
(1980) 02 AHC CK 0073
In the Allahabad High Court
Case No : Civil Revision No. 3444 of 1978

Waqf Alal Nafs Alal Aulad

APPELLANT

Vs

Nawab Sher and Another

RESPONDENT

Date of Decision : 28-02-1980

Acts Referred:

United Provinces Muslim Wakf Act, 1936 — Section 10, 11, 12, 19, 29(2)

Citation : (1980) AWC 237

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

Bench : Single Bench

Advocate : K.B.L. Gaur, for the Appellant; N.A. Kazmi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Singh, J.—This is Plaintiffs' revision against the order dated 21st August 1978 of Civil Judge, Saharanpur, dismissing the reference as not maintainable.

2. The facts of the case in brief are that originally Hazi Sadat Ali created waqf of the property in dispute through a waqf deed dated 23rd March 1935. It is mentioned in the waqf deed that after the death of Waqif, Abdul Hasan would be Mutwalli and after the death of Abdul Hasan, his eldest son will be Mutwalli. Sadat Ali died in the year 1943 and after his death, Abdul Hasan became Mutwalli Of the waqf property. He also died on 30-5-1971. After some time of the death of Abdul Hasan, O.P. No. 1 Nawab Sher moved an application to the U.P. Sunni Central Board for registration of the waqf and the U.P. Sunni Central Board registered the waqf-deed with O. P. No. 1 as Mutwalli of the waqf property. The Applicant--Abdul Gafoor has filed this reference for Waqf Alal Aulad Nafs under the provisions of U.P. Muslim Waqf Act for cancellation of the order dated 19th November 1977 passed by the U.P. Sunni Central Board on the ground that Nawab Sher O.P. No. 1 misrepresenting him as Mutwalli has got the waqf registered in the U.P. Sunni Central Board. In fact, according to the terms of the waqf deed, the Applicant being the eldest son of Abdul Hasan is the Mutwalli and he has entered into possession of the waqf property as such. His name is also

recorded in the Municipal Board and he also paid the Municipal taxes. It was further alleged that the U.P. Sunni Central Board, on receipt of the application from opposite party No. 1 to register the waqf deed with O.P. No. 1 as Mutwalli, did not serve any notice on the Applicant nor he was given any opportunity to put his case before the Board. Thus the order was obtained by fraud and misrepresentation and O.P. is not the legal Mutwalli of the waqf property. Hence, the order dated 19th November, 1977 has been challenged and its cancellation has been sought.

3. Opposite Party No. 1 has contested the claim of the Applicant on the ground that he is Mutwalli of Waqf property and the Sunni Central Board has rightly registered the waqf deed with opposite party No. 1 as Mutwalli According to the O.P., Abdul Gaffar, the Applicant has no concern with the waqf property. It was further alleged that Applicant has not mentioned the Section of the U.P. Muslim Waqf Act, under which the reference has been filed" and so the reference is not maintainable under the provisions of U.P. Muslim Waqf Act. Applicant No. 2 fictitiously got his name entered in the Municipal Board, but those entries have got no effect on the right of the opposite party No. 1 as Mutwalli. The tenants of the disputed property have been paying rent to the O.P. No. 1 and treating him as Mutwalli. On 29-5-1971, Abdul Hasan, Mutwalli appointed O.P. No. 1 as Mutwalli in writing. Hence, the reference is not legally maintainable and is liable to be dismissed on legal point.

4. The only question involved in this case is whether the reference made in this case is maintainable? The application for reference does not disclose any of the sections of the U.P. Muslim Waqf Act (hereinafter referred to as Act), under which this reference has been made. However, before the learned Civil Judge, the learned Counsel for the Appellant stated that the reference has been filed u/s 55 of the Act. The learned Counsel for the Appellant, in order to make out a case that reference is maintainable, invited my attention to various provisions of this Act.

5. Section 55 of the Act is the provision for the removal of Mutwalli. Sub-section (1) of Section 55 of the Act deals with the power of the Board for the removal of the Mutwalli whereas Sub-section (2) of Section 55 of the Act is the provision for the aggrieved person to refer the matter to the tribunal against the order of removal passed under Sub-section (1) of this Section within a period of 90 days from the date of the order.

6. The establishment of Central Boards is provided u/s 10 of the Act. According to Section 10 of the Act, there shall be establishment in the Uttar Pradesh of two separate Boards to be called "Sunni Central Board" & "Sia Central Board" of Waqf. The constitution of the Sunni Central Board (hereinafter referred to as Board) and Sia Central Board are provided under Sections 11 and 12 of the Act respectively. Thereafter, Section 19 of the Act provides functions of the Board. One of the functions of the Board is provided in Sub-section (o) of Section 10 of the Act as to remove a Mutwalli or appoint a Mutwalli and to put the Mutwalli so

appointed in possession of the Waqf property under the provisions of the Act. The provision for registration of the waqf is contained in Chapter III of the Act. Sub-section (2) of Section 29 of the Act provides for moving an application for registration by the Mutwalli and on receipt of the application for registration under Sub-section (7) of Section 29, the Board has been given power to make such enquiries as he thinks fit in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by a person other than a person administering the waqf property, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf properly and shall, after affording him a reasonable opportunity of being heard, pass such orders as it may deem fit. Under Sub-section (8) of this section, any aggrieved person, by an order of the Board under Sub-section (7) may, be application within 90 days from the date of that order, refer the dispute to the Tribunal which shall give its decision thereon. According to this provision, if an application for registration is moved by a person, who is administering the property and he is also claiming himself to be Mutwalli, the Board is required to make necessary enquiries about the genuineness and the validity of the application and the correctness of any particular therein. But where the waqf property is being administered by some other person, in that case, on receipt of the application, the Board is required, before registering the waqf, to give notice of the application to the person administering the waqf properly. After affording him a reasonable opportunity of being heard, it can pass such orders as it may deem fit. In this case, the application was moved for registration by opposite party No. 1 in the capacity of a Mutwalli. According to him, he was himself the person administering the waqf property. There was no other person, who was administering the waqf property. Therefore, it appears that without issuing any notice to any person, the Board passed the orders to register it as Waqf Alal Aulad with the name of Nawab Sher as Mutwalli. Once the Waqf is registered with the name of any person as Mutwalli, the Board has also power to pass the order of his removal. The power of removal of Mutwalli is given u/s 55 of the Act. It provides certain conditions for the removal of a Mutwalli. Section 55 of the Act is not meant to adjudicate the dispute regarding right of Mutwalli between the parties. In the instant case, no ground as contained in Section 55 of the Act has been set forth for the removal of Mutwalli and the only ground alleged in this case is that the Applicant Abdul Gafoor is the Mutwalli according to the terms of the waqf-deed and not Nawab Sher. Therefore, he should be appointed as Mutwalli in place of Nawab Sher, the O.P. No. 1. Such a dispute is not contemplated u/s 55 of the Act. This section is confined only to a case where the waqf is registered with the name of certain Mutwalli and after the registration, if the disqualification or the conditions as provided u/s 55 happens, the Mutwalli will be liable for removal by the Board. In such circumstances, if any order is passed, the aggrieved person has been given a right to refer the matter to the Tribunal within 90 days of the communication of the order of the removal under Sub-section (2) of this Section. Therefore, the present case, in my opinion, is not covered by Section 55(2) of

the Act.

7. This Act has made certain provisions to refer the matter to the Tribunal. For instance, there is Section 8 of the Act, which makes the provision to refer the dispute for adjudication to the Tribunal. In case any dispute arises whether a particular property is Waqf property or not or whether a waqf is a Shia Waqf or Sunni Waqf, the Board concerned or Mutwalli of the waqf of any person interested therein, may, in accordance with the provisions of the Act, refer the dispute for adjudication to the Tribunal. Similarly, there are also other provisions for making reference to the Tribunal. But, there appears to be no specific provision to refer any dispute of Mutwallis for adjudication to the Tribunal.

8. As I have held above, Section 55(2) of the Act is not applicable in the present case and as there is no specific provision to refer the dispute of Mutwalli for adjudication to Tribunal, the present reference is not maintainable.

9. In the result, the revision fails and is accordingly dismissed without any order as to costs.