

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 25.04.2011*

+ **R.S.A.No. 24/2007**

ANJUMAN SHIA-TUS-SAFA Appellant
Through: Mr. Anis Ahmed, Advocate.

Versus

MR. TEHSIN HAIDER (DECEASED) THROUGH LRS & ANR Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 15.11.2006 which had endorsed the findings of the trial Judge dated 02.05.2005 whereby the suit filed by the plaintiff Anjuman Shia Tus Safa seeking possession of the immovable property i.e. a portion of the Shia Jama Masjid, Hemilton Road, Kashmere Gate, Delhi (hereinafter referred to as the 'suit property') in his capacity as the mutawalli of the Wakf had been dismissed.

2 The case as set up by the plaintiff is that he is the registered mutawalli of the Jama Masjid and its buildings which are Wakf properties. The plaintiff had allowed the defendant to stay in the suit property as he was a member of Shia community; inspite of requests, the defendant had failed to vacate the suit property; present suit was accordingly filed.

3 In the written statement, the defence set up by the defendant was that the suit is not maintainable as defendant is a tenant in the suit property having been inducted by the Shaitussafa Provincial Shia Conference which had been accepting the rent from the defendant.

4 On the pleadings of the parties, the following five issues were framed.

1. Whether the suit is not maintainable in view of provision of DRC Act? OPD
2. Whether plaintiff has locus standi to file the present suit? OPP
3. Whether defendant is a licensee or tenant? OP Parties.
4. Whether plaintiff is entitled to the relief claimed? OPP
5. Relief.

5 Oral and documentary evidence was led. Qua issue No. 2, the trial Judge had returned a finding that the mutawalli of a Wakf cannot file a suit for recovery of the immoveable property. Various provisions of the Wakf Act, 1954 i.e. Sections 15, 16, 22, 67 &

Rule 10 of the Wakf Rules had been adverted to. The finding returned was as under:-

“As per these provisions it is the function of the Board to institute and defend the proceedings in the Court of Law relating to Wakf. As per section 16 of the Court can either generally or for particular purpose appoint committees for the supervisions of works to be carried out by the Board or as per Section 22 of the Board can delegate its power by general or special order in writing to the Chairman or any of the member or to the Secretary or any other officers or servant of the Board or any committee thereon. As per Section 67 the State Government has been given the powers of this Act which are to be framed by Notification in the official Gazette and as per Section 68 of the Wakf Board can with the previous sanction of State Government makes rules and regulations for carrying out its functions. As per Rule 10 of this Act any delegation of power Under Section 22 of the Act made should be published in the Delhi Gazette and a copy of the same shall also be affixed on the notice board of the Board which implies that any delegation of power of the Board to any other person must be notified in the Official Gazette and if it is not notified the delegation would not be proper.”

6 Admittedly there was no delegation of power by the Wakf Board in favour of the plaintiff to file the present suit. In 45 (1991) DLT 3 Mohammad Jahan Begum Vs. Abdul Hakim, a Bench of this Court while dealing with the Wakf Act of 1954 had held that a person who is in position of a defacto or deemed mutawalli does not have the locus standi to institute a suit for recovery of Wakf properties; such a right vests only with the Wakf Board.

7 This finding was affirmed in the first appeal.

8 This is a second appeal. After its admission on 09.07.2009,
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the following substantial question of law was formulated:-

“Whether mutawalli has the right to file a suit for recovery of possession from unauthorized occupants?”

9 On behalf of the appellant, it has been urged that the judgment of Mohammad Jahan Begum (Supra) relied upon by the two courts below was misinterpreted. There is provision under Section 55 D of 1954 Act permitting a mutawalli to file a suit for recovery of immoveable properties which is the Wakf property. Attention has been drawn to the said provision. Section 55-D of the Wakf Act, 1954 read as under:-

“55-D. Appointment of a receiver in certain cases:- Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, where any suit or other legal proceedings is instituted or commenced:-

(a)XXXXXXXXXX

(b) by a mutawalli to recover possession of immoveable property, which is Wakf property which has been transferred by a previous mutawalli, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board, and which is in the possession of the defendant;

The Court may, on the application of the plaintiff, appoint receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property such amount as the court may consider to be necessary for further prosecution of the suit.”

10 This provision does not in any manner come to the aid of the appellant. Section 55-D permits a mutawalli to recovery possession of immoveable property i.e. Wakf property which has

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been transferred by a previous mutawalli whether for a valuable consideration or not and which may or may not be in accordance with the sanction of the Board and which is in possession of the defendant. There is no such averment in the present plaint. The plaint does not state that the present suit which has been filed for recovery of immoveable property is a property which has been transferred by an earlier mutawalli. This provision is wholly inapplicable. No other argument has been urged before this Court.

11 The finding in the impugned judgment does not in any manner calls for any interference. It had examined the judgment of Mohammad Jahan Begum (Supra) in its correct perspective. This finding is as follows:-

"I have carefully gone through the judgment cited as Mohammad Jahan Begum v Abdul Hakim 45 (1991) DLT 3 and learned Trial Court was fully justified in placing its reliance upon the aforesaid judgment. Needless to say that aforesaid judgment passed by our own High Court is binding on us and in the aforesaid judgment it has been categorically held that even duly appointed Mutawalli had no authorization to institute suit for Wakf's property and such power vested with the Board only. Para 18 & Para 19 of said judgment read as under:

Para-18

"As pointed out by Mr. Ishwar Sahai, a bare reading of Section 15, which lays down the statutory functions to be carried out by the Board, reveals that one of such functions in terms of sub-Section 2(i) of the said Section, is "to institute and

defend suits and proceedings in a Court of law relating to wakfs." The learned counsel rightly contended that even if there is a validly appointed mutawalli, he is not in a position, better than that of a manager of a property, and except under express authority from the Board, he cannot in his own name institute suits for recovery of wakf properties. Even the administration of wakf properties is to be carried out by a mutawalli under directions of the Board, as is clear from Section 15(2)(c) of the Act."

Para-19

"I find justification in what Mr. Sahai has argued, as a reference to different provisions of the Act of 1954 makes the legislative intent as to the scope of the authority of a 'mutawalli' manifest itself in a way that the inference is inescapable to the effect that the authority to institute suits in respect to wakf property has been vested in the Board and in no event exercisable by a mutawalli."

12 Learned counsel for appellant has contended that as per the amended Act i.e. Wakf Act, 1995, mutawalli has been authorized to institute such suit. However, present case is under old Act and as per aforesaid judgment of Mohammad Jahan Begum (Supra), it becomes evident that mutawalli had no authority to institute such suit in respect of Wakf's property more so when Wakf Board had taken a categoric stand that suit was not maintainable and that plaintiff had no locus standi to file present suit. Thus when the institution of suit itself was without sanction of Board it is not permissible for the appellant to take shelter behind the Amended Act. Suit was apparently not maintainable as per the provisions of old Act and mutawalli had no locus standi to file the suit in view of the provisions contained under the Wakf Act 1954 and in view of the judgment of our own High Court and, therefore, no infirmity can be found in the impugned judgment. Appeal is accordingly dismissed."

12 In view of the aforementioned discussion, the substantial question of law is answered in favour of the respondent and against the appellant. There is no merit in this appeal. Dismissed.

INDERMEET KAUR, J.

APRIL 25, 2011

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