

(1989) 11 KAR CK 0034
In the Karnataka High Court
Case No : W.P. No. 5251/1989

M. Inaithulla and Another

APPELLANT

Vs

Karnataka Board of Wakf and Others

RESPONDENT

Date of Decision : 06-11-1989

Acts Referred:

Waqf Act, 1954 — Section 15

Citation : (1990) 1 KarLJ 51

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

Judgement

Swami, J.-Though this petition is posted for orders, having regard to the fact that it can be disposed of on a short ground, it is heard for final disposal.

2. In this writ petition under Article 226 of the Constitution of India, the petitioner has sought for quashing the Order at Annexure-A. Annexure-A is the Order dated 4-10-1988 bearing No. KTW 69 CMC DNU 87-88 passed by the Karnataka Board of Wakfs appointing one Sri Janab Mohammed Tafhimulla Maroof son of late M. Amjad Ali as Muthavalli of "Ibadathkhana-e-Islam Jamia Maroof (Lal Masjid), at Jumma Masjid Road (OPH Road), Bangalore-1 in the vacancy caused due to death of the notified Muthavalli Janab M. Amjad Ali of the above said Wakf Institution. Under the same order one Sri Janab Badrul Islam son of Janab B. Iqbal Ahmed Saheb is appointed as guardian of the minor Janab Mohammed Tafhimulla Maroof to carry out the functions of the Muthavalli till the minor Muthavalli attains majority.

3. There is a controversy as to whether a minor can be appointed as Muthavalli since the functions of Muthavalli in the instant case also include religious functions. However, it is not necessary to go into this controversy. It is not in dispute that even prior to registration of the Wakf in question under the provisions of the Wakfs Act, 1954, there was a scheme framed by the District Court in respect of the Wakf in question, as per Annexure-B dated 14-2-1951. The scheme has not been set aside or modified even to this day. As long as the scheme is not set aside or modified, the scheme as framed by the District Court

in respect of the Wakf in question will hold the field. All the parties/authorities concerned, including the Wakf Board are required to implement the Scheme and act in accordance with the terms of the scheme. Under the scheme the mode of succession is not purely hereditary. After the death of the Creator of the Wakf the management of the Wakf has to vest in the Committee which has to be constituted in accordance with the terms mentioned in the scheme itself. Admittedly that has not been done. Under the impugned order the second respondent is appointed as Muthavalli on the ground that he is the son of late M. Amjad Ali and the third respondent is appointed as the guardian of the minor-second respondent. Such an appointment of Muthavalli is not permissible under the provisions of the scheme. Therefore, it can be straight-away stated that the Wakf Board to that extent has acted contrary to law.

4. However, it is contended by Sri Savanour, learned counsel for respondents 2 and 3 that there is a suit filed by respondents 2 and 3 in O.S.NO. 5115 of 1988 in the City Civil Court for a permanent injunction on the basis that the scheme is no more in force, and the same has not been acted upon. It is also further stated by him that there is also another suit in O.S.NO. 4895 of 1988 filed by one Obedulla in the City Civil Court against respondents 2 and 3 and the Karnataka Board of Wakf. As far as the Karnataka Board of Wakf is concerned, it is a party to both the suits. In O.S. 4895 of 1988 the plaintiff has sought for enforcement of the scheme produced at Annexure-B. No doubt under Section 15(2)(b) of the Wakfs Act, the Wakf Board is also entitled to settle the schemes of management for Wakf. But in the instant case, before the institution in question came under the Wakf Board, the scheme was framed by the District Court. As per the provisions contained under Section 15(3) of the Wakfs Act, even after the scheme is settled by the Wakf Board, parties are given a right to institute a suit in a Civil Court of competent jurisdiction for setting aside such a settlement or direction, and, the decision of the Civil Court thereon has been made final. That being so, eventhough under Section 15(2)(b) of the Act the Wakf Board is competent to settle the scheme of management for Wakf, and such a scheme is liable to be set aside or modified by a Civil Court, and, as such in a case where a scheme had been settled by a Civil Court before the Wakf came to be governed by the Wakfs Act, any modification or annulment of such a scheme shall be made only by a Civil Court and not by the Wakf Board. Therefore, the Wakf Board is required to enforce the scheme until it is modified by a competent Civil Court. As the Wakf Board has acted contrary to the terms of the scheme, the impugned order cannot at all be sustained.

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

The Order dated 4th October, 1988 bearing No. KTW 69 CMC DNU 87-88 (Annexure-A) is hereby quashed.

The Wakf Board is directed to enforce, act upon and implement the scheme dated 14-2-1951 produced at Annexure-B until it is modified or annulled by a

competent Civil Court.

All other contentions of the parties are left open.

It is also necessary to make an observation that, as there is a dispute between the parties with regard to the constitution of the Committee of Management, until that is settled it is open to the Wakf Board to take the institution in question under direct management or appoint a Committee of Muthavalli as per the Scheme.

It is submitted on behalf of the respondents 2 and 3 that they intend to go in appeal, therefore, the operation of the order may be stayed. Accordingly, the operation of this order is stayed till 30-11-1989.

Writ Petition allowed.