

(2001) 09 AP CK 0041
In the Andhra Pradesh High Court
Case No : CRP No. 2148 of 2001

Managing Committee, Nade Ali Masque, Bodhan, Nizambad District APPELLANT

Vs

Andhra Pradesh State Wakf Board and Others RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Andhra Pradesh Wakf Rules, 1974 — Rule 20
Civil Procedure Code, 1908 (CPC) — Section 151
Waqf Act, 1954 — Section 42
Waqf Act, 1995 — Section 112, 3(K), 32, 6, 6(1)

Citation : (2001) 6 ALD 811

Hon'ble Judges : P.S. Naryana, J

Bench : Single Bench

Advocate : Mirza Imamullah Baig, for the Appellant; A.M. Qureshi and M.T. Ghor, for the Respondent

Final Decision : Allowed

Judgement

1. The civil revision petition is preferred as against an order made by the A.P. Wakf Tribunal, Hyderabad in IA No. 65 of 2001 in OA No. 4 of 2001. The petitioner filed IA No. 65 of 2001 in OA No. 4 of 2001 u/s 151 of CPC to suspend the operation of the proceedings issued by the first respondent in file No. 45/B2/M/NZB/99 dated 18-1-2001, pending disposal of the Original Application No. 4 of 2001, interim orders were granted on 9-2-2001. By order 30-3-2001, the interim orders were vacated and aggrieved by the same; the petitioner had filed the present civil revision petition under the proviso to Sub-section (9) of Section 83 of the Wakf Act, 1995 [herein after for short called as Act]. In the present civil revision petition, an order of status quo was granted on 8-5-2001 and the same was made absolute on 3-8-2001. By virtue of direction of this Court, the civil revision petition is coming up for hearing. The facts in brief are as follows:

2. Mosque Nade Ali, Graveyard and Dargah Hazrath Feroz Shah situated in Survey No. 713, of Dautyal Tarfa, Bodhan in Nizambad District with its attached

properties are registered Wakf properties. One Faqueer Shah was the muthawalli of the said Wakf institution. On the complaints received against the muthawalli the A.P. Wak Board appointed an Enquiry Officer to enquire into the allegations. During the pendency of the enquiry the Muthawalli died in 1986 and the Wakf Board constituted a managing committee to manage the wakf institution. The said committee was extended from time to time. By its order dated 2-11-1994 the Wakf Board constituted -a managing committee with Dr. Nazir Ahmed Siddique as president. In 1996 another committee with the same president was constituted by the Wakf Board through its proceedings dated 11-6-1996. The president Dr. Nazir Ahmed Siddique died on 29-6-1996 and after his death the petitioner Mohd. Zaheerudding Babar has been functioning as president of the Managing Committee. In spite of repeated representations, the Wakf Board did not constitute any committee after 10-6-1997. The musallies of the mosque conducted elections and elected 10 members as its members and the petitioner as the president. The panel was sent to the Wakf Board for approval. But it was neither approved nor negatived. However, said managing committee has been continuing till this day. Meanwhile, the Wakf Board by its proceedings dated 18-1-2001 appointed 2nd respondent as mulhawalli and the 3rd respondent as joint Muthawalli of the subject institution. The said proceeding is illegal and the same is liable to be set aside. The Managing Committee with the petitioner Mohd. Zaheeruddin Babar as president has been continuously functioning for the last several years and paying Wakf fund every year regularly. Even on the date of passing of the impugned proceeding the Managing Committee was functioning. If the impugned proceeding is not suspended the Managing Committee will suffer irreparable loss and injury.

3. A counter affidavit is filed by the contesting respondents, to the following effect.

4. There was no managing committee for the subject institution with Mohd. Zaheeruddin Babar as President. It is true that Wakf Board constituted a Managing Committee with Dr. Nazir Ahmed Siddique as President for a period of one year and the period was expired by 10-5-1997. Thereafter no Managing Committee was constituted by the Wakf Board. No election was conducted at any time as alleged by the petitioner. As there is a vacancy in the office of muthawalli of the Wakf institution, the Wakf Board appointed respondent Nos.2 and 3 as muthawalli and joint muthawalli in accordance with law u/s 63 of the Wakf Act 1995. There is no provision for appeal or application against the orders passed u/s 63 of Wakf Act, 1995. The said provision of law does not provide any right of Appeal or application. The period of the managing committee was expired by 10-6-1997 and no managing committee was constituted thereafter. Therefore the question of giving notice to the petitioner before appointing the respondent Nos. 2 and 3 as muthawallis does not arise. There was no approval by the Wakf Board for self-style Managing Committee headed by the petitioner and if there is any such Managing Committee it has no legal right to function. The petitioner has no locus standi to file the present application.

5. The Wakf Tribunal had framed a point for consideration whether the petitioner has shown sufficient causes to get the relief of suspension of the operation of the proceedings issued by the first respondent on 18-1-2001 pending disposal of the OA No. 4 of 2001. Both the sides had made elaborate submissions in regard to certain contentions were raised virtually touching upon the merits of the matter. In fact the Tribunal had observed at Para 7 as follows:

"the petitioner filed certain documents to show that the Managing Committee headed by the petitioner is still functioning. The first document is memo-dated 17-10-2000. This memo is given to Inspector-Auditor to enquire into the representations from the petitioner for constitution of a Managing Committee, It means there was no managing committee by 17-10-2000 as alleged by the petitioner.

6. The other documents are copies of the complaints sent to the District Collector, District Revenue Officer, Revenue Divisional Officer and Municipal Commissioner of Bodhan against one Shankar alleging that he is making some constructions on Wakf land. These complaints may not create any right to manage subject institution. Petitioner also filed copies of challans to show that the petitioner is depositing Wakf fund. The latest challan is dated 25-11-1999. Thereafter he did not deposit Wakf Fund. In the present case muthawallies were appointed on 18-1-2001. There is no evidence that by the date of appointment of Muthawallies there is a Managing Committee functioning. As per the documents filed by the petitioner the Managing Committee was constituted by the Wakf Board on 11-6-1996 for a period of one year and the period was expired by 10-6-1997. Thereafter there was no extension nor constitution of any Managing Committee. As soon as the period was expired the Managing Committee cannot claim as a right to continue to manage Wakf Institution. Further as soon as the muthawallies are appointed the Managing Committee cease to exist. Further as soon as the period of Managing Committee expires the office of the muthawalli is deemed to be vacant. When the office is vacant Section 63 of Wakf Act 1995 empowers the Board to appoint a muthawalli. In the present case there was no extension after 10-7-1997 and therefore the Board appointed the second respondent as muthawalli and third respondent as Joint Muthawalli. The petitioner has no locus standi to question the said appointments."

7. The application in IA No. 65 of 2001 in OA 4 of 2001 was filed by the petitioner seeking interim relief pending disposal of the main OA No. 4 of 2001. Heard Counsel on record.

8. Sri Mirza Immamullah Baig representing revision petitioner had drawn my attention to several sections of the Wakf Act and had contended that the expression "person interested" has an elaborate interpretation, even a person who offers prayers also can be considered as a person interested, and if such an elaborate interpretation is given, it can be definitely said that the petitioner can maintain and can seek the relief which was prayed for. Learned Counsel also had raised several contentions virtually touching the merits of the matter, which are

to be decided by the Wakf Tribunal at the time of the final disposal of the OA. The learned Counsel had raised a contention that from the very nature of the order, it is clear that the order in question does not fall within the ambit of Section 63 of the Act and even otherwise appointment of Joint Muthawalli is nowhere specified in the Act. The learned Counsel also had contended that u/s 83 of the Act, the Wakf Tribunal and also the revisional Court have jurisdiction to pass interim orders, since passing such interim orders are inherent and ancillary vested in the Wakf Tribunal and also the revisional Court. Learned Counsel also placed strong reliance on *Syed Amjadulla Khadir v. Muslim Wakf Board, Hyderabad 1962 (2) AWR 28*, and *M.A. Aziz Vs. A.P. State Wakf Board and Another*, .

9. Sri A.M. Qureshi, learned Counsel representing the Wakf Board, had submitted that though there is no specific power conferred on a Wakf Tribunal u/s 83 of the Act, by virtue of Section 83(5) and 83(9) of the Act, it can be inferred that the Wakf Tribunal and also the revisional Court have power to make interim orders. Learned Counsel for Wakf Board had drawn my attention to Section 67 of the Act and also Section 83(2), Section 3(k) of the Act and had contended that since the time of the revisional petitioner committee had expired long back, it does not have locus standi at all to question in proceedings of the Wakf Board, much less the impugned proceedings and hence the Wakf Tribunal had exercised the discretion properly in vacating the interim orders and such an order does not warrant interference in exercise of the jurisdiction u/s 83 of the Act.

10. Sri Ghouri, learned Counsel representing the contesting respondents had contended that the contention that the appointment of the Joint muthawalli is not contemplated by the Act at all is not sustainable. The over all expression in singular always has to be understood as plural also and in support of his contention the learned Counsel had drawn my attention to Rule 20 of the A.P. Wakf Rules, 2000. The learned Counsel also had gone to the extent of contending that the OA itself is not maintainable. The learned Counsel had drawn my attention to Section 67(4), Section 69(3), Section 83, Section 32 and Section 68 of the present Act and also drawn my attention to the corresponding provisions under the old Act i.e., Wakf Act, 1954. Learned Counsel also had drawn my attention to several aspects to substantiate his contentions and all these contentions relates to the merits of the matter to be decided by the Wakf Tribunal at the time of the final disposal of the OA specified supra.

11. Now the question which falls for consideration in the present civil revision petition is whether the status quo granted by this Court on 8-5-2001 and made absolute on 3-8-2001 has to be continued during the pendency of the OA or the said order is liable to be vacated. Since elaborate arguments have been advanced by both the sides relating to the powers of Wakf Tribunal to make interim orders, for the purpose of deciding this question, certain provisions of the Wakf Act, 1995 may have to be looked into. The Wakf Act, 1995, Act 45 of 1995 referred to as Act, is infact for better administration of the Wakf and for matters

connected therewith or incidentally thereto. Section 112 of the Act deals with repeal and Sub-section (1), has specified that Wakf Act, 1954 and the Amendment Act, 1994 have been repealed. Section 6[2] of the Act specifies that notwithstanding anything contended in Sub-section (1), no proceedings of this Act in respect of any Wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceedings arising out of such suit. Section 6 of the Act deals with dispute regarding Wakfs, Section 7 of the Act deals with power of the Tribunal to determine disputes regarding Wakfs. Section 67 Sub-section (4), second proviso specifies "provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal." Section 69(3) second proviso specifies "provided further that the Tribunal shall have no power to stay the operation of the order made under this section."

12. It is pertinent to note that u/s 83 of the Act, there is no such specific prohibition relating to granting of interim orders. Section 83 of the Act deals with constitution of Tribunal etc. As rightly contended by Mr. Qureshi representing Wakf Board is Section 83[5] read with Sub-section (9) are read together, it can be inferred that the Wakf Tribunal has power to make interim orders. Section 83[5] says that the Tribunal shall be deemed to be a Civil Court and shall have powers as has been exercised by a Civil Court under the Code of Civil Procedure, while trying a suit or executing a decree or order. Section 83(9) reads as follows :

"No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal. Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit."

The present revision in fact is filed under the proviso to Sub-section (9) of Section 83 of the Act. The power conferred under this proviso is limited to "satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit,"

13. If the expression "determination" is liberally construed, even in a matter of this nature, where the Interim order had been granted subsequently vacated by the Tribunal, may fall within the ambit of such expression. The further question is whether the Wakf Tribunal had committed any impropriety in making such as order. While granting interim order, prima facie case of the petitioner and the balance of convenience may have to be looked into and that does not mean that all the matters touching the merits of the case, which may have to be decided at the final disposal of the matter, have to be clearly established.

14. In view of Section 83[5] of the Wakf Act, the Wakf Tribunal can exercise all

the powers of civil Court and hence by exercise of powers u/s 151 CPC, the Wakf Tribunal has power to make interim orders u/s 83 of the Act. Since, there is no specific prohibition imposed in Section 83 of the Act, as such Section 83 of the Act has to be read as an independent provision. The specific power imposed under other provisions cannot be imported and cannot be read into the language of Section 83 of the Act, so as to arrive at a conclusion that the Wakf Tribunal has no power to grant interim orders.

15. In *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* 1962 [1] SCR 450, the Apex Court held that temporary injunction not covered by Order 39 Rule 1 can be granted while exercising the inherent powers.

16. The words "Whether interim or otherwise" in Section 83[9] impliedly suggest the conferment of such power of granting interim orders of Wakf Tribunal. In view of Section 83[5] of the Act, in appropriate cases, the Wakf Tribunal can make interim orders by exercising powers u/s 151 CPC.

17. Section 63 of the present Act corresponds to Section 42 of the repealed 1954 Act. In *Syed Amjadulla Khadir* case [supra], it was held that Section 42 of the Wakf Act, 1954 does invest the Muslim Wakf Board with powers to make interim arrangements and it is beyond the scope and jurisdiction to make any permanent appointment of a muthawalli which in this case is closely connected with the question of succession to atiyat properties.

18. In *M.A. Aziz* case [supra] it was held that an order to constitute new committee for disputed Moque, passed by Chairman of Board on basis of vague resolution as to delegation of all existing powers to chairman, was held to be illegal.

19. The question whether the joint muthawalli can be appointed or not what is the scope and ambit of Section 63 of the Act and all other contentions raised by the parties touching the merits of the matter may have to be considered at the stage of interlocutory application only for the purpose of satisfying, itself, relating to the principles, while granting such interim orders. It is always desirable to leave such questions to be decided by the Wakf Tribunal while deciding the main OA. In view of the fact that the petitioner is continuing the management of the affairs of the Wakf even as on today by virtue of interim orders and in the light of the fore going discussion, I am of the considered opinion that the order of status quo granted earlier by this Court on 8-5-2001 and made absolute subsequently has to be continued till the disposal of the main OA. However, since the parties have been agitating for their rights and pressing for disposal of the main OA itself at an early date, it is hereby directed that the A.P. Wakf Tribunal shall dispose of OA 4 of 2001 on its file within a period of two months from the date of receipt of copy of this order, uninfluenced by the observations made in the present CRP.

20. Accordingly, the civil revision petition is allowed. No costs.