
(2002) 04 AP CK 0040

In the Andhra Pradesh High Court

Case No : Appeal No. 480 of 1976 and CRP No's. 642, 643 and 3177 of 1997 and 2142 and 2143 of 2002

Radhakrishna Rice Mill Company and Others

APPELLANT

Vs

Jumma Maseedh by its Muthavalli

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 93
Wakf (Amendment) Act, 1955 — Section 32, 36, 42, 56
Waqf Act, 1954 — Section 15, 15(1), 29, 42, 44

Citation : AIR 2003 AP 70 : (2002) 6 ALD 52 : (2002) 6 ALT 791 : (2003) 2 RCR(Civil) 36

Hon'ble Judges : L. Narasimha Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : M.S.R. Subrahmanyam, C.V. Mohan Reddy, M.V.S. Suresh Kumar, V.L.N.G.K. Murthy and A.M. Qureshi, SC for T. Veerabhadrayya, for appearing parties, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Since common questions of fact and law involved in the appeal as well as the revisions, they are heard together and common judgment is being rendered in all the matters.

2. The appellants in AS. No. 480/76 are the petitioners in CRP Nos.642 and 643 of 1997. For the sake of convenience, they are referred to as "the tenant". The respondent in the appeal and the CRP Nos.642 and 643 of 1997 is Jumma Masjid, Vijayawada, which is referred to as "the Mosque" for the sake of convenience. There are rival contenders for the office of the Trustee/Mutawalli in respect of the said Mosque. They are arrayed in the proceedings in various capacities. To avoid confusion, they are referred to by their names.

3. The facts which gave rise to the proceedings under adjudication are as under:--

4. Way back in the 17th century, one Shah Musafir Sahib, acquired extensive properties at Vijayawada and constructed a Mosque on a part of it and endowed the remaining property for the benefit of the Mosque. Its affairs went on smoothly for about two centuries.

5. Feeling that the administration of the Mosque and its properties should be regulated in accordance with a Scheme, one Mr. Abdul Hakim Sahib and others filed OS No. 113/13, on the file of the Sub-Court, Bezawada (now Vijayawada), under Sections 92 and 93 of the CPC and provisions of Religious Endowments Act, 1893. They prayed for framing of a scheme regarding administration of the Mosque and different properties and they be appointed as Trustees for the Mosque. Hakim Sahib claimed to be the descendents of the founder of the Mosque viz., Shah Musafir Sahib. After taking into account the evidence on record and the relevant provisions of law, the trial Court framed the Scheme through its order dated 30-9-1915. The salient features of the scheme were:

(a) Mohammed Abdul Hakim shall be the first Trustee of the Mosque and its properties. He shall hold office for life and shall have the power to appoint his successor;

(b) The succeeding Trustees shall also have the power to appoint their successors and the successors shall be among the descendents of the founder Mr. Shah Musafir Sahib;

(c) Where, if any Trustee dies or vacates the office without appointing his successor, the Court may appoint the Trustee from among the descendents of the founder, on the applications of three worshippers of Bezawada;

(d) If there is no person among the descendents qualified to fill the office, the Court may appoint a stranger;

(e) A Panchayat or Committee consisting of five respectable Mohammedan residents of Bezawada shall be constituted to supervise and control the management and administration of the trust by the Trustees. If the majority of the committee feels that the nominee of the outgoing Trustee is not fit to hold office, they may pass a resolution in writing stating their objections to his nomination and may move the sub-Court of Bezawada for his removal.

(f) The property of the trust shall vest in the Trustee and he shall administer the same in accordance with the principles of Mohammedan religion and the provisions of Mohammedan Law and the Religious Endowment Act.

(g) The Trustee or the members of the trust are liable to be removed or suspended by the Court, on proven acts of misconduct and neglect of duty;

Having framed the above Scheme and appointed one Abdul Hakim as the Trustee, the trial Court had also constituted the Panchayaths. Abdul Hakim nominated his brother Abdul Rahim to be his successor on 11-4-1945. Abdul Rahim accepted the nomination and through its order in IANo.677/45 in OS No.

113/13, the trial Court approved the same.

6. During the tenure of Abdul Rahim as the Trustee, the Wakf Act, 1954 (hereinafter referred to as "the 1954 Act") came to be enacted. He was appointed as the 1st Chairman of A.P. Wakf Board. He made some attempts to change the mode of nomination or succession of Trusteeship to the Mosque. He executed two Wakf Deeds on 2-11-1961 and 15-6-1977 providing a different order of succession. These deeds were not enforced at any point of time. He nominated his son Md. Abdul Gafoor as his successor. On the death of Abdul Rahim on 14-12-1977, his son assumed the management of the Mosque. Even before he could nominate any one, Abdul Gafoor died in a plane accident on 19-8-1980.

7. At this stage, four worshippers of the Mosque i.e., M.A. Khayyum and others filed IA No. 3517/80 in the trial Court to appoint the Trustee and Panchayatdars as per the Scheme. One Mr. Mir Shah Zahoor (for short "Mr. Zahoor") filed IA No. 4431/80 to implead him in IA No. 3517/ 80 filed by the said four worshippers. He also filed IA No.4432/80 to appoint him as Trustee claiming that he is the descendent of the founder of the Mosque. The A.P. Wakf Board also stepped in and appointed one Mohiuddin Ali Khan (for short "M.A. Khan") as the Trustee/ Mutawalli. M.A. Khan was also impleaded as the 3rd respondent in IA No.3517/80. On 7-3-1981, the trial Court passed a common order in all the above IAs., appointing Mr. Zahoor as the Mutawalli.

8. The order of the trial Court appointing Mr. Zahoor as the Mutawalli was challenged in CRP. Nos. 1671 to 1673 of 1981. This is as regards the appointment/ nomination of the Trustee/Mutawalli of the Mosque. This aspect will be continued a little later.

9. An important item of the property belonging to the Mosque was a site of about 3500 sq. yards, which was, leased out to the tenant several decades ago. He constructed a rice mill thereon. The lease was under registered lease deeds from time to time. The Mosque filed OS No.84/48 in the Sub-Court, for termination of the lease and resumption of the property. The half hearted manner in which the eviction proceedings were pursued, is evident from the following developments:--

(a) The suit OS No.84/48 was compromised on 21-4-1949 whereunder the rent was enhanced to Rs.400/-per month and the tenant was given time up to 15-9-1952.

(b) EP No.32/52 was filed for execution of decree. Consent order was passed in EA No.3733/52. The rent was enhanced to Rs.450/- and time for vacating was extended upto 15-9-1953.

(c) EP filed by the Mosque since the tenant did not vacate by 15-9-1953. Consent order passed in EA No. 196/ 54 giving three years time to the tenant from 1-1-1954.

(d) EP No. 213/56 was filed on failure of the tenant to vacate the premises after

the expiry of the agreed period. Consent order was passed extending the time till December 1959 and enhancing the rent to Rs.475/-.

(e) EP No.50/60 was filed. Consent order was passed in EA No. 1328/60 extending the time till 31-12-1963 and enhancing the rent to Rs.600/-. A clause was incorporated that in the event of failure of the tenant to vacate the premises by 31-12-1963, the tenant shall be liable to pay the rent at Rs. 1,200/- per month.

(f) EP No. 15/64 was filed on failure of the tenant to vacate the premises. The tenant took the plea that the consent orders passed in various EPs constitute fresh leases and the decree in OS No.84/48 is superseded. The Executing Court overruled the objection and ordered eviction.

(g) CMA No.304/66 was filed by the tenant in the High Court against the order in EP No. 15/64. A learned single judge of this Court held that the compromise recorded in EP No.50/ 60 constitutes a fresh lease. The plea of the tenant that he had a permanent tenancy was turned down.

(h) The Mosque filed LPA No.74/69 against the order in CMA and the same was dismissed on 2-12-1971.

Thus, with the concerted efforts of the then trustee and the tenant, the decree in OS No.84/48 was given a decent burial.

10. The Mosque filed OS No.73/73 on the file of the II Additional Subordinate Judge, Vijayawada, for eviction of the tenant and for recovery of damages for use and occupation of the premises. The suit was filed through the Trustee and Mutawalli Mohd. Abdul Rahim Sahib. The suit was decreed by the trial Court on 31-1-1976. Aggrieved by the same, the tenant Sri Radhakrishna Rice Mill, filed AS No.480/76. When the said appeal was pending, as observed earlier, M.A. Khan came to be appointed as Trustee/Mutawalli by the A.P. Wakf Board. He came on record in AS No. 480/76. At his instance, a compromise was recorded in CMP No.2559/81 on 17-3-1981. The tenant was permitted to continue for a period of 15 years. The appeal was ordered in terms of the compromise.

11. It was noticed earlier that one Mr. Zahoor was appointed as the Trustee/Mutawalli of the Mosque by the trial Court in its order in IA No. 3517/80 and Batch. Mr. M.A. Khan and another filed CRP Nos. 1671, 1672 and 1673 of 1981 to revise the order in IA Nos. 3517/80 and batch, appointing Mr. Zahoor as the Trustee of the Mosque. Mr. Zahoor, in turn, filed CMP Nos.4246, 4247 and 4248 of 1981 in AS Nos.480/76 for amending the cause title showing him as the Mutawalli, to set aside the compromise recorded in CMP No.2559/81 and to set aside the decree in AS No.480/76. This Court, through orders dated 2-3-1982, dismissed the CRPs and allowed the CMPs, setting aside the compromise recorded by the trial.

12. The A.P. Wakf Board filed six (6) appeals in the Supreme Court against the order in the CRPs and CMPs, referred to above. The Supreme Court, through its

order dated 6-11-1990 in A.P. Wakf Board v. Mirza Nizamuddin Baig 1991 (1) APLJ 15, allowed the appeals and remanded the matters for fresh disposal. The trial Court was directed to decide the matter relating to appointment of Mr. Zahoor afresh after giving opportunity to both the parties. The result is that IA Nos. 3517, 4431 and 4432 of 1980 were directed to be decided afresh. The order of this Court in CMP Nos.4246, 4247 and 4248/81 was set aside and the orders whereunder the appeal was compromised remained, subject however, to the outcome of the decision of the trial Court in IA Nos. 3517/80 and Batch.

13. After the remand, the trial Court took up the adjudication of the matter afresh. The parties have adduced oral and documentary evidence in support of their respective contentions. On appreciation of oral and documentary evidence, the trial Court passed a common order in IA Nos.3517/80 and batch on 9-1-1997, appointing Mr. Zahoor as the Mutawalli of the Mosque. The tenant was also a party in the said IAs. The tenant filed CRP No.642/97 against the order in IA No.3517/ 80 and CRP No. 643/97 against the order in IA No.4432/80. Abdul Khayyum, who is one of the petitioners in IA No. 3517/80, filed CRP No.3477/97 against the order in the said IA. One Mr. Kareemullah Baig, who was not a party to the IAs., sought to challenge the orders passed in IA Nos.3517/80 and 4432/80 by way of filing CRPs. Since he is not a party to the proceedings before the trial Court, the Revisions filed by him are not numbered and they are listed as CRP (SR) No.6579/ 97 and CRP (SR) No.6584/97 respectively.

14. Thus, the matters now call for consideration before this Court are two CRPs viz., CRP Nos.642 and 643/97, filed by the tenant, one CRP No.3477/97 filed by Mr. Abdul Khayyum, two CRP(SR) Nos.6579 and 6584/97 filed by one Mr. Kareemullah Baig, a 3rd party, and AS No.480/76 together with CMPs filed therein.

15. The learned Counsel appearing for the respective parties have addressed their arguments touching on all aspects including the validity of the orders passed by the trial Court appointing Mr. Zahoor as the Mutawalli, the legality of the compromise that was recorded by this Court in AS No.480/76 at the instance of Mr. M.A. Khan and correctness of the decree in OS No. 73/73, which is the subject-matter of AS No.480/76. The learned Counsel also addressed arguments with reference to the facts of the case as well as the impact of the provisions of the Wakf Act of 1954 and the Wakf Act of 1995.

6. Sri M.S.R. Subrahmaniam, learned Counsel appearing for the tenant, who is the appellant in AS No.480/76 and petitioner in CRP Nos. 652 and 643/97, submits that the appointment of Mr. Zahoor as Mutawalli of the Mosque was contrary to law and opposed to the Scheme framed by the trial Court in OS No. 113/13 (hereinafter referred to as "the Scheme Suit"). It is also his contention that the appeal was compromised by a competent person viz., M.A. Khan, who was appointed as Mutawalli by the Wakf Board at the relevant point of time. According to him, the appeal, which is compromised, cannot be reopened at this stage.

17. Sri C.V. Mohan Reddy, learned Counsel appearing for the petitioner in CRP. No. 3177/97 (filed by Mr. M.A. Khayyum) submits that the appointment of Mr. Zahoor, as the Mutawalli of the Mosque by the trial Court, is opposed to the Scheme. It is also his contention that Mr. Zahoor failed to establish that he is a descendent of the founder of the Mosque.

18. Sri M.V. Suresh Kumar, learned Counsel appearing for the 3rd party (Mr. Kareemullah Baig), who filed CRP (SR) Nos.6579 and 6584/97) also submits that the order of the trial Court appointing Mr. Zahoor as Mutawalli of the Mosque cannot be sustained either in facts or in law.

19. Sri V.LN.G.K. Murthy, learned Counsel, appeared for the Mosque and Sri T. Veerabhadrayya, learned Counsel, appeared for Mr. Zahoor. It is their contention that the appointment of Mr. Zahoor is in accordance with the Scheme framed by the trial Court as well as the directions given by the Hon''ble Supreme Court while remanding the matter to the trial Court for fresh adjudication. According to them, the trial Court had appreciated the oral and documentary evidence before it and has recorded a finding and the same does not call for any interference.

20. Sri A.M. Qureshi, learned Standing Counsel for the A.P. Wakf Board, addressed the Court with reference to various provisions of the Wakf Acts of 1954 and 1995. He has also placed before this Court, the various authorities on the subject and ultimately submitted that continuance of the lease in favour of the tenant is in gross violation of the provisions of the Wakf Acts of 1954 and 1995 and that the Mosque was put to great loss on account of unlawful continuance of the tenant.

21. Before proceeding with the discussion on the questions involved in these proceedings, the unnumbered CRPs filed by Mr. Kareemuilah Baig are to be dealt with. He seeks leave of this Court to file revisions against the orders passed by the trial Court in IA Nos. 3517/80 and Batch. It needs to be noticed that the issue relating to appointment of the Mutawalli for the Mosque consequent upon the death of Mr. Abdul Gafoor was pending before various Courts since last two decades. While Mr. Khayyum and three others, devotees of the Mosque, approached the Court by filing IA No. 3517/80, Mr. Zahoor filed IA No.4432/80, praying that he may himself be appointed as Mutawalli. The trial Court passed orders in favour of Mr. Zahoor. Revisions were filed in the High Court and thereafter appeals in the Hon''ble Supreme Court. The matter was remanded by the Hon''ble Supreme Court way back in the year 1990. A simple matter of appointment of Mutawalli, that too, in accordance with the Scheme, which was in vogue for almost a century, was protracted on one pretext or the other for over two decades. The matter was already complicated by the active participation of the tenant in the matter of appointment of Mutawalli, Granting of leave or permission to Mr. Kareemullah Baig would only add to the existing complications. Further except reiterating the stand taken by the tenant and Mr. Khayyum., he has not placed any material or pleaded any aspect, which may have any bearing on the order passed by the trial Court. We, therefore, reject CRP (SR) Nos.6579

and 6584/97 filed by Mr. Kareemuilah Baig. Accordingly, the said CRPs stand dismissed.

22. In the other revisions viz., CRP Nos.642, 643 and 3477/97 as well as the Appeal, the questions that fall for consideration are:-

(a) Whether the Scheme framed by the trial Court in OS No. 113/13 will continue to be in force even after the enactment of Wakf Acts of 1954 and 1995?

(b) Whether the appointment of Mr. Zahoor has Mutawalli of the Mosque is legal and valid?

(c) Whether the compromise decree passed in AS No. 480/76 at the instance of M.A. Khan is valid and legal?

(d) Whether the tenant is liable to be evicted from the suit schedule property in OS No.73/73?

23. The founder of the Mosque did not frame a Scheme. That necessitated in filing of the suit in OS No. 113/13 under Sections 92 and 93 of CPC for framing of a Scheme in accordance with the provisions of the Charitable Endowments Act, 1890. As observed earlier, the trial Court framed the Scheme in the year 1915. The salient features of the Scheme are referred to above. When the Scheme was in operation, the 1954 Act came to be enacted. The fact that the Mosque came under the purview of the 1954 Act and its registration thereunder is not in dispute. The question, however, is whether the Scheme framed by the trial Court would continue to be operative, even after the Mosque has come within the purview of the 1954 Act.

24. Section 15 of 1954 Act deals with the functions of the Board constituted under that Act. Sub-section (1) together with the proviso and explanation is relevant in this context:--

"15. Functions of the Board :--(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State in relation to all matters, except those which are expressly required by this Act to be dealt with by the Wakf Commissioner, shall vest in the Board established for 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 likely 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 wakif, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law.

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 the Wakf (Amendment) Act, 1984"

Sub-section (1) of Section 15 lists out the powers of the Board in relation to wakfs in general terms. The proviso clarifies that the exercise of the powers by the Board shall be in conformity with the directions of the wakif and the usage and custom of the concerned wakf. The explanation was added to Sub-section (1) by way of Amendment in the year 1984 to the Act 1969. The explanation only clarifies that the expression "wakf" shall include the wakf in relation to which any Scheme has been made by any Court of Law whether before or after commencement of the Amendment Act of 1984.

25. Sri M.S.R. Subrahmaniyam, learned Counsel for the tenant, as well as Sri C.V. Mohan Reddy, submits that but for the addition of explanation to Sub-section (1) through Act 69 of 1984, the Scheme framed by any Court of Law in relation to any wakf would have been irrelevant and appointments of Mutawalli or administration of the properties in relation to any wakf are to be made only in accordance with the provisions of the 1954 Act. Since the date of coming into force of the Amendment Act was not notified at all, the provision never had the force of law and, in that view of the matter, the Scheme has no force once the 1954 Act came into existence. It is also their contention that the Scheme was framed under the Charitable Endowments Act of 1890 and since the said Act was repealed u/s 69 of Amended Act of 1984, the Scheme is no longer operative.

26. Section 69 deals with the Repeal and Savings under the 1954 Act. It reads as under:

"69. Repeal and savings:--(1) The following enactments, namely:--

(1) The Bengal Charitable Endowments, Public Buildings and Escheats Regulations, 1810 (Bengal Regulation XIX of 1810);

(2) (x x x) The Religious Endowments Act, 1863 (20 of 1893);

(3) The Charitable Endowments Act, 1890 (6 of 1890);

(3-A) On and from the commencement of the Wakf (Amendments) Act. 1894, Sections 92 and 93 of the Code of Civil Procedure, 1908 (5 of 1908);

(4) The Charitable and Religious Trusts Act, 1920 (14 of 1920);

(5) The Mussalman Wakf Act, 1923 (42 of 1923); shall not apply to any wakf to which this Act applies."

An attempt was made in the year 1954 to repeal Sections 92 and 93 of the CPC.

27. Sri T. Veembhadrappa and Sri V.L.N.G.K. Murthy, the learned Counsel, submit that what was added by the explanation was only a clarification. Even without the said explanation, the proviso ordained that the exercise of the powers of the Board shall be in conformity with the directions of the wakf and in the absence of the same, any usage or custom.

28. We are of the view that even if the explanation added to sub-section (1) of Section 15 and Section 69 of 1984 is to be ignored, it is evident from the proviso

to Sub-section (1) of Section 15 that exercise of the power by the Board was to be in conformity with the directions of the wakif and usage and custom of the concerned wakf. Since the wakif did not provide for any mode of administration or appointment of trustees, the devotees approached the Court and got a Scheme framed. There is nothing in that section which excluded the application of the Scheme. Further, the Scheme, which was framed in the year 1915 and which was strictly followed by the devotees can be said to have given rise to usage and established the custom. Section 42 of 1954 Act also throws light upon it. It reads as under:

"42. Power to appoint mutawallis in certain cases :--When there is a vacancy in the office of the mutawalli of a wakf and there is no 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."

It is evident that the power of the Board to appoint Mutawalli is only where there is no 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. When the method is prescribed under a Scheme, the same can be equated to the terms of a deed; At any rate, as long as it is in operation, and proceedings are initiated thereunder, the right of any one to act as Mutawalli, till appointed by the Court, has to be treated as disputed.

29. There is another aspect of the matter touching on the issue. Even after the 1954 Act came to be enacted, Sections 92 and 93 of CPC continued to be available for the aggrieved persons to get Schemes framed in relation to religious institutions including wakfs. An attempt was made under Amendment Act 69 of 1984 to repeal Sections 92 and 93 of CPC by adding Item 3-A to Sub-section (1) of Section 69 of the 1954 Act. The date with reference from which that amendment was to come into force was not notified. The result is that Sections 92 and 93 continued to be applicable even in respect of wakfs covered by the provisions of the 1954 Act. The cumulative effect of these provisions is that the Schemes framed under Sections 92 and 93 of the CPC are in no way affected on account of enactment of 1954 Act. This discussion with reference to the provisions of 1954 Act is undertaken because applications were filed for appointment of Trustee/Mutawalli for the Mosque and the orders were passed when 1954 Act was in force. Even this doubt ceased to exist with the enactment of Wakf Act 1995 (for short "1995 Act"). Section 32 of 1995 Act corresponds to Section 15 of 1954 Act. Sub-section (1) of Section 32 of 1985 Act reads as under:

32. Powers and Junctions of the Board :-- (1) Subject to any rules that may be made under the 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 power 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 customs 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 subsection, "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 the Act."

A reading of explanation to Section 32 of 1955 Act would remove all the doubts as to whether the wakf in relation to which the Scheme has been made by the Court of law before or after the commencement of the Act in relation to that section. A seal of approval is accorded to the Scheme framed by a Court of Law in relation to wakfs whether before or after the commencement of the 1995 Act. One significant feature of this Act is that though separate machinery is provided for adjudication of disputes. Sections 92 and 93 of the CPC, for the repeal of which an abortive attempt was made in 1954 Act, are not repealed under this Act. Therefore, the Scheme framed in OS No. 113/13 shall continue to be operative in respect of the Mosque.

30. The next question is as to the validity and correctness of the appointment of Mr. Zahoor as the Mutawalli of the Mosque by the trial Court.

31. As observed earlier, one of the clauses contained in the Scheme were that the Trustee (Mutawalli) shall be appointed, as far as possible, from the descendents of the founder of the Mosque. The necessity for the trial Court to undertake the adjudication on this matter arose on account of the death of Abdul Gafoor, who died in a plane accident on 19-8-1980, even before he could nominate his successor. While Abdul Khayyum and three others filed IA No. 3517/80 for appoint an appropriate person as the Trustee, Mr. Zahoor filed IA No. 4432/80 for appointment of himself as the Mutawalli, claiming to be the descendent of the founder of the Mosque. The trial Court passed orders appointing Mr. Zahoor as the Mutawalli. The matter was ultimately taken to the Supreme Court and the Hon"ble Supreme Court observed that the trial Court:

"should have required evidence to be placed in support of Shah Zahoor's claim to have life trusteeship on the basis that he was in the line of the creator of the Wakf."

It is in this context that the matter was adjudicated afresh.

32. Before the trial Court, arguments were advanced as regards the implication of the provisions of 1954 Act. After elaborate discussion and relying upon certain decided cases, the trial Court held that the Scheme continued to be in operation. Thereafter, it has undertaken elaborate discussion with reference to the oral and

documentary evidence to arrive at a conclusion as to whether Mr. Zahoor hails from the descendent of the founder. After discussing the principles laid down by the Hon''ble Supreme Court in State of Bihar Vs. Radha Krishna Singh and Others, as regards the acceptance of and decision on genealogy, it considered Exs. A1 to A8.

33. Mr. Zahoor, who figured as PW1, claimed to be the grandson of Mir Karimuddin. Ex. A1 is the deposition of Mir Karimuddin in OS No. 113/13, i.e., the very Scheme suit. Ex.A2 dated 27-4-25 is the memo filed by local Muslims notifying to appoint the Committee of members of the Mosque and inviting objections. Ex.A3 is the memo dated 17-3-25 where the names of the members of the founder and ordinary members of the family were furnished. The name of Mir Karimuddin figured at Sl. No. 12 as member from the founder's family. Through Ex.A4 dated 26-3-25, the Court invited objections from the public in respect of the persons named in Ex.A3. The name of Mir Karimuddin was shown at Sl. No. 12. In Ex.A1, Mir Karimuddin deposed that the tombs of his father and brother are in the premises of the Mosque. The relationship so claimed by Mr. Zahoor was not disputed by any one, by placing any acceptable evidence before the Court. Further, no one with any superior or better claim has approached the Court. On the basis of the evidence on record, the trial Court found that Mr. Shah Zahoor is from the descendant's family and appointed him as the Trustee/Mutawalli in accordance with the terms of the Scheme. We also hold that in the matter relating to the appointment of a Trustee/Mutawalli, that too, under a Scheme framed by the trial Court the tenant has absolutely no locus either to participate in the adjudication in such proceedings or to challenge the outcome of the same. Even otherwise, we are not convinced by the learned Counsel appearing for the tenant or Mr. Khayyum, to take any other view. We accordingly uphold the order of the trial Court in IA Nos. 3517 and Batch and dismiss CRP Nos. 642, 643 and 3177 of 1997.

34. The next question is whether the compromise decree passed in AS No.480/76, at the instance of MA. Khan, is valid and legal?

35. The tenant filed AS No. 480/76 aggrieved by the decree of the trial Court in OS No. 73/73. The appeal was filed during the lifetime of Abdul Rahim. During the pendency of the appeal, his son Abdul Gafoor was nominated as Mutawalli of the Mosque. Therefore, he was brought on record. Abdul Gafoor died on 19-8-1980. M.A. Khan, claiming to have been appointed as Mutawalli by the Wakf Board, came on record on the appeal. This was at a time when proceedings were already initiated by the trial Court in the Scheme suit for appointment of Mutawalli of the Mosque; in which he was also impleaded. Having come on record, the said M.A. Khan compromised the matter with the tenant and obtained a compromise decree whereunder the tenant was entitled to continue in possession for 15 years.

36. After Mr. Zahoor was appointed by the trial Court as the Mutawalli, he filed CMPs in this Court to come on record as the Mutawalli of the Mosque in the

appeal as well as to set aside the compromise and the resultant decree. This Court allowed the same. The Hon"ble Supreme Court passed a common order in the matters relating to the appointment of Mutawalli and the matter was remitted to the trial Court for fresh adjudication, Therefore, the order of this Court setting aside the compromise stood set aside by the Hon"ble Supreme Court. The appeal, in its compromised form, is before this Court. The CMPs filed by Mr. Zahoor for setting aside the compromise became alive in view of the orders passed by the trial Court after remand, appointing him as Mutawalli. Now it needs to be seen as to whether the compromise, which was recorded in this Court at the instance of Mr. M.A. Khan, is valid or the same is liable to be set aside at the instance of Mr. Zahoor, who has been appointed as the Mutawalli by the trial Court, which we upheld in this order.

37. Sri M.S.R. Subrahmaniyam, learned Counsel for the tenant, submits that once the appeal was compromised, at the instance and with the approval of the Mosque, it is not liable to be set aside, simply because there was a change in the office of the Mutawalli. The learned Counsel will be correct in his submission if the appointment of M.A. Khan as Mutawalli was in accordance with the Scheme framed for the Mosque- In the preceding paragraphs, it has been observed that where the matter relating to the appointment of the Mutawalli is provided for by the wakif himself or under a Scheme, the Wakf Board has no authority to appoint Mutawalli in such Wakfs u/s 32. It is not in dispute that M.A. Khan was not appointed by the trial Court under the Scheme. He has not even moved an application before the Court under the Scheme Suit. It is the Wakf Board, which appointed him. On the face of it, such appointment was without any authority. Further, the trial Court passed orders in IA Nos. 3517/80 and batch appointing Mr. Zahoor as the Mutawalli on 7-3-1981 and compromise was recorded on 17-6-1981, at the instance of M.A. Khan. Once the competent Civil Court has appointed Mr. Zahoor as the Mutawalli under the Scheme Suit, M.A. Khan ceased to have any right to continue to act as Mutawalli with effect from 7-3-1981; whatever may have been the basis of his acting as Mutawalli, earlier to that date. The trial Court, on the basis of evidence on record, appointed Mr. Zahoor as the Mutawalli of the Mosque once again after the matter was remanded by the Supreme Court. The Wakf Board issued Notification in the official gazette as contemplated u/s 42 of 1995 Act (Section 29 of 1954 Act), notifying the change of Mutawalliship.

38. Compromises recorded where the property of a public trust is involved stand on a different footing. The parties representing their individual interest are at liberty to enter into compromise in legal proceedings, even if such compromise may work out to their detriment. However, the same is not the case where the individuals representing institutions, especially public trusts or similar institutions. The Courts will be keen to scrutinise whether such compromise has resulted in sacrifice of the interest of the trust. In *Narayan Swamy v. Board of Religious Endowments* AIR 1930 Mad. 629, the Division Bench of the Madras High Court held as under:

"In the case of private individuals, the only question the Court asks itself is, has there been in fact a compromise and if so, is the adjustment a lawful one? Even if it sees reason to think that one of the parties was foolish in agreeing to certain terms, it has no option but to recognise and give effect to the compromise voluntarily made..... In the case of public trust, no compromise can be said to be lawful which sacrifices its interest; on the ground, therefore, that a compromise entered into without due regard to the trust, is under Order 23 Rule 3, an unlawful agreement."

If we see as to whether the compromise entered into at the instance of M.A. Khan was in the interest of Mosque, one hardly hesitates to say that it was not. The facts stated above would reveal as to how the tenant was enjoying the valuable properties decades after decades, obviously by managing one after the other trustees. If loss in terms of income to the Mosque is calculated in terms of money, it runs to astronomical figures. So far as the conduct of the tenant is concerned, it was he who agreed to vacate the premises by 15-9-1952 and on the basis of which the suit OS No.84/48 was compromised on 21-4-1949. He deceived the Mosque at every stage. As many as five EPs that came to be filed for execution of the consent decrees/orders. Ultimately, the decree itself became unenforceable. It was such a person, that was conferred with the benefit of continuing in possession for 15 more years. On account of long delays, even that 15 years period has expired long back. Therefore, viewed from any angle, the compromise recorded in the appeal at the instance of M.A. Khan cannot be sustained either on facts or in law. We, therefore, order CMP Nos.4246, 4247 and 4248/81 and set aside the compromise.

39. Now remains the consideration of the judgment and decree in OS No. 73/73. The suit was filed by the Mosque for vacant possession of the suit schedule property after removing the structures and for recovery of damages. The Mosque pleaded the various facts as to how the tenant was inducted into the premises and how it defeated the eviction proceedings, one after the other, through acts of misrepresentation and fraud. Reference was also made in the plaint to the various notices that were exchanged between the parties. Though three defendants are impleaded in the suit, the 1st defendant is the Radhakrishna Rice Mill Company represented by its Managing Partner Sri K.V. Narsimha Murthy, the 2nd defendant is the Managing Partner Sri K.V. Narasimha Murthy and the 3rd defendant is the Radhakrishna Rice and Oil Mill Contractors Company, represented by Sri K. V. Narasimha Murthy. Since there is no difference between these three defendants, they are together referred to as the tenant.

40. The plea of the tenant was that the tenancy was permanent in nature and as long as the business subsists, they were entitled to continue as tenant and that the suit was not maintainable. The trial Court framed the following issues:

- "1. Whether the 1st defendant is a permanent lessee of the suit property?
2. Whether the suit is not maintainable?

3. Whether the compromise decree in OS No.84/48 and the orders in the subsequent execution proceedings are merely records of agreement of a permanent tenancy?
4. Whether the compromise decree in OS 84/48 and the orders in the subsequent execution petitions were not of 1st defendant's free volition or consent but through coercion and force?
5. Whether the notice to quit dated 26-3-1972 is not valid?
6. Whether the claim for damages at Rs.1200/- is illegal and whether the plaintiff is entitled to only Rs.125/-per month?
7. Whether the plaintiff is entitled to any damages, if so to what amount?
8. Whether the plaintiff is entitled to interest?
9. Whether the 1st defendant is estopped from contending that the lease is a permanent one?
10. To what relief?"

On behalf of the Mosque, PWs. 1 to 3 were examined and documents Exs.A1 to A25 were marked. The tenant examined DWs. 1 to 3 and marked Exs. B1 to B14. On appreciation of oral and documentary evidence, the trial Court decreed the suit as prayed for.

41. Sri M.S.R. Subrahmaniyam learned Counsel for the tenant, submits that the trial Court ought to have accepted the plea of the tenant that the tenancy is permanent in nature. He does not dispute the relationship of lessor and lessee between the Mosque and the tenant.

42. Sri T. Veerabhadrayya and Sri V.L.N.G.K. Murthy, on the other hand, submit that there is nothing on record to show that the tenancy was permanent in nature.

43. In view of the above submissions, the points that fail for consideration are whether the lease was permanent in nature and whether the tenant was liable to be evicted.

44. The relationship of lessor and lessee between the Mosque and the tenant is not at all in dispute. It is no doubt true that the possession of the tenant over the premises is spread over several decades. But it should not be forgotten that the tenant suffered a decree for eviction way back in 1949. Possession for a long period by itself does not render the tenancy permanent. It should be evident from the conditions of lease that the tenant will be entitled to continue in the premises as long as the business for which the premises is leased, subsists. There were several lease deeds executed one after the other: between the parties. In none of these leases, such a clause existed. Further, the earlier lease deeds stood annulled and the compromise recorded in EP No. 50/60 was treated as an independent lease by this Court through orders in CMA No.304/66. The

order passed in EP No.50/50 also does not contain such a clause. Therefore, the lease in favour of the tenant cannot be said to be permanent.

45. There is another reason why the plea of the tenant cannot be accepted. The Mosque filed OS No.84/48 seeking eviction of the tenant. The tenant did not raise the plea of permanent tenancy. On the other hand, the tenant agreed to vacate the premises and a consent decree came to be passed. The orders that came to be passed in the successive EPs filed by the Mosque have the effect of only permitting the tenant to continue for specified periods indicated therein. Therefore, even if there existed any semblance of permanency in the tenancy, the same is deemed to have obliterated when the tenant agreed to vacate the premises and suffered a compromise decree in OS No.84/48.

46. Apart from the factual aspects, there is legal aspect also. The Mosque is undisputedly a registered Wakf. The Scheme framed by the trial Court in the Scheme Suit (OS No. 113/13) has bearing only on the appointment of Mutawalli. So far as the administration of the properties is concerned, the provisions of 1954 Act and thereafter 1995 Act are applicable. In fact the Scheme, which was framed in the year 1915 contained the following clause:

"The trust property shall vest in the trustee for the time being who shall take possession of and administer the same in accordance with the principles of Mohammedan religion and the provisions of Mohammedan Law and the Religious Endowment Act."

Therefore, the administration of the property of the Mosque is to be in accordance with the provisions of both the Acts. u/s 36(f) of 1954 Act, lease or sublease of any Wakf property for any period exceeding three years shall be void and of no effect, notwithstanding any thing contained in the Deed or Instrument of Wakf, or in any other law for the time being in force. The corresponding provision under 1995 Act is Section 56. Under both the Acts, grant of lease for a period exceeding one year is prohibited. While under the 1954 Act, grant of lease is for a period exceeding one year, but not exceeding three years is permissible with the previous sanction of the Board, such a provision does not exist under the 1995 Act. The provisions of 1954 Act applied to the present case either when the consent order was passed in EP No. 50/60, which was held to be constituting a lease or when the compromise was recorded at various stages. Once such lease could not have been granted even with the approval of the Board, the continuance of the tenant in the premises was in utter violation of Section 36(f) of 1954 Act. Therefore, the decree of the trial Court cannot be found fault with. So far as mesne profits granted by the trial Court is concerned, compared to the value of the property and the benefit, which the tenant derived out of it, the decretal amount is not even a pittance. We, therefore, dismiss the appeal and uphold the judgment and decree of the trial Court.

47. In the result, CRP Nos. 642 and 643 are dismissed with costs; CRP No.3177/97 and CRP (SR) Nos.6579 and 6584/97 are dismissed without costs;

and AS No.480/76 is dismissed with costs. It shall be open to the plaintiff/Mosque in OS No.73/73 on the file of the II Additional Subordinate Judge, Vijayawada, to take steps for ascertainment of the mesne profits for the period subsequent to the disposal of the suit till the date of realisation.