
(1927) 02 PAT CK 0003
In the Patna High Court

(Syed) Ali Mohammad

APPELLANT

Vs

Collector of Bhagalpur

RESPONDENT

Date of Decision : 23-02-1927

Acts Referred:

Mussalman Wakf Act, 1923 — Section 11, 2(e)

Citation : AIR 1927 Patna 189

Hon'ble Judges : Kulwant Sahay, J

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an application by Syed Ali Mohammad inviting this Court to revise an order made by the District Judge of Bhagalpur, purporting to be an order under the Mussalman Wakf Act (42 of 1923). The facts as set out in the application and as appearing from the documents on the record are shortly these. The Local Government sent to the Collector of Bhagalpur copies of rules framed by it u/s 11 of the Act for distribution to the mutwallis in his district. The Collector caused a list of the wakf properties in his district to be filed on receipt of reports from different officers, and copies of the rules framed by the Government were supplied to the persons reported to be in charge of wakf properties. One of those persons was the present petitioner. He returned the rules with a letter stating that the rules did not apply to him as he was not in charge of any wakf property as denoted in Sub-section (e) of Section 2 of Act 42 of 1923. Thereupon, on the 9th June 1926, the Collector wrote to the District Judge" informing him of the fact of the rules having been supplied to the petitioner and of his having denied the fact of his being in control of any property governed by the Act of 1923.

2. The Collector in his letter stated that as according to the Mussalman Wakf Act and the rules promulgated thereunder the supervision of wakf estates was vested in the District Judge, he submitted the list and the replies received to the District Judge for such action as he might consider necessary. On receipt of this letter from the Collector, the District Judge¹ made an order on the 5th July 1926;

directing the issue of notice to the petitioner to the effect that his objection had" been filed before him by the Collector for disposal and intimating to him that his objection will be heard in Court on the 13th of July 1926. The notice was duly served, and on the 13th of July 1926, the District Judge ordered notice to be given to the Government Pleader, fixing the 24th of July, for hearing. On the 24th of July the Government Pleader appeared in support of the order requiring the petitioner to comply with the provisions of Act 42 of 1923.

3. The petitioner filed a copy of an entry in Register D which showed that he had been recorded as a proprietor in respect of 2 annas 19 gandas odd share in village Kazi Koerya Tauzi No. 765 in the district of Bhagalpur, and that he did not hold any share in the village as a mutwalli. The District Judge then decided to hear evidence on both sides in order to decide whether or not there was a wakf within the meaning of Section 2(e) of the Act. Witnesses were then examined on behalf of the petitioner and on behalf of the Secretary of State for India in Council, and documents were produced and marked as exhibits on both sides. Arguments were heard, and the learned District Judge by his decision dated the 29th of September 1926, held that 2 annas 2 gandas odd share in the village was wakf property and that the petitioner was the mutwalli thereof, and he directed the petitioner to file the necessary particulars u/s 3 of the Act within two months.

4. It is this order of the District Judge which is now sought to be revised; and it is contended on behalf of the petitioner that the action taken by the learned District Judge was without jurisdiction, and that the Mussalman Wakf Act (42 of 1923) under which the District Judge purported to act and to make the order gave him no jurisdiction to do so.

5. In my opinion the objection is sound and ought to prevail. Act 42 of 1923 purports to make provision for the better management of wakf properties and for ensuring the keeping and publication of proper accounts in respect of such properties. Section 2 of the Act, among other terms defines "Court", "mutwalli" and wakf as used in the Act. Section 3 directs that within six months from the commencement of the Act, every mutwalli shall furnish to the Court, which in the present case and according to the definition given in Section 2 would mean the Court of the District Judge, within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated, a statement containing certain particulars prescribed in the section. When the statement prescribed by Section 3 is furnished, the Court is directed by Section 4 to cause notice of the furnishing of the statement to be affixed in some conspicuous place in the Court house and to be published in such other manner as may be prescribed, and thereafter any person may apply to the Court by a petition in writing accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents; and on such application being made, the Court may, after making such inquiry as it thinks fit, cause to be served on the mutwalli an order requiring him to furnish such particulars or

documents as the Court might consider necessary in order that full information may be obtained regarding the origin, nature or object³ of the wakf or the condition or management of the wakf property.

6. Sections 5 and 6 of the Act then prescribe for the filing statement of accounts and for the audit of the accounts. Sections 7, 8 and 9 of the Act make general provisions relating to the payment of costs of audit etc. from wakf funds for verification of statements furnished under Sections 3 or 4, and for inspection and obtaining copies of the statements furnished under Sections 3 or 4 or of the accounts furnished or of the audits made under Sections 5 and 6. Section 10 provides for penalties for failure to furnish the particulars or documents under Sections 3 and 4, or of the accounts u/s 5. Section 11 gives power to the local Governments to make rules to carry into effect the purposes of the Act; and Section 12 saves the effect of any other enactment for the time being in force in British India providing for the control or supervision of religious or charitable endowments. And the last section, viz., Section 13 gives power to the local Government to exempt from the operation of the Act any wakf created or administered for the benefit of any specified section of the Mussalman community.

7. It will thus appear that there is no provision in the Act authorizing the Court as defined in the Act to determine as to whether any property which is denied to be a wakf property is a wakf property within the meaning of the Act. No provision is made in the Act authorizing the Court to summon witnesses or to take evidence. No procedure is prescribed for determining the question as to whether any property, is a wakf property, and no provision is made for appeal or revision. The Act was expressly intended for ensuring the keeping and publication of proper accounts in respect of wakf properties, and the Court was given no jurisdiction to decide whether a particular property was wakf property. Section 12 of the Act expressly saves the provisions of other enactments in force in British India providing for the control or supervision of religious or charitable endowments.

8. Act 14 of 1920 is an Act intended to provide more effectual control over the administration of charitable and religious trusts, and in this Act provision is made by Section 3 empowering any person having an interest in any express or constructive trust, created or existing for a public purpose of a charitable or religious nature to apply by petition to the Court to obtain an order directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust and other particulars specified in the section; and Section 5 prescribes procedure to be followed on such a petition being filed before the Court, Sub-section 3 of Section 5 of this Act prescribes that if any person appears at the hearing of the petition and either denies the existence of the trust or denies that it's a trust to which this Act applies and undertakes "to institute within three months a suit for a declaration to that effect and for any other appropriate relief the Court shall order a stay of the proceedings and if

such suit is so instituted, shall continue the stay until the suit is finally decided, Sub-section 4 then provides that if no such undertaking is given, and if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.

9. No such provision is contained in Act 42 of 1923; and I am of opinion that the legislature never intended to authorize the Court to decide the question of title under the provisions of Act 45 of 1923. This Act to my mind applies to admitted wakfs and not to properties which are denied to be wakf properties. If a mustmali in charge of wakf properties denie³ the properties to be wakf properties, ample provision is made in other enactments for the preservation of the wakfs and for removal of mufewallis who deny the properties to be wakf.

10. In my opinion the action taken by the learned District Judge was without jurisdiction, and his decision that the property in dispute in the present case was wakf property was not a decision which he was authorized to come to under Act 42 of 1923.

11. The order of the District Judge must, therefore, be set aside. The learned Govt. Pleader appears and says that he has no instruction to oppose the application there will be no order for costs.