
(2009) 12 MAD CK 0121

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1935 of 2009 and M.P. (MD) No's. 1 to 3 of 2009

Tamil Nadu Wakf Board

APPELLANT

Vs

Janab K.S.M.A. Mohamed Mansoor

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Waqf Act, 1995 — Section 65, 65(1), 65(2), 83, 83(1)

Citation : (2010) 1 LW 935

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : K.K. Senthil, for the Appellant; G.R. Swaninathan, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—This Civil Revision Petition is filed under Article 227 of the Constitution of India by the revision Petitioners to strike off the petition in W.O.P. No. 2 of 2009 on the file of the Wakf Tribunal/Sub Court, Dindigul.

2. The Respondent filed W.O.P. No. 2 of 2009 for declaring the order of the second Petitioner in this revision made in proceedings Na. Ka. No. 616/2006/B15/DGL, dated 18.09.2009 published in Tamil Nadu Government Gazette on 14.10.2009, is null and void and for setting aside the same.

3. It is stated by the Respondent in the wakf original petition that the second Petitioner has taken over the management of the Wakf by the above said proceedings and the action of the Petitioners is against the provision of the Act and therefore, the order passed by the second Petitioner in taking over the management is to be set aside. Though in the petition various averments have been made, for the purpose of disposing of the revision petition on technical grounds, there is no need to go into the facts of the case.

4. As stated supra, the wakf original petition was filed u/s 83(2) of the Wakf Act 43 of 1995 before the learned Sub Judge, Dindigul (The Wakf Tribunal) for

setting aside the order of the second Petitioner made in Na. Ka. No. 616/2006/B 15/DGL, dated 18.09.2009, by which direct Management was taken over by the revision Petitioners.

5. Mr. K.K. Senthil, learned Counsel for the revision Petitioners submitted that u/s 65 of the Wakf Act, the Board has got the power to take over direct management of certain wakfs and if any person is aggrieved by the order of the Board, he can file a revision or appeal against the order before the State Government as provided u/s 65(2) of the Act and without filing a revision or appeal as per Section 65(2) of the Act, it is not open to the Respondent to file a revision before the Wakf Tribunal invoking the provision u/s 83 of the Wakf Act, 1995. He further submitted that when the Act provides a remedy that has to be invoked and without invoking the appellate remedy as provided in the Act, it is not open to the Respondent to file a revision u/s 83(2) of the Wakf Act.

6. Mr. G.R. Swaminathan, learned Counsel for the Respondent submitted that u/s 83 of the Wakf Act, the Tribunal was constituted for the determination of any dispute, question or other matter relating to the wakf or wakf property and as per Section 83(2), any mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, may make an application before the Tribunal for the determination of any dispute, question or other matter relating to Wakf. Therefore, the learned Counsel for the Respondent submitted that the impugned order passed by the second Petitioner is also an order passed under the said Act and therefore, u/s 83, the same can be challenged by filing an application before the Tribunal. He further relied upon the judgment of the Division Bench of this Court reported in Salam Khan v. The Tamil Nadu Wakf Board and Ors. 2005 (1) L.W. 676 wherein the Honourable Chief Justice Mr. Markandey Katju as he then was, held that,

the words "any dispute, question or other matters relating to a Wakf or Wakf property" are, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal.

7. Relying upon the said passage in the judgment, Mr. G.R. Swaminathan, learned Counsel for the Respondent submitted that the impugned order, by which direct management was taken over by the Wakf Board is also an order as stated in Section 83(2) and hence, the Respondent is entitled to invoke the jurisdiction of the Wakf Tribunal by filing an application u/s 83(2) and that cannot be followed.

8. On the other hand, Mr. K.K. Senthil, the learned Counsel for the Petitioners relied upon the judgment rendered in Naina Mohammed Jamaath Pallivasal rep. by its Mutawalli U. Ilyas Vs. Tamil Nadu Wakf Board and Others and submitted that in the judgment in para 21, it has been stated that:

Section 65(2) of the Act provides for a revision by the State Government against a Notification u/s 65(1) and on application, the State Government will decide the

question of correctness, legality and propriety of the notification issued by the Board under Sub-section (1).

He further submitted that in that case, notification issued u/s 65(1) was challenged in the writ petition and this Court has held that it is not maintainable and the remedy is to file a revision before the State Government. He also relied on a judgment reported in *M. Ali Hussain Vs. The Tamil Nadu Wakf Board and Janab MES Ansari*, wherein this Court has held in para 6 of the judgment that,

the present Act creates four power centres viz., the Chief Executive Officer, (ii) the Wakf Board, (iii) the Wakf Tribunal and (iv) the Government and clearly demarcates the area of operation of these power centres. Some of the powers conferred are administrative in nature and some are quasi judicial or judicial in nature. As a consequence, some of the powers are exercisable in original and some are appellate or revisional.

9. The learned Judge also tabulated the appellate or revisional authority to whom the appeal or revision lies against the order passed by the Board and has stated that against the order passed u/s 65(1) of the Act, revision lies before the State Government u/s 65(2) of the Act.

10. Mr. K.K. Senthil, learned Counsel for the Petitioners also relied upon the judgment of the Honourable Supreme Court reported in *M.P. Wakf Board Vs. Subhan Shah (D) By LRs. and Others*, wherein the Honourable Supreme Court has held that,

where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute.

Therefore, he submitted that a specific provision has been made under the Act for challenging the order of the Wakf Board while taking direct management and without following the provisions contemplated u/s 65(2), the Petitioner is not entitled to file a petition u/s 83(2) of the Wakf Act.

11. I have given anxious consideration to the submission made by both the counsel.

12. According to me, Section 83(2) of the Wakf Act gives wide power to the Tribunal to decide any dispute. u/s 83(2), the Tribunal is entitled to decide any dispute, question or other matter relating to the Wakf. It is in the nature of general superintendence over the Wakf and its properties. It is made clear u/s 83(1) that the Tribunals are constituted for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Act. Therefore, a conjoint reading of Section 83(1) and (2) made it clear that the Tribunal was constituted to decide all the disputes, question or other matters relating to a Wakf property and in my opinion, the Tribunal has been given the general superintendence power to decide all disputes and question in relation to Wakf. The Petitioner is entitled to invoke the jurisdiction of the Tribunal when no

other remedy by way of appeal or revision is provided in the Act. When the Act provides any appeal or revision against the order passed under the Act, the same has to be exhausted before approaching the Tribunal u/s 83(2) of the Act. Under the Act, Section 65(2) deals with the revisional power given to the State Government to satisfy itself as to the correctness, legality or propriety of the notification issued by the Board under Sub-section (1) of Section 65. As per Section 65(2), the State Government may, on its own motion or on the application of any person interested in the Wakf can scrutinies the notification issued by the Board u/s 65(1) of the Act. Therefore, an inbuilt machinery is provided under the Act to find out the correctness, legality, or propriety of the notification and hence, without resorting to that provision, it is not open to the Respondent to apply to the Tribunal u/s 83(2) for challenging the notification u/s 65(1) of the Act. This has been made clear by the Honourable Supreme Court in the judgment reported in M.P. Wakf Board Vs. Subhan Shah (D) By LR.s. and Others, , by holding that,

where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute.

13. The Wakf Act provides a revisional remedy against the order passed by the Wakf Board u/s 65(1) and the revisional power is conferred on the State Government. Hence, without filing a revision u/s 65(2) of the Wakf Act, the Respondent is not entitled to file an application before the Wakf Tribunal u/s 83(2) of the Act. In the judgment reported in (2009 (2) MLJ 342) also, this position has been made clear and this Court has held that against the order passed u/s 65(1) of the Act, the remedy lies only by filing a revision before the State Government. Hence, the Respondent can only approach the State Government, if he is aggrieved by an order passed u/s 65(1) and without filing a revision, it is not open to the Respondent to file an application before the Tribunal u/s 83(2). Hence, the revision petition is allowed and the W.O.P. No. 2 of 2009 on the file of the Wakf Tribunal/Sub Court, Dindigul is struck off. There is no need to pass any orders in the Miscellaneous Petitions and the same are closed.