

(2016) 07 AHC CK 0155
In the Allahabad High Court
Case No : Writ C No. 30355 of 2016

Maulana Rizwan Ahmad

APPELLANT

Vs

U.P. Sunni Central Waqf Board

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Waqf Act, 1995 — Section 67(2), 67(6)

Citation : (2016) 5 AILLJ 695

Hon'ble Judges : V.K. Shukla, ACJ. and Mahesh Chandra Tripathi, J.

Bench : Division Bench

Advocate : Manish Goyal, Advocate, for the Petitioners; Punit Kumar Gupta and Ashish Kumar Singh, S.C, for the Respondents

Final Decision : Allowed

Judgement

1. Petitioners, who are five in number, are before this Court assailing the validity of order dated 27.04.2016 passed by Chairman, U.P. Sunni Central Waqf Board, Lucknow (respondent no.2) and the office memorandum dated 28.04.2016 issued by Assistant Secretary, U.P. Sunni Central Waqf Board, Lucknow, proceeding to suspend the petitioners from performing and discharging their duties as office bearers and Members of the Committee of Management of Waqf No. 13, 26, 208 and 344 Varanasi.

2. Brief background of the case is that the waqf no. 13, 26, 208 and 344 are the Waqf-alal-khair duly recorded in the register of waqf maintained by the U.P. Sunni Central Waqf Board under the provisions contained in section 37 of Waqf Act, 1995. Over waqf no. 13 and 26 immovable properties of the waqf are situated and over waqf no. 208 weavers market is situated upon the first floor a Madarsa named as Dairatul Islah-Chiragh-EUloom is situated, which is recognised institution and receiving grant-in-aid from the State Government. Over waqf no.344 Mosque and Eidgah is situated and for the benefit of the Mosque, the properties of other three waqf have been dedicated. U.P. Sunni Central Waqf Board, in exercise of powers conferred by virtue of Section 63 of

Waqf Act, 1995, appointed a Committee of Management for the management of Waqf no. 13, 26, 208 and 344 Varanasi vide order dated 17.07.2013.

3. Petitioners submit that upon the building belonging to Waqf no. 208, a Madarsa have been established and at all point of time eandevour has been to raise the income of the waqf. Petitioners submit that the dispute arose when the shop no.12 of the market situated upon the waqf property belonging to waqf no. 208 was vacated by its tenant namely Mr. Shamshuddin in the month of December, 2013 and Ghulaam Muneer-respondent no.5 without any resolution of the Committee let out the same to his brother namely Sulaiman Akhtar from January, 2014 and received three months advanced rent. This act and conduct of the Ghulaam Muneer-respondent no.5 was opposed by the other members of the Committee of Management including Maulana Rizwan Ahmad-petitioner no.1 in the capacity of Secretary of the Committee. Petitioners submit that further Ghulaam Muneer has got appointed his daughter namely Rizwaana Khatun in the Madarsa by misusing his office on temporary basis and thereafter built the pressure to substantively appoint her as the Assistant Teacher since the Madarsa is receiving grant-in-aid from the State Government. Petitioners have contended that they have resisted the said illegal activities of Ghulaam Muneer, who was not at all acting in the interest of waqf, and thereafter a complaint dated 29.10.2015 has been moved under Section 67 of the Waqf Act, 1995. Petitioner submits that based on the said complaint, inquiry in question has been got conducted and Circle Inspector submitted his final report on 15.02.2016 and he opined that there is serious differences between the office bearers of the Committee, therefore, the waqf has not been managed properly and as such the Committee may be removed in exercise of powers contained in Section 67(2) of the Waqf Act, 1995 and it was further recommended that till the final order of supersession is passed by the Board, the petitioner no.1 may continue to realise the rent by staying the order dated 29.01.2016 and the aforesaid report was duly approved by the Chairman of the Board on 02.03.2016. In pursuance to the order of the Chairman dated 02.03.2016, an office memorandum was issued on 03.03.2016 whereby the earlier order dated 29.01.2016 was stayed and the petitioner no.1 was permitted to manage the waqf as was being previously done and also he was authorised to realise the rent from the waqf property. In pursuance to the order of the Chairman dated 02.03.2016, a show cause notice was issued to the Committee under Section 67(2) of the Act seeking the supersession of entire Committee and in pursuance to the show cause notice the petitioners have submitted their reply which was duly received in the office of the board on 23.04.2016. Ghulaam Muneer and other office bearers and members of the Committee have also submitted their explanation to the show cause notice dated 10.03.2016. After reply have been submitted, Circle Inspector proceeded to consider explanation and submitted further report on 27.04.2016 recommending therein that instead of removing the entire committee only petitioner and other members be removed and in the meantime the petitioner be restrained from managing the waqf in question. Petitioners submit that thereafter

instead of taking final decision in the matter, the petitioners have been restrained from managing the waqf as a interim measure and order impugned dated 27.04.2016 have been passed and consequent to the same Office Memorandum dated 28.04.2016 have been issued and same has impelled the petitioner to be before this Court.

4. On the presentation of the Writ Petition in question, this Court on 06.07.2016 asked Shri Punit Kumar Gupta, Advocate to obtain requisite instruction in the matter.

5. On the matter being taken up today, requisite instructions in question have been obtained by Shri Punit Kumar Gupta, Advocate and on behalf of opposite party no.5, Shri Ashish Kumar Singh, Advocate has entered appearance and thereafter with the consent of parties, present Writ Petition in question is being taken up for final hearing and disposal.

6. Shri Manish Goyal, learned counsel for the petitioners submitted with vehemence that, in the present case, the procedure that has been adopted totally contravenes and violates the principle of natural justice and not only this, there is no authority delegated either to Chairman or to any other Member under Section 27 of the Act to pass interim orders in the supersession proceedings, in view of this, apart from procedural front, the order is totally without jurisdiction and requires interference by this Court.

7. Shri Punit Kumar Gupta, Advocate as well as Shri Ashish Kumar Singh, Advocate are submitting that rightful order has been passed and as such, no interference should be made.

8. After respective arguments have been advanced, the relevant provision that holds the field of supervision and supersession of Committee of Management is extracted below:

"67. Supervision and supersession of Committee of Management:-

(1) Whenever the supervision or management of any waqf is vested in any committee appointed by the waqf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the waqf, whichever is earlier:

Provided that 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:

Provided further that if the Board is satisfied that any scheme for the management of a waqf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the waqf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the waqf or of the provisions of this Act and the

rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the waqf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the waqf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the waqf, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the waqf.

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the waqf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final."

9. A bare perusal of the order in question would go to show that sub section (2) of Section 67 of the Act, 1995 authorizes the Board if satisfaction is recorded by the Board for the reasons to be recorded in writing that a committee is not functioning properly and satisfactorily, or that the waqf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the waqf, in so far as it relates to the constitution of the committee, shall cease to have any force. The other provision that is relevant is sub section (6) of Section 67 that deals with a nonobstante clause by providing that Board may instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the waqf, and every such order for the removal of any member shall be served upon him by registered post and this order can be passed only after he have been given a reasonable opportunity of showing cause against the proposed action.

10. On the touchstone of the statutory provisions that has been holding the field what we find, in the present case, that proceedings in question has been initiated under sub-section 2 of Section 67 of Waqf Act, 1995 and in the said proceedings, this much is also reflected that Circle Inspector was asked to make an inquiry and thereafter the Circle Inspector made an inquiry and proceeded to make certain recommendations and the Chairman of U.P. Sunni Central Waqf Board, Lucknow has proceeded to approve the same and therein five persons have been put on restrain to function.

11. Once proceedings under sub section (2) of section 67 have been undertaken and report have been submitted by the Circle Inspector, then before proceeding to take any decision on the same, it was incumbent and obligatory to have provided copy of the said report to the incumbents against whom prejudicial order was to be passed so that they could have their say in the matter. Here in the present case, the most surprising feature of the entire proceedings are that report in question have been submitted and straightway on the same, order in question have been passed. Report is merely an opinion of Circle Inspector, and at the end of the day when decision is to be taken, the authority empowered to take decision has to apply its own independent mind, as to whether in the facts of case, prerequisite terms and conditions for exercise of authority/passing of order are in existence.

12. Once proceedings are initiated under sub section (2) of Section 67 and report in question have been submitted then at the said point of time in case the Board is of the opinion that instead of superseding entire committee under sub-section (2) of Section 67, removal of member would subserve the situation, then Board may remove any member thereof on such satisfaction that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the waqf. Board proceeding to take such an action

against any member, a notice in this regard is required to be issued to the said incumbent.

13. Here, the most surprising feature is that the proceedings for supersession have been dropped and straightway authority under sub section (6) of section 67 have been exercised and that too not in the shape of final order rather in the shape of interim order. Final orders under sub section (6) of Section 67, can be passed only after providing reasonable opportunity of hearing and once sub-section (6) of Section 67 does not empower the Authority to pass such an order as have been passed in the present case, then such an order cannot be approved of by us, in view of this, the order impugned dated 27.04.2016 passed by respondent no.2 and consequential office memorandum dated 28.04.2016 are hereby quashed. It is made clear that passing of this order will not at all come in the way of U.P. Sunni Central Waqf Board to take a final call in the matter in accordance with law.

14. With these, Writ Petition is allowed.