

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA
ON THE 26th OF JULY, 2024**

CIVIL REVISION No. 667 of 2023

*(HUSSAIN TEKRI SHARIF WAQF MANAGING COMMITTEE
Vs
VASI JAMA BAIG S/O PARVEZ AKHTAR AND ANOTHER)*

Appearance:

***(SHRI POURUSH RANKA – ADVOCATE FOR THE PETITIONER)
(SHRI ABHISHEK TUGNAWAT – ADVOCATE FOR RESPONDENT NO.1)
(SHRI DANIEL ROBERT – ADVOCATE FOR RESPONDENT NO.2)***

ORDER

1. Petitioner has preferred this civil revision under Section 83(9) of the WAQF Act, 1995 against the impugned order dated 28.8.2023 passed by the M.P. Waqf Tribunal, Bhopal in Appeal No.4/2022 by its President and Member.

2. Brief facts of the case are that the petitioner-Committee has been constituted by exercising its powers under the Waqf Act, 1995 for a period of three years. Respondent No.1 was appointed as Executive Officer vide order dated 5.2.2020. Previous Mutavali Late Shri Sarvar Akhtar has died on 10.11.2021. Then M.P. Waqf Board has appointed the present applicant Committee as Mutavali of Hussain Tekri Sharif for managing the affairs of the Committee. Respondent No.2 has also conducted a detailed enquiry through the SDM, Jaora into the affairs of

Waqf Committee during the tenure of previous Mutavali. The Committee has found the huge financial irregularities by the family members of the respondent No.1 and income of the Waqf Board is diverted for the personal gains. Respondent No.2 after giving sufficient opportunity of hearing to respondent No.1, constituted a new Committee vide order dated 8.12.2021, by which they have cancelled the appointment of respondent No.1.

3. The respondent no.1/appellant Vasi Jama Baig filed an appeal under Section 38(7) of Wakf Act 1995 before the MP Wakf Tribunal Bhopal. During pendency of the appeal, the appellant has preferred an application under Order 1 Rule 10 read with Section 151 CPC which has been dismissed by lower appellate court and another application under Order 41 Rule 5 read with Section 151 CPC has been allowed and execution of order dated 20.1.2022 passed by Wakf Board has been stayed. Being aggrieved by the same, the appellant has preferred this civil revision.

4 Learned counsel for petitioner contended that the impugned order passed by the Wakf Tribunal is against law and fact and is illegal, perverse and arbitrary. The Wakf Tribunal has failed to consider that petitioner's committee has been appointed by respondent no. 2 and who is necessary and proper party in the appeal. New executive officer has been appointed by respondent no. 2, therefore, two executive officers cannot work in same wakf on the same post. Hence he prays that both

the impugned orders be set aside and Wakf tribunal be directed to implead the petitioner as respondent no. 2 in the pending appeal.

5 Per contra learned counsel for respondent no. 1 opposes the prayer by submitting that the impugned order passed by the below tribunal is just and proper and does not deserve for any interference.

6 Counsel for respondent no. 2 also opposes the prayer.

7 Both the parties heard at length and perused the documents filed by them.

8 From perusal of the impugned order and other documents it appears that petitioner was not made party in appeal pending before the MP Wakf Tribunal. MP Wakf Tribunal Bhopal himself vide order dated 8.12.2021 constituted a new management committee for management of Wakf Hussain Tekari Sharif Jaora. Ibrahim Khan has been removed from the post of CEO Wakf Hussain Tekari Sharif Jaora. The petitioner has been appointed new CEO for Wakf Hussain Tekari Sharif Jaora, therefore, petitioner appears to be proper and necessary party for adjudication of pending appeal pending before MP State Wakf Tribunal but the below tribunal has not considered all these aspect while considering the application under Order 1 Rule 10 CPC. Therefore, the impugned order for dismissal of the application under Order 1 Rule 10 read with Section 151 CPC is liable to be set aside.

9 So far as the another order under Order 41 Rule 5 CPC is concerned, it is very strange that petitioner's application for

impleadment as party has been dismissed but stay order has been passed. Therefore, the reasons assigned for allowing the application under Order 41 Rule 5 CPC appears to be not just and proper. No proper reason has been assigned which also deserves to be set aside.

10 Accordingly, this civil revision is allowed and the entire impugned order dated 28.8.2023 passed by the below tribunal is hereby set aside. Respondent No. 2 MP Wakf Board is directed to allow the application under Order 1 Rule 10 CPC filed by the petitioner and after hearing both the parties matter be decided on its merit without influencing any observation made by this court in this order.

(ANIL VERMA)
JUDGE

Trilok/-