

(2002) 09 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16221 of 2002

Qamaruddin Sabri

APPELLANT

Vs

U.P.Sunni Central Waqf Board & Ors.

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 67(2)

Citation : (2002) 09 AHC CK 0120

Hon'ble Judges : M.Chaudhary, J and S.Rafat Alam, J

Judgement

1. In the instant writ petition the sole petitioner claiming to be Mutawalli of the Waqf in question, is aggrieved by the order of the U.P. Sunni Central Waqf Board, Lucknow, dated 432002 (Annexure4) recalling its earlier order dated 1842001 and the office memorandum dated 732002 (Annexure5) appointing Managing Committee to manage the affairs of the Waqf in question.

2. It appears that on the application moved by the petitioner the Waqf in question was registered as Waqf No. 3145 vide order dated 1842001 and Committee consisting of 7 persons including petitioner was constituted by the Waqf Board for supervision and management of the Waqf. However, the respondent No. 4, Shamshad Ahmad, moved an application before the Waqf Board on 6122001 to recall its earlier order, dated 1842001 on the ground, inter alia, that the Committee headed by him is in actual management of the Waqf in question. Accordingly the Waqf Board stayed its earlier order dated 1842001 and issued notices to the petitioner to give showcause. An order was also passed on 3112002 for spot enquiry. Accordingly, the Circle Inspector went to the site and after necessary enquiry reported that there exists a mosque in which five times namaz is being held everyday and NamazeJuma is also performed on every Friday. It has also been found that the said Mosque has a permanent Imam and the Waqf in question is being managed by the Committee of respondent No. 4. Since the petitioner did not appear, by an ex parte impugned order dated 432002 the order dated 1842001 appointing committee to manage the Waqf in question

headed by the petitioner was accordingly recalled and a new committee headed by respondent No. 4 was constituted vide office memorandum dated 732002.

3. Sri B.D. Mandhyan, learned Counsel for the petitioner vehemently contended that the aforesaid order has been passed without affording any opportunity of hearing to the petitioner and the notice alleged to have been issued pursuant to the order dated 20th December, 2001 was never issued nor served on the petitioner. It is also contended that subsection (2) of Section 67 of the Waqf Act, 1995 provides that before superseding any Committee, a showcause notice mentioning reasons for the proposed action is mandatory in the absence of which order passed under Section 67 of the Act is illegal, without jurisdiction and cannot sustain and, therefore, the whole proceeding initiated under Section 67 of the Act on this score alone deserves to be quashed. He also argued that the petitioner is managing the Waqf in question since 1942 and for the first time respondent No. 4 has moved the application before the Waqf Board with a view to usurp the Waqf property and change the nature of Waqf in question.

4. Mr. M.A. Qadeer, learned Counsel appearing for the respondent No. 1, U.P. Sunni Central Waqf Board, and respondent No. 2 its Chief Executive Officer, on the other hand, contended that the notices were issued to the petitioner and in spite of that he did not choose to appear in the proceeding. It is also submitted that the petitioner obtained the registration of Waqf by suppressing material facts. It is also alleged that in the application of registration the petitioner has mentioned that there is only tomb of 14 Pirwala and he did not mention about the mosque, which also exists there since time immemorial. It is also alleged that the petitioner has wrongly stated in the aforesaid application that he is managing the said Waqf since 1942. He also pointed out that the present writ petition is not maintainable at this stage in view of availability of the alternative remedy under the Act itself. He drew our attention to the proviso to subsection (4) of Section 67 of the Act which provides that any person aggrieved by the order passed under subsection (2) superseding the managing committee, can prefer an appeal to the Tribunal within 60 days from the date of the order.

5. Mr. W.H. Khan, learned Counsel appearing on behalf of respondent No. 4 submitted that the committee of respondent No. 4 is in actual and effective control of the Waqf in question and is managing its affair from the very beginning and the petitioner has obtained the registration certificate by misrepresentation and without stating correct fact and as such he has no right to manage the Waqf in question. He vehemently argued that the petitioner has falsely stated that he is managing the said Waqf since 1942.

6. We have heard learned Counsel for the parties at length.

7. Section 67 of the Act provides supervision and supersession of the Committee of Management. Subsection (1) of Section 67 provides that the Committee for supervision and management of a Waqf appointed by the Waqf Board shall continue to function until it is superseded by the Waqf Board or until expiry of its

term as specified by the Waqf, whichever is earlier. Subsection (2) of Section 67 of the Act, however, empowers the Waqf Board to supersede such Committee if it is satisfied that such committee is not functioning properly and satisfactorily or the Waqf is being mismanaged and that in the interest of its proper management it is necessary to supersede the Committee, may after recording reasons in writing, pass such order. However, the Proviso to subsection (2) of Section 67 puts a rider that before taking steps for superseding any committee, notice containing reasons for the proposed action, to showcause, is to be given to the committee. Subsection (2) of Section 67 is extracted herein below :

67 (2) ?Nowwithstanding anything contained in this Act and in the deed of the Waqf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub section (1) is not functioning properly and satisfactorily, or that the Waqf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the Waqf, in so far as it relates to the constitution of the committee, shall cease to have any force :

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to showcause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.?

8. Therefore, notice in terms of the proviso to subsection (2) of Section 67 is mandatory before passing an order superseding Committee of Management. In the case in hand, although it has been mentioned in the impugned order that order was passed after issuing notice but it does not mention as to whether notice was actually issued and duly served on the petitioner. In the counteraffidavit too there is no categorically averment that the notice was duly served and in spite of that the petitioner did not appear and therefore, it is difficult to hold that the prescription of law was complied with while passing the impugned order.

9. So far as the objection raised on behalf of the Waqf Board regarding availability of alternative remedy, it is settled legal position that it does not exclude the jurisdiction of the High Court where the order impugned is passed in violation of principles of natural justice. In the absence of notice under subsection(2) of Section 67 of the Act, the impugned order cannot sustain. We, accordingly, quash the same and remit the matter back to respondent No. 1 to decide it afresh after affording opportunity of hearing to the petitioner as well as all other necessary parties. Sri Mandhyan, learned Counsel for the petitioner made a statement that the petitioner shall appear before the Waqf Board within a month along with a certified copy of this order and thereafter shall file showcause. We accordingly direct that the petitioner shall appear before the Waqf Board within a month and file his showcause. The Waqf Board thereafter shall give hearing to all the parties and pass fresh order in accordance with law

expeditiously preferably within six weeks.

10. In view of the fact that the controversy involved is in respect of management of Waqf and this Court, on 2242002, by an interim order, has directed the parties to maintain status quo, in our view, in the ends of justice, it would be appropriate that the status quo in respect of management of the Waqf in question, i.e. mosque and tomb shall be maintained by the parties till the final decision is taken by the Waqf Board. It is further directed that if the petitioner fails to appear within a month before the Waqf Board, in that event the writ petition shall be deemed to have been dismissed.

11. The writ petition is partly allowed with the aforesaid direction.