

Khalid Perwez Vs. the State of West Bengal and ors.

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Court : Kolkata

Decided On : Oct-04-2010

Judge : Jayanta Kumar Biswas, J.

Appeal No. : WP No. 1229 of 2010

Appellant : Khalid Perwez

Respondent : The State of West Bengal and ors.

Judgement :

The Court :- After hearing counsel for the parties and considering the case stated in the petition, I am of the view that it will be appropriate to dispose of the art.226 giving suitable directions.

The petitioner claims that claiming right to office of mutawalli in terms of the wakfname he submitted an application to the Board in 2003, and that his application has not yet been disposed of. Counsel for the petitioner has argued that after illegally taking direct management of the wakf in 2004 the Board published the requisite notification only in, 2009 and that the five-year term specified by s.65 of the Wakf Act, 1995 having already expired, today the Board cannot keep the management of the wakf.

According to him the petitioner, entitled to the office of mutawalli, has acquired a right to act as the mutawalli of the wakf. Counsel for the Board has submitted that the order under which the Board assumed direct management of the wakf was

never challenged by the petitioner. His further submission is that the Board has already decided to release the management of the wakf, and that applications submitted by several persons claiming right to office of mutawalli of the wakf are yet to be decided.

Counsel for the State has submitted that previously only one person was holding the office of mutawalli, and that the petitioner never claimed right to office. According to him no order should be made appointing anyone to the office of mutwalli until the Board decides all the applications submitted to it.

In terms of provisions of s.32(2)(g) of the Wakf Act, 1995 the Board is empowered to appoint and remove mutawallis in accordance with provisions of the Act. Hence the petitioners claim to office of mutawalli of the wakf, in my opinion, can be decided by the Board even though, as submitted by counsel, the petitioner has requested the Board only to record his appointment under the wakfname as the mutawalli of the wakf. It is to be noted that several other persons have submitted applications claiming right to office of mutawalli of the wakf. In my opinion, it will be appropriate to direct the Board to decide claims of all the persons. True it is that in view of the provisions of s.65 direct management of the wakf cannot be kept by the Board for a period exceeding five years from the date of takingover of the management.

Under the circumstances, I am of the view that the Board should decide who is to manage the affairs of the wakf, until it is decided who is entitled to office of mutawalli of the wakf. For these reasons, I dispose of the petition ordering as follows. Claims of all persons to the office of mutually of the wakf shall be decided by the Board within eight weeks from the date of communication of this order by counsel for the Board. In the process the Board shall make necessary enquiry, record proceedings and hear all concerned.

Reasoned decision shall be communicated to all concerned immediately. The Board shall take necessary steps for management of the affairs of the wakf during pendency of the proceeding according to the wakfname.

No costs. Certified xerox.

