
(2008) 02 AHC CK 0105
In the Allahabad High Court

Mauli Moinuddin and Others

APPELLANT

Vs

Sardar Maqbool Hasan and Others

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Waqf Act, 1995 — Section 83

Citation : (2008) 2 AWC 1508

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This revision has been filed u/s 83(9) of the Waqf Act, 1995. It is directed against order passed by Waqf Tribunal/Civil Judge (Senior Division), Varanasi in Waqf Reference No. 04 of 2007 Maqbool Hassan v. U.P. Sunni Central Board of Waqf and Ors. Through the impugned order, temporary injunction/stay order has been granted and operation of order of the Waqf Board dated 26.07.2007/23.08.2007 has been stayed till the disposal of the reference. Through the said order, an injunction has also been granted restraining opposite parties No. 4 to 20 (who are applicants in this revision) from interfering in the working of applicant in the reference (respondent No. 1 in this revision) as Mutawalli of Waqf in question bearing Waqf No. 7-Varanasi. They have further been restrained from interfering in possession and management of Waqf property by respondent No. 1 in this revision.

3. Through the orders of the Waqf Board, which have been challenged in the reference before Civil Judge and operation of which has been stayed by the impugned order, Waqf Board appointed a Committee consisting of the 17 applicants in this revision as Mutwalli/Committee of Management of Waqf in question.

4. One of the points raised in this revision is that the basic order passed by the

Waqf Board (dated 26.07.2007) is without jurisdiction as it has been passed only by the Chairman of U.P. Sunni Central Board of Waqf, while order ought to have been passed by the entire Waqf Board. In this regard, judgment dated 15.11.2007, given by a Division Bench of this Court in Civil Misc. Writ Petition No. 63598 of 2006 Qadeemi Khandani Qabristan v. Union of India and Ors. has been cited. However, in the said judgment, no question of law has been decided. That is a judgment passed on concession made by the Waqf Board in respect of the matter involved in the said writ petition. In the said case, a concession was made that in the matter in dispute in the said writ petition, relevant records should be placed before the Board for taking final decision qua removal of Mutwalli.

5. In my opinion, this question need not be decided at this stage. Let it be decided at the stage of final disposal of the reference by the Civil Judge.

6. The other point is that revision against interim order is not maintainable. In this regard, an authority of this Court reported in 1991 AWC 620 U.P. Sunni Central Board of Waqf v. Abdul Rashid and Ors. has been cited. However, in the said case, revision was directed against an order through which an earlier order had been recalled by the tribunal. Similarly, in the other authority reported in 2002 AWC 1430 Hafeez Abdulla v. Akbar Ali also temporary injunction had not finally been decided by the tribunal. Last sentence of Para-6 of the said authority is quoted below:

The order is totally interlocutory and the question whether the operation of the order should be stayed or not is still to be decided by the trial court.

7. u/s 83(9) of the Waqf Act, 1995, revision is directed against determination by the tribunal of any dispute, question or other matter. In my opinion, final disposal of temporary injunction application is such determination, which is amenable to revisional jurisdiction of the High Court under the aforesaid section.

8. The facts of the case are that the Waqf in dispute, which is situate in Varanasi is known by the name of Masjid Laat and Roza Tajuddin Ahmad Bukhari. It is a Waqf by immemorial user. There is no Waqf deed. It appears that for the first time in the Year, 1936, one Abdul Sattar filed application before the Waqf Commissioner, Varanasi for registering the Waqf in dispute and thereafter it was registered with Waqf Board.

9. In March, 1999, Waqf Board appointed Mohd. Bashir as Mutwalli of the Waqf in question, who died on 16.12.2005. There was absolutely no dispute regarding appointment of Mohd. Bashir as Mutwalli, However, after his death dispute arose giving rise to the reference before the Civil Judge and this revision. The respondent No. 1-Maqbool Hasan filed an application on 16.01.2007 before Waqf Board for his appointment as Mutwalli alleging that more than a year before i.e. on 25.12.2005, Association of Weavers (Bunker Panchayat) had elected him as Mutwalli. On the other hand, applicants filed application on 11.06.2007 before the Waqf Board praying for their appointment as Committee of Management to

manage the Waqf in question on the ground that general Muslims of the locality had elected them as Committee of Management to look after the affairs of the Waqf. Waqf Board through order dated 26.07.2007, which has been challenged before the Civil Judge/Waqf Tribunal, decided in favour of the applicants giving rise to the reference before the court/tribunal below.

10. Respondent No. 1 also claims that on 27.05.2006 about six months before filing of application by him for his appointment as Mutwalli, Mohd. Hanif, previous deceased Mutawalli son of Mohd. Bashir had filed an application before Waqf Board proposing appointment of respondent No. 1 as Mutwalli/intimating that the respondent No. 1 was elected and was acting as Mutwalli after death of Mohd. Bashir.

11. In the matter of private Waqfs (Waqf Alal Aulad) which are necessarily created by deeds or those Charitable Waqfs, where there are Waqf deeds, the matter of appointment of Mutwalli is normally to be decided on the basis of Waqf deed and the manner of appointment of Mutwalli provided thereunder. However, in the matter of Waqfs by immemorial user, the task of Waqf Board to appoint Mutwalli (which may include Committee) is rather difficult and confers a wide discretion upon the Waqf Board. If income of the Waqf is substantial, then obviously there are rival claimants propagating and pressing their claims with such rigour, which is proportionate to the income of the Waqf. In such matters, the past practice is required to be given due weightage even though it may not be conclusive. Opinion of concerned persons may also be sought. However, it is not easy to decide that who are the concerned people and how their opinions may be invited. A proper way may be to invite the objections through publication in such newspaper, which has got wide circulation in the area and is in the language commonly understood by concerned people. The concerned people may be directed to send their recommendations showing their interest/concern also with the Waqf in question. Opinions of learned Muslims of the City may also be sought.

12. One of the arguments of learned Counsel for the applicants is that the tribunal below could by maximum stay the operation of the order of the Waqf Board, however it was not at all within its jurisdiction to issue further direction restraining the applicants in this revision from interfering in the working of respondent No. 1 in this revision as Mutwalli as it amounted to confer Mutwalliship upon respondent No. 1, which is the exclusive jurisdiction of the Waqf Board.

13. Unfortunately, neither Waqf Board nor the tribunal has considered as to who was managing the affairs of the Waqf immediately after the death of Mohd. Bashir, previous undisputed Mutwalli. It was very relevant circumstance. At least, for six months, absolutely no intimation was given to the Waqf Board regarding death of previous Mutwalli and appointment, if any, of the new Mutwalli. Learned Counsel for the respondent No. 1 has shown some documents obtained under the Right to Information Act, 2005, wherein police authorities of the City

(Varanasi) have supplied the information that the two annual important prayers of Eidul Fitr and Eid-uz-zuha were performed under the management of respondent No. 1 in this revision, however, those documents were not filed before the tribunal below.

14. As far as, the argument regarding issuance of subsequent directions in the operative portion of the impugned order is concerned, it has got some force. However, in case respondent No. 1 in this revision was managing the affairs of Waqf prior to the order passed by the Waqf Board appointing applicants as Committee of Management, then mere stay of the order of Waqf Board would have the same effect.

15. As usually happens, the Civil Judge (Senior Division)/Waqf Tribunal has spend lot of time and energy on temporary injunction matter while with some dexterity, he could decide the main reference itself consuming same or slightly more energy and time.

16. During the arguments on enquiry from the Court, learned Counsel for both the parties stated that if desired and directed by the Court, they would fully co-operate in earliest possible disposal of the reference.

17. Accordingly, revision is disposed of with the direction that the tribunal below shall make all efforts to decide the reference within three months from the date of production of certified copy of this order. Absolutely no unnecessary adjournment shall be granted to any of the parties. If any adjournment is granted, then it shall be for short period and on heavy cost, which shall not be less than Rs. 1000/- per adjournment. If due to any reason, the reference is not decided within three months from the date of production of a certified copy of this order, then the tribunal below should reconsider as to whether it is proper to continue the temporary injunction order challenged in this revision or not.