

(2003) 04 AHC CK 0082
In the Allahabad High Court
Case No : Civil Revision No. 32 of 1997

Aqua Zawwar Ali Khan

APPELLANT

Vs

Controller, Shia Central Board of Wakf

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Uttar Pradesh Muslim Waqfs Act, 1960 — Section 55, 76

Citation : (2003) 4 AWC 3323

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : P.L. Misra, for the Appellant; Javed Murtaza and Rajesh Ojha, for the Respondent

Judgement

N.K. Mehrotra, J.—This is a revision u/s 76 of the U . P. Muslim Waqfs Act, 1960 against the order/award dated 2.4.1997, passed by the Civil Judge (Senior Division), Lucknow/Tribunal in R. S. No. 343 of 1996.

2. I have heard the learned counsel for the parties and have perused the record.

3. It appears that one Nawab Sajjad Ali Khan created a waqf known as Sajjadia Qadim on 6.5.1921 and Sajjadia Jadid by waqf deed dated 28.2.1934. Five members committee was appointed under the waqf-deed. The waqif provided that every mutwalli shall have right to appoint his successor mutawalli. It was also provided that if any mutawalli does not nominate his successor and dies, then firstly, the Mujtahid-ul-asr secondly, the Hakim-e-Waqt shall have right to appoint a competent person on his place. In one waqf there was a five members" committee and in other there was six members" committee. In the waqf deed dated 22.2.1934, it was provided that every mutawalli shall have a right to nominate his successor and if any mutawalli does not nominate his successor, then after his death, the other mutawalli shall be entitled to appoint a successor by majority vote. According to the revisionist, he was one of the mutawalli. After the resignation of six members out of seven, he (the revisionist) was the only mutawalli and the U. P. Shia Waqf Board vide order dated 17.12.1976 dissolved

the committee of management. The revisionist filed a reference. It was decided on 1.9.1990. The order dissolving the committee was quashed. When the waqf board did not hand over the charge of the waqf property to the revisionist, he filed a suit No. 313 of 1991 in the Court of the Munsif South, Lucknow. On 18.5.1996, the U. P. Shia Waqf Board (hereinafter referred to be as "Board") served a show cause notice to the revisionist u/s 55 of the U. P. Muslim Waqf Act, 1960. The revisionist replied to the notice but the Board removed the revisionist on 31.7.1996. It is against these two orders a reference was made before the Tribunal/Civil Judge (Senior Division), Lucknow. The Civil Judge, (Senior Division), Lucknow dismissed the reference and it is against this order that the present revision has been filed.

4. The case of the opposite party is that the revisionist was never appointed by the waqif as member of the committee of the management. After the enforcement of the U. P. Muslim Waqf Act, 1960, both the waqfs were duly notified as public waqf. According to the Board, opposite party, the revisionist was also not nominated as successor mutawalli by any of the outgoing mutwallies. After his resignation Mirza Ali Hasan Saheb did not nominate his successor. The revisionist moved to the Board and the Board appointed him as member of the Committee in place of Mirza Ali Hasan Saheb. Later on, the Committee became defunct and the Board assumed direct management on 17.12.1976 and appointed Shri Syed Mohammad Mujtaba as its Administrator. During the pendency of the reference No. 112 of 1977, the Administrator appointed by the Board had ceased to function and it was substituted by a committee. Later on the, the Board vide its order-dated 5.4.1995, appointed Maulana Syed Kalbe Jawad Saheb Qibla Mujtahid as mutawalli. The period of mutawalliship was for two years from 5.4.1995. The Board appointed the revisionist as assistant mutawalli to help the mutawalli Maulana Syed Kalbe Jawad Saheb. The copy of the Board's order dated 24.8.1995 is Annexure No. C.A.-2 on the record. The Waqf Board received the complaints and after making enquiry removed the mutawalli.

5. The learned counsel for the revisionist has argued that at the time of issuing notice, the new Waqf Act, 1995, was already in force, so the Board was not competent to proceed under the provisions of U. P. Muslims Waqf Act, 1960. It was also been argued that the orders passed in the earlier reference were to be complied with by the Board and the learned Tribunal has committed illegality in not appreciating the import of the earlier order in Reference No. 112 of 1977. It has also been argued that the show cause notice was illegal and proper enquiry was not conducted. The enquiry made was not in accordance with the provisions either under the U. P. Muslim Waqf Act, 1960 or under the Waqf Act, 1995. Therefore, the order of the Board was illegal and it was to be set aside in the reference. Since the Tribunal has not appreciated these arguments, the order of the Tribunal is illegal and required to be corrected.

6. A perusal of the record goes to show that the revisionist was appointed as

Nayeb mutawalli on 16.8.1995 for a period of two years from 5.4.1995 when Maulana Syed Kalbe Jawad Saheb was appointed as mutawalli. This period of two years expired on 4.4.1997. In reply to the notice (Annexure-8 on the record of the lower court), the revisionist has admitted that he was appointed on 25.8.1995 by the Board and not on 5.4.1995. Even if, this fact is accepted, the period of two years expired on 24.8.1997. So this fact is proved beyond doubt that the revisionist is the assistant mutawalli appointed by the Board vide order dated 25.8.1995 and he was appointed to assist the mutawalli during the tenure of his appointment. Since this period has expired, long back, the revisionist has no right to continue as assistant mutawalli of the waqf in question. Even if all the arguments advanced by the learned counsel for the revisionist are accepted, no relief can be granted to the revisionist in this revision because his tenure of the appointment has already expired. This revision has become infructuous. Therefore, there is no need to enter into the question as to whether the old U. P. Muslim Waqf Act will apply or the new Waqf Act, 1995, will apply or as to whether the due enquiry was conducted or not? Therefore, without deciding these questions. I am of the view that after expiry of the period of two years from the date of the appointment, the revisionist cannot be given any relief and his revision is liable to be dismissed.

7. The revision is dismissed and the Board is directed to act in accordance with the deed of waqf and the provisions of Waqf Act, 1995, with regard to the management of the property of the waqf.