
(2012) 09 AHC CK 0016
In the Allahabad High Court
Case No : C.R. No"s. 432 and 434 of 2012

Mohd. Nasir

APPELLANT

Vs

Mohd. Aftab and Another

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Societies Registration Act, 1860 — Section 1, 20
Waqf Act, 1995 — Section 36, 63, 83

Citation : (2013) 3 AWC 2928

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Anshu Chaudhary and G.K. Singh, for the Appellant; M.A. Qadeer, S.L. Lari and Puneet Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

Pankaj Mithal, J.—In these two revisions under provisio to sub-section (9) of Section 83 of The Wakf Act, 1995 (herein after referred to as "Act") the relief sought is to set aside the judgment and order dated 31.5.2012 passed in reference No. 1 of 2010 by the Civil Judge (Senior Division) Mau exercising the powers of Wakf Tribunal. There was a Madarsa (Urdu Medium School) and a "Masjid" (Mosque) adjoining to one another. In the vicinity of the Madarsa and the Masjid there was land of araji No. 215 area 168 Kadi. All within the village Kareemuddinpur, pargana and Tehsil- Ghosi, District- Mau, Haji Sukurullaha, the owner of the said plot vide registered wakfnama dated 14.4.1947 wakfed the above land for the purposes of Madarsa and Masjid and appointed his son Abdul Sattar as its Mutyalli. The said Abdul Sattar remained Mutvalli of the said Wakf till 1982. The Wakf was later registered in the records of U.P. Sunni Central Wakf Board, Lucknow (hereinafter for short the "Wakf Board") as Masjid, Madarsa Islamiya Shamsul Uloom Kareemuddinpur, Ghosi, Mau and subsequently as Wakf No. 611, District Azamgarh now Mau.

2. In the year 1960 a society with the name of Darul Uloom Ahale Sunnet

Shamsul Uloom Ghosi, Mau also came to be registered in connection with the aforesaid Madarsa.

3. In connection with the Wakf properties including Madarsa a dispute of management arose between the parties wherein Mohd. Aftab claimed himself to be the Mutvalli of the Wakf being the grandson of Wakif Haji Sukurullah.

In opposition, Mohd. Nasir claimed to be Mutvalli/Manager in accordance with the bye laws of the society.

4. The battle between the two after a long rally of litigation came up before the High Court in Writ Petition No. 55177 of 2007, Mohd. Aftab v. State of U.P. and others. The writ petition was disposed of by the Division Bench of this Court vide order dated 6.11.2007 with the direction to the Wakf Board, Lucknow to take appropriate steps for constitution of a Committee of Management in respect of Wakf No. 611 Azamgarh expeditiously in accordance with law.

All other previous litigation, about a dozen between the parties in this regard are not very material and relevant for the present dispute and its details are not being referred to for brevity.

5. In pursuance of the direction of the High Court in the above-referred writ petition, the Wakf Board, Lucknow vide order dated 15.12.2007 rejected the claim of Mohd. Aftab regarding appointment of his Committee of Management and at the same time a Committee of Management of 16 members headed by Maulvi Rizwan Ahmad with Mohd. Nasir as the Secretary was appointed for a period of one year. Simultaneously, Mohd. Aftab was appointed as Mutvalli for a period of one year to manage the affairs of the Masjid only and to function in consultation with the Committee of Management appointed above but was restrained from interfering with the working of the Committee of Management that was impliedly given right to manage entire Wakf properties other than the properties dedicated by Haji Sukurullah. On the application of Mohd. Nasir who was not satisfied by the above order, the Wakf Board vide order dated 16.2.2008 stayed the operation of the above order in relation to the appointment of Mohd. Aftab as Mutvalli of the Masjid, notices were directed to be issued to the parties for reconsideration of the matter and till that time the Committee of Management as appointment vide order 15.12.2007 was permitted to continue to manage the aforesaid Wakf. The term of the aforesaid Committee of Management so appointed was extended by the office memorandum of the Wakf Board dated 1.11.2009 for a period of 5 years w.e.f. 15.12.2007 on the basis of the order dated 29.10.2009.

The above three orders dated 15.12.2007, 16.2.2008 and 29.10.2009 and the office memorandum dated 6.11.2009 all passed and issued by the Wakf Board were made the subject matter of reference by Mohd. Aftab u/s 83 of the Act before the Wakf Tribunal.

6. The reference has been decided by the impugned judgment and order dated

31.5.2012. The Tribunal has partly allowed the reference. The orders of the Wakf Board have been set aside; the Managing Committee of Mohd. Aftab has not been recognized and his prayer for recognizing him Secretary/Mutvalli has been rejected; and a direction has been issued for constituting the Electoral College first as provided in the judgment and then to constitute a fresh Committee of Management in compliance with the order of the High Court dated 6.11.2007 passed in writ petition No. 55177 of 2007.

7. I have heard Sri M.A. Qadeer, senior advocate assisted by S.L. Lari, learned counsel appearing for Mohd. Aftab. Sri G.K. Singh alongwith Sri Anshu Chaudhari, learned counsel for Mohd. Nasir and Sri Puneet Gupta, learned counsel for the Wakf Board, all of whom consented for decision of both the revisions on merits at the stage of admission itself without requiring any further material on record.

8. On the submissions advanced by the respective counsel of the parties, the primary controversy seems to be as to whether the above Wakf No. 611, Azamgarh is to be governed by Wakfnama dated 14.4.1947 or the bye laws of the society which came into existence in the year 1960 and as to who is to be appointed as the Mutvalli of the said Wakf.

In addition to the above the validity and correctness not only of the impugned judgment and order of the Tribunal but also that of those passed by the Wakf Board as referred to above and of the direction to constitute an electoral college and then to hold the elections of the Committee of Management of the Wakf has also to be examined.

In attempting to resolve the above question, let me first examine the nature and the manner of creation of the aforesaid Wakf.

9. A Wakf is a permanent dedication of any property by a Muslim for religious, pious or charitable purpose recognized by Mohammedan Law. A Wakf may be made in writing or the dedication may be oral. However, a wakfnama by which immovable property of the value of Rs. 100 and upwards is dedicated is required to be registered under the Indian Registration Act, 1908.

The dedication and declaration of any property for any of the above recognized purposes divests the wakif of the said property and vests it permanently in the Allaha Tala. In other words, a Wakf extinguishes the right of the wakif on dedication of the property and transfers its ownership to Almighty.

The properties of the Wakf on behalf of the God are managed by a mutvalli or a Committee appointed for the purpose.

10. Haji Sukur Ullaha undoubtedly dedicated his land for the purposes of Madarsa and Masjid vide registered deed of Wakf dated 14.4.1947 whereupon a single Wakf comprising a madarsa, masjid and the land so dedicated by him come into existence with his son Abdul Sattar as its mutvalli.

11. There is ample evidence on record and successive findings of the authorities that the Madarsa and Masjid were in existence before the execution of the registered Wakfnama dated 14.7.1947 by Haji Sukurullah. However, there is no document on record or any material establishing creation of any Wakf prior to 1947 in respect of the above Madarsa and the Masjid. It was for the first time by the Wakf deed dated 14.4.1947 that Haji Sukurullah not only wakfed his land araji No. 215 but also included the aforesaid Madarsa, Masjid in the Wakf so created.

12. It is well recognized that properties which are used from times immemorial for religious, pious or a charitable purposes, would be deemed to be Wakf by user, even though, there may not be any evidence of any express dedication. In this view of the matter, the Madarsa and the Masjid which were in use for religious and charitable purposes were in the nature of a Wakf by immemorial use and on the express dedication of the land vide deed of Wakf dated 14.4.1947 became a single consolidated Wakf.

13. There is no dispute that after the wakfnama dated 14.7.1947 there is only one Wakf in respect of the above Madarsa, Masjid and the land. On the basis of the survey conducted by the State Government in the year 1980 a single Wakf No. 611 Azamgarh named Masjid, Madarsa Shamsul Uloom was registered in accordance with the provisions of the U.P. Muslim Wakf Act, 1960. The Wakf was accordingly notified in the survey gazette and its registration was never challenged. In the aforesaid manner one single Wakf comprising all the three properties of Madarsa, Masjid and the land of araji No. 215 which was being run as single unit since 1947 came to be registered as Wakf No. 611 Azamgarh with mutvalli Abdul Sattar as per the aforesaid Wakf deed.

14. A translated copy of the Wakf deed dated 14.4.1947 in Hindi is on record as Annexure-1 to the stay application in civil revision No. 434 of 2012. It dedicates the land araji No. 215 for the purposes of Masjid and Madarsa Islamia Shamsul Uloom situate in Kareemuddiunpur and creates a consolidated Wakf thereof. The said Wakf deed of Haji Sukurullah appoints his son Maulvi Abdul Sattar as its first Mutvalli and makes a provision that after him, the next Mutvalli would be appointed in consultation with the Hanafi and Sunni School of Musalmans.

The relevant clause in this regard contained in the Wakf deed reads as under:

In view of the above, Maulvi Abdul Sattar son of Haji Sukurullah continued as Mutvalli till his death, i.e., 1982. It was during his tenure as Mutvalli that the Wakf was duly registered with the Wakf Board also.

15. On the death of first Mutvalli Abdul Sattar his son Mohd. Aftab claimed to have been duly appointed as the next Mutvalli and he continued as such. The Wakf Board also appointed and recognized Mohd. Aftab as Mutvalli vide order dated 11.11.2005 which was challenged by Mohd. Nasir by filing writ petition No. 765586 of 2003 wherein initially an order of status quo was passed but was ultimately dismissed as not pressed on 20.9.2007. Thus the order dated

11.11.2005 recognizing Mohd. Aftab as the Mutvalli of the Wakf remained undisturbed. There is nothing on record to establish that the above order was set aside by any court or that it was recalled or revoked.

In view of the aforesaid facts and circumstances, the aforesaid Wakf which is duly registered with the Wakf Board comprising of the three properties referred to above is to be managed in accordance with the Wakf deed dated 14.4.1947 of which Mohd. Aftab was recognized as mutvalli vide order dated 11.11.2005.

16. The Tribunal in the impugned order has also found that the entire property is of the Wakf Islamia Shamsul Uloom which is in existence and its administration and management is being done in accordance with the Wakfnama executed by Haji Sukur Ullaha Saheb and that the Mutvalli was being so appointed and is to be appointed accordingly in future.

I also endorse the above view.

17. Now I travel to the Constitution and the role of the Society.

A society Darul Uloom Ahle Sunnat, Shamsul Uloom, Ghosi district Mau came to be registered on 2.7.1960 under the Societies Registration Act, 1860 (hereinafter for short "Societies Act"). The said society has its own bye laws which are not disputed. A translated copy in Hindi of the bye laws are on record as Annexure-14 to the stay application in civil revision No. 432 of 2012.

A plain reading of the aforesaid bye laws reveals that the society is not in connection with the above Wakf but is only in relation to Madarsa which is one of the properties of the Wakf. The bye laws provides for the constitution of the Committee of Management of the society and for the election of its office bearers. The term of the Committee of Management was initially three years and now it has been increased to 5 years. The said society apart from other things in Clause 34 specifically provides that the Mutvalli of the Wakf would not be a member of the Committee of the Management, meaning thereby that the office of Mutavalli is distinct and separate from that of the Committee of Management of the society and its office bearers which are only for the purposes of running the Madarsa.

18. It may be relevant to note that u/s 36 of the Act every Wakf whether created on or after the commencement of the Act is compulsorily required to be registered with the Wakf Board as provided. The Wakf in question as said earlier, is duly registered.

Section 63 of the Act authorizes the Wakf Board in certain contingencies to appoint any person to act as Mutvalli for such period and for conditions specified as may be necessary. The said power of the Wakf Board to appoint mutvalli includes the power to remove him and if necessary to constitute a Committee of Management according to the scheme of the Court.

19. The High Court in Writ Petition No. 55177 of 2007 was seized with the matter

of appointment of Mutvalli only of the aforesaid Wakf No. 611 Azamgarh and not of the Committee of Management of the Society. The Division Bench of this Court in connection with the above dispute vide order dated 6.11.2007 while disposing of the writ petition in unequivocal terms directed the Wakf Board to appoint a fresh Committee of Management in accordance with law so that the management of the Wakf is not hampered in any manner. There was no direction therein for constituting a Committee of Management of the society for the purposes of running the Madarsa. Thus, the order of the High Court directing for constitution of the Committee of Management of the Wakf in effect gave direction to the Wakf Board to appoint Mutvalli or a Committee of Management as the case may be for the purposes of managing the Wakf. There was no direction for the constitution of management of the society and no such Committee of Management for the society could have been constituted by the Wakf Board under the Act, inasmuch as, the working of the society is controlled altogether by a different Act.

20. Section 1 read with Section 20 of the Societies Act clearly provides for the formation and registration of a society for literary, scientific or charitable purposes only and not for any religious purpose. Thus, a society is generally formed for literary, scientific and charitable purposes and not for religious purposes.

21. In view of the above, the society in question is certainly a society only for the limited purpose of running the management of the Madarsa and not for the management of the Wakf which is essentially for a religious purpose though on charitable basis.

22. In short, there is a single Wakf No. 61 Azamgarh comprising of Madarsa, Masjid and the land with its management in the hands of a Mutvalli who was and is to be appointed in accordance with the Wakf deed dated 14.4.1947. The Wakf properties vest in Almighty God and are not the properties of any individual/ Mutvalli or of any Society. The registered society is for managing the affairs of the Madarsa which comprises of one of the properties of the Wakf. The Mutvalli is for the management of the Wakf properties whereas the Committee of Management constituted according to bye laws of the Society and its office bearers are only for the limited purpose of managing/running the Madarsa. In view of the aforesaid facts and circumstances, I am of the opinion that not only the order of the Tribunal dated 31.5.2012 impugned in both the revisions but also the orders of the Wakf Board dated 15.12.2007, 16.2.2008, 29.10.2009 and the Office Memorandum dated 6.11.2009 are liable to be set aside with a further direction to the Wakf Board to ensure, if necessary, appointment of the Mutvalli or the Committee of Management of the Wakf No. 611 Azamgarh in accordance with law in terms of the Wakf deed dated 14.4.1947 as directed by this Court's order dated 6.12.2007. The mutvalli or the Committee of Management as the case may be shall not interfere with the functioning of the aforesaid society which has to be constituted in accordance with its bye laws and the provisions of the Societies Act. It is clarified that the functioning of the society would be

confined to that of managing the affairs of the Madarsa without any intervention with the Wakf or its properties.

Both the revisions stand disposed of accordingly with costs upon the parties.