
(2013) 02 UK CK 0006
In the Uttarakhand High Court
Case No : Civil Revision No. 68 of 2008

Mohd. Idris

APPELLANT

Vs

Uttaranchal Wakf Board

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Waqf Act, 1995 — Section 3(i), 4, 63, 64, 64(4)

Citation : AIR 2013 Utt 72

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : M.C. Pandey and Devesh Upreti, for the Appellant; Dharmendra Barthwal, for the Respondent

Judgement

Brahma Singh Verma, J.—This revision is directed against the judgment and order dated 28.11.2008 passed by the Wakf Tribunal/District Judge, Almora in Misc. Civil Case No. 20 of 2006 Mohd. Idris alias Idris Baba v. Uttaranchal Wakf Board, whereby the District Judge has dismissed the appeal/application of the revisionist on the ground that the appeal has been filed beyond the prescribed period of limitation i.e. within a month from the date of passing of the impugned order. By a perusal of the impugned order, it reveals that the order which was passed on the application u/S. 83(2) of the Wakf Act, moved by the petitioner challenging the letter No. 043/UWB/06-07 dated 31.5.2006, was filed before the Wakf Tribunal.

2. It appears that Sri Sheikh Saleem Ahmed was appointed Mutawalli vide order dated 4.3.2006 by the Board and a direction was given to the revisionist to hand over the charge to the newly appointed Mutawalli. So far as the direction of the District Judge is concerned that the revisionist ought to have approached the tribunal u/S. 64(4) of the Wakf Act, is a perverse finding since the revisionist was not removed u/S. 64 of the said Act. Therefore, the provision of section 64 is not applicable in the case at hand.

3. Now, it is to be seen as to whether the application which was moved by the

revisionist u/S. 83(2) of the Act is maintainable before the Wakf Tribunal or not.

4. Learned counsel appearing for the respondent drew attention of this Court to the order dated 11.3.1998 of the Assistant Survey Commissioner, whereby the revisionist was appointed Administrator of the Wakf on adhoc basis. Since the appointment was on adhoc basis and when another person was appointed Mutawalli, he has no right to continue as Mutawalli and furthermore it was contended that even otherwise the appointment is also against the provision of law as the Assistant Survey Commissioner is not a competent authority to appoint the Administrator even on adhoc basis in place of Mutawalli. That power also lies with the Wakf Board as mentioned in Section 63 of the Act, which is quoted hereunder:--

63. Power to appoint mutawallis in certain cases.-When there is a vacancy in the office of the mutawalli of a wakf and there is not 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 conditions as it may think fit.

5. Learned senior counsel appearing on behalf of the revisionist also drew attention of the Court to the definition of Mutawalli which is defined u/s 3(i) of the Act and which reads as under:--

(i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property.

6. Next, it is to be seen whether the revisionist was appointed by a competent person. In the case at hand, revisionist was appointed by Assistant Survey Commissioner. Work of Assistant Survey Commissioner has been defined in sub-section (2) of section 4 of the Act, wherein there is no mention that he has a power even to appoint ad hoc Administrator to perform the act of mutawalli under the Act.

7. The application which was moved by the revisionist can only be maintained by the learned Tribunal when any order has been passed under the Act. Since the appointment of the revisionist even as ad hoc administrator to manage the wakf was also bad in law, therefore, he has no right to continue and the application u/ S. 83(2) as such is not maintainable since he has not been appointed mutawalli under the Act by the Wakf Board. For the reasons recorded above, the revision lacks merit and is dismissed. The application is not maintainable and the same is rejected. So far as the finding of the District Judge to the effect that the revisionist ought to have approached the Tribunal u/S. 64(4) of the Wakf Act, is a

perverse finding, and the same is also set aside.