
(1945) 10 AHC CK 0025
In the Allahabad High Court

Sunni Central Board of Wakfs

APPELLANT

Vs

Sardar Khan and Others

RESPONDENT

Date of Decision : 12-10-1945

Acts Referred:

Citation : AIR 1946 All 256 : (1946) 16 AWR 28

Hon'ble Judges : Bennett, J; Bennet, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bennett, J.—This is an application u/s 115, Civil P.C., challenging an order passed by the learned District Judge of Aligarh relating to the removal of a committee of management of a certain waqf. There is a Muslim shrine in Jalesar called Dargah Ibrahim Sahab Sahid. It was held in 1928 that the property with which the shrine was endowed for the purpose of upkeep constituted a public waqf, and a committee of Musalmans of Jalesar was appointed for the purpose of management and a scheme was drawn up. This scheme was sanctioned by the Additional District Judge on 7th September 1929. An amendment was made in it by an order of the District Judge dated 18th September 1941, but the character of the waqf was not changed. It remained a public waqf and the management was left to a committee elected by the people of Jalesar, the final order to this effect being passed on 2nd December 1941. As regards the personnel of the committee, five persons whose names are given in the order of the District Judge as Wahabuddin, Ghulam Husain, Sardar Khan, Mumtaz Ahmad and Bashir Uddin were elected in 1942 and ordered to take charge of their duties on 11th April of that year. On 29th April of the following year, 1943, the Presidents the Central Sunni Waqf Board informed the District Judge, by telegram, that the Board had superseded these elected members and had appointed another committee consisting of other persons.

2. Objection was taken before the District Judge by the previously elected members that the President of the Central Sunni Waqf Board had no jurisdiction

to remove them and the District Judge issued notice to the President to show cause why they should not be allowed to function. The District Judge heard arguments bearing on the powers of the Board under the Muslim Waqfs Act of 1936 (U. P. Act, 13 [XIII] of 1936) and held on 8th November 1943, that the supersession of the elected members referred to was not in accordance with law. He directed, therefore, that they should continue to function. It is against this order that the present revision application has been brought.

3. Arguments before us have related very largely to the question of the powers of the Central Sunni Waqf Board created by the Act of 1936 and in particular to the question whether they are empowered by that Act to remove a committee of management. The order removing the elected members named was passed by the President of the Central Sunni Waqf Board on 1st April 1943. The order shows that powers u/s 59 of the Act had been delegated to the President by the Central Board in respect of this waqf and the order was passed under the provisions of Section 59(2) of the Act. This section empowers the Central Board to supersede a committee of supervision which does not in its opinion function properly and satisfactorily. The view taken by the District Judge was that the committee of supervision referred to in this section is not a committee of management and, therefore, the Central Board had no power to supersede the committee of management. The primary question with which we are concerned is whether the District Judge had jurisdiction to interfere. That he possessed such power prior to the enactment of the Muslim Waqfs Act is not disputed. Once a waqf had been created the District Judge had general powers of control, these being the powers formerly exercised by the Qazi.

4. It cannot be doubted that on the enactment of the Muslim Waqfs Act changes of a very wide and comprehensive character were made in the law governing the supervision and control of such Muslim waqfs as come under the Act. It was, we may mention here, contended by the learned Counsel for the opposite parties, who are three of the members of the elected committee of management that the Act does not apply to this waqf. He referred to Clause (c) of Section 2(2)(ii) of the Act, where it is provided that the Act shall not apply to the maintenance of private imambaras, tombs and graveyards, the argument being that the word "private" governs only the word "imambara" and not "tombs and graveyards." We have no doubt that there is no force in this contention, apart from which it has been held that the waqf is a public waqf. Further the Central Sunni Waqf Board has assumed control over it in accordance with the provisions of the Act.

5. The preamble of the Act shows that it was passed to provide for the better governance and administration of certain classes of waqfs and the supervision of mutwalli's management of them in accordance with the waqifs' directions. The Act provides for a survey of wakf and the constitution of a Central Board of Waqfs for Sunnis and a similar Board for Shias. It further provides for Sunni District Committees and Shia Sub-Committees for certain areas as the Central Boards may consider necessary. General power of superintendence of all waqfs to

which the Act applies are vested in the Central Boards and many of these powers are specified in Section 18. u/s 47 the Central Boards are empowered to apply to the Court, that is, the Court of the District Judge, for directions in certain cases, namely, in all cases of undisposed waqf funds or where the directions in the deed of waqf are no longer sufficient to carry out the intention of the wakif or where any case for the application of the doctrine of cy pres arises. On such application the District Judge may direct that the real intention of the wakif be carried out by such means as in the existing circumstances appear to him to be most appropriate. Such an order is appealable to the High Court or the Chief Court, as the case may be, but subject to such appeal, the order shall be final.

6. Various sections of the Act refer to civil suits or limit the jurisdiction of civil Courts. Section 18 includes among the powers and duties of the Central Board the power to institute and defend suits and proceedings relating to administration of waqfs, taking of accounts, appointment and removal of mutwallis in accordance with the deed of waqf, putting mutwallis in possession and removing them from possession and the settlement or modification of any scheme of management. The Central Boards are further empowered to sanction the institution of suits u/s 92, Civil P.C. Special provision is made in Section 48 with regard to civil suits relating to waqfs u/s 92 of the Code. They may be instituted by the Central Board without obtaining the consent referred to in that section, or by any person interested in the waqfs with the previous sanction in writing of the Central Board and without obtaining the consent referred to in that section. There is a proviso that if in such suit the validity or propriety of any order or direction passed or made by the Central Board is challenged, a suit may be instituted without previous sanction after giving the two months notice to the Central Board provided in Section 58. Section 50 provides that, save as provided in this Act, no act done or direction issued by the Central Board, except an order settling the scheme of management of a waqf, shall be questioned in any Court. Finally there is a provision in Sub-section (3) of Section 59 that an order passed by a Central Board under Sub-section (2) shall be final and shall not be questioned in any Court of law.

7. We are not concerned in these proceedings with the question whether the order passed by the President of the Central Board on 1st April 1943, could be challenged in a civil suit. It is stated in the revision-application that a regular suit was filed by the opposite parties in the Court of the Munsif challenging the validity of the supersession of the committee and this suit was dismissed on 13th August 1943. The judgment of the Munsif is on the record and it shows that he held that the order superseding the committee was not ultra vires and that the suit was barred by Sub-section (3) of Section 59. There was apparently no appeal against the Munsif's decree, but the Central Board was not a party to that litigation.

8. As the primary question for determination is whether the District Judge had jurisdiction to pass the order setting aside the order of 1st April 1943 and we

have come to the conclusion that he had no such jurisdiction, whether the view taken by him on the scope of Section 59 is or is not correct, we do not consider it necessary or desirable to express any opinion on the other questions to which reference has been made. Although no powers of the District Judge are expressly abrogated by the Act, we are of opinion that on its enactment the powers of the District Judge were circumscribed by it. He is given certain powers u/s 47 but those powers are of a limited nature and they can be exercised only on the application of the Central Board. In other respects the Central Board would appear to have taken the place of the District Judge. Whenever a waqf to which the Act applies is created, the Central Board assumes control and superintendence and is given wide powers to enable it to exercise these duties properly. Provision is also made, however, for litigation in respect of various matters and it seems to us that the intention must have been that, except where provision is made for the intervention of the Court referred to in Section 47 - and according to the definition of "Court" this means the Court of the District Judge - the District Judge shall retain no other power.

9. On this view it is, as we have said, unnecessary to express any opinion on the question whether the District Judge's views with regard to the scope of Section 59 are right or not. We must set aside the District Judge's order on the ground that it was passed without jurisdiction. We may mention that the question whether the order amending the scheme on 18th September 1941 was valid or not was also raised but it is not necessary for us to consider this question in these proceedings. We are satisfied that the District Judge on the enactment of the Muslim Waqfs Act did not retain such powers as he has exercised in the present case, in effect sitting in appeal over the Central Board, holding that the order of the Board was not in accordance with law and directing the previously elected members to continue to function notwithstanding that order. We allow this application with costs and set aside the District Judge's order.