

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

WRIT APPEAL No. 782 of 2023

Between:

Masjid-A-Noor Committee,
Gopavaram Village, Proddatur Mandal,
YSR Kadapa District,
Rep. by its President Sri Gagguturu Mastan,
S/o Gangulu, aged about 46 years, Muslim,
Resident of D.No.2/120, Gopavaram Village,
Proddatur Mandal, YSR Kadapa District.

...Appellant

Versus

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Minorities Welfare Department,
Secretariat, Velagapudi,
Amaravathi & eleven others.

...Respondents

Counsel for the Appellant	: Sri Syed Kaleemulla
Counsel for Respondent No.1	: Government Pleader for Minorities Welfare Department
Counsel for Respondents 2 & 3	: Sri Mohammed Gayasuddin, Learned Standing Counsel for A.P. State Waqf Board
Counsel for Respondents 4 & 5	: Sri S. Karimulla
Counsel for Respondents 6 & 7	: Ms. Bandaru Radhika
Counsel for Respondents 8 & 9	: Sri Shaik Rajak
Counsel for Respondents 10 & 11	: Sri Shaik Rafi

Counsel for the 12th Respondent : --

JUDGMENT

Dt:10.10.2023

(per Hon'ble Sri Justice R.Raghunandan Rao)

Heard Sri Syed Kaleemulla, learned counsel for the appellant, the learned Government Pleader for Minorities Welfare Department, appearing for respondent No.1, Sri Mohammed Gayasuddin, Learned Standing Counsel for A.P. State Wakf Board, appearing for respondents 2 and 3, Sri S. Karimulla, learned counsel appearing for respondent Nos.4 and 5, Ms. Bandaru Radhika, learned counsel appearing for respondent Nos.6 & 7, Sri Shaik Rajak, learned counsel appearing for respondent Nos.8 & 9 and Sri Shaik Rafi, learned counsel appearing for respondent Nos.10 and 11.

2. The case of the appellant is that it is a Public Society which had been set up to establish a Mosque for Muslim Dudekula Community in Gopavaram village. The petitioner-society is said to have purchased some land and constructed a Mosque out of money collected by way of donations. The Masjid is said to have been construed in an area of Ac.0.11 1/4thcents. The petitioner-society which had got itself registered with the Registrar of Societies on 28.02.2017 has been taking care of the Masjid and

has been paying the salaries to the Imam and Muezzins of the Masjid for some time and thereafter with the help of the funds given by the government.

3. At this stage, the Inspector of audit of YSR Kadapa District had directed the Branch Manager of A.P Grameena Bank, where the petitioner was operating the bank account for the Masjid, to permit respondents 4 and 5 to operate the account and subsequently these persons started obstructing the muezzins from praying in the Mosque.

4. Upon enquiry, the petitioner-society came to know that a managing committee had been appointed by the 2nd respondent Wakf Board, by its proceedings dated 14.10.2022, and the same is clearly impermissible as necessary procedure has not been followed.

5. The petitioner-society being aggrieved by the action of the 2nd respondent-Wakf Board in issuing order in F.No.05/KDP/K/GOPAVARAM/2022, dated 14.10.2022 appointing unofficial respondents as the Managing Committee had approached this Court by way of W.P.No.35937 of 2022 for setting aside the said proceedings.

6. The respondents took the objection that the writ itself was not maintainable as the petitioner-society is not a person

interested in the Wakf, as defined in Section 3(k) of the Wakf Act, 1995.

7. The learned Single Judge after referring to the judgment of the erstwhile High Court of Andhra Pradesh in the case of **Madrasa AhleSunnathBahrul Uloom vs. State of Andhra Pradesh and others**¹ had held that the petitioner-society cannot be treated as a person interested in Wakf, as defined under Section 3(k) of the Wakf Act and consequently dismissed the writ petition. The learned Single Judge did not go into the merits of the case as he had found that the writ itself was not maintainable.

8. Section 3(k) of the Wakf Act reads as follows:

“Person interested in a Wakf” means any person who is entitled to receive any pecuniary or other benefits from the Wakf and includes—

- (i) Any person who has a right to worship or to perform any religious rite in a mosque, idgah, imabara, dargah, khangah, maqbara, graveyard or any other religious institution connected with the Wakf or to participate in any religious or charitable institution under the Wakf;
- (ii) The Wakif and any descendant of the Wakif and the mutawalli;

¹(2004) 1 ALD 365

9. The contention raised before the learned Single Judge and which was accepted by the learned Single Judge was that a person interested in a Wakf can only be a natural person and cannot be a juristic person as all the provisions of Section 3(k) relate only to a natural person.

10. A reading of Section 3(k) would show that a Mutawalli of a Wakf would also be a person interested in Wakf. The definition of Mutawalli contained in Section 3(i) reads as follows:

“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:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation;

11. Section 3(i) envisages that a committee or corporation for the time being, managing or administering any Wakf or Wakf property would come within the definition of Mutawalli. In the present case, it is an admitted fact that the

petitioner society was managing the Mosque which would amount to a Wakf.

12. The attention of the learned Single Judge in **Madrassa AhleSunnath Bahrul Uloom vs. State of Andhra Pradesh and others**, was not drawn to the definition of Mutawalli which includes Committees or Corporations.

13. Accordingly, this Court holds that the petitioner society would have to be treated as a Mutawalli of the Mosque in question.

14. Sri Gayasuddin, appearing for the respondent Wakf Board contends that under the Wakf Act, the Wakf Board has control over all Wakf Institutions and Wakf Properties. He would further contend that under Section 18 of the Wakf Act, the Wakf Board is entitled to appoint a managing committee for any Wakf institution. He would also draw the attention of this court to the provisions of the A.P Wakf Managing Committee (Constitutions, funds or duties) Regulations 2009 and more specifically regulation 5 of the said regulation which states that the managing committee for a Wakf institution may be constituted, by the Wakf board, by approving the persons universally selected by the Musallies and certified by the inspector auditor of the board.

15. Sri Gayasuddin would also draw the attention of this Court, to section 40 of the Wakf Act which reads as follows:

40. Decision if a property is Wakf property:-

(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is wakf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered: Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

16. Sri Gayasuddin would contend that as the Mosque in question is a Wakf property, the Wakf Board, for the purposes of getting the said Mosque recognized as a Wakf property had constituted a Managing Committee under the impugned order dated 14.10.2022 and had directed the said managing committee to take immediate steps for registering the Mosque as a Wakf property under Section 40 of the Wakf Board.

17. Sri Syed Kalleemulla, learned counsel for the appellant would submit that Section 40 of the Wakf Act can be invoked for the purposes of determining the question of whether a property is Wakf property or not and for that purpose notices would have to be issued to the Mutawalli or other persons in management of the said property, to show cause why the said property should not be recognized as Wakf property. He would submit that it is only after the Wakf Board expresses such a satisfaction that further steps can be taken for registration of the property. He would contend that the Wakf Board, for the purpose of recognizing the Mosque as a Wakf property, cannot appoint a managing committee and

direct the managing committee to admit the character of the property and to register the same with the Wakf Board.

18. Regulation 1(ii) of The A.P Wakf Managing Committee (Constitutions, funds or duties) Regulations 2009 states that the said regulations would apply to Wakfs or Wakf institutions under the direction management of the board or where the board itself is notified, in the gazette, as the Mutawali of the institution. It is the admitted case on both sides that the masjid in question is neither under the direct management of the Wakf Board nor is the Wakf Board, gazetted as the mutawalli of the Masjid. Consequently, these regulations would not be applicable. In any event, even regulation 5, relied upon by the Wakf Board stipulates that managing committee can be constituted by approving a panel universally elected by the Musallis and certified by the Inspector Auditor of the board. A perusal of the proceedings dated 14.10.2022 does not mention any certification by the Inspector auditor of the board. Consequently, the proceedings of 14.10.2022 are not in accordance with Regulation 5 of the Regulations.

19. Section 18 of the Wakf Act reads as follows:

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 2 [auqaf]. (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.

20. The said provisions grant a power to the Wakf Board to establish committees for supervision of Wakfs either generally or for a particular purpose or for any specified area or areas. The pre-requisite for exercise of such power is the recognition of a property or institution as a wakf property or a Wakf institution. The Wakf Board has taken the stand that it would have to consider this issue under Section 40 of the Wakf Act and for that purposes had appointed a Managing Committee. In the light of this stand, the appointment of the managing committee would be contradictory to the scheme of Section 40 of the Wakf Act. The Wakf Board would have to first decide whether the property, in question, namely the Masjid, is a Wakf property and for that purpose would have to follow the procedure set out under Section 40 of the Wakf Act. The constitution of a managing committee, without completing the procedure set out in Section 40 of the Wakf Act, would be without authority of law.

21. In view of the above, the wakf Board would have to first complete the process under Section 40 of the Wakf Act and

thereafter in the event of arriving at a conclusion that the Masjid is a Wakf property, get the same registered as a Wakf property and make arrangements for the management of the said Wakf property. At this stage, the Wakf Board would also have to take a decision as to whether the petitioner society which is managing the Mosque would be the Mutawalli of the Mosque or whether the petitioner society cannot be treated as the Mutawalli of the Mosque.

22. For all the aforesaid reasons, this Writ Appeal is allowed, setting aside the judgment of the learned Single Judge dated 04.07.2023 in W.P.No.35937 of 2022 as well as the proceedings of the respondent Wakf Board dated 14.10.2022 leaving it open to the respondent Wakf Board to take appropriate steps, in accordance with the observations of this Court in the present order. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R. RAGHUNANDAN RAO, J

RJS

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

WRIT APPEAL No.782 of 2023

(per Hon'ble Sri Justice R.Raghunandan Rao)

Dt:10.10.2023

RJS