

(2016) 08 AHC CK 0087
In the Allahabad High Court
Case No : Misc. Bench No. 11912 of 2016

Shah Ammar Ahmad

APPELLANT

Vs

U.P. Sunni Central Waqf Board

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Waqf Act, 1995 — Section 27, 32(2)(g)

Citation : (2016) 5 AILLJ 535 : (2016) 4 CivillJ 275

Hon'ble Judges : Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

Bench : Division Bench

Advocate : Mohammad Aslam Khan and Mohd Shadab Khan, Advocates, for the Petitioner; Q.H. Rizvi and Syed Mamood, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

1. This petition questions the correctness of the order dated 10.2.2015 and the Office Memorandum dated 20.2.2015, whereby the petitioner's status as Sajjada Nashin of Dargah Hazrat Sheikh Makhdoom Abdul Haque situate in Qasba Rudauli, District Barabanki is sought to be disturbed as alleged by Sri M.A. Khan, learned Senior Counsel. He submits that by virtue of being the Sajjada Nashin of the said Dargah he also can be the Mutawalli of Mosque Arif Mian and in such a situation, the appointment of the respondent No.3 as the Mutawalli of the Mosque by the Chairman of the Waqf Board is unlawful. He contends that as a matter of fact, treating the office of Mutwalli as vacant and then appointing the third respondent is an erroneous exercise of power and the Chairman had no right or authority to question the status of the petitioner as Sajjada Nashin of the Dargah.

2. Sri Khan has therefore invited the attention of the Court to the documents relating to the Waqf, Dargah, Hazrat Makhdoom Sheikh Abdul Haque where he claims himself to be the Mutawalli and has also referred to the annuity role indicating that it's renewal and payment having been made the said status of the petitioner as Sajjada Nashin of the Dargah and the consequential right of the

petitioner to function as Mutawalli cannot be questioned. He has further invited the attention of the Court to the survey forms that have been filed as Annexure ? 3 to the writ petition to contend that the manner, in which the power have been exercised, the Chairman did not have any legal authority to appoint any person or Mutwalli as Waqf, as such the order being illegal the writ petition deserves to be allowed.

3. At the very outset, on 26.5.2016, when the matter was heard, the following order was passed by a Division Bench of this Court:-

"Mr. Q.H. Rizvi, Advocate has accepted notices on behalf of opposite parties.

A preliminary objection have been raised regarding maintainability of the writ petition on the ground that petitioner has no locus standi to maintain this writ petition. Moreover he has a statutory alternative remedy under Section 83 of the Act.

An affidavit to that effect may be filed by the opposite parties.

List in the first week of July, 2016, as fresh."

4. Sri Q.H. Rizvi, learned Counsel for the Waqf Board has invited the attention of the Court to paragraph ? 19 of the writ petition to contend that the petitioner does not have any locus to challenge the order, where the petitioner himself has stated that the petitioner is not interested in the Tauliyat of Mosque Arif Mian, Waqf No.719, Barabanki.

5. Responding to the said submissions, Sri Khan has urged that by virtue of the impugned order, the Chairman had proceeded to recognise a Mutawalli, which does not amount to it's appointment.

6. Sri Syed Mahmood, learned Counsel for the respondent No.3 has opposed the writ petition contending that the relevant facts have not been stated in the writ petition. He has invited the attention of the Court to the certain facts to contend that the respondent No.3, whose descendants including respondent No.3, became Sajjada Nashin. He has further urged that in 1932, a Waqf Deed was executed by Mst. Bibi Musandi who was the ancestor of the respondent No.3 appointing Shah Iftikhar Ahmad as Sajjada Nashin for the Dargarh of Sheikhul Alam Makhdoom Abdul Haque Sahibe Tosha Rudaulwi. The Waqf Deed was registered as Waqf No.118 and the entry of Sajjada Nashin was made in the year 1972 who was the uncle of the answering respondent. He was issueless and after his death, his brother/the father of the respondent No.3 became Sajjada Nashin. This is evident from the order dated 27.1.1984 of the Waqf Board. He has further submitted that this is a customary succession and the answering respondent No.3 came to be recognised as Sajjada Nashin under a Will Deed, which is Annexure 4 to the affidavit.

7. He therefore contends that if the petitioner has any grievance on such questions of fact he should approach the Waqf Tribunal for any such declaration

and not the High Court. He has also relied on the decision of the Patna High Court reported in A.I.R 1932 Patna 33, (Syed Shah) Muhammad Kazim v. (Syed) Abi Saghir and others.

8. From a perusal of the facts, the main issue raised by the learned Counsel for the petitioner is that the powers that have to be exercised by the Board under Section 32 (2) (g) of the 1995 Act cannot be delegated under Section 27. It is therefore submitted that the impugned order appointing the respondent No.3 as Mutawalli of the Mosque Arif Mian is in excess of such powers and that's why the Chairman who has exercised this power unauthorisedly, has avoided the use of the word "appointment" as Mutawalli and has rather "recognised" the respondent No.3 as Mutawalli.

9. However, the main contention of Sri Khan is that the findings with regard to recognition of Sajjada Nashin of the Dargarh could not have been made the basis of such declaration which was beyond the authority of the Chairman.

10. On a consideration of the aforesaid submissions, we are clearly of the opinion that the contention of Sri Khan to the effect that a declaration in respect of the customary right of a person to claim himself to be Sajjada Nashin of the Dargarh was not within the powers of the Chairman and make such a declaration. If a party wants to seek such declaration, it has to approach the appropriate forum. Thus, any observation made with regard to the office of Sajjada Nashin adversely affecting the interest of the petitioner would be of no consequence under the impugned order dated 10.2.2015, but at the same time, so far as the acknowledgment of the respondent No.3 as Mutawalli of Mosque Arif Mian is concerned, the same can be agitated before the appropriate forum under the 1995 Act by an aggrieved person. We would have entered into this question had it been so necessary, but we find that the 1995 Act makes ample provision for the same.

11. We are also not inclined to enter into this question because of the reason by the petitioner in paragraph - 19 of the writ petition that he is not interested in the Tauliyat of the Mosque Arif Mian, Waqf No.719, Barabanki. If the petitioner is not interested in the Tauliyat of Mosque, then there is no occasion for us to exercise our extraordinary jurisdiction in favour of the petitioner for that purpose.

12. Subject to the observations made above, the writ petition stands disposed off without prejudice to the rights of either of the parties to seek any appropriate declaration before the appropriate forum on the issue of Sajjada Nashin of the Dargah.