
(2010) 03 AHC CK 0128

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 68113 of 2009

Kokab Abbas

APPELLANT

Vs

Shia Central Board of Waqf and Others

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Waqf Act, 1995 — Section 64, 67

Citation : (2010) 03 AHC CK 0128

Hon'ble Judges : Ashok Bhushan, J and Virendra Singh, J

Final Decision : Dismissed

Judgement

Virender Singh, J.

(1) Heard Sri W. H. Khan, learned Senior Counsel for the petitioner, Sri M. A. Qadeer, Senior Advocate assisted by Sri Shamim Ahmad learned counsel for respondent nos. 4 and 5 and Sri Haidar Hussain, learned counsel appearing on behalf of respondent nos. 1 to 3.

(2) This writ petition has been filed by the petitioner Kokab Abbas with the prayer to issue a writ in the nature of certiorari quashing the order dated 03.09.2009 issued by the Administrative Officer (Respondent No. 3) certifying the appointment of Sayyed Hadi Raza (Respondent No. 4) as duly appointed Managing Mutawalli by the Shia Central Board of Waqf, the order dated 19.08.2009 passed by the Waqf Board, the order dated 21.08.2009 issued by the Administrative Officer of the Waqf Board in the form of Tauliat certificate and the order dated 16.09.2009 passed by the respondent Board regarding appointment of Sri Hadi Raza, the respondent no. 4 as Muntazim Mutawalli and Kokab Abbas the petitioner as Mustarak Muntazim Mutawalli.

(3) Learned counsel for the petitioner submits that the impugned orders by which respondent nos. 1 and 3 have given entire power to respondent no. 4 Sayyed Hadi Raza as Managing Mutawalli, Waqf Noorul Hassan to manage total financial powers solely have been passed without giving any opportunity of

hearing to the petitioner Kokab Abbas, who was earlier jointly managing all the affairs of Waqf and all the financial powers were being managed with joint signatures of petitioner and respondent no. 4. Originally property of Waqf Noorul Hassan was managed jointly by Moattar Raza (father of the petitioner) and respondent no. 4 Hadi Raza and after the death of Moattar Raza, the main Managing Mutawalli, his son Kokab Abbas (the petitioner) was nominated by the Board vide order dated 17.10.2005 as main Mutawalli while the names of respondent no. 4 Sayyed Hadi Raza and respondent no. 5 Khalak Haider were placed as Managing Mutawalli (2nd) and Mutawalli respectively to manage the affairs of the Waqf properties. Thereafter, the waqf properties were managed by all the three Mutawallis and the petitioner was empowered to manage the affairs jointly with respondent no. 4 and all the financial transactions were made by their joint signatures. The period of Tauliat was extended for a period of three years w.e.f. 16.10.2008 by the order dated 21.08.2009 by respondent no. 3, the Administrative Officer, Shia Central Board of Waqf, U.P. Lucknow, but the petitioner was surprised to note that in that order, the petitioner was shown as Additional Managing Mutawalli with Respondent No. 5 Khalak Haider. As per order dated 01.09.2009 passed by the Chairman, Shia Central Board of Waqf, U.P. Lucknow, the name of the petitioner is shown as Additional Managing Mutawalli and total power of management was given to respondent no. 4 Sayyed Hadi Raza, that too, on the basis of one application dated 01.09.2009 alleged to have been sent by the petitioner while no such application was sent or moved by the petitioner and no such consent was given by the petitioner that the whole managing powers may be given to respondent no. 4.

(4) It is further submitted on behalf of the petitioner that as per application dated 11.08.2009, respondent no. 4 Sayyed Hadi Raza had requested to respondent no. 2 the Chief Executive Officer, Shia Central Board of Waqf, U.P. that the annuity of the waqf be given to him enabling him to manage the properties solely. By another application of the same date, i.e. 11.08.2009, respondent no. 4 requested to respondent no. 1 Shia Central Board of Waqf that he may be empowered solely to manage the accounts, property and bank's accounts which were earlier managed by him and the petitioner jointly. Without affording any opportunity, the respondent nos. 1 to 3 passed the impugned order on totally false statement of respondent no. 4. Section 23, 25 and 28 of the Waqf Act 1995 empowers the Chief Executive Officer to exercise all or any of the powers conferred on him and thus the total power of administrative control of the Waqf properties lies with the Chief Executive Officer. Vide letter dated 30.01.2006, respondent no. 2 Chief Executive officer had clearly directed respondent no. 3, the Administrative Officer, not to issue any letter under his signature in pursuance to Government Orders as only the Chief Executive Officer is the authorized officer to sign any direction issued by the Board and thus the order issued by any officer other than the Chief Executive Officer is totally illegal and without jurisdiction. Section 65 of the Waqf Act clearly states that no action shall be taken without giving proper opportunity to show cause to any of the

concerned Mutawallis. The intention of respondent no. 4 remained totally malafide and he is trying to seize all the powers of management of accounts and properties of Waqf for which respondent no. 3 has also joined hands with respondent no. 4.

(5) As per counter affidavit filed on behalf of respondent nos. 4 and 5, it is submitted on behalf of respondents that the Waqf has been managed by a Managing Committee appointed by the Waqf Board for last several years and the respondent no. 4 was appointed as Managing Mutawalli on 06.06.1984. Sri Moattar Raza, father of the petitioner, was also one of the Mutawallis. After his death, the Managing Committee of three persons was appointed for a period of three years and in this regard, an office memorandum was also issued that since the office of Chief Executive Officer is vacant in the Board and the Administrative Officer is officiating in his place, who has been delegated powers u/s 27 of the Act and therefore, he issued the office memorandum in this regard. The petitioner himself had applied on 01.09.2009, claiming his appointment as Mustarak Managing Mutawalli in place of his father Moattar Raza. The petitioner had also sought alteration to this effect that Khalak Haider (respondent no. 5) be made a member of the Managing Committee instead of joint Managing Mutawalli. The chairman of the Board vide order dated 01.09.2009 made alteration in this regard. Sri Moattar Raza was not having any personal interest in the property of the Waqf nor he hailed from the family of the Waqif, therefore, the petitioner cannot claim any personal right over the Waqf. There were several complaints against the petitioner as he acted against the interest of the waqf, therefore, he was charged sheeted on 03.09.2009 and the disciplinary proceedings against the petitioner for his removal are pending. Respondent no. 4 Sayyed Hadi Raza is realizing rent from the tenants and depositing the dues against the Waqf to the Nagar Palika and is in actual management and control of the Waqf being duly appointed Managing Mutawalli. The provisions u/s 65 of the Act are not applicable in the instant case and the impugned orders suffer with no malafide and have already been given effect and implemented too.

(6) Learned counsel for Respondent Nos. 1 and 2 Shia Central Board of Waqf and its Chief Executive Officer, submits that apart from the submissions made on behalf of Respondent No. 4, they have to add that the order dated 3.9.2009 was issued after perusing the records and also after hearing the concerned parties. The petitioner as Managing Mutawalli was found involved in financial irregularities which followed the charge sheet against him for his conduct in discharging the duties and therefore, the Board took over financial power from the petitioner and appointed Respondent No. 4 as Muntazim Mutawalli and there is no illegality or apparent error in the order dated 03.09.2009 which has already been implemented. The properties of the Waqf were not the personal properties of Moattar Raza and therefore the petitioner cannot claim the right of Muntazim Mutawalliship on the basis of his father's Muntazim Mutawalliship. There is no Chief Executive Officer in the Shia Central Board of Waqf and all the duties of Chief Executive Officer are discharged by the Administrative Officer by resolution

dated 7.11.2008. In a similar case, this Court has held that it is abundantly clear that if there is no Chief Executive Officer, the Board does not become nonexistent or redundant in any manner and the Board must function even in absence of the Chief Executive Officer and the appointment of the Chief Executive Officer need not to be waited. Section 65 of Waqf Act too is not applicable in this case as the petitioner has not been removed.

(7) Learned counsel for the petitioner further contended thereby filing rejoinder affidavit and supplementary rejoinder affidavit that the Administrative Officer of the Board belongs to clerical cadre. Waqf Act does not empower him to pass order regarding appointment, removal or any other matter connected with Mutawalli or Mutawalliship. Prior to the petitioner, his father Moattar Raza was Managing Mutawalli and on his death, the petitioner was appointed as Muntazim Mutawalli and SanadETauliat was issued in this regard. Thereafter, without giving any opportunity of hearing and without any reason, by the order dated 19.08.2009, the Respondent No. 4 Sayyed Hadi Raza was made Muntazim Mutawalli and the petitioner's status was lowered by making him Joint Muntazim Mutawalli and thereafter Respondent No. 3 the Administrative Officer authorized Respondent No. 4 Sayyed Hadi Raza to realize rent of the waqf property and the interest of FD as well as annuity. To give support and colour to the impugned orders and to justify their action, the respondents wrongly charge sheeted the petitioner and issued show cause notice without any basis and even without giving any opportunity of hearing. The petitioner who was admittedly appointed as Managing Mutawalli in the year 2005 could not be removed or deprived from the said office without giving any opportunity of hearing and without passing a legal order in terms of Sections 64(3) of the Waqf Act, which requires 2/3 majority of the Members of the Board to remove the Mutawalli.

(8) In the light of submissions of both the parties and after perusal of the record, it is revealed that initially the petitioner's father Moattar Raza, Shane Raza and Hadi Raza, were Joint Mutawallis as is certified by the Secretary of Shia Central Board of Waqf, U.P. on 28.06.1984, as per Annexure No. 3 of Counter Affidavit of Respondent Nos. 4 and 5 on record. Thus, all the three Mutawallis were jointly empowered to realize rent of the Waqf property and the interest of the Waqf's stock certificates, as well as their annuity and to take necessary action, including legal steps to safeguard the Waqf and their properties. Thereafter, on 19.08.2009, Hadi Raza as Muntazim Mutawalli, Kokab Abbas as Mustarak Muntazim Mutawalli and Khalak Haider also as Mustarak Muntazim Mutawalli were appointed by the Board w.e.f. 16.10.2008 for a period of three years from the date of order. Tauliat certificate in this regard was issued by the Administrative Officer on 21.08.2009. Later on, on 01.09.2009 on the application of Sayyed Kokab Abbas, the petitioner, to the Board, requesting the appointment of Sri Hadi Raza as Muntazim Mutawalli, Sri Kokab Abbas as Mustarak Muntazim Mutawalli, Khalak Haider as member, the Board as per order dated 01.09.2009 appointed Khalak Haider as member, Hadi Raza as Muntazim Mutawalli and Kokab Abbas as Mustarak Muntazim Mutawalli and on the basis of that order, the

alleged impugned order dated 3.9.2009 seems to have been certified by the Administrative Officer of the Waqf for Sri Hadi Raza as Managing Mutawalli on 03.09.2009. Later on, on 16.09.2009 the Board has again appointed Khalak Haider as Mustarak Muntazim Mutawalli with out changing the status of Hadi Raza as Muntazim Mutawalli and Kokab Abbas as Mustarak Muntazim Mutawalli.

(9) A perusal of the record further shows that some allegations in the form of charge sheet have also been leveled against the petitioner, but the main question to be considered in this writ petition remains as it is that the petitioner was appointed as a Mustarak Muntazim Mutawalli by the Board on 19.08.2009 and remained appointed as Mustarak Muntazim Mutawalli. On his own request dated 01.09.2009 too, made to the Chairman of the Board by the petitioner as per Annexure 6 of the Counter Affidavit of Respondent Nos. 4 and 5 in which he had requested that Hadi Raza as Muntazim Mutawalli, Kokab Abbas the petitioner as Mustarak Muntazim Mutawalli and Khalak Haider as member be appointed, the petitioner remained appointed as Mustarak Muntazim Mutawalli. In this letter petitioner himself had requested to be appointed as Mustarak Muntazim Mutawalli and nowhere asked himself to be designated as Muntazim Mutawalli.

(10) It is also revealed on record that at one point of time, the petitioner Kokab Abbas was appointed as Muntazim Mutawalli as is the SanadETauliat dated 18.10.2005 issued by the Administrative Officer shows, but since the letter dated 04.10.2006 issued by the Administrative Officer addressing to District Magistrate reveals that Sri Kokab Abbas was appointed on 17.10.2005 in place of his father Sayyed Moattar Raza as a Muntazim Mutawalli by the Board, therefore, the SanadETauliat dated 18.10.2005 in favour of Kokab Abbas designated him as Muntazim Mutawalli and Hadi Raza, Khalak Haider as Mustarak Muntazim Mutawallis under the order of the Board dated 17.10.2005, seems to have been wrongly issued by the Administrative Officer and on that basis the petitioner cannot claim that he was appointed as Muntazim Mutawalli and Hadi Raza, Khalak Haider were appointed as Mustarak Muntazim Mutawallis because the letter dated 04.10.2006 issued by Administrative Officer pertaining to appointment of the petitioner as Muntazim Mutawalli as per Board's order dated 17.10.2005 merely gives the status to the petitioner of a Joint Muntazim Mutawalli with Sayyed Hadi Raza and Khalak Haider. Sayyed Hadi Raza who was appointed Muntazim Mutawalli right from June 1984 jointly with Sayyed Moattar Raza (father of the petitioner) and Mr. Sayyed Shane Raza could not be designated by the Administrative Officer in SanadETauliat dated 18.10.2005 as Mustarak Muntazim Mutawalli. Though as per SanadETauliat dated 18.10.2005, issued by Administrative Officer of the Board, Kokab Abbas the petitioner is shown as Muntazim Mutawalli, Respondent No. 4 Hadi Raza is shown as Mustarak Muntazim Mutawalli and Respondent No. 5 Khalak Haider is shown as Mutawalli but since there was no order of the Waqf Board in this regard therefore such certificate issued has no relevance because the Administrative Officer has no Authority to communicate any order contrary to the order dated 17.10.2005 by which the petitioner was appointed merely the joint Muntazim Mutawalli by the

Waqf Board. As per Tauliat certificate dated 21.08.2009 issued as per Board's order dated 19.08.2009 Sri Hadi Raza is appointed as Muntazim Mutawalli and Kokab Abbas is appointed as Mustarak Muntazim Mutawalli, therefore, the Tauliat certificate dated 21.08.2009 cannot be said to have been passed an order by the Administrative Officer himself, rather it is merely a communication of the Waqf Board order dated 19.08.2009. Since the Board has appointed Sri Hadi Raza as Muntazim Mutawalli and the petitioner Kokab Abbas and Respondent Khalak Haider as Mustarak Muntazim Mutawalli on 19.08.2009 w.e.f. 16.10.2008, therefore there is no illegality in the Tauliat Certificate Issued on 21.08.2009 in this regard.

11. The Waqf Board has ample power to arrange the management of the Waqf by the Mutawallis. Section 67 is very much relevant in this regard, which provides that whenever the management of a Waqf is vested in any committee appointed by the Waqf as is found in this case, such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time. The orders under challenge in this writ petition are of same nature passed by the Board under the authority vested in the Board as per sec. 67 of the Act. The impugned orders do not amount removal of Mutawalli requiring any inquiry or opportunity for hearing to him as provided in sec. 64 of the Act. Here in this case, the petitioner Kokab Abbas is not removed from his Mutawalliship, so that he should have been provided any opportunity for hearing. Mere arrangement of the Management of the Waqf amongst the Mutawallis does not amount to the removal of any of the Mutawalli.

(12) So far the question of passing the impugned orders by the Administrative Officer is concerned, we do not find the impugned orders have been passed by the Administrative Officer rather the orders passed by the Board have been communicated or certified by the Administrative Officer Sections 23 to 29 of the Act deal with the appointment and powers of Chief Executive Officer and other officers and employees of the Board to give effect the orders of the Board and we find no illegality in any of the impugned order giving effect of the orders of the Board. Therefore in the light of the aforesaid provisions of law, we do not find any error in the impugned orders.

(13) We do not find any substance in this writ petition which deserves to be dismissed and is hereby dismissed accordingly.