
(2014) 03 AP CK 0048
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 213 of 2014

Ibrahim Bin Abdullah Masquati	Vs	APPELLANT
A.P. State Wakf Board and Others		RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Waqf Act, 1995 — Section 32, 36, 42

Citation : (2014) 3 ALD 78 : (2014) 2 ALT 678

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; P.V. Sanjay Kumar, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, Senior Counsel for Mr. Ramakrishna Pativada, Counsel, Advocate for the Appellant; Vedula Venkataramana, Senior Counsel for Mr. M.A.K. Mukheed, Counsel for Respondent No. 1, Mr. M.V.S. Suresh Kumar for Mr. T. Srinivas, Counsel for Respondent No. 2, Mr. C. Raghu, Counsel for Respondent No. 3, Mr. S. Nyaya Murthy, Counsel for Respondent Nos. 6 and 8 and Mr. D. Jagan Mohan Reddy, Counsel for Respondent No. 7, Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—After reading the text of the impugned order passed by the A.P. State Wakf Board, at page 35 of the paper book, which was challenged before the learned trial Judge, we find that there is no adjudication or determination of anyone's right or liability. It merely records the fact of change of composition of the managing committee. Learned trial Judge also read it as we have. But Mr. C.V. Mohan Reddy, learned senior advocate, says that this seriously affects his client's interest. We have read the judgment of the learned trial Judge and we are of the view that the learned trial Judge should have passed the following order after hearing the learned counsel for the appellant. It appears that on receipt of any intimation about the change of composition of the managing committee of any wakf institution, the Wakf Board has no jurisdiction to do anything in the matter except to receive and record such intimation. It has no power to pass any separate order as has been done in this case. Section 42 of the Wakf Act, 1995, pointed out by Mr. Mohan Reddy, provides for the course of

action to be taken by the Board.

2. Section 42 of Wakf Act, 1995 reads as follows:

Change in the management of wakfs to be notified.--(1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in Section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

3. It appears that the Board should only be notified about the change. There is no provision in the Wakf Act as to what should be done by the Board on receipt of the change. According to us, no separate order requires to be passed. The Wakf Board can certainly take note of this change and record it in its register or record u/s 32 sub-section (2) Clause (o) of the Wakf Act, which reads as follows:

32. Powers and functions of the Board.--(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act 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 school of Muslim law to which the wakf belongs.

Explanation.--For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be--

(a) to (n).....

(o) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.

.....

Therefore, we feel that for control, maintenance and administration of the wakf, the change of composition also has to be recorded. We hereby make it clear that noting of this fact recorded by the Wakf Board will not create any extra right nor destroy any existing right or extinguish any such right. Whatever rights and liabilities are prevailing upon this change will remain.

The writ appeal is accordingly disposed of. Miscellaneous petitions, if any, shall stand closed. No order as to costs.