

(1969) 09 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 162 of 1966

Sk. Saffiruddin and Another	Vs	APPELLANT
Board of Wakfs and Others		RESPONDENT

Date of Decision : 23-09-1969

Acts Referred:

Charitable and Religious Trusts Act, 1920 — Section 3
Constitution of India, 1950 — Article 226, 227

Citation : (1969) 35 CLT 1198

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : R. Das, for the Appellant; Sk. Rehenoma, for the Respondent

Judgement

R.N. Misra, J.—This is an application under Articles 226 and 227 of the Constitution of India on behalf of two persons, Petitioner No. 1 being the vendor and Petitioner No. 2 being the vendee, in respect of a homestead plot and a house in the town of Cuttack which was sold by Petitioner No. 1 in favour of Petitioner No. 2 on 14-9-1965 under a registered deed of sale. Opposite party No. 1 who is the Board of Wakfs constituted under the provisions of the Wakfs Act (Central Act XXIX of 1954) (hereinafter referred to as the Act) called upon Petitioner No. 1 by notice dated 16-10-1965 to cancel the conveyance in question. The notice runs thus:

You are hereby directed to cancel within 15 days of the receipt of this notice the registered deed dated 14.9.1965 for transferring the Wakf property, Cuttack Sadar Thana No. 204 : Khata No. 853, Ac. 0.034 dec. out of plot No. 761 to Abdul Rashid of Jholasahi, otherwise necessary legal steps will be taken under the above Act against you for misuse of wakf property as well as for dispossessing the transferee from the said property.

On the self same day Another notice was issued by opposite party No. I to four persons who were said to be the tenants in respect of the house standing on the property in dispute. The said notice was to the following effect:

To

1. Sk. Abdul Aziz,
2. Dhani Paramani,
3. Reffique Mohammad,
4. St. Amir. S/o Sk. Ahamat at Jholasahi, Cuttack town.

It has been brought to the notice of the Board that the rent of the house occupied by you is not being utilised for services of wakf for which the property was dedicated. You are, therefore, directed to pay the house rent hence-forward to the Board of Wakfs which is the Statutory body for supervision and administration of wakf property throughout the State.

In case of non-compliance of the above order of the Board, necessary legal steps under the above Act, will be taken to evict you from the house.

Details of Wakf property

Khata No. 853, Cuttack Sadar Thana No. 204, Plot No. 760, 761.

Commissioner of Wakfs and

Secretary, Board of Wakfs.

A copy of this notice was endorsed to Petitioner No. 1 with the following direction:

He is also directed to show cause within 15 days of the receipt of this notice why legal steps will not be taken against him for appropriating the income of wakf, that is, Rs. 125/- P.M. realised as house rent for the purpose other than wakf.

Petitioner No. 1 showed cause claiming the property to be his personal asset and not belonging to any wakf. He relied upon the judgment of the District Judge of Cuttack in O.S. No. 7 of 1940 which was an action u/s 3 of the Charitable and Religious Trust Act, 1920. He contended that, this being his private property has been wrongly recorded u/s 25 of the Act 0.8 wakf property. Some time thereafter on 19-2-1966, opposite party No. 1 sent a communication to Petitioner No. 1 which was styled as the "Decision of the Board of Wakfs under Muslim Wakfs Act, 1954-." The said alleged decision read as follows:

The : Orissa Board of Wakf in its meeting held on the 21st November, 1965 considered the petition of Safiruddin regarding his contention that the properties of Tahatul Masjid in his Possession are not wakf properties. The Board went through the judgment referred to by the District Judge and also saw the records of rights connected therewith in accordance with the findings of the District Judge. The Board are of opinion that the nature of the properties in possession of Safiruddin Comes within the definition of wakfs u/s 3 of the Wakfs Act as amended upto date.

It was followed by another decision of opposite party No. 1 communicated to

Petitioner No. 1 on 29-3-1966. The relevant portion thereof reads as follows:

The Board in its meeting held on the 21-11-1965 considered the petition of Saffiruddin (Petitioner No. 1) claiming the above property as private and as such the Muslim Wakfs Act, 1954 is not applicable to the management of the properties and decided the property as public wakf and the power of management and administration thereof rest with the Board of Wakfs under Muslim Wakfs Act, 1954...This decision of the Board was already communicated to Saffiruddin with Board's letter No. 35/O.B.W. dated 19-2-1966.

In accordance with Section 27 of Muslim Wakfs Act, 1954 the decision of the Board regarding whether a property is wakf or not shall be final unless reversed or modified by a Civil Court of competent jurisdiction.

In view of the above decision of the Board and provision of Section 27 of Muslim Wakfs Act" 1954, the Board resolves that the Board has full power over the management and administration of wakf properties of Tahatul Masjid, Jholasahi until Saffiruddin, the adopted son of Maniruddin, gets modified the decision of the Board by a Civil Court of competent jurisdiction. Saffiruddin, the opposite party has not yet done so. Nor Adbul Rashid (Petitioner No. 2) to whom Saffiruddin has alienated the property has challenged the decision of the Board in a Civil Court of competent jurisdiction.

Therefore the Board hereby authorises Sk. Abdul Aziz, the Plaintiff (opposite party No. 2) to remain in possession of the house, in question, on payment of Rs. 25/. to the managing committee of Jholasahi Masjid and copy of receipt of payment by Sk. Amir (opposite party No. 3) President of the Committee should be submitted to Board for information and necessary action.

2. The 1954 Act underwent considerable amendments by Central Act 34 of 1964. u/s 9 a new Sub-section as (1-A) was added to the following effect:

Notwithstanding anything contained in Sub-section (1), if the Shia wakfs in any State constitute in number more than fifteen per cent of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent of the total income of the properties, of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of wakfs each for Sunni Wakfs and for Shia wakfs under such names as may be specified in the notification and in such a case, the provisions of this Act shall, in their application to the State, have effect as if, the amendments specified in the Schedule had been made and in the Schedule for Section 27 the following section was substituted:

27. Decision if a property is wakf property. (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a, particular "Property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it shall refer the, question to a civil Court of competent jurisdiction.

Section 27 in the parent Act reads as follows:

27. Decision if a property is wakf property. (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry, as it may deem fit, decide the question.

Both the parties remained under the impression that the amended Section 27 covered the case before us until just before the final bearing opposite party No. 1 filed an affidavit to the effect that the amended Section 9(1-A) is not attracted with reference to the State of Orissa as there is only one Board. We therefore, hold that the original Section 27, as extracted above, is applicable to this case.

3. It can hardly be disputed that the duty cast u/s 27(1) of the Act on opposite party No. 1 is a quasi-judicial one. There are two parties. There is a lis-whether the property is wakf property or not - and a statutory duty to decide has been cast on the Board. The scheme u/s 27(1) thus clearly comprehends an enquiry which must necessarily comply with the rules of natural justice.

4. We find that the Board of Wakfs has not given reasonable opportunity to, the Petitioners to, substantiate their claim. The materials on record do not show that Petitioner no. 2, to, whom Petitioner No. 1 has already alienated his interest, was given even any Justice in the matter. Though Petitioner No. 1 filed an objection, he has not been given a bearing. On the other hand, the order of the Board dated 29-3-1966 shows that evidence was collected behind the back of Petitioner No. 1. We have no doubt that fundamental rules of natural justice have been violated and the rights of the Petitioners to the property have been affected by the decision of opposite party No. 1 which has been arrived at in a manner not keeping with the dictum of the rules of natural justice. It is true that the Petitioners have a right of suit u/s 27(2) of the Act. But it is well settled that an alternate remedy can be no defence where a quasi-judicial Tribunal has acted in breach of rules of natural Justice. We do not consider it just and proper to drive the Petitioners to seek remedy under Section, 27(2) of the Act in the facts of this case, on the plea that the present decision of the Board of Wakfs can be annulled or modified in a properly constituted suit before a Court of competent jurisdiction.

5. In the circumstances, we issue a writ of certiorari quashing the notices and orders issued by opposite party No. 1 as referred to above and we further issue a writ of mandamus commanding opposite party No. 1 to hold an enquiry u/s 27(1) of the Act and notice Petitioner No. 2, hear both the parties and decide the question as to whether the property in dispute is wakf property or not. We further direct that until such decision is taken, opposite party No. 1 is not to interfere with the rights of the Petitioners in any manner. In the facts and circumstances of the case, we, however, do not make any order as to costs.

G.K. Misra, C.J.

6. I agree.