

Court No. - 40

Case :- WRIT - C No. - 30719 of 2023

Petitioner :- Waqf Jama Masjid Sarai Aqil Waqf No. 204 And Another

Respondent :- U.P. Sunni Central Waqf Board And 2 Others

Counsel for Petitioner :- Siraj Ahmad Khan, Ziauddin

Counsel for Respondent :- Punit Kumar Gupta

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Shri Siraj Ahmad Khan, learned counsel for the petitioners; Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel and Shri Punit Kumar Gupta, learned counsel appearing for respondent nos. 1 and 2.

2. The petitioner is aggrieved by an order dated 26.06.2023 passed by respondent no. 2 and prayed for a direction directing the respondents not to interfere in the peaceful functioning of waqf affairs by the petitioner's committee of management.

3. Learned counsel for the petitioner in support of his submissions has heavily relied upon Section 32 (2) (g) of Waqf Act, 1995 which does not subscribe any such power to the Chairman to exercise the discretion *de hors* the provision, whereas the power is vested in the Board to appoint or to remove Mutwalli and the chairman cannot take solitary decision for induction or removal of a Mutwalli. He has placed reliance upon the order dated 13.07.2023 passed by this Bench in Writ-C No. 21785 of 2023. He submits that the issue in hand is no more *res integra*. While deciding the aforementioned writ petition, the Court has also relied upon the Co-ordinate Bench decision dated 22.01.2014 passed in Misc. Bench No. 6306 of 2006 (Haroon Al Rasheed v. U.P. Sunni Central Waqf Board Thru C.E.O. & 02 Others). He submits that similar indulgence may also be extended in favour of the petitioner.

4. On the other hand, Shri Punit Kumar Gupta, learned counsel for U.P. Sunni Central Waqf Board (in short "Waqf Board") has resisted the writ petition on the ground that against the order impugned the petitioner has got efficacious remedy to challenge the same before the Tribunal under Section 83 of the Waqf Act. Once efficacious remedy is available, there is no reason or occasion to bypass the statutory forum. He has further raised an objection that in pith and substance the petitioner is aggrieved by order dated 26.6.2023 passed by the Chairman, Waqf Board on the

ground that he does not inhere power to pass such an order. The said objection cannot be raised at this stage as by the same process the petitioner's claim has been acknowledged and accepted by the same authority. The same is also reflected from the office memorandum dated 22.6.2018, which is also brought on record by the petitioner as Annexure No.2 to the writ petition.

5. In this backdrop, it is submitted by learned counsel for Waqf Board that now at this stage the claim of the petitioner that the Chairman has no authority to pass such an order is not sustainable as the induction and approval of the petitioner himself as Mutawalli was accorded from the same process and by the same authority. Therefore, in case the order impugned is unsustainable, then it is implied that his initial induction, which was approved by the Chairman on 22.6.2018 is also not sustainable. He submits that the said procedural aspect of the matter may be examined by the Tribunal and such disputed facts cannot be looked into and examined in the writ jurisdiction, once efficacious remedy is available to the petitioners.

6. We have heard rival submissions advanced by the parties and perused the record. For ready reference, the Office Memorandum dated 22.06.2018 which has been passed by the Chairman, U.P. Sunni Central Waqf Board is quoted as under:-

"The Hon'ble Chairman, U.P. Sunni Central Waqf Board vide his order dated 18.05.2018 has extended the term of the following committee to manage the affairs of Waqf Jama Masjid Sarai Aqil, No.-204-Allahabad (Kaushambi) for a period of four years, with effect from 10.02.2018 :-

- 1. Sri Kamran Ahmad S/o Sri Naushad Ali - President*
- 2. Sri Naushad Ali S/o Late Haji Shaukat Ali - Secretary*
- 3. Sri Kaleemullah S/o Maulana Qasim Ali - Member*
- 4. Sri Mohd. Azmat S/o Late Mohd. Yunus - Member*
- 5. Sri Ghulam Abbas S/o Ghulam Ali - Member*
- 6. Sri Majid Ali S/o Nawab Hussain - Member*

All residents of Mauza Sarai Aqeel, Tehsil- Chayal, Distt.- Kaushambi."

7. In this backdrop, we find that contention of the petitioner that the order impugned cannot be passed by the Chairman is not sustainable as the petitioner himself as well as the other office bearers have been inducted as Mutawalli by the same process/authority and as such later on the said process cannot be questioned. We find substance in the contention of learned counsel

for Waqf Board. Moreover, against the order impugned, the petitioner has got efficacious remedy. In such circumstances, we are not inclined to enter into such disputed facts, which can very well be examined by the Tribunal. In case, any case is set up before the Tribunal, the same would be decided on its merit, without any interference of the observations made above.

8. The writ petition stands **disposed of** accordingly.

Order Date :- 30.10.2023

Rama Kant