

(2024) 02 BOM CK 0058

In the Bombay High Court

Case No : Civil Revision Application No. 133 Of 2016

Syed Abdul Qadar

APPELLANT

Vs

Sayed Abdul Quddus And Others

RESPONDENT

Date of Decision : 21-02-2024

Acts Referred:

Wakf Act, 1995 — Section 36, 63, 83(2)

Citation : (2024) 02 BOM CK 0058

Hon'ble Judges : Sandipkumar C. More, J

Bench : Single Bench

Advocate : Mobin H. Shaikh, S. B. Khan, N. E. Deshmukh

Final Decision : Dismissed

Judgement

@JUDGEMENT- JUDGEMENT

Sandipkumar C. More, J

1 The applicant, who is original Respondent No.1 in Wakf Application No. 32/2012, has challenged the order dated 30.07.2016, passed by the Wakf Tribunal in the aforesaid application, whereby the learned Tribunal, by setting aside the order of temporary appointment of present applicant as Mutawalli in Case No. M.S.B.W./Atiyat/139/11, passed by the Chief Executive Officer, Maharashtra State Board of Wakfs, Aurangabad i.e. present Respondent No.2, remanded the matter back to present Respondent No.2 for deciding the application afresh after giving an opportunity of hearing to present Respondent No.1.

2 The background facts are as under:

One Syed Mahmood and Syed Abdul Quader were the Mutawallis of Wakf Institution namely Masjid Bibi Bulandh Sayadan and Mazar (Grave) at Nanded. Thereafter on 27.10.1983, one of the aforesaid Mutawalli, namely Syed Mahmood was expired. Thereafter, on 31.07.2010, present applicant moved an

application before Respondent No.2-authority seeking registration of the aforesaid Institution as Wakf under Section 36 of the Wakf Act, 1995 (for short, the 'Wakf Act'). On 04.08.2010, the aforesaid Wakf Institution was registered as Wakf under the orders of Respondent No.2 and Registration Certificate was accordingly issued. On 05.10.2010, present applicant moved an application under Section 63 of the Wakf Act before Respondent No.2 for his appointment as Mutawalli. On 24.01.2012, Respondent No.2 temporarily appointed present applicant as Mutawalli of the said Institution. The said order was challenged by present Respondent No.1 before the Wakf Tribunal, in the aforesaid application under the provisions of Section 83 (2) of the Wakf Act.

3 The learned Tribunal allowed the said application and by setting aside the order of appointment of present applicant as Mutawalli, remanded the matter back to Respondent No.2 for deciding it afresh on its own merits. Hence, this Revision Application.

4 The learned Counsel for the applicant submits that there are various documents on record to show that forefathers and predecessor of this applicant was Mutawalli of the said Institution and present respondent no.1 was not having any authority to challenge the appointment of applicant made by Respondent No.2, as there is no provision for appointing a person as Mutawalli by inheritance.

5 On the contrary, learned Counsel for the Respondent No.1 strongly opposed the submissions made on behalf of the applicant and pointed out that the learned Tribunal, by exercising appellate powers under Section 83(2) of the Wakf Act, has rightly remanded the matter back to Respondent No.2 with a direction to give opportunity of hearing to Respondent No.1 in accordance with principles of natural justice. According to him, there were ample documents on record to show that Respondent No.1 was also rendering services to the Institution. He pointed out that the appointment of the present applicant was only on temporary basis and no period for such appointment was mentioned by Respondent No.2 in the order and, therefore, it has been set aside by the learned Tribunal.

6 Heard rival submissions, perused the documents on record and the impugned order.

7 It is extremely important to note that the learned Tribunal has not decided rights of the contesting parties finally. Moreover, it is also observed by the learned Tribunal, in its order, that there were certain documents on record showing that present Respondent No.1 was also rendering services to the Institution. Not only this, but the report of DWO, which was called by the Chief Executive Officer i.e. present Respondent No.2 in respect of the Institution, also indicated that present Respondent No.1, being the son of Mutawalli No.1 – Syed Mahmood had also rendered services for Masjid and Grave and also paid wakf funds. Further, no objection certificate dated 29.04.1992, issued by the DWO, also indicated that the no objection certificate was given by present Respondent No.1 as Mutawalli for repairing the Masjid with his own expenses. Thus, there are

ample documents on record to show as to how present respondent no.1 is rendering services to the Institution.

8 It is equally important to note that as per Section 63 of the Wakf Act, the Board can appoint any person to act as Mutawalli, but such appointment is subjected to certain period. Here in this case, the learned Tribunal has set aside the order merely because it did not follow spirit of Section 63 of the Wakf Act by mentioning specific period for which present applicant was appointed as temporary Mutawalli.

9 Considering all these aspects, the impugned order, passed by the learned Tribunal only for deciding the validity of the order dated 24.01.2012, by giving an opportunity of hearing to the present respondent no.1, appears just and proper in the circumstances of this case. As such, no interference is required in the impugned order.

10 In the result, Civil Revision Application stands dismissed.