
(1956) 08 AHC CK 0027
In the Allahabad High Court
Case No : F.A.F.O. No. 79 of 1951

Custodian Evacuee Property	Vs	APPELLANT
Shrimati Bibijan		RESPONDENT

Date of Decision : 31-08-1956

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 11, 11(2), 2, 4, 8

Citation : AIR 1957 All 249

Hon'ble Judges : Beg, J;Agarwala, J

Bench : Division Bench

Advocate : D.D. Seth, for the Appellant; M.A. Kazmi, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is an appeal against an order removing a person from the office of the Mutwalli and calling for applications for the appointment of a fresh mutwalli.

2. A Waqf-alal-aulad was created by one Karamat Ullah by means of a deed of Waqf dated 14th October, 1951, and the order of mutwallis to be appointed for the Waqf properties was laid down in the deed of Waqf. According to the terms contained in the deed of Waqf Akhtar Husain became mutwalli and managed the property.

He, however, migrated to Pakistan and his rights, title and interest in the Waqf properties vested in the Custodian of Evacuee Properties. One Bibi Jan claiming to be the niece of Karamat Ullah applied to the Court of the District Judge, Bareilly, that she may be appointed mutwalli in place of the said Akhtar Husain, The Court below passed an order removing Akhtar Husain from the office of Mutwalli and inviting applications for the vacant office.

3. The Custodian, Evacuee Properties, U.P., has now appealed against this order and his contention is that the order of the Court below was without jurisdiction inasmuch as u/s 11(2) of the Administration of Evacuee Property Act, 1950 (Act

No. XXXI of 1950) all right, title and interest of evacuees have become vested in him and the learned District Judge had no jurisdiction to remove Akhtar Husain from the office of Mutwalli.

4. In our opinion the order of the Court below cannot be supported. The application of Bibi Jan did not specify the law under which it was made. We have not been shown any law by the learned counsel appearing on behalf of Bibi Jan under which such an application could have been made. Certainly it could not be made under the U.P. Waqfs Act (Act No. XIII of 1936). It has not been shown under what other law such an application lay. Of course, Bibi Jan might have filed a regular suit for the reliefs claimed by her in the ordinary course. It is another thing that such a suit may have succeeded or failed.

5. Again, assuming that an application lay under some provision the Court below has overlooked the provisions of the Administration of Evacuee Property Act (Act No. XXXI of 1950). Section 2(f) of the aforesaid Act defines evacuee property. It runs as follows:--

" "Evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity)....."

Section 8 of the Act lays down

""Any property declared to be evacuee property u/s 7 shall be deemed to have vested in the Custodian for the State--"

Section 11(2) lays down

"In respect of any waqf-alal-aulad, where the mutwalli is an evacuee, the property forming the subject matter of the Waqf shall vest in the Custodian subject to the rights of the beneficiaries under the Waqf, if any, who are not evacuee,"

6. From a perusal of these three sections it is quite clear that the property which is the subject-matter of a waqf-alal-aulad in its entirety vests in the Custodian subject to the rights of the beneficiaries under the Waqf who are not evacuees, and that all the rights of the mutwalli under the Waqf property and any other property also vest in the Custodian. Under the Mohammedan Law Waqf property vests in God. The provisions of Section 11, however, override the provisions of Mohammedan Law by virtue of Section 4 of the Act which provides:--

"The provisions of this Act and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law."

7. If the Waqf property vests in the Custodian all the rights of the mutwalli also vest in him and the Custodian becomes entitled to administer the trust in place of the mutwalli-evacuee. In such a case it is not proper for the Court to pass an

order of removal of the mutwalli so long as the Custodian is in charge of the property because he is prima facie the best person to manage the property and discharge the duties of a Mutwalli. The Court below did not take these facts into consideration while removing Akhtar Husain from the office of the Mutwalli.

8. For all these reasons the order of the Court below is set aside and the objection of Bibi Jan is dismissed with costs in both the Courts.