

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

% *Date of Judgment: 13.03.2012*

+ **CM(M)No. 869/2011 and CM No. 13994/2011**

MALIK MOHD. TANVEER & ORS. .... Petitioners  
Through: Mr. Vijay Tandon, Advocate.

versus

MADRARSATULULOOM & ORS. .... Respondent  
Through: Mr. Javed Ahmed, Advocate for R-10.  
Mr. Rajiv Nanda, Addl. Standing Counsel, GNCTD/R-11.

**CORAM:**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.** (Oral)

1. The order impugned before this court is the order dated 05.03.2011; the impugned judgment had noted that the petition filed by the petitioners before the Waqf Tribunal is not maintainable as the reliefs prayed for by the petitioners (in terms of the petition) cannot be granted by the Tribunal; petition had accordingly been dismissed.

2. Petitioner is aggrieved by this finding.

3. Record shows that the present wakf petition had been filed by the two petitioners before the Wakf Tribunal at Patiala House. The contentions as depicted from the petition disclose that the petitioners were aggrieved by the fact that the respondent No. 2 who was working as a President of the Waqf was using it for his own benefits. He was using the monitory resources of the Trust for his personal interest. His job was supervisory in nature but he was manipulating things in such a manner that all efforts were being made by him to derive illegal benefits from the money of the Trust; the petitioners were compelled to write a letter to respondent No. 2 to which they have not received any reply; further contention is that the respondent No. 2 has deliberately inducted other persons in the Trust who are illiterate in order that respondent No. 2 continues to exercise complete control and dominus over the Trust. Contention is that the respondent No. 10 (Wakf Board) be superseded and respondent No. 11 (Delhi Government) be directed to take control of the Wakf and formulate a proper scheme for the said purpose. The prayers in the petition are contained as follows:-

“a. That respondent No. 10, may be superseded and the respondent No. 11 may be directed to take control of the Wakf and formulate a

proper scheme for the said affairs of the respondent No. 1 so that the working and affairs of respondent No. 1, are transparent and are not subjected to abuse and misuse and the affairs are not misappropriated by anybody for his personal gain.

b. That the defendant No. 1 committee may be liquidated and the respondent No. 2 to 9 may be removed and the control of the Wakf may be taken from them and may be kept away from managing the Wakf.

c. That the respondent No. 2 to 9 may be ordered to give account of the affairs of the respondent No. 1 during the period they were managing the affairs of respondent No. 1.

d. That the necessary investigation may be ordered by an independent agency/chartered accountant to ensure that the affairs of respondent No. 1 which has already been abused could be brought to light and consequently appropriate order for undue and refund of the benefit derived by the respondent No. 2 to 9 are compelled to return the same.

e. Any other order which this Hon'ble Wakf Tribunal deem fit in the circumstances of the case not claimed.

f. Cost of the suit may be awarded.

g. The necessary measures may be taken for the appointment of a court receiver who will manage the affairs of the Wakf till such period matter in controversy is pending before this Hon'ble Tribunal.

h. Ad-interim injunction restraining respondent No. 2 to 9 to interfere in the management of affairs of respondent No. 1.

i. Respondent No. 10 may be ordered to provide the entire record for investigation."

4. This petition was filed under Section 92 of the Code of Civil Procedure (hereinafter referred to as the 'Code') read with Section 6 of the Wakf Act, 1995 (hereinafter referred to as the said Act).

5. The Wakf Act is a complete Code in itself; Wakf Tribunal can entertain petitions only those which are permissible under the provisions of the said Act.

6. Under Section 83(2) of the said Act there are three categories of persons who can file a petition before the Tribunal: (i) Mutawali; (ii) person interested in Wakf; (iii) any other person aggrieved by the order made under the Act or rules framed thereunder.

7. The petitioners do not fall in either of the three categories; a person interested in the Wakf has been defined in Section 3(k). This provision read reads as follows:-

“3(k) 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, imambara, 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 mutwali.”

8. It is not the case of the petitioners that they are entitled to receive any pecuniary or other benefits from the Wakf; this Wakf does not relate to any mosque, idgah, imambara, dargah, khangah, maqbara, graveyard

or any other religious institution; the petitioner do not fall even within the provision of Section 3 (k) of the said Act.

9. Allegations made in the petition are largely of the mis-management of the Board; prayer is that the Wakf Board should be superseded by the Delhi Government. Learned counsel for the petitioner has vehemently relied upon the provision of Section 69 and 70 of the said Act. Both these provisions deal with the powers of the Board to frame a scheme for the administration of the Wakf. Nowhere in the entire petition has it been averred that any letter or communication prior to the filing of the suit was sent to the Board. On a specific query put to the learned counsel for the petitioner on this count, he has no answer. Impugned judgment had also noted that the petitioners have not approached the Wakf Board about the mis-management of the Wakf with a prayer that action may be taken against the Managing Committee before resorting to this present petition.

10. The Tribunal cannot usurp the jurisdiction of the Board; Section 69 and 70 of the said Act in fact stipulate that if there is a mismanagement of the wakf, information has to be sent to the Board where an appropriate scheme can be framed and also call for an

enquiry. Although the jurisdiction of the Civil Court is not completely ousted, yet the prayers which are sought for in the present petition are clearly prayers which are outside the domain of the Wakf Tribunal.

11. In this case, the prayers made for by the petitioner do not fall within the domain of the Tribunal. Petition was rightly dismissed.

12. Impugned order calls for no interference. Petition is without any merit; dismissed.

**INDERMEET KAUR, J**

**MARCH 13, 2012**  
**rb**