
(2013) 11 AHC CK 0179
In the Allahabad High Court
Case No : Writ C No. 52698 of 2013

Nawab S. Kazim Ali Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2013) 10 ADJ 257 : (2014) 1 ALJ 161 : (2014) 102 ALR 155 : (2013) 121 RD 791

Hon'ble Judges : Vimlesh Kumar Shukla, J;Suneet Kumar, J

Bench : Division Bench

Advocate : S.M. Haider Zaidi and Shashi Nandan, for the Appellant; Punit Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

1. Nawab S. Kazim Ali Khan son of late Nawab S. Zulfikar Ali Khan. Mutawalli Auqaf District Rampur is before this Court with following relief:-- (i) Issue a writ, order or direction in the nature of certiorari to quash the show-cause notice dated 12.09.2013 issued by respondent No. 2 u/s 64 of Waqf Act, 1995 and the order dated 11.09.2013 and 08.05.2013 passed by respondent Nos. 2 and 3.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to ensure and audit of Waqf Nos. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 241 and 187 and accept the contribution to be made by the petitioner to the Board.

(iii) Issue a writ, order or direction in the nature of mandamus restraining the respondent No. 2 from proceeding on the basis of show-cause notice dated 12.09.2013.

(iv) Issue a writ, order or direction, as this Hon''ble Court may deem fit and proper under the circumstances of the case.

Brief background of the case is that Waqf Nos. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13,

187 and 241 Rampur are the Waqf Alal Khair [Public Charitable Trust] situated at Rampur within the local territory of Rampur Estate as it has been. The waqf deed was prepared on 23.04.1942. Petitioner has further proceeded to mention that these waqfs in question were created and always managed and supervised by the rulers of Rampur as all these Sunni Auqafs mainly constitute Tombs of the Ex-Rulers and Mosque. Late H.H. Nawaz S. Raza Ali Khan after merger of Rampur framed rules in 1952 for management of Estate Auqafs in the changed scenario created separate office known as Auqaf Office of Rampur that was required to function under the control and supervision of Nawab and his family. Petitioner has further proceeded to mention that his father who happens to be the Ruler of Rampur Estate created the aforesaid Waqf by the royal order and Waqf deeds whereby the Right of Management was given to the Elder Male member of the family, accordingly the petitioner has been appointed as Mutawalli of the aforesaid waqf and accordingly has been managing the Waqf. Petitioner submits that on account of political motivation action has been sought to be initiated against him and in the said direction complaining mismanagement on the part of the petitioner and for not complying with the terms and conditions of the Waqf and the provision of Waqf Act, 1995, complaint has been made. On the said complaint being made by Maqsood Ali dated 05.04.2013 an order was passed for making spot inspection and for submission of the report. Pursuant thereto waqf property in question has been examined and thereafter report in question has been submitted on 13.06.2013 recommending therein for action under Sections 64(1), (g), (h), (i), (j) and (k) of Waqf Act, 1995. After receiving the report in question the Chairman U.P. Sunni Central Waqf Board on 05.09.2013 has proceeded to mention that after inquiry has been conducted and report has been submitted on 13.06.2013, same reflects that allegations against the Mutawalli are very serious and deserves scrutiny, and accordingly let a show-cause notice u/s 64 of Waqf Act, 1995 be issued to the Mutawalli giving 15 days time to him to submit his reply-to the show-cause notice fixing 26.09.2013 for personal hearing. After the said order in question has been passed by the Chairman U.P. Sunni Central Waqf Board, pursuant thereto show-cause notice has been issued u/s 64 of Waqf Act, 1995 and the same has impelled the petitioner to be before this Court.

2. On the presentation of present writ petition in question Sri Shashi Nandan, Senior Advocate opened his argument by contending that entire proceedings which are being so undertaken pursuant to show-cause notice dated 12.09.2013 are totally without jurisdiction for the simple reason that authority to take action against Mutawali has been conferred upon the Board constituted under Waqf Act, 1995 and in view of this Chairman of the Board unilaterally has got no authority to initiate proceeding as has been sought to be done by him and accordingly entire proceeding so undertaken are without jurisdiction and this Court should quash the entire proceeding so undertaken as it would be nothing but an exercise in futility.

3. Sri. Punit Kumar Gupta, Advocate who represents Waqf Board in question on

the other hand contended that authority of the Board has been delegated to the Chairman of the Board concerned and in exercise of such authority proceedings have been initiated and there is no lack of authority/jurisdiction, in the proceedings in question.

4. This Court on 25.09.2013 has proceeded to pass following order:

Put up this matter on 01.10.2013. On the said date, Sri. Punit Kumar Gupta, Advocate who respondent No. 2 before this Court is directed to produce copy of the order dated 05.09.2013 as well as the documents which would show and substantiate that authority of the Board has been delegated to the Chairman of the Board concerned.

5. On the matter being taken up today copy of the respective instructions as has been received has been supplied to learned counsel for the petitioner, to show and substantiate that there is valid authorization u/s 27 of Waqf Act, 1995 delegating the authority to the Chairperson, as well as to the other members, and accordingly Chairman has rightfully taken action.

6. After receiving of the said instructions, request has been made by the parties that matter be decided on its own merits as pure question of law is involved.

7. Sri. Shashi Nandan, Senior Advocate appearing with Sri. S.M. Haider Zaidi, Advocate submitted that proceeding u/s 64 of Waqf Act, 1995 can be initiated only if it is preceded by resolution of Board and by no stretch of imagination in the matter of initiation of proceeding u/s 64 of Waqf Act, 1995 the Chairman has got no authority to proceed unilaterally, as such entire proceeding initiated by means of notice dated 12.09.2013 is without jurisdiction and is liable to be quashed.

8. Countering the said submission, Sri. Keshri Nath Tripathi, Senior Advocate assisted by Sri Punit Kumar Gupta, Advocate contended that to stream line the business of Waqf Board, the Waqf Board in its wisdom has proceeded to delegate its authority u/s 27 of the Waqf Act, to the Chairperson, and other members of the Board in order to carry out effective administration of the Waqf Board, and once such an authority has been delegated and the delegatee in its wisdom has chosen to initiate proceeding u/s 64 of Waqf Act, 1995, by issuing notice then there is no lack of authority or jurisdiction at this stage of proceeding as final decision of removal still would be taken by the Waqf Board as resolution of removal can be passed by majority of not less than 2/3rd members of the Board, in view of this, challenge made under the scheme of things is unsustainable and accordingly writ petition at this juncture deserves dismissal.

9. In order to appreciate the respective arguments as has been advanced this Court proceeds to take note of the Waqf Act, 1995 framed with the object to provide for the better administration of Waqfs and for matters connected therewith or incidental thereto. Section 3(c) of Waqf Act, 1995, defines "Board" as Board of Waqf established under Sub-section (1) or as the case may be, under

Sub-section (2) of Section 13 and shall include a common Waqf Board established u/s 106. Under Waqf Act, 1995, Chapter IV deals with establishment of Board and their functions. Section 13 therein deals with Incorporation and provides that w.e.f. from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification. Said Waqf Board is a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and by the said name can sue and can be sued. Composition of Board has been provided u/s 14 of Waqf Act 1995 as follows:

14. Composition of Board.--(1) The Board for a State and the Union Territory of Delhi shall consist of-

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of-

(i) Muslim Members of Parliament from the State or, as the case may be, the Union Territory of Delhi,

(ii) Muslim Members of the State Legislature,

(iii) Muslim Members of the, Bar Council of the State, and

(iv) Mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations;

(d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.

10. Section 15 provides for term of office, whereas section 16 deals with disqualification for being appointed, or for continuing as, a member of the Board. Section 17 provides for the meetings of the Board. Section 27 deals with delegation of powers by the Board. Section 32 deals with powers and functions of the Board.

11. Sections 17, 27 and 32 of Waqf Act 1995 are as follow-

17. Meetings of the Board.--(1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

(2) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

Section 27. Delegation of powers by the Board--The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.

Section 32. Powers and function of the Board.--(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs. Explanation.--For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in, relation to which any scheme has been made by any court of law. whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be.

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;

(b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were intended or created;

(c) to give directions for the administration of wakfs;

(d) to settle schemes of management for a wakf: Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct--(i) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the, wakf as was

previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of, the poor or for the purpose of promotion of knowledge and learning in the Muslim community: Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard. Explanation.-For the purposes of this clause, the powers of the Board shall be exercised-

(i) in the case of a Sunni Wakf, by the Sunni members of the Board only; and

(ii) in the case of a Shia Wakf, by the Shia members of the Board only: Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be. as it thinks fit, to be temporary members" of the Board for exercising its powers under this clause;

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(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

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(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of wakfs;

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any wakf;

(i) to institute and defend suits and proceedings relating to wakfs;

(j) to sanction any transfer of immovable property of a wakf by way of sale, gift,

mortgage, exchange or lease, in accordance with the provisions of this Act: Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction;

(k) to administer the Wakf Fund;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, wakf properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of wakf and wakf property, and to cause, whenever necessary, a survey of such wakf property;

(o) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any wakf land, which is a wakf property, offers a feasible potential for development as a, shopping centre, market, homing flats and the like, it may serve upon the mutawalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, with the prior approval of the, Government, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from Wakf funds or from the finances which may be raised on the security of the properties of the wakf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the Property:

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be banded over to mutawalli of the concerned wakf.

12. A bare perusal of the provisions quoted above would go to show that Board for transaction of business as per Section 17 has to meet at such time and places as may be provided by regulations. Chairman or in his absence, any member chosen by the members from amongst themselves, is required to preside at the meeting of Board. Sub-section (3) of Section 17, opens with the sentence, subject to the provisions of this Act, all questions which come up before any meeting of the Board, same has to be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson, or in his absence any other person presiding shall have a second or a casting vote. Section 27 confers authority on the Board to delegate such of its power and duties, as it may deem necessary by a general or special order in writing to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order. Section 32 deals with the Powers and function of the Board and specifically provides for by mentioning the general superintendence of all wakfs in a State shall vest in the Board established or the State. Sub-section (2) of Section 32 deals with specific functioning of the Board and one of the such functions of Board is to remove Mutawali in accordance with this provision of the Act.

13. Section 64 being relevant is also being extracted below:--

Section 64. Removal of mutawalli--(1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli-

- (a) has been convicted more than once of an offence punishable u/s 61; or
- (b) has been convicted of any offence of criminal breach of trust, or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
- (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or
- (d) is an undischarged insolvent; or
- (e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or
- (f) is employed as a paid legal practitioner on behalf of, or against, the wakf; or
- (g) has failed, without reasonable excuse, to maintain regular amounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the wakf. (a) has been convicted more than once of an offence punishable u/s 61; or

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than, two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry: Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the, Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908. (5 of 1908) appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property.

(8) A mutawalli of a wakf removed from his office under this section shall not be

eligible for re-appointment as a mutawalli of that wakf for a period of five years from the date of such removal.

Section 64 deals with removal of mutawalli and clearly proceeds to mention that the Board has been empowered to remove a mutawalli from the office if he (i) has been convicted more than once of an offence punishable u/s 61 of the Act; or (ii) has been convicted of any offence of criminal breach of trust, or any other offence involving moral turpitude, or (iii) is of unsound mind or is suffering from other mental or physical defect or infirmity, or (iv) is an undischarged insolvent or (v) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs or (vi) is employed as a paid legal practitioner on behalf of, or against, the wakf; or (vii) has failed to maintain regular account or has failed to submit, the yearly statement of accounts, for consecutive years, or (viii) is interested, in a subsisting lease in respect of any property, or, in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to the wakf, or (x) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf or in respect of any money or other wakf property, or (xi) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, or Board; (xii) misappropriates or fraudulently deals with the property of the wakf. Sub-section (2) of Section 64 protects personal right of a Mutawalli if any in respect of the waqf property either as a beneficiary or in any other capacity or his right, if any sub-section (3) of Section 64 clearly provides that no action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than, two-thirds of the members of the Board. Sub-section (4) of Section 64 provides for redressal forum to approach the Tribunal by filing appeal against the order and the decision of the Board under clauses (c) to (i) of Sub-section (i). Sub-section (5) of Section 64 authorizes the Board to pass order of suspension pending inquiry.

14. Section 70 and Section 71 of Waqf Act 1995 being relevant are also being looked into:

Section 70-Inquiry relating to administration of wakf. Any, person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

Section 71--Manner of holding inquiry.--(1) The Board may, either on an application received u/s 70 or on its own motion,-

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit,

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

15. Section 70 deals with inquiry relating to administration of wakf. Any, person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit. Section 71 provides the way and manner in which inquiry is to be held. The Board may, either on an application received u/s 70 or on its own motion holds an inquiry in such manner as may be prescribed or authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit. Sub-section (2) of Section 71 gives authority to the Board for the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for enforcing the attendance of witnesses and production of documents.

16. On the parameter of the aforesaid provisions as have been quoted above, the issues as has been raised and are arising in the present writ petition are being looked into.

17. The issue to be adverted to by this Court is as to whether action is proposed u/s 64 of Waqf Act, 1995 in the direction of removal of Mutawalli, whether same has to be preceded by the resolution of Board and the Chairman has got no authority to initiate proceeding as has been done in the present case.

18. Variety of functions to be performed by the Board has been provided for u/s 32 of Waqf Act, 1995 and other provisions of the Act. u/s 32 of the Act in question, the general superintendence of all Waqfs in the State vests in the Board established in the State and it is duty of the Board to exercise authority under this Act to ensure that the Waqf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such waqfs were created or intended. Sub-section (2) of Section 32 gives authority to the Board without prejudice to the generality of the foregoing power, to perform and discharge wide variety of functions and one such specific function apart from general function conferred on the Board is the authority to appoint, and remove Mutawallies in accordance with the provision of this Act. Board is the repository of all power for ensuring that affairs of waqf are carried out strictly in consonance with the provision of Waqf Act, 1955.

19. In order to effectively carry out its power of general superintendence of all waqf in the State and in order to ensure that waqf in question is functioning and are properly maintained and administered and the income thereof is duly

applied to the objects, the Board u/s 27 of the Act has been conferred with the authority to delegate its authority to the Chairperson, any other member the Secretary or any other officer or servant of the Board of any area committee subject to such conditions and limitations as may be specified in the said order. Such of its power and duties under this Act, as it may deem necessary.

20. In the present case U.P. Sunni Central Waqf Board on 24.04.2010 in its meeting held on 17.04.2010 has taken a resolve that all the powers and functions of the Board u/s 32 and other section of the Waqf Act, 1995 are, in exercise of powers conferred u/s 27 of the Waqf Act, delegated to the Chairperson and other members of the Board in following manner:

OFFICE OF THE U.P. SUNNI CENTRAL WAQF BOARD 3-A, MALL AVENUE
LUCKNOW-226001

Ref. No. 7174/CEO-10

Dated 24.04.2010

OFFICE MEMORANDUM

The U.P. Sunni Central Waqf Board in its meeting held on Saturday the 17th April, 2010, under the item No. 1 has resolved that all the powers and functions of the Board u/s 32 and other Section of the Waqf Act, 1995 are in exercise of powers conferred u/s 27 of the Waqf Act, delegated to the Chairperson and other members of the Board in following manner:--

Resolution No. 1 (i) The Chairperson, Mr. Zufar Ahmad Farooqui and all the other members of the Board are authorised in individual capacity to hear and dispose off such disputed matters in which the parties re-require to be heard.

Resolution No. 1 (ii):- For allotment of files of disputed matters for hearing, the power u/s 27 of the Act is delegated to the Chairperson, Mr. Zufar Ahmad Farooqui, without the allotment of such files by the Chairperson, no member Board shall have any right to hear and decide the disputed matter.

In case any transfer application is moved by a party against any member conducting hearing in a waqf, then the right not to transfer or to transfer the case shall rest with Mr. Zufar Ahmad Farooqui, the Chairperson. The Chairperson shall also have the right to nominate any member of the Board to deal with the matter relating any particular region of the State.

Resolution No. 1(iii):- The power to register a new waqf and to pass orders in undisputed matter are delegated to Mr. Zufar Ahmad Farooqui u/s 27 of the Waqf Act, 1995. The Chairperson is empowered that in his absence he can nominate any member of the Board for the same.

Resolution No. 1 (iv):- That all the financial and administrative powers of the Board, are u/s 27 of the Waqf Act, 1995 delegated to Mr. Zufar Ahmad Farooqui, the Chairperson.

Resolution No. 1 (v):- Under the Section 27 of the Waqf Act, 1995 the power for permission of Hypothecation of in favour of Central Waqf Council and execution of leave to Waqf Development Corporation are hereby delegated to Mr. Zufar Ahmad Farooqui the Chairperson. Simultaneously it is being clarified that apart from the above delegation no powers u/s 51 and 56 of the Waqf Act, 1995 are delegated to Chairperson or any the members of the Board.

Under this resolution restriction is hereby imposed on the Chairperson and other members of the Board that they (sic) records of the Board nor they can recall any registration order. And if the same is necessary in view of the order of any court even then the matter shall be placed in the meeting of the Board and the Board shall take decision thereon. Secondly if any person after concealing the facts gets a waqf registered under wrong tauliat in such matters only that part of the order concerning tauliat can be recalled.

Resolution No. 1(vi):-Powers u/s 30 of the Waqf Act, 1995 to issue certified/verified copies of Resolutions, orders and records of the Board are hereby delegated to Sri Khalid Umar, S.W. and in his absence, Sri Tajdar Alam, S.W. shall issue such copied

To,

1. Hon''ble Chairpersons, 2. All members of Board.

(Dr. Shaukat Ali Tyagi) Chief Executive Officer.

Copy to:- 1. A.S. 2. SW''s 3. L.O. 4. P. A. to Chairperson. 5. P.A. to C.E.O.

(Dr. Shaukat Ali Tyagi) Chief Executive Officer.

21. In order to facilitate its working the Board in its wisdom has intended to distribute its business amongst the Chairman and other members of the Board and this is one of the recognised mode for distributing the business wherein power is not exercised directly by the delegating body but through a delegate. Such arrangements are made for convenience of transaction of business and such acts are simply termed to be an exercise in the direction of indoor Management of Boards function. Delegation of power in the matter is not always a matter of mere convenience but a necessity at times and the delegation is permissible only when there is provision in the statute for delegation and the administrative power vested in a body of person can for effective exercise of such powers be exercised by some of them acting on behalf of all. Delegating Body i.e. the Board will retain not only power to revoke the grant but also power to act concurrently on the matter within the area of delegated authority, except insofar as it may already have become bound by an act of its delegate. There is no doubt on this proposition that order of delegate has to be treated as an order of Principal itself and the principal does not loose his power merely because those powers have been delegated to another body. The order passed by delegate has to be treated as order of the Board.

22. Apex Court in the case of State of Orissa and Others Vs. Commissioner of Land Records and Statement, Cuttack and Others, has clarified this aspect of the matter that once power has been delegated to an incumbent i.e. the Chairman then order passed by the incumbent has to be treated as the order of Board of Revenue and not to be accepted as Commissioner's order.

23. On the own showing of the petitioner there are 99,000 waqf registered in the State of U.P. and once the Waqf Board in order to streamline its functioning in exercise of authority vested u/s 27 of Waqf Act, 1995 has delegated all powers and function of the Board u/s 32 and other section of Waqf Act, 1995 to the Chairperson and other members of the Board, then Chairman and other members of the Board has every authority to hear and dispose of the matter, and all such orders passed by the delegate will be accepted to be an order passed by the Board. This is an impact of the delegation of authority on delegate by the Principal, Waqf Board in the present case. Here control of the business has been retained in the Chairperson as files to be heard by other member are to be distributed/assigned by the Chairperson and the Chairperson has authority to transfer the files also and to nominate any other member to hear the matter.

24. In the present case entire emphasis is to the effect that Section 64 proceeds to mention that no action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than 2/3rd of the members of the Board. Thus, Board has been empowered to remove Mutawalli from his Office but such action is permissible only after it has been preceded by an inquiry held in the matter in a prescribed manner and the decision has been taken by a majority of not less than 2/3rd of the members of the Board and here in the facts of the present case, as there is no resolution of the Board to initiate action, as such entire action so initiated is per-se bad.

25. This particular provision, Section 64 can be divided into two stages, (i) investigation i.e. holding of an inquiry into the matter and (ii) decision taken by the majority of not less then 2/3rd members of the Board.

26. Section 32(2)(g) authorizes the Board to appoint, and remove mutawallis in accordance with the provision of this Act. Section 70 gives right to person interested in a waqf to make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the waqf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the waqf are being mismanaged it shall take such action thereon, as it thinks fit. Even this Section is in two parts, i.e. institution of an inquiry relating to the administration of waqf and after inquiry if the Board is satisfied that there are reasonable ground for believing that the affairs of the waqf are being mismanaged, to take action thereon as it thinks fit. Section 71 provides the manner of holding of inquiry.

27. In the present case vide resolution dated 24.04.2010 all the powers and

functions of the Board u/s 32 and other section of the Waqf Act, 1995 has been delegated to the Chairperson and others members of the Board. Conferment of such authority of delegation on the Board authorises Board to make arrangements as to in what way and manner, waqfs are to be supervised and specially when wide variety of powers has been assigned to the Board and it is practically impossible for the Board to supervise the functions of large number of waqf u/s 32 of Waqf Act 1995 and other sections. Delegation, as there are 99,000 Waqfs is not a matter of mere convenience, rather it is necessity, as power/authority vested in body of persons, here Board, can for effective exercise of such power be exercised by one, or by some of them acting on behalf of all. This is the impact and essence of delegation. In such a situation and in this background in case Board has delegated its authority to the Chairman and other members to exercise its statutory authority u/s 27 of Waqf Act, 1995, then the Chairman and other members who have been delegated with the said authority are entitled to pass order and to take action on behalf of the Board and such action as taken by them is to be accepted as on behalf of Board.

28. Now coming to the case in hand. This much is clear that complaint supported by an affidavit was made to the Chairman of the Board and the Chairman of the Board after receiving complaint supported by an affidavit directed for spot inspection and inquiry by three member committee constituted and three member committee on 13.06.2013 submitted its report showing therein misappropriation of waqf property and it's income and thereafter the Chairman after receiving the said report in question on 05.09.2013 passed following orders:

Upon receipt of complaints against Sri Kazim Ali Khan, Mutawalli waqf Nos. 1 to 5, 8 to 13 Rampur and 515 Bareilly in respect of Mismanagement of waqfs and misappropriation of waqf property and it's income.

The Board directed for the spot inspection and inquiry for which a three member committer was constituted.

After inquiry the report was submitted on 13.6.2013. The bare perusal of inquiry report shows that the allegations against the Mutawalli are very serious and deserves scrutiny.

Let a show-cause notice u/s 64 Waqf Act, 1995 be issued to the Mutawalli giving 15 days time to submit his reply to show cause notice. Fixing 26.9.2013 for personal hearing.

Notice be send by registered post and through D.M./A.W.C. Rampur/Bareilly.

Dated 05/09/2013

(Zufar Ahmad Farooqui) Chairman U.P. Sunni Central Waqf Board

29. Based on the said order dated 05.09.2013 show-cause notice has been sent.

30. Can in the facts of the case, the proceedings so undertaken by the Chairman be termed to be without jurisdiction? Answer would be "No" for the simple

reason that there is resolution of the Board wherein all the powers and function of the Board u/s 32 and other section of the Waqf Act, 1995, in exercise of powers vested u/s 27 of the Waqf Act, 1995 has been delegated to the Chairperson and other members of the Board wherein Board and other members have been authorized to hear the matters in individual capacity and decide the matter in which the parties are required to be heard and further Chairperson has been authorized to allot files to be heard by himself or by other members.

31. Once such is the factual situation that authority to initiate action u/s 32 of the Act, 1995 has been conferred upon the Board and the Chairman is exercising authority of Board being delegated and the Chairman after receiving the said complaint has proceeded to exercise its authority by initially directing for preliminary inquiry and after receiving report of preliminary report has chosen to hold an inquiry in consonance with the provision of Section 71 of 1995 Act, then to say that proceedings are without jurisdiction cannot be accepted under the scheme of things provided for under Sections 27, 32, 64, 70 and 71 of Waqf Act, 1995.

32. As already mentioned above the Chairman has to be accepted as if he is acting on behalf of Board in such a situation there is no transgression or overstepping of jurisdiction on his part and action taken has to be treated as valid action in the backdrop of the statutory scheme in question as here Board in its wisdom has delegated its authority to be exercised by delegate backed by the statutory provisions. In view of this, as far as issuance of notice is concerned by the Chairman for making enquiry same cannot be treated to be without jurisdiction, as Section 64 provides for holding of inquiry into the matter as per the provision in prescribed manner and thereafter decision has to be taken by the Board for removal by not less than two thirds of the member of the Board. Holding of an inquiry in the prescribed manner is a condition precedent. At the enquiry stage the Chairman has all the authority, delegated upon him, to entertain the application for holding of an enquiry supported by affidavit and to hold an enquiry. This exercise by the Chairman is not at all required to be preceded by a resolution in this regard. All resolutions are not required to come before the meeting of the Board, and that is why consciously sub-section (3) of Section 17 starts with the term, subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by majority of votes of members present. Once Board has delegated its authority on Chairman and other members, and such delegate has chosen to exercise its authority, then such matters are not at all required to come to the meeting of Board. For holding enquiry against Mutawalli, there is no requirement of any resolution being passed by the Board, and the delegate has full authority to entertain the complaint u/s 70 and hold enquiry as is envisaged u/s 71.

33. After inquiry in question is over and in case such Mutawalli has been found mismanaging the affairs of the Waqf, then final decision of removal from office has to be taken by the majority of not less than 2/3rd members of the Board. At

this juncture and at this stage the delegate cannot exercise authority of removal of Mutawalli from his office for the simple reason that clear cut provision has been provided for that such decision has to be taken by the majority of not less than 2/3rd members of the Board. Final decision has to be taken for removal of Mutawalli after report of inquiry is received by the majority of not less than 2/3rd members of the Board. Section 32 also ensures that Mutawalli should be removed in accordance with the provisions of the Act, accordingly after final report of inquiry is received, and final decision is to be taken as to whether Mutawalli can be removed or not, the said decision has to be backed by majority of not less than 2/3rd members of the Board and prior to it, it is not at all the requirement that even for initiation of proceedings for holding of an inquiry there has to be resolution backed by majority of not less than 2/3rd members. In view of this under the scheme of things provided for and as already noted above, there are two stages (i) inquiry into the matter in the prescribed manner and (ii) decision be taken by the majority of not less than 2/3rd members of the Board based on the report of aforesaid inquiry. Entertainment of complaint and holding of an enquiry on the same by the Board can be exercised by the delegate i.e. Chairman and there is no lack of authority in the same and as far as second part of the obligation is concerned, after inquiry has been held in the prescribed manner, decision for removal of mutawalli in question, at the said point of time has to be taken by the majority of not less than 2/3rd members of the Board. In view of this, challenge made by the petitioner before this Court is unsustainable. No other point has been pressed. In terms of the aforesaid discussion present writ petition is dismissed.