

(1984) 08 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 492 of 1984

Ataur Rehman Barlaskar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1954 — Section 43(4A)

Citation : AIR 1986 Guw 19

Hon'ble Judges : T. Nandakumar Singh, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : G.K. Talukdar and N.K. Singha, for the Appellant; A.S. Bhattachajee, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—The subject matters of the present proceedings are matters of 1977 as well wherefore 7 years have rolled by and the matter regarding removing of a mutawalli under the provisions of Section 43 of the Wakf Act. 1954, as amended, has yet to see a final end. It is a fit case in which the petitioner is entitled 10 Rule. However, it may cause injury and harm to both the parties if the matter is delayed and not disposed of to-day right now.

2. We had the advantage of hearing Mr. A.S. Bhattacharjee, learned Additional Senior Government Advocate Assam in respect of the appellate order marked Annexure 3, which we extract hereinbelow : --

"Order -

The Government do not find any ground to set aside the order of removal of the appellant from the Mutawalliship of the above mentioned Wakf Estate. Hence the appeal is rejected.

Sd/- Secretary to the Govt. of Assam, Legislative Wakf Affairs Deptt."

The act of removal of a Mutawalli is a serious business as it appears from the provisions of the Act itself. A detailed enquiry is necessary to be made and that too in the prescribed manner and the decision must be by a majority of not less than 3/4th of the members of the Board, namely, the total members of the Board. Further, the only right of a Mutawalli removed u/s 43 is a right of appeal prescribed u/s 43(4A) of the Act. The decision of the appellate authority is final and it cannot be questioned in any court of law. In law it amounts to a decree of the Civil Court. Such high, apparently, is the responsibility of the appellate authority that there should be some minimum obligation on it to dispose of an appeal in accordance with the well-known norms applicable for disposal of appeals before a judicial or quasi-judicial authority. The appellate authority, undoubtedly has the trappings of the court. Its order becomes a decree.

3. In *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 AC 147, it has been held that there is no finality of a decision or a decree if it happens to be a purported order and not a "real" order in that it was not rendered in accordance with the provisions of the Act. Similar views have been expressed by their Lordships in the Supreme Court and the learned counsel for the parties have conceded to this. We have disposed of many cases following the rule that in a writ of certiorari this court can quash an order of quasi-judicial authority if it renders a "purported decision" and fails to render a "real decision".

4. u/s 43(4A), the appellate authority, that is the final authority, is to hear both the parties to consider whether the enquiries envisaged u/s 43(4) of the Act were duly made and it must also consider whether the decision rendered by the Board was in accordance with the provisions of Section 43(1) of the Act. All the contentions raised must be dealt with by the appellate authority, namely, the State Government. We have before us the Memorandum of Appeal presented by the petitioner to the appellate authority and we regret to say that not a single point was touched by the appellate authority. The impugned order marked Annexure-3 does not contain any reason for reaching the conclusion. There is no application of mind by it to the facts of the case although it is the final court for disposal of facts as well as questions of laws involved in the appeal.

5. Upon hearing learned counsel for the parties, we feel that for the ends of justice instead of issuing Rule we should dispose of the matter in accordance with law. We have heard Mr. G.K. Talukdar, learned counsel for the petitioner and Mr. A.S. Bhattacharjee, learned Additional Senior Government Advocate, Assam appearing on behalf of the appellate authority. No further and other records are necessary to determine the validity of the impugned order. Under these circumstances, instead of delaying the matter we quash the impugned order for reasons alluded and remit the appeal to the State Government for disposal of the same in accordance with law and in terms of the directions contained in this order.

6. In the result, the petition is accepted. However there will be no order as to costs.

7. However, anybody affected by this order may come up before this court for modification or cancellation of this order, if so advised.

8. We feel that the appeal should be disposed of within a span of 3 weeks from the date of receipt of this order after hearing both the parties.