

(2005) 07 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 21667 of 2001

Saheblal

APPELLANT

Vs

The Karnataka State Board of Wakfs and Another

RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Waqf Act, 1995 — Section 25, 64, 64 (3)

Citation : (2005) ILR (Kar) 4846 : (2006) 5 KarLJ 498 : (2005) 4 KCCR 2340

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : S.B. Hebballi, for the Appellant; Anuradha, for D.L.N. Rao, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—The petitioner was appointed as a Mutawalli of Datari Masjid, Khandakgalli, Bijapur, by order dated 14.11.2000 of the Chief Executive Officer of the Karnataka State Board of Wakfs to manage the day to day affairs of the said institution until further orders. The said order is produced as Annexure-A. Later, the Karnataka State Board of Wakfs ("the board" for short) did not ratify the said appointment made by the aforesaid officer and by order dated 8.2.2001 appointed the Administrator, District Wakf Advisory Committee, Bijapur namely Mr. Asad Ali Ansari, Excise Superintendent as administrator and mutawalli of the aforesaid masjid. In this writ petition, the petitioner has challenged the said order of the board dated 8.2.2001 declining to ratify his appointment as Mutawalli, which order is produced as Annexure-C.

2. I have heard the learned Counsel appearing for the parties and perused the orders produced as Annexure-A and C.

3. Sri Hebballi, learned Counsel appearing for the petitioner submits that a Mutawalli could be removed only by holding an enquiry as provided under Sub-section (3) of Section 64 of the Wakf Act 1995 ("the Act" for short). According to

him, as no enquiry was held, the order of the board removing the petitioner from the post of Mutawalli is illegal and requires to be set aside. He also relied on a judgment of this Court in *Masjida Agsa v. Karnataka Board of Wakfs and Anr.* 1990(3) Kar. L.J. 514 in support of his submission.

4. Smt. Anuradha, learned Counsel appearing for respondent No. 1 submitted that initially the petitioner was appointed by the Chief Executive Officer of the board in exercise of his powers u/s 25 of the Act. Subsequently, by the impugned order (Annexure-C), the board did not ratify the appointment made by the Chief Executive Officer. It is her submission that the power to appoint Mutawalli is conferred on the board u/s 63 of the Act and it is for the board to make appointment and the board is also conferred with the power to remove any Mutawalli u/s 64 of the Act. According to the learned Counsel, it is permissible for the board being the appointing authority to decline to ratify the appointment made by the Chief Executive Officer. She further contended that in the context of the present case, Section 64 of the Act relating to removal of Mutawalli and holding of an enquiry would have come into play if the appointment had been made by the Board u/s 63 of the Act.

5. In the light of the above rival contentions, the two questions that fall for determination is as to,-

(i) whether the initial appointment of the petitioner as Mutawalli of the Datari Masjid by the Chief Executive Officer of the Board is valid in law and

(ii) whether the impugned order of the board declining to ratify such an appointment is illegal?

6. To resolve the controversy, it is necessary to examine the relevant provisions of the Act.

Section 25 of the Act reads as follows:

"25. Duties and powers of Chief Executive Officer:

(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include:

a) investigating the nature and extent of wakfs and wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time, for accounts, returns and information from mutawallis;

b) inspecting or causing inspection of wakf properties and account, records, deeds or documents relating thereto;

c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of wakfs.

(2) In exercising the powers of giving directions under Sub-section (1) in respect of any wakf, the Board shall act in conformity with the directions by the wakf in the deed of the wakf, the purpose of wakf and such usage and customs of the

wakf as are sanctioned by the school of Muslim law to which the wakf belongs.
(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act."

(underlining supplied)

Section 63 of the Act reads as follows:

"63. 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."

(underlining supplied)

7. A reading of Section 63 would clearly show that the power to appoint a Mutawalli, in case of any vacancy, when no one is to be appointed under the terms of the deed of wakf or where the right of any person to act as Mutawalli is disputed, is conferred on the board. The above two Sections do not confer any power on the Chief Executive Officer of the Board to appoint a Mutawalli. Section 25 of the Act is made subject to the provisions of the Act and the rules made thereunder, which obviously would include Section 63. In other words, Section 63 of the Act overrides Section 25. In my opinion, the power to appoint a Mutawalli, in the circumstances narrated in Section 63, is exclusively conferred on the board of Wakf. The facts of this case would fall within the ambit of Section 63 of the Act. In this view of the matter, the initial appointment order dated 14.11.2000 as per Annexure-A, appointing the petitioner as Mutawalli is without authority of law and void. Hence, I do not see any illegality in the order dated 8.2.2001 passed by the board as per Annexure-C in declining to ratify the petitioner's appointment. Holding an enquiry for removal of Mutawalli u/s 64(3) of the Act would arise only in cases of valid appointments. The decision cited by the learned Counsel for the petitioner has no application to the facts of this case.

8. In the result, the writ petition fails and is hereby dismissed. However, no order is made as to costs.