

(2008) 02 KAR CK 0052
In the Karnataka High Court
Case No : C.R.P. No's. 729 and 730 of 2004

Ibrahimsab Tharthari, Chairman Chingisha Darga and Others APPELLANT
Vs

Kashimsha Tharhari, The Secretary of Wakf Board, The RESPONDENT
Chairman and Karnataka Wakf Tribunal, Belgaum Division

 Ibrahim and Sirajasab Vs The Karnataka Wakf Board,
Wakf Committee Jod Gumbaj, Kasim Sab and The Karnataka
Wakf Tribunal, Belgaum Division

Date of Decision : 26-02-2008

Acts Referred:

Waqf Act, 1995 — Section 63, 63 (b), 64, 83

Citation : AIR 2008 Kar 2448 : (2009) 5 RCR(Civil) 153

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

Bench : Single Bench

Advocate : Jayakumar S. Patil and Associates, for the Appellant; Mohd. Shafiuddin, in C.R.P. No. 730 of 2004 and for Respondent No. 3 in C.R.P. No. 729 of 2004 and Prabhuling K. Navadgi, in C.R.P. No. 730 of 2004 and for Respondent No. 1 in C.R.P. No. 729 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioners in these two petitions are assailing the correctness of the order dated 26.3.2004 bearing No. KWT;BAG;SR;9A/02 passed by the Presiding Officer, Karnataka Wakf Tribunal, Belgaum, dismissing the revision petition and confirming the order dated 21.6.1997 passed in LCC No. 2/88, on the file of the Law Committee of Karnataka Board of Wakfs, Bangalore.

2. Learned Counsel appearing for first respondent in C.R.P. No. 730/2004 had filed an application u/s 151 of CPC on 29 10.2003 before the Karnataka Wakf Tribunal, Belgaum Division, Belgaum 4th respondent herein to reject the appeal as not tenable in law. The said application has been filed by first respondent at the stage when the matter is posted before the 4th respondent for hearing IAs I and II i.e. an application filed under Order 41 Rule 10 read with Section 83 of the Wakf Act 1995 for staying the operation of the order dated 21.6 1997 bearing

No. LCC 2/1988 by the Law Committee of the Karnataka Wakf Board (i.e. IA No. 1) and another application filed u/s 5 of the Indian Limitation Act read with Section 95 of the Wakf Act to condone the delay in filing the said appeal (i.e. IA No. II).

3. In C.R.P. No. 729/2004, the revision petition has been filed by petitioners u/s 63(b) of the Wakf Act, before the Government on 15.10 1997 to set aside the impugned order passed in LCC No. 2.1988 dated 21 6.1997 by the Law Committee of the Karnataka Board of Wakfs, Bangalore. The said revision petition filed by petitioners has been transferred to the 4th respondent-Karnataka Wakf Tribunal, Belgaum Division, Belgaum, since the subject matter involved in both the cases is against the order dated 21 6.1997 passed by the Law Committee of the Karnataka Board of Wakfs, Bangalore bearing No. LCC 2/1998. The 4th respondent regarding the respective proceeding as referred above has taken up the matter for consideration. The 4th respondent-Tribunal, after hearing both the parties through their counsel and after considering the relevant materials available on file and in consonance with the relevant provisions of the Karnataka Wakf Act, has held that, the order passed by the Law Committee is on 21 6 1997 and the appeal has been filed after the lapse of 5 years (in C.R.P. No. 730/2004) and after the lapse of one year one month five days, the revision has been filed (In C.R.P. No. 729/2004) and the said delay has not been explained satisfactorily. Further, the 4th respondent-Tribunal has taken up the matter for consideration on merits and held that, the appeal provision is not provided against the order and the order of the Board appointing respondent No. 1 as Mutawalli i.e. order dated 31.1.1976 has not been challenged at all and therefore, no relief can be granted under any of the provisions of the said Act. Accordingly, both the appeal and the revision petition filed by these petitioners have been dismissed as not maintainable Being aggrieved by the impugned orders passed by the 4th respondent-Tribunal, these petitioners have presented the instant Civil Revision Petitions, seeking appropriate relief as stated supra.

4. I have heard learned Counsel appearing for petitioners and learned counsel appearing for respondents-1 and 2 and other respondents served and unrepresented.

5. After careful perusal of the impugned orders passed by the 4th respondent-Tribunal, I do not find any error of law, much less material irregularity as such committed by the Tribunal in dismissing the appeal and the revision filed by petitioners as not maintainable against the order dated 21.1.1997 passed by the Law Committee of the Karnataka Board of Wakfs, Bangalore. Further, it emerges that, against the order passed by the Law Committee of the Karnataka Board of Wakfs Bangalore, dated 26 1.1997, an appeal u/s 83 will have to be filed within three years from the date of the order if the proceeding is filed in the nature of the application.

6. The nomenclature used is appeal u/s 83 of the Wakf Act, whereas, the said order is appealable u/s 83 of the Wakf Act, 1995 The right of appeal is a

statutory right, unless an appeal is provided under the Act, it cannot be entertained as an appeal. The 4th respondent-Tribunal has observed that, since the order passed by the Law Committee on 21.6.1997 in No. LCC 2/1988 has only recognized the first respondent's right to continue as Mutawalli as per the order passed by the Board dated 31.1.1976 and the order is not with regard to appointment of Mutawalli or removal of Mutalli u/s 63 and 64 of the Wakf Act, 1995 which sections deal with the power of the Board to appoint Mutawalli in certain cases and with regard to removal of Mutawalli and the challenge made against the order of the Law Committee does not fall under any of the two sections as referred above Further, it is specifically opined by the 4th respondent-Tribunal that the order of the Law Committee refers to hereditary Mutawalliship of first respondent which comes under Sections 63 and 69 of the Act, which states that, as and when there is vacancy in the office of the Mutawalli of the Wakf and there is no one to be appointed under the terms of the deed of the Wakf etc., the Board may appoint any person to act as Mutawalli for such period and on such conditions as it may think fit and while the Board frames a scheme for administration of wakf, the scheme framed u/s 69(1) may provide for removal of the Mutawalli of the Wakf holding office as such etc., provided that where any such scheme provides for the removal of any hereditary Mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the Mutawalli so removed as one of the members of the Committee appointed for the proper administration of the wakf and the order u/s 69 above referred can be challenged by the aggrieved person by filing an appeal before the Tribunal within 60 days from the date of the order and there is no appeal prescribed u/s 63 of the Wakf Act, 1995. The Tribunal after critical evaluation of the relevant materials available on file and with reference to the statutory provisions of the Karnataka Wakf Act and by assigning valid reasons has rejected the appeal and revision filed by petitioners Therefore, I do not find any justification or good grounds as such made out by petitioners to entertain the instant Civil Revision petitions.

6. Further, the specific ground urged by petitioners in these revision petitions is that, they have filed the revision petition before the Government assailing the correctness of the order dated 21.6.1997 passed by the Law Committee of the Karnataka Board of Wakfs, Bangalore and in view of the constitution of the Wakf Tribunal, the Government has transferred the same to the Tribunal and during these process there is a delay The said ground taken by petitioners has no basis or there is no substance in the same for the reason that, the revision has been transferred by the Government, but there is a delay of 5 years in filing the appeal and the said delay has not been satisfactorily explained by petitioners by assigning cogent reasons. Even the said delay is condoned, petitioners cannot maintain the appeal against the order passed by the Law Committee, until and unless they assail the correctness of the order passed by the Board, appointing the first respondent as Mutavalli under the relevant provisions of the Wakfs Act. This aspect of the matter has been rightly considered and appreciated by the

Tribunal and after assigning cogent and valid reasons has rightly rejected the appeal and revision filed by petitioners holding that they are not maintainable.

7. In view of the valid reasoning given by the Tribunal for rejecting the appeal and revision filed by petitioners, I do not find any illegality or much less material irregularity as such committed by the Tribunal. Interference by this Court exercising revisional power is not justifiable when the petitioners have failed to make out good grounds to entertain these revision petitions.

8. Having regard to the facts and circumstances of the case as stated above, these two revision petitions filed by petitioners stand dismissed as devoid of merits.