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Court : Chhattisgarh

Decided On : Feb-16-2012

Judge : N.K. Agarwal

Appeal No. : Civil Revision No 142 of 2011

Appellant : Bashir Rizvi

Respondent : Chhattisgarh State Waqf Board and Another

Judgement :

(CIVIL REVISION U/S 89 (3) OF WAQF ACT)

1. Instant revision filed by the petitioner under proviso to Section 83 (9) of the Wakf Act, 1995 (for short 'the Act') is directed against the order dated 27.07.2011 passed by the Presiding Officer, Chhattisgarh State Wakf Tribunal, Raipur (henceforth "the Wakf Tribunal") in MJC (Civil) No.02/2011.

2. The petitioner filed an application before the Wakf Tribunal under Section 83 (2) of the Act, 1995 before the Wakf Tribunal claiming himself to be lifetime Mutawalli of Syed Baba Hazrat Fateshah, Raipur, for annulling election of respondent No.2 as Mutawalli.

3. The Tribunal vide order impugned dismissed the petitioner's application. Hence, this revision.

4. Shri H.B. Agrawal, learned Senior Counsel appearing for the petitioner would submit: the petitioner was appointed as lifetime Mutawalli according to bye-laws of the Wakf and respondent No.1 is not authorised under the Act to remove him and elect respondent No.2 as Mutawalli de hors the provision contained in Section 67 of the Act. It was further argued: the election was held without notice to the petitioner and respondent No.1 has also illegally changed the registration number of trust. The Wakf Tribunal, without going into above aspect of the matter, has erroneously dismissed the petitioner's application, and therefore, this revision deserves to be allowed.

5. On the other hand, Shri Prateek Sharma and Shri Sarfaraj Khan, learned counsel appearing for the respondents, vehemently argued: the alleged bye-laws of the Wakf were not approved bye-laws; earlier vide order dated 14.12.1999, a Managing Committee of 5 persons including the petitioner was appointed by the M.P.Wakf Board for a period of 3 years; during the above period, the petitioner filed a writ petition, being W.P.No.126/2002, claiming himself to be entitled to work as Mutawalli upto 5.11.2002, that, in terms of order dated 14.12.1999 passed by the Wakf Board. Somehow or other, the petitioner became successful in getting new 5 member Managing Committee including the petitioner appointed by the M.P.Wakf Board, vide order dated 15.06.2002, which period is also over. The election was held after noticing every person interested including the petitioner and the application filed by the petitioner before the Wakf Tribunal was devoid of merit and was rightly dismissed and there is also no merit in the instant revision.

6. I have heard learned counsel for the parties and perused the paper book.

7. Section 18 of the Act reads as under:

"18. Committees of the Board. --- (1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.

(2) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

8. Section 18 of the Act empowers the Board to constitute Committees for supervision of Wakfs. The Constitution functions, duties and the term of office for such Committees has to be determined by the Board from time to time. What is important is that not only is the composition of the Committees and the nature of the functions and duties assigned to them left to be determined by the Board but even the term of its office of such Committees is left to the discretion of the Board.

9. Admittedly, vide order dated 14.12.1999, a Managing Committee of 5 persons including the petitioner was appointed by the M.P. Wakf Board for a fixed period of 3 years and thereafter, again a new Managing Committee comprising of 5 persons including the petitioner was appointed vide order dated 15.06.2002 for a fixed term of five years.

10. A bare perusal of orders dated 14.12.1999 and 15.06.2002 passed by the Wakf Board, in the light of petitioner's pleading and prayer made in W.P.No. 126/2002 would reveal, the Managing Committee comprising the petitioner and other members was constituted by respondent No.1 under Section 18 of the Act and not under Section 67 of the Act. In exercise of the said power, when the Board constitutes a Committee, it is open to it to provide a specific term of office during which it would function.

11. Therefore, on the face, it is crystal clear, the petitioner was appointed as Mutawalli of the Managing Committee by respondent - Wakf Board in exercise of its statutory powers vested in the Board under Section 18 of the Act.

12. The High Court of Karnataka, in the case of Janab Shahstry Khaja-Hussain v. Karnataka Board of Wakf and another, 1997, All India High Court Cases (A.I.H.C.) 4146, has held in para 5 of its judgment as under:

"5. I have given my anxious consideration to the submissions made at the bar. Section 16 of the Act (Section 18 in the Act of 1995), empowers the Board to constitute Committees for supervision of Wakfs. The Constitution functions, duties

and the term of office for such Committees has to be determined by the Board from time to time. What is import is that not only is the composition of the Committees and the nature of the functions and duties assigned to them left to be determined by the Board but even the term of it office of such Committees is left to the discretion of the Board. In exercise of the said power when the Board constitutes a Committee it is open to it to provide a specific terms of office during which it would function or make any such appointment subject to its pleasure.
....."

13. So far as registration of Wakf in Chhattisgarh is concerned, the Chhattisgarh Wakf Board was constituted under Section 13 (1) of the Act. As per Section 36 of the Act, every Wakf, whether created before or after the commencement of this Act, shall be registered at the Office of the Board. Therefore, there is nothing wrong in registration of the Wakf in the State of Chhattisgarh at the Office of the Chhattisgarh Wakf Board.

14. At one point of time, the petitioner prayed for his continuance as Mutawalli for a period of 3 years in terms of order dated 14.12.1999 passed by the Wakf Board. Now, he is estopped from changing his stand. Moreover, the bye-laws are not approved bye-laws. Wakf deed was also not filed. The Wakf Tribunal, after discussing in detail every aspect of the matter, has dismissed the petitioner's application.

15. In view of the fact that the orders, on the face, appear to be passed by the Wakf Board under Section 18 of the Act, I do not find any jurisdictional illegality committed by the Tribunal in dismissing the petitioner's application.

16. The civil revision, therefore, fails and is hereby dismissed.

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