
(2003) 03 MP CK 0010

In the Madhya Pradesh High Court

Case No : Civil Revision No. 539 of 2000

Subhan Shah (deceased by L. Rs.) and Others

APPELLANT

Vs

M.P. Wakf Board and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Waqf Act, 1995 — Section 32(3)

Citation : AIR 2004 MP 22 : (2003) 4 MPLJ 513

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : A.S. Garg, instructed by Rajesh Yadav, for the Appellant; S.R. Saraf, for No. 1, V.P. Khare, Dy. Govt. Advocate for No. 2 and O.P. Sharma, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Gohil, J.

This order shall also govern the disposal of Civil Revision No. 463 of 2000 (Madhya Pradesh Wakf Board, Bhopal v. Shri Subhanshah (deceased) through L. Rs. Ramjan and others) and Civil Revision No. 558 of 2000 (Saleem S/o. Nannusha v. Madhya Pradesh Wakf Board, Bhopal and Ors.).

Against the impugned order dated 8-2-2000 passed by M.P. Wakf Tribunal, Bhopal, in Case No. 864/1995 all the parties to the suit have filed these revisions u/s 83 (9) of the M.P. Wakf Act, 1995 (for short "the Act").

Civil Revision No. 539 of 2000 has been filed by the L. Rs. of deceased Subhan Sah; deceased Ghisa Sah; Mamu Sah; and deceased Yakub Sah, who were plaintiffs before the Wakf Tribunal in the suit. Civil Revision No. 463 of 2000 has been filed by the M.P. Wakf Board, Bhopal. Civil Revision No. 558 of 2000 has been filed by one Saleem who was defendant No. 3 in the suit.

The brief facts of the case are that the applicants of Civil Revision No. 539 of

2000 filed a civil suit before IVth Civil Judge, Class-II. Indore on 26-7-1969 for declaration and possession of "Majar" Hajrat Nahar Sah Walli, Khajarana, which was subsequently transferred on 11-8-1995 to the Wakf Tribunal. In the suit they prayed for declaration that the "Majar" is not the wakf property and the orders passed by the M.P. Wakf Board on 24-4-1968 and 13-4-1969 respectively are illegal and void ab initio. It is not in dispute before me that the Board had taken possession of "Majar" on 13-7-1969 and since then it is being managed by the Board. At present, the Intajamia Committee appointed by Board is in-charge of the "Majar".

In the plaint, plaintiffs' case in brief was that according to the hereditary succession, their forefathers had been serving the "Majar" as Mujawars. In the regime of Mughal Emperor of "Hijari San 1193, Mah Rajbul Murjjab, Tarikh 11", erstwhile Maharaja Holkar Darbar had granted "Mafi Inayat Land" situated at village Khajarana to them. The plaintiffs claimed themselves as Mutwallis and Mujawars of the said Dargah. It was further alleged in the plaint by the plaintiffs that upon the complaint of one Munna Bai, defendant No. 3, whose son has filed Civil Revision No. 558 of 2000, the M. P. Wakf Board on 18-3-1968 registered the "Majar" as wakf property at Serial No. 25 without giving an opportunity of hearing to them in spite of their objections filed on 15-2-1968 and 20-2-1968. On 5-4-1968 plaintiffs gave notice to Board for the cancellation of registration, but they were informed by the Board on 24-4-1968 that the registration of the said "Majar" was legal and it was the wakf property. On 13-4-1969 the Board constituted a Committee for management of the said "Majar".

The M.P. Wakf Board in its written-statement filed on 10-1-1970 denied the plaint allegations in toto, but admitted that the plaintiffs forefathers got 50 bighas of land for serving the said "Majar" which is wakf. The Board pleaded that on 29-11-1967, the defendant filed an application for registration of "Majar" as Wakf u/s 25 of the Act and, thereafter invited objections upon it, by publishing a general notice on 7-12-1967, and affixed a copy of the notice on the conspicuous part of the "Majar" on 8-12-1967. A notice was also served upon the plaintiffs on 5-2-1968 asking them to file objections within 15 days. As the plaintiffs did not file any objections, the said application filed by Munna Bai was accepted and the said "Majar" was registered as Wakf and a committee was constituted for its management. It was further submitted by the Board that Board exercised powers u/s 27 of the Act. The Board filed the M.P. Gazette and certified copy of the registration, in which "Majar" was shown as Wakf property, to which the plaintiff did not take any objection.

The Tribunal framed issues, recorded the evidence of the parties and after hearing them by the impugned order dated 8-2-2000 has held that the said "Majar" of Hajrat Naharshah Walli, situated at Village Khajarana, Tehsil and District Indore as a Wakf property and the Wakf Board is having every right to manage the said Wakf property. It is further held by the Tribunal that according to hereditary succession, the plaintiffs have got rights of Khidmat and Mujawari

of "Majar" and they are entitled to get Wajifa from the M.P. Wakf Board or from the Committee appointed by the Wakf Board. It is further held that the plaintiffs and defendant No. 3 are also entitled to receive offerings, Chadar, Coconut, Chironji Dane etc. which are offered at Dargah and the Tribunal further directed that an officer appointed by the Collector, Indore will open and count the amount of all the donation-boxes of "Majar" in presence of both the parties and out of the said amount, contributions according to law be paid to M.P. Wakf Board and 50% of remainder be deposited in Bank for maintenance of "Majar" and rest 50% be given to the plaintiffs towards Wajifa. Against the aforesaid order M.P. Wakf Board has filed Civil Revision No. 463 of 2000 challenging the later part of the judgment by which rights have been given for Wajifa and Mujawari to the plaintiffs and also to receive offerings. In civil Revision No. 539 of 2000 plaintiffs challenged first part of the order by which it has been held that the said "Majar" (Dargah) is a Wakf property, and defendant No. 3, L. Rs. of Munna Bai in Civil Revision No. 558 of 2000 has also challenged that it is not the Wakf property on the ground that she has never filed any application before the Wakf Board that the said property is the Wakf property, and also supported the case of the plaintiffs.

I have heard Shri A.S. Garg, learned Senior Advocate for the original plaintiffs; Shri S. R. Saraf, learned counsel for M.P. Wakf Board; Shri O.P. Sharma, learned counsel for defendant No. 3 Saleem L. Rs. of Munna Bai; Shri V.P. Khare, learned Deputy Govt. Advocate for State; and perused the record.

The submission of Shri Garg, learned counsel for plaintiff is that the Tribunal has wrongly recorded the finding that the "Majar" is a Wakf property and he further supported the finding that the plaintiffs have got right of Khidmat and Mujawari of the said "Majar" and they are entitled to get the Wajifa from the Wakf Board or from the Committee and the Tribunal has rightly directed for payment of 50% amount of donations and also offerings to the plaintiffs and defendant No. 3. The same is the argument of Shri O.P. Sharma, learned counsel for defendant No. 3.

The submission of Shri S. R. Saraf, learned counsel for Board is that Mujawar is a servant of Mohammadan Shrine or Mosque. The claim of Mujawar to act as an intermediary or as an intercessor between God and man is opposed to Islamic teaching. The office of Mujawar as an integral part of a Dargah is also not known to Mohammadan Law and there can be no claim to it by hereditary succession. Mujawar has ordinarily no claim to donations and offerings made at Dargah. These offerings are to be dealt with the scheme for the upkeep of the Dargah. Mujawar is a servant and the property of Dargah does not vest in him. There is no provision in the Wakf Act by which the Mujawars or Mutwallis can get share in the income of the said "Majar" along with the offerings thereto. He further submitted that once a Wakf, is always a Wakf and mere grant of patta in favour of individuals would not affect the original character of the Wakf property and it continues to be so for all times to come. His further submission is that according to the provisions of the Wakf Act, the "Majar" has rightly been registered as a

Wakf property. His further submission is that it has been proved by the positive evidence that the said "Majar" is a Wakf property and the plaintiffs have also failed to prove that the "Majar" is their personal property. His further submission was that the Court cannot give any direction for providing Wajifa or share in the donations and offerings to the Mujawars.

Having heard learned counsel for the parties and after perusal of the record as well as the findings recorded by the Court below and after considering the evidence of the parties on record and findings thereon, the trial Court has rightly held that it is not the plaintiffs' personal property but the "Majar" is the Wakf property. It is true that in the absence of any positive evidence on record either oral or documentary the plaintiffs cannot claim that the said "Majar" is their personal property, they can only claim themselves as Mujawars of Dargah according to the hereditary succession. They admitted to have received notice from Wakf Board, they have also admitted that out of 50 bighas of Inami land granted by Sanad, 10 bighas of land are in their possession and the remainder had been sold by their forefathers. Plaintiffs have admitted before the Tribunal that the said "Majar" is a Wakf property but claimed Mujawarship on the Dargah on the basis of their family inheritance. Admittedly all the plaintiffs are Fakirs. Mujawarship is the only source of their livelihood, their families are also fully dependent on this job. The Tribunal has held, on the basis of admissions made by the plaintiffs, that the said "Majar" of Hajrat Naharshah Walli is a Wakf property and the same has rightly been registered as a Wakf property and its registration has already been published in the Gazette of 25-9-1989. The trial Court has found that the persons belonging to all religions are visiting the "Majar" and offering prayers. Therefore, the said "Majar" cannot be said to be a personal property of any body and its registration as a Wakf property has become final and no challenge can be made to it now. After considering the evidence on record, the Tribunal has further rightly recorded a finding that the plaintiffs and defendant No. 3 are Mujawars and they are rendering services to the "Majar" hereditarily and they are also receiving income from the "Majar". On the basis of the evidence on record the Tribunal has rightly held that the plaintiffs and defendant No. 3 are entitled to receive offerings, Chadar, Coconut, Chironji Dane etc, offered at Dargah and they are also entitled to get Wajifa out of the donations from M.P, Wakf Board or from the Committee appointed by the Wakf Board and for that in Para No. 17 of the impugned order the Wakf Tribunal has already framed a scheme about the distribution of donation offered at "Majar".

Learned counsel for the parties made long submissions before me on the question whether any arrangement can be made or whether any scheme can be framed either for the management of the Dargah and also for the distribution of the donations offered at "Majar". Section 32 of the Act provide powers and functions of the Board. Under this section Board has general power of superintendence and control over all the Wakfs in the State subject to the direction of the Wakf its purpose and any usage or custom of the Wakf sanctioned by the school of Muslim Law to which the Wakf belongs.

The sole question before this Court is whether the scheme framed in Para Nos. 16 and 17 of the impugned order for the welfare of the plaintiffs (Fakirs) (sic) are rendering services to the "Majar" is valid according to the Wakf Act, 1995 or not? It has been proved that the plaintiffs in the suit are rendering services to the "Majar", hereditarily, in succession, therefore, they have got the right of Khidmat and Mujawari of "Majar" and, therefore, they are entitled to get the Wajifa and are also entitled to receive offerings, Chadar, Coconut, Chironji Dane etc. made at Dargah as has been held by the Tribunal. Sub-section (3) of Section 32 of the Act provides that the Board can settle any scheme for management under Clause (d) or give any direction under Clause (e) about the utilisation of surplus income of Wakf or the Tribunal can also give a direction and decision about the scheme of management as stated above. Therefore, the Wakf Act clearly provides for framing of any scheme of management of "Majar" and also for settlement of the rights of the Mujawaris regaining Wajifa offerings etc. who are rendering services, Khidmat and Mujawaris to the "Majar" and, therefore, in the impugned order the Tribunal has rightly and legally framed a scheme about the distribution of the offerings and donations amongst the Mujawaris and has rightly framed scheme under the law. Therefore, this argument of Shri Saraf, learned counsel appearing for the Board appears to be meritless that there is no provision in the Wakf Act for framing any scheme of management to the Mujawaris and Khidmatgars rendering services on "Majars". In fact this question is part of management scheme of "Majars" which is a Wakf. The definition of Mutawalli also includes Khadim, Mujawar, Sajjadanashin.

Thus on consideration of the fact and features of the case and also legal provisions under the Wakf Act, 1995 the Tribunal has rightly and legally framed the scheme . The order passed by the Tribunal appears to be just and proper and has been passed within its jurisdiction by the Tribunal, under Sub-section (3) of Section 32 the Tribunal can settle schemes of management for a Wakf, give a direction for the utilisation of income of Wakf consistent with the object of the Wakf and as per its object and have rightly held that the plaintiffs are also entitled for Wajifa and have rightly and legally framed a scheme for the distributions of the offerings and Wajifa amongst them. Thus, I do not find any case for interference by this court in the impugned order passed by the tribunal which is just and proper and the order passed by the Tribunal is hereby maintained. The Wakf Board or the Committee constituted by the Wakf Board may regulate the services of the plaintiffs to be acting as Mujawaris for the proper management at Dargah.

Consequently all three civil revisions fail and are hereby dismissed with no order as to costs. Record be returned.

Retain this order in the record of Civil Revision No. 539 of 2000 and place its copy each in the record of connected revisions, as particularised above, for ready reference.

Revisions dismissed.