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(2016) 1 ARC 667 : **(2016) 34 LCD 219** : (2016) 131 RD 103

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

MOHSIN RAZA — Appellant

Vs.

SHIA CENTRAL BOARD OF WAKFS U.P. AND OTHERS — Respondent

(Before : D.Y. Chandrachud, C.J. and S.N. Shukla, J.)

Misc. Bench No. 10300 of 2015

Decided on : 04-11-2015

- Wakf Act, 1995 - Section 25(2), Section 27, Section 32, Section 32(1), Section 32(2)(g), Section 4, Section 5, Section 63, Section 64

A. Waqf Act, 1995 — Section 32(1), proviso — Board's Duty and Powers —
The Board has general superintendence over auqafs, ensuring proper maintenance, control, administration, and application of income. The Board must conform to the waqif's directions, the waqf's purposes, and sanctioned Muslim law usage/custom. Boards cannot act at variance with their own earlier decisions without revoking or modifying them. (Paras 5, 6, 7)

B. Waqf Act, 1995 — Section 32(2)(g) and Section 63 — Appointment and Removal of Mutawallis — The power to appoint and remove Mutawallis is vested in the Board, not its individual members, and must be exercised in accordance with the Act's provisions. This power is expressly not delegable. The Board can appoint a Mutawalli if there's a vacancy, no one is designated by the waqf deed, or if the right to act as Mutawalli is disputed. (Para 5)

C. Waqf Act, 1995 — Section 25(2) — Chief Executive Officer (CEO) — The CEO, in exercising powers, must conform to the waqf deed's directions, the waqf's purpose, and sanctioned Muslim law usage/custom. (Para 5)

D. Mutawalli — Appointment — Decisions regarding Mutawalli appointment must consider the welfare of the waqf and its proper administration. The Board cannot act without valid reasons, justification, or on grounds extraneous to the principles of the waqif's intent, and the usage and customs governing the school of Muslim law. (Paras 7, 9)

E. Orders — Validity — An order passed by the Board that contradicts prior un-revoked decisions without proper justification or consideration of relevant factors, such as the welfare of the waqfs and proper administration, is unsustainable and liable to be quashed. (Paras 6, 7, 9, 11)

Counsel for Appearing Parties

Rakesh Pathak and Amit Kumar Awasthi, for the Appellant; Aslam Khan and Saiyed Afzal Abbas Rizvi, for the Respondent

Final Result : Disposed Off

ORDER

1. The challenge in these proceedings is to an order dated 30 September 2015 passed by the Shia Central Board of Wakfs¹, the first respondent, and to a communication dated 14 October 2015 issued by the Administrative Officer by which the third respondent has been designated as a Mutawalli of the Waqf Imambada and Karbala Meer Raza Ali (bearing registration number I-2173).

2. On 18 October 1937, Smt. Alia Begum, wife of Haji Syaed Ashiq Hussain, who was a resident of Qasba Pargana and Tehsil Safipur, District Unnao, executed a Waqf Alal-Aulad which was presented for registration before the Sub Registrar and was duly registered. The waqf was registered with the first respondent on 31 March 2007. Under the terms of the waqf deed only a member of the family can be appointed as Mutawalli. From the record of these proceedings, it emerges that there are two waqfs:

- "(i) Waqf Imambada and Karbala Meer Raza Ali (bearing registration number I-2173); and
- (ii) Waqf Misammat Alia Begum (bearing registration number I-2757)."

3. On 3 November 2011, the Board issued an order to the effect that it is the duty of the Board to ensure that a Mutawalli is appointed in accordance with the provisions contained in the waqfnama. The order recites that since there is no waqf deed in respect of Waqf Imambada and Karbala Meer Raza Ali, it was not appropriate to appoint a separate Mutawalli in respect of the said waqf. Hence, a decision was taken that in the interest of the waqf and security, it was appropriate that Waqf Imambada and Karbala Meer Raza Ali (I-2173) and Waqf Misammat Alia Begum (I-2757) should be governed by one and the same Mutawalli in future. The third respondent, Mehndi Miya, submitted an application for

being appointed as a Mutawalli of Waqf Imambada and Karbala Meer Raza Ali in March 2015. On 6 April 2015, an order was passed by the first respondent rejecting the application. Reliance was placed on the earlier order dated 3 November 2011. While doing so, it was opined that it was appropriate in the interest of the waqf that the petitioner, whose term as Mutawalli had ended, should be appointed for a further period of five years. On 6 April 2015, in implementation of its order, the petitioner came to be appointed for a period of five years as a Mutawalli in respect of both Waqf Misammat Alia Begum (I-2757) and Waqf Imambada and Karbala Meer Raza Ali (I-2173).

4. After this exercise had been completed, an order was passed by the first respondent on 30 September 2015. The order states that since both the waqfs are registered separately in the records of the Board, it was appropriate that they are administered separately as before. Accordingly, a decision was taken to appoint the third respondent as Mutawalli on the ground that his father was, during his lifetime, acting as a caretaker of the properties of the waqf. Accordingly, it was clarified that the petitioner would continue, in pursuance of the earlier directions of the Board, as Mutawalli of Waqf Misammat Alia Begum (I-2757) for a period of five years. This order and the communication dated 14 October 2015 have been called into question.

5. Section 32(1) of the Waqf Act, 1995 provides that the general superintendence of all auqafs in a State shall vest in the Board and that it shall be the duty of the Board to exercise its powers so as to ensure that the auqafs under its superintendence are properly maintained, controlled and administered and the income is duly applied to the objects and the purposes for which the auqafs were created or intended. Under the proviso to Sub-section (1) of Section 32, the Board is required to act in conformity with the directions of the waqif, the purposes of the waqf and any usage or custom of the waqf sanctioned by the school of Muslim law to which the waqf belongs. Section 32(2)(g) is the power to appoint and remove Mutawallis in accordance with the provisions of the Act. This power which is vested in the Board has to be exercised by the Board itself since Section 27 which provides for a delegation of powers of the Board specifically carves out the powers and functions exercisable, inter alia, under clause (g) of sub-section (2) of Section 32. Section 63 empowers the Board to appoint Mutawallis when there is a vacancy in the office and there is no one to be appointed under the terms of the deed of waqf and when the right of any person to act as Mutawalli is disputed. Section 25(2) also contains an indication to the effect that the Chief Executive Officer of the Board, while exercising his powers under sub-section (1), shall act in conformity with the directions in the deed of the waqf and have due regard to the purpose of the waqf as well as usage and customs as are sanctioned by the school of Muslim law to which the waqf belongs.

6. The record before the Court indicates that a decision was taken on 3 November 2011 to the effect that both Waqf Imambada and Karbala Meer Raza Ali (I-2173) and Waqf Misammat Alia Begum (I-2757) should be administered by one person having due regard to the interest of the waqfs and the need to secure the properties of the trust of the waqfs.

The order dated 3 November 2011 has been referred to in a subsequent decision dated 6 April 2015, rejecting the application by the third respondent for being appointed as Mutawalli of Waqf Imambada and Karbala Meer Raza Ali (I-2173). In fact, it was on that basis that the application submitted by the third respondent was rejected and a decision was taken to appoint the petitioner as a Mutawalli of both the waqfs on 6 April 2015 for a period of five years. However on 30 September 2015, the Board acted at variance to its own earlier decisions, inter alia, dated 3 November 2011 and 6 April 2015 by appointing the third respondent as Mutawalli of Waqf Imambada and Karbala Meer Raza Ali (I-2173). Neither have the earlier decisions been revoked or cancelled. The decision of the Board dated 30 September 2015 does not remove the petitioner as Mutawalli which power is purely vested in the Board under Section 64 of the Act and is exercisable for specified reasons.

7. In this background, the grievance of the petitioner has substance because without revoking or modifying the earlier decisions of 3 November 2011 and 6 April 2015, the first respondent could not have proceeded to appoint the third respondent as Mutawalli. The only basis is that the Board had decided that both the waqfs should be administered separately and that the third respondent, who was son of an erstwhile caretaker, should be appointed as Mutawalli of Waqf Imambada and Karbala Meer Raza Ali (I-2173). Such decisions have been entrusted to the jurisdiction of the first respondent for the reason that the registration of the properties of the waqf should be carried out in a manner consistent with the intent of the donor and the usage and customs governing the school of Muslim law to which the waqf relates. These considerations have evidently not been borne in mind. The power which is vested in the Board could not have been exercised without any reason and justification and on grounds extraneous to the principles which have been set out above.

8. It has been submitted on behalf of the first and third respondents that both the waqfs owe their origin to an independent pedigree. It has been urged that Waqf Misammatt Alia Begum (I-2757) is a Waqf Alal-Aulad under which only a member of the family can act as a Mutawalli. On the other hand, it has been submitted that Waqf Imambada and Karbala Meer Raza Ali (I-2173) was registered in pursuance of a survey which was conducted under Sections 4 and 5 and the waqf was registered on 17 May 1989.

9. The issue as to whether both the waqfs have a separate and independent existence, whether the properties of the two waqfs are separately identified and, hence, whether there were sufficient or valid reasons for revoking the earlier decision which was taken on 3 November 2011 to the effect that both the waqfs should be administered by the same Mutawalli are all matters which should have been considered by the first respondent if it were to revoke its earlier decision. None of these factors have been borne in mind. Moreover, we find from the record that there has been absolutely no consideration of the welfare of the waqfs and need for proper administration.

10. On behalf of the third respondent, it was urged by the learned Senior Counsel that the

earlier orders dated 3 November 2011 and 6 April 2015 were passed by a single member of the Board and would be regarded non est and as being void. As we have noted from the record, the Board has itself proceeded on the basis that the earlier orders were passed by the Board. However, since we leave it open to the Board to consider all aspects of the matter. We clarify that this issue is also kept open to be considered by the first respondent in appropriate proceedings.

11. In this view of the matter, the impugned orders dated 30 September 2015 and 14 October 2015 are unsustainable and are accordingly quashed and set aside. However, we clarify that this would not preclude the first respondent from exercising its powers having due regard to the observations contained in this judgment and in a manner consistent with the provisions of law which have been indicated above. Any such decision, it is needless to add, would be arrived at after furnishing all the contesting parties including the petitioner, an opportunity of being heard.

12. The petition is, accordingly, disposed of. There shall be no order as to costs.

¹Board