
(1973) 03 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 3364 of 1970

Mysore State Board of Wakfs

APPELLANT

Vs

Dr. M. Channabasavaiah and Others

RESPONDENT

Date of Decision : 07-03-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Waqf Act, 1954 — Section 36 B, 36 B (2), 5 (2)

Citation : AIR 1973 Kar 312 : (1973) ILR (Kar) 422 : (1973) 1 MysLJ 514

Hon'ble Judges : M. Sadananda Swamy, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : K.S. Savanur, for the Appellant; K.N. Shankaralingappa, for the Respondent

Final Decision : Dismissed

Judgement

Jagannatha Shetty, J.—This is a petition under Arts. 226 and 227 brought on behalf of the Mysore State Board of Wakfs (the Board of Wakfs).

2. The petition is directed against the order of the District Judge, Chitradurga, made in M. A. No. 61 of 1968, setting aside the order of the Deputy Commissioner, Chitradurga, dated 28-9-1968.

3. The facts leading to the petition are these :

Respondent 3, a Darga at Chitradurga, is registered as a Wakf with its property under the Wakfs Act, 1954 ("the Act"). The Board of Wakfs published in the Mysore Gazette dated 6-1-1965 a list of Wakfs and their properties relating to Chitradurga District. The list was published in exercise of the power conferred on the Board of Wakfs by Sub-section (2) of Section 5 of the Act. The Board of Wakfs sent a requisition to the Deputy Commissioner, Chitradurga, u/s 36-B (2) of the Act to obtain delivery of possession of certain property which was admittedly in possession of respondent 1 since deceased by his legal representatives, 1(a), to 1(f). The Deputy Commissioner passed an order dated

28-9-1968 directing respondent 1 to deliver possession of the property mentioned under the requisition made by the Board of Wakfs. The order was passed by the Deputy Commissioner under Sub-section (2) of Section 36-B of the Act.

4. Being aggrieved by the order, respondent 1 appealed before the District Judge, Chitradurga, under Sub-section (4) of Section 36-B of the Act. The learned District Judge has set aside the order of the Deputy Commissioner holding that the provisions of Section 36-B of the Act are not applicable to the facts of the case. That decision is challenged by the Board of Wakfs in this petition.

5. Mr. K. S. Savanur, learned counsel for the petitioner, contended that once that property is entered in the list as wakf property and published u/s 5 of the Act, the provisions of Section 36-B automatically are attracted. He further submitted that, if any of the properties is transferred without previous sanction of the board and in contravention of the provisions of Section 36-A, the Deputy Commissioner is competent to direct delivery of possession from such transferee to the Board of Wakfs. According to him, if the transferee is aggrieved by the said action, it was for him to approach the Civil Court for the redressal of his grievance.

6. We are not persuaded to accede to the contention of Mr. Savanur. In *Corporation of the City of Bangalore v. Mysore State Board of Wakfs* (1973) 1 Mys LJ 103 : AIR 1973 Mys 189, a Bench of this Court held :--

"The Wakfs Board's jurisdiction under the Act is confined to matters of administration of wakfs and not to adjudicate the question of title. Sections 4 and 6 do not invest Commissioner of the Wakfs power with authority to decide the question whether a particular property belongs to the wakf or not, and particularly, so, where the person claiming title is a stranger to the wakf."

This Court followed the decision of the High Court of Rajasthan in *Radhakishan and Another Vs. State of Rajasthan and Others*, in reaching the above conclusion.

7. In the case of *Corporation of City of Bangalore*, this Court was not called upon to examine the applicability of Section 36-B of the Act, in a case where the Board of Wakfs claims possession of property from a person who is a stranger to the wakfs. The scope of that section was considered by the High Court of Rajasthan in *Radhakishan and Another Vs. State of Rajasthan and Others*, wherein, D. S. Dave, C. J., stated at page 8 thus :

"Moreover, Section 36-B would come into play only if the property has been transferred by a person over whom the Board exercises control and who ought to have obtained the previous sanction of the Board before such transfer, for example, a mutawalli or some other person who has been entrusted with the management of the property by the Board. In our opinion, this section cannot apply in the case of a property which is in the bands of a stranger over whom the Board has no control under the Act, simply because the Board happens to enter

the property in its register. In cases like the present one where the petitioners claim their possession over the property as mortgagees from the year 1944 and further claim their title and possession as vendees over the same property from the year 1954, the Board of Wakfs cannot, by simply entering the property in the list of wakfs or registering it in the register of wakfs, drive them to file a suit to establish their title or retain their possession. It cannot also seek to dispossess them from the property by resorting to Section 36-B. It is for the Board to file a civil suit for a declaration that the property in dispute, is a wakf property and to obtain its possession."

8. We would respectfully agree entirely with what was said there. There is nothing contrary stated by the same High Court in Mohammad Abdul Baqi Khan Vs. Rajasthan Board of Muslim Wakfs, Jaipur and Others,

9. Respondent 1 is a stranger to the wakf and he claims title to the property and he is in possession thereof. The jurisdiction of the Board of Wakfs is limited to the ad-ministration of Wakfs and the persons claiming under the Wakfs. It has no jurisdiction over a stranger and therefore it cannot seek to dispossess Respondent 1, from the property by having recourse to the provisions of Section 36-B of the Act. It could establish its, title and obtain possession of the property in a properly constituted suit.

10. In our judgment, the learned District Judge has taken a correct view and it docs not call for interference. The petition therefore fails and is dismissed, without any order as to costs.