

HIGH COURT OF MADHYA PRADESH : JABALPUR

SINGLE BENCH: J.K. MAHESHWARI, J.

CIVIL REVISION NO.377 OF 2009

Haji Abdul Aziz Ansari

vs

M.P. Wakf Board, Bhopal and another

Shri S.P. Tripathi, Advocate for petitioner.
Shri R.B. Patel, Advocate for respondent No.1.
Shri Ishtiyaque. Hussain, Advocate for respondent No.2.

CIVIL REVISION NO.393 OF 2009

Mubarak Ansari

vs

Haji Abdul Aziz Ansari and another

Shri Ishtiyaque Hussain , Advocate for petitioner.
Shri S.P. Tripathi, Advocate for respondent No.1.
Shri R.B. Patel, Advocate for respondent No.2.

ORDER
(13/10/2011)

In both these revisions, the order dated 31st of October, 2009 passed by the Wakf Tribunal is under challenged by both the parties, however, they are being decided by this common order.

2. As per order dated 5.10.2009 passed by the Wakf Board, a committee was appointed in exercise of powers conferred under Section 67 of the Wakf Act, 1995 (hereinafter referred to as "the Act") by which Mubarak Ansari was

appointed as Chairman of the said committee consist with 10 other members. The said order was challenged by Haji Abdul Aziz Ansari. By the order impugned Tribunal found that appellant was having no locus to challenge the order of supersession because he was not duly appointed *Mutawalli* of *Masjid* known as *Wakf Masjid Yasin, Katra, Rewa* (for short "the *Masjid*"). It has further been held that an opportunity of hearing is not required to be afforded to petitioner, but by the same order it is also held that appointment of the committee by the Board as per order dated 5.10.2009 is not fair and reasonable, therefore, order of appointment of committee was also set aside. Being aggrieved by the order dated 5.10.2009 and also of Tribunal, Haji Abdul Aziz Ansari filed CR No.377/09 and President of Committee Mubarak Ansari filed CR No.393/2009 as his committee was not recognised, raising common questions of law and facts for adjudication.

3. Shri S.P. Tripathi, learned counsel representing Haji Abdul Aziz Ansari contends that the *Masjid* was registered with Wakf from 1988 and *Kuvar Noshad* was the *Mutawalli*. The said *Masjid* was having no deed and instrument of Wakf. *Kuvar Noshad* died on 12.04.1996 since then petitioner is working as *Mutawalli* and managing the affairs of Wakf and property of *Masjid*. He is also paying *Chanda Nigrani* to the Board annually in view of provisions contained in Section 72 of the Act. Thus, by virtue of managing the affairs of said *Masjid* he has become the *Mutawalli* as defined under Section 3(i) of the Act. The Tribunal committed an error by recording the finding that applicant was not appointed as *Mutawalli*, however, having no right to challenge the appointment of the committee. He has placed reliance on the judgment of this Court in the case of

Jardar Ali s/o Ban Ali and others vs. Wakf Intajamiyan Committee, Khandwa and Ors. 2000 (2) MPLJ Short Note 25, and urged that if petitioner is working as *Mutawalli* since last more than 13 years, he cannot be removed without following the due procedure as specified under Section 64 of the Act and affording reasonable opportunity of hearing, however, finding as recorded by Tribunal is unsustainable in law. It is further contended that appointment of committee headed by Chairman Mubarak Ansari is unfair and unreasonable as apparent from the findings of the Tribunal, however, such committee cannot be continued as *Mutawalli* to look after the affairs of said *Masjid*, however, Tribunal has rightly reduced the period of appointment of the committee and directed the appointment of fresh *Mutawalli* or committee as the case may be.

4. Shri Ishtiyag Hussain, learned counsel representing Janab Mubarak Ansari has strenuously urged that Janab Haji Abdul Aziz Ansari has no *locus* to challenge the appointment of committee constituted by Board because he was not duly appointed as *Mutawalli*. It is further contended that as per Section 63 of the Act, Board is having power to appoint *Mutawalli* or committee. As per Section 67 if such appointment is directed by Board in exercise of powers under Section 63 and 67 of the Act, appointing a committee, it cannot be said to be arbitrary or unreasonable. Placing reliance on two judgments of this Court in the case of **Haji Moosakhan and others Vs. M.P. Wakf Board and others 1995 MPLJ 463** and **Syed Masood Ali Vs. M.P. Wakf Board 2009 (4) MPLJ 646**, it is submitted that no opportunity of hearing deserves to be granted to Haji Abdul Aziz Ansari as he was not a validly appointed *Mutawalli*. It is also submitted that

if appointment of Mutawalli was made by Board in exercise of powers as conferred under the law, the said committee may be continued to work for the period so specified.

5. Learned counsel appearing for Wakf Board contends that order dated 5.10.2009 appointing a committee has been passed by Wakf Board in exercise of powers under Section 63 of the Act because some complaints regarding financial irregularities were received along with the letter of Collector, District-Rewa against Haji Abdul Aziz Ansari, however the order of appointment of new committee is in the interest of wakf and also of community. It is further submitted that Janab Haji Abdul Aziz Ansari has not been appointed as a *Mutawalli* by the Board, however, assuming the vacancy the order of appointment of the committee has rightly been passed.

6. After having heard learned counsel appearing on behalf of parties and on perusal of record, it is not in dispute that the *Masjid was* registered with Wakf in the year 1988 and Kuvar Noshad was the *Mutawalli* of said Masjid. Kuvar Noshad died on 12.04.96 and since then Janab Haji Abdul Aziz Ansari was managing the affairs of the *Masjid* till passing the orders dated 2.9.09 and 5.10.09. It is also not in dispute that Wakf Board was receiving annual contribution from Janab Haji Abdul Aziz Ansari raising demand by every year which was deposited by him. On perusal of record, it reveals that some complaints regarding financial irregularities and mis-management of said *Masjid* were submitted before the Collector whereupon reply was sought for and the order dated 2nd September, 2009 was passed appointing one *Tahsildar* as a receiver. A copy of the said order was also sent to Board, however, in

consequence thereto the Wakf Board has passed the order on 5.10.09 appointing a committee headed by Janab Mubarak Ansari. In the said fact, it is clear that action has been taken against Janab Haji Abdul Aziz Ansari on account of allegation of financial irregularities and mis-management of *Masjid*. This Court while considering the issue of removal of *Mutawalli* without holding an enquiry in the case of **Jardar Ali (supra)** held that even if appointment is prior to commencement of the Wakf Act, 1995, the principle of natural justice has to be observed prior to displacement of person. As the question has been posed by other side that Haji Abdul Aziz Ansari does not fall within the definition of *Mutawalli*, however, an opportunity of hearing is not required to be afforded to him. As he was not appointed as *Mutawalli*, however, on appointment of fresh committee, he is having no *locus* to challenge the said order of appointment.

7. The argument so advanced is required to be dealt with in the context of definition of *Mutawalli* and in the context of power to appoint a *Mutawalli* by the Wakf Board. To deal with the said argument, the definition of *Mutawalli* is required to be referred which is reproduced as under :-

“3(i) “mutawalli” means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property.

8. On going through the aforesaid provisions, it is apparent that if any vacancy in the office of *Mutawalli* of a Wakf arises and no one is appointed under the deed or instrument of a Wakf or where the right of any person to act

as *Mutawalli* is disputed, the Board is having power to appoint any person to act as *Mutawalli* for such period and on such conditions as it may think fit. In the said context, no other provision has been shown in the matter of appointment of *Mutawalli*. In the facts of the present case, Kuvar Noshad was the Mutawalli of the said Masjid who died on 12.04.96, since then Abdul Aziz Ansari is discharging the functions of Mutawalli and managing the affairs and property of the Masjid. He is paying annual contribution on raising such demand by the Board. The documents thereof are available on record however by unrebutted facts, he can be treated as a Mutwalli appointed verbally of the said Masjid and discharging his duties continuously since last more than 13 years. Thus, in the opinion of this court he can be called as Mutawalli as per the said definition.

9. In the present case, the Board by passing an order dated 5.10.2009 appointed a committee. The said order of appointment was passed because a group of the person submitted an application to the Collector indicating some irregularities of the Mutawalli. On such application, by issuing a notice reply was filed by Haji Abdul Aziz Ansari thereafter the order was passed by the Dy. Collector on behalf of the Collector District Rewa on 2nd September, 2009 appointing Mr. Balveer Raman Singh, Tehsildar as a receiver of the said Masjid. Copy of the order has been sent to the Wakf Board. The Board on receiving such order exercising power under Section 67 of the Act appointed a committee. Thus, by appointment of a new committee by the Board Haji Abdul Aziz Ansari was removed. As per section 64 of the Act, procedure for removal of Mutawalli has been specified which is relevant for the purpose of this case, however it is reproduced as under:-

64. Removal of mutawalli :- (1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli -

- (a) has been convicted more than once of an offence punishable under section 61; or
 - (b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
 - (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or
 - (d) is an undischarged insolvent; or
 - (e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or
 - (f) is employed as a paid legal practitioner on behalf of, or against, the wakf; or
 - (g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or
 - (h) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or
 - (i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication or funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or
 - (j) willfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;
 - (k) misappropriates or fraudulently deals with the property of the wakf.
- (2) The removal of a person from the office of the mutawalli

shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a *sajjadanashin*.

- (3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.
- (4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.
- (5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry;

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

- (6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.
- (7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer duly authorized in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property.
- (8) A mutawalli of a wakf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that wakf for a period of five years from the date of such removal."

10. From the bare reading of the aforesaid, it is clear that the Wakf may remove a Mutawalli from his office if there are allegation as specified under sub clause (1)(a) to (k). It further appears that prior to passing an order of removal of a Mutawalli an enquiry into the matter in a manner prescribed is to be held and the decision may be taken by a majority of not less than 2/3rd members of the Board, and he cannot be continued as a Mutawalli up to 5 years if removed once, and person aggrieved may prefer an appeal. In the facts of the present case, the order of appointment of the committee was passed pursuant to the order of Collector dated 2nd September, 2010 appointing a receiver on a complaint received to him. The said power can be exercised by the Collector after approval of the Board as enumerated under Section 28 of the Act. It is true that there are certain allegations against Haji Abdul Aziz Ansari , however as contemplated under sub-section (3) of Section 64 of the Act an inquiry ought to be conducted prior to passing an order of removal or otherwise the recourse as specified under sub-section (5) may be taken. The Board ignoring the aforesaid procedure exercising the power under Section 67 of the Act appointed a committee. In such circumstances the petitioner may be a person aggrieved and having locus to challenge the appointment of the committee and its management. It is to be further held that the action as taken by the Board or by the Collector is not in conformity to the provisions of Section 28, 64 (3), (5) and (6) of the Act and also against the procedure prescribed.

11. Learned counsel representing the Wakf Board laid much emphasis that the power has been exercised by the Board under Section 63 of the Act, which

confers power of appointment of Mutawalli on the Board. To deal with the said argument, Section 63 of the Act is required to be quoted which is reproduced as thus :

“63. Power to appoint mutawallis in certain cases – When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.”

Bare reading of the said, it is apparent that when there is a vacancy in the office of Mutawalli of a Wakf and there is no one for appointment under the terms of the deed and instrument or where the right of any person to act as mutawalli is disputed then the Board may appoint a person to act as mutawalli for such period and on such conditions as it may think fit. In the context of the said provision, it is contended that in the present case, the right of Haji Abdul Aziz Ansari to act as Mutawalli is in dispute, however the Board has rightly exercised the power appointing a committee for managing the affairs of the Masjid. In the opinion of this Court, there is no substance in the said argument and it is liable to be repelled because the action against the Mutawalli has been taken on account of an application submitted by a group of the persons showing mismanagement, misfeasance, malfeasance, misapplication of the funds showing breach of trust. Thus in the facts of the present case, it is apparent that Haji Abdul Aziz Ansari was not removed because his right to act as Mutwalli was in dispute.

12. By the impugned order Tribunal has recorded the finding that appointment of committee without due publication in newspaper is not fair and

reasonable. In the said context the provisions of Section 67 which deals with the supervision and supersession of committee of management is relevant which reproduced thus :-

67. Supervision and supersession of committee of management. - (1) Whenever the supervision or management of a wakf is vested in any committee appointed by the continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the wakf, whichever is earlier;

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time;

Provided further that if the Board is satisfied that any scheme for the management of a wakf by a committee is in consistent with any provision of this Act or of any rule made thereunder or with the directions of the wakf, it may, at any time modify the scheme in such manner as my be necessary to bring it in conformity with the directions of the wakf or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee referred to in sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, an, on such supersession, any direction of the wakf, in so far as it relates to the constitution of the committee shall cease to have any force;

Provided that the Board shall, before making any order superseding any committee issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakf.

(4) Any order made by the Board under sub-section (2) shall be final :

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall whenever it supersedes any committee under sub-section (2) constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the wakf, and every such order for the removal of any member shall be served upon him by registered post;

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final."

13. Bare reading of the aforesaid, it is apparent that whenever the supervision or management of a wakf is vested in any committee appointed by the wakf, it may continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the Board whichever is earlier on having satisfaction that the action of the committee is inconsistent to the scheme for the management of the Wakf. The power of Section 67 of the Act can be exercised for supervision of a committee. Thus, as per the language of the said provision it can safely be accepted that the Board is having a power to appoint a committee for management of the affairs of the Wakf and as per the definition specified under Section 3(i), it may be treated as a Mutawalli, however, the power is vested with the Board to appoint a committee. Under Section 65 of the Act, the Wakf is having a power to take the direct management if there is a mismanagement, misfeasance, malfeasance, misapplication and also that function of the Wakf is inconsistent to the object of the scheme of the Wakf and deed or instrument of the said Wakf. The State Government is also having power of removal of Mutawalli as conferred by Section 66 of the Act. In the scheme of the Act, it is clear that if the Wakf is registered it may function through Mutawalli as defined under Section 3(i) of the Act. In case of mis-management, action may be taken for removal as per the procedure prescribed under Section 64 of the Act. The Board may directly take the management as per Section 65 of the Act while the power of supervision and supersession of the committee is with the Board as per Section 67 of the Act.

14. In view of the foregoing discussion, it is to be examined whether the removal of Haji Abdul Aziz Ansari on the allegation as revealed from the record is in accordance to law and the appointment of the committee without having

any order of removal or without taking recourse as specified under sub-section (5) of Section 64 of the Act is justifiable. In the present case the committee was appointed as per order dated 5.10.2009 and by virtue of such order Haji Abdul Aziz Ansari has been superseded though there are certain allegations of mismanagement, misfeasance, malfeasance and financial irregularities. In the opinion of this Court, he cannot be removed; and without his removal the order of appointment of the committee by the Board is not in accordance to law.

15. In the facts of the present case, it is not out of place to observe here that if any application has been filed before the Board disputing the right of Haji Abdul Aziz Ansari to act as Mutawalli, the Board is at liberty to take the recourse as specified under Section 63 of the Act otherwise for his removal the action is required to be taken by following the procedure as prescribed under Section 64 of the Act and thereafter only the appointment of the committee may be ordered by the Board.

16. In view of the foregoing discussion, the order dated 5.10.2009 appointing a committee by the Board and the order impugned dated 31.10.2009 passed by the Wakf Tribunal are hereby set aside. The Board is at liberty to take recourse of law in view of the foregoing observations. Both the revision petitions stand disposed of accordingly. In the facts and circumstances of the case, parties are directed to bear their own costs.

(J.K. Maheshwari)
Judge.

JK.