
(1997) 07 AP CK 0044
In the Andhra Pradesh High Court
Case No : Appeal No. 585 of 1985

Mohammed Sulaiman and another	Vs	APPELLANT
The Andhra Pradesh Wakf Board and another		RESPONDENT

Date of Decision : 21-07-1997

Acts Referred:

Waqf Act, 1954 — Section 42

Citation : AIR 1997 AP 387 : (1997) 5 ALD 611 : (1997) 5 ALT 740

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : Mohamood Ali, for the Appellant; Anantha Rao Deshmukh and Mirza Munwar Ali Baig, for the Respondent

Judgement

1. Plaintiffs are the appellants. Suit for declaration that the 1st respondent had no jurisdiction to grant Towliath (succession) in favour of the 2nd defendant-respondent and. therefore, its order dated 6-4-1977 is illegal and void, has been dismissed.

2. The facts giving rise to his appeal may be briefly stated as follows :--

There is a Mosque popularly known as the `Jama Mosque" at Vellandu and this Mosque owns 25 milgis. The Grandfather of the second respondent, namely Mohammed Khasim since deceased, was the Muthavalli and Secretary of the "Jama Mosque" and used to manage the affairs of the Mosque and Milgis After coming into force of the Wakf Act, 1954 (for short the Wakf Act), the Wakf Board had taken over the supervision of the Mosque and the Malgis. On 19-2-1935 late Mohammed Khasim executed a Wakf Deed, Ex. A 16 in Urdu (translated copy in English of the same is at Ex. A 17), whereby he declared that after his death his elder (son) and after his death his son would become Mutawalli of the Mosque and in the event there is no son of his elder son, the Government would be free to appoint anybody. After his death on 7-3-1952, his elder son, that is the father of the 2nd respondent, became Mutavalli for two years and he died on 30-6-1954 leaving the second respondent is his minor son who was about eight years. At

the instance of the second respondent for grant of 12 years Towliath (succession) in terms of the Wakf Deed. Ex. A16. and appointment as Muthawalli, the 1st respondent invited objection by publishing public notice in Urdu Newspaper, Ex. A 7, (English translation of which is al Ex. AN), and therefore appointed the 2nd respondent as Muthawalli to manage the Jama Mosque and the Malgis vide proceedings, dated 6-4-1977. The appellants sought a decree for declaration that the impugned order dated 6-4-1977 passed by the 1st respondent granting succession and appointing the second respondent as Muthavalli of the Mosque in question is illegal and void because the 1st respondent had no power to grant such succession under the provisions of the Wakf Act and also sought a decree for accounts of the Mosque for the years 1977-78. 1978-79 and 1979-80. The respondents resisted the suit alleging that the Jama Mosque was permanently constructed by Late Mohammed Khasim and the Malgis were constructed by his own funds and because he had executed the Wakf Deed. Ex. A 16. wherein provision for appointment of hereditary Muthavalli had been made. the 1st respondent was competent to grant succession and to appoint the 2nd respondent as Mulhavalli of the said Mosque.

3. The trial Court found that the Jama Mosque was a public Mosque and by virtue of para 5 of the Wakf Deed. Ex. A16. the second respondent was entitled for grant of succession because Para 5 provides thati will his life lime, laic Mohammed Khasim. was to remain as Muthvalli and Secretary of the Mosque and on his death his elder son and on his death his son that is the 2nd respondent view entitled to he appointed as Muthvallis The trial Court also held that, by virtue of S. 42 of the Wakf Act. the Wakf Board is entitled to appoint Muthvallis in the event that there is an existing vacancy and there is no one to he appointed under the terms of the Deed of Wakf and when the right of any person to act as Muthvallis is disputed. Holding so. the trial Court concluded that the Board has power to appoint and grant succession to the 2nd respondent both as per the terms of the Wakf Deed, Ex. 16. and also as per the provisions of the Wakf Act. The trial Court also ordered for appointment of a Managing Committee consisting of nine members to manage the affairs of the Mosque in pursuance of the terms of the Wakf . Deed. Kx. A16. In result, the suit was dismissed

4. Feeling aggrieved by the dismissal of the suit the plaintiffs have preferred this revision.

5. Having heard the learned counsel of the appellants as also the learned counsel of the respondents. I am of the view that the appeal deserves to he allowed only on the ground that the 1st respondent has no jurisdiction to grant Towliath (succession) for the reasons given in the subsequent paragraphs.

6. Section 42 of the Act may be set out as follows:

"When there is a vacancy in the office of the Muthvallis of a wakf and there is no one to be appointed under the terms of the deed of the Wakf or where the right of any person to act as mutawalli is disputed, the Board may appoint any person

to act as mutawalli for such period and on such condition as it may think fit."

7. On a plain reading of S. 42 of the Act it is clear that the Board has been conferred power to appoint any person to act as Mutavalli in two situations as specified in this Section. The first is when there is a vacancy in the office of the Mutavalli of the Wakf and there is no one to be appointed under the terms of the Wakf Deed and secondly where the right of any person to act as Muthvallis is disputed. Thus, the power of appointment can be exercised only when there is no one appointed under the terms of the Deed of Wakf and when the right of any person to act as Muthvallis is disputed, provided, of course, there is an existing vacancy in the office of the Muthvalli of the Wakf. Such appointment shall be made for such period and on such condition as the Board may think fit, is indicative and suggestive of the fact that it is not a regular appointment of a Muthvalli that is contemplated by S. 42 of the Wakf Act. There is no provision in the Wakf Act for appointing a person as Muthvalli under S. 12 of the Wakf Act if there is a successor named in the Wakf Deed.

8. A look at the resolution passed on 6-4-1977, which is at Ex. A14, reveals that the proposal for granting Towliath (succession) to the 2nd respondent was unanimously passed and the 2nd respondent was appointed as Muthvallis of the Jama Mosque and its properties. As noted above, the 1st respondent had no power to grant succession and had no power to appoint any person as Muthavalli of any Wakf Board if a successor Muthavalli is named in the Wakf deed and, therefore, in the case on hand, the 1st respondent Board though had no power either to grant succession or to appoint the 2nd respondent as hereditary Muthavalli, yet, at the same time, it had the power to appoint the 2nd respondent as Muthavalli because his right to act as Muthavalli was disputed by the respondents by filing objection. The learned trial Court has committed a small mistake in not deleting the words "Towliath" from the resolution dated 6-4-1977, a copy of which is at Ex. A14.

9. In result the 1st respondent is directed to delete the words "grant of Towliath" from Item No 7 and from the Resolution No. 72/77, dated 6-4-1977 and to substitute with the words "grant of Muthvalliship" in Item No. 7 as also in Resolution No 72/77 and to add the words "to appoint" after the words "Mohammed Khasim" and before the words "Muthvalli" With these modification, the resolution dated 6-4-1977 is declared valid. The appeal is thus allowed. No costs.

10. Orders accordingly.