

**(1985) 02 KAR CK 0004**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 1305 of 1984**

Gulam Ali

APPELLANT

Vs

Karnataka Board of Wakfs and Another

RESPONDENT

**Date of Decision :** 13-02-1985

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Waqf Act, 1954 — Section 15, 42, 43 A

**Citation :** AIR 1985 Kar 242 : (1985) ILR (Kar) 3321 : (1985) 1 KarLJ 385

**Hon'ble Judges :** K.A. Swami, J

**Bench :** Single Bench

**Advocate :** K.S. Savanur, for the Appellant; Mahboob Ali Khan, for the Respondent

## Judgement

1. On the last occasion this petition was heard in part and was adjourned to enable learned Counsel for the Wakf Board to obtain the records and instructions in the matter. Accordingly, learned Counsel for the Wakf Board Sri Mahboob Ali Khan submits that he has received the instructions and is ready to argue the matter. Hence, this petition is heard for final disposal.

2. In this petition under Arts. 226 and 227 of the Constitution, the petitioner has sought for quashing the order dt. 16-12-1983 bearing No. KTW.10 CMC-BNU/79 passed by the first respondent produced as Annexure-F. The petitioner has also sought for issue of a writ in the nature of mandamus directing the first respondent to constitute a committee of Muthavallis for managing the Bakarabad Trust alias Aga Ali Asker Wakf and its properties described in the Schedule to the petition and hand over possession of the Wakf to the said committee.

3. The Wakf in question is known as Aga Ali Asker Wakf. The properties of the Wakf are enumerated in the Schedule to the petition: as such it is not necessary to repeat the same. This Wakf was created by the late Sri Aga Ali Asker Shirazi by his will dt. 29-10-1880 and his second Codicil dt. 22-6-1887. The Wakf is also known as Bakarabad Wakf. It is governed by the provisions contained in the Wakf

Act (hereinafter referred to as the Act). Subsequent to the creation of the wakf, a scheme is also framed by the Wakf Board in No. MWB LCC 5/67 dt.16-11-69 as per Annexure-B. However, the Board assumed the direct management in exercise of its powers under S. 43-A of the Act by the order dt. 26-1-1978 produced as Annexure-C.

4. The contention of the petitioner, who claims to be one of the descendants of the creator of the Wakf the late Aga Ali Asker is that the Board can at the most exercise its direct supervision for a period of five years from the date of its assumption of direct management and thereafter it has to appoint a committee of Muthavallis as per the scheme framed for the Wakf in question. Therefore it is submitted that the order dt. 18-1-1983 bearing No. KTW/10/CMC/BNU/79 produced as Annexure-E appointing an Ad hoc Committee of management to manage the Wakf in question in exercise of its power, under S. 42 of the Act after the expiry of five years direct supervision, is impermissible in law. On the contrary, it is submitted by Sri Mahboob Ali Khan, learned Counsel for the Board that several developments have taken place subsequent to framing of the scheme, therefore it is under contemplation to amend the scheme itself, Therefore, the Board has thought it fit to appoint an ad hoc committee of management pending the amendment of the scheme, as such the appointment made under S. 42 of the Act is valid in law.

5. Having regard to the rival contentions, the question that arises for consideration is whether under the facts and circumstances of the case, it is permissible for the Wakf Board to appoint an ad hoc committee of management under S. 42 of the Act?

6. It is not in dispute that the scheme framed for the wakf in question is complete in all respects. It is also not the case of the Wakf Board that it is not possible to implement the scheme. The relevant portion of the scheme is as follows:

"Therefore, we frame the following scheme of Management for the Bakarabad Wakf.

1. The Management of the Bakarabad Wakf shall vest in a Committee of Muthavallis consisting of five adult male members. But the State Board of Wakfs may raise this number to 7 (seven) if it deems fit.

2. The Muthavallis shall be nominated by the State Board of Wakfs from among descendants of the Wakif, i.e., late Aga Ali Asker whether they are descended through the male line or female line. But no person who has an interest adverse to the interest of the Wakf shall be so nominated.

3. The Committee of Muthavallis so nominated shall hold office for three years from the date of their nomination.

4. The State Board of Wakfs shall be competent to expand the number of Muthavallis to seven as provided above and two additional members to be added,

need not necessarily be from the descendants of the Wakif, but they shall be Shia Muslims of the Imam men Persuasion but all things being equal descendants of the Wakif shall be preferred to others.

5. In case of casual vacancies in the committee of Muthavallis the State Board of Wakfs shall fill up the vacancy by nomination and the member so nominated shall hold office for the remaining period of the term of the Committee.

6. In case a sufficient number of suitable persons is not available from among the, descendants of the Wakif, the Board of Wakfs may appoint any other Shia Imman Muslim as member of the Committee of Mutavallis.

7. The Committee of Muthavallis shall within a fortnight from their nomination meet and select a president and secretary from among themselves. It shall be the duty of the Secretary for the previous terms to call this meeting, hold the elections and report the result of the elections to the Board of Wakfs.

8. The Chairman shall have overall supervisory powers and the Honorary Secretary shall be the Chief Executive Officer of the Wakf.

9. All cheques, drafts, instruments and documents shall be drawn under the joint signatures of the President and Secretary.

10. The Committee of Muthavallis shall frame detailed rules of business for the conduct of business by the Committee of Muthavallis and allocation of duties and powers, such rules shall come into force only after the approval of the Board of Wakfs.

11. It shall be the duty of the Muthavallis to discharge the duties laid upon by law and in particular to develop the sources and income of the wakf, maintain and preserve it and give effect to the wishes of the Wakif impartially.

12. The Committee of Muthavallis shall be subject to and give effect to all the instructions and directions that so far have been issued by the Board of Wakfs or may be given hereafter.

13. The parties are requested to submit to the Board a panel of ten names out of which the Board will select and nominate five persons to first Committee of Management."

7. It is not in dispute that the descendants of Aga Ali Asker are available. If that be so, there is no reason whatsoever to exercise the power under S. 42 of the Act. The fact that the Wakf Board is contemplating to amend the scheme is not a ground for not implementing the scheme and not appointing, the Committee as per the provisions of the scheme. The scheme framed for the wakf has the force of law. The Wakf Board as well as the Wakf and all concerned with the Wakf are bound by it. There is a legal duty cast on the Wakf Board to implement the scheme. S. 15 of the Wakf Act provides that it shall be the duty of the Wakf Board to ensure that the Wakfs under its superintendence are properly maintained, controlled and administered. It also further provides that in respect

of any. Wakf, the Board shall act in conformity with the directions of the Wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law. The scheme is framed with a view to properly administer the Wakf in conformity with the direction, purposes and any usage or custom of the Wakf sanctioned by the Muslim law. Therefore, there is no option left to the Wakf Board to over-come the provisions of the scheme and appoint an ad hoc committee. Such an act cannot at all be sustained as it is directly in conflict with the provisions of the scheme. As long as there is no obstacle for implementing the scheme or appointing the committee as per the scheme, it is not permissible for the Wakf Board to appoint an ad hoc committee under S. 42 of the Act. That being so, it is not possible to sustain the order dt. 18-1-1983 (Annexure-E).

8. It is submitted by Sri Mahboob Ali Khan, learned Counsel for the Wakf Board that in the event this Court comes to the conclusion that the order dt. 18-1-1983 is liable to be quashed and a committee has to be appointed as per the scheme, a reasonable time may be granted to the Wakf Board to appoint the committee in accordance with the provisions of the scheme and in the meanwhile the ad hoc committee be permitted to manage the affairs of the wakf. This submission is reasonable because it is not reasonable to expect the Board to appoint the committee as per the provisions of the scheme over-night. Therefore, a reasonable time has to be given to the Board to appoint a committee in accordance with the provisions of the scheme.

9. For the reasons stated above, the writ petition is allowed in the following terms:

1). The order dt. 18-1-1983 bearing No. KTW/10/CMC/BNU/79 produced as Annexure-E passed by the first respondent is hereby quashed.

2) A Writ in the nature of mandamus shall issue to the first respondent to appoint a committee of Muthavallis for the management of the affairs of Bakarabad Trust as per the provisions contained in the scheme dt. 16-11-1969 framed by the Wakf Board in No. MBW.LCC 5/67 as per Annexure-B within three months from today.

3) In the meanwhile, till the expiry of three months from today, the ad hoc committee of management appointed by the impugned order dt. 18-1-1983 (which is quashed by this order) produced as Annexure-E is permitted to manage the affairs of the wakf, but the said committee has to only conduct the day to day affairs of the wakf and it shall not enter into any transaction which has the effect of alienating or creating any encumbrance on the Wakf properties and shall not do an), such act which causes any harm, injury or loss to the wakf and its properties.

10. Petition allowed.