

Court No. - 17

Case :- CIVIL REVISION No. - 4 of 2024

Revisionist :- C/M Waqf No 74 To 94 Thru President Haji Mohd. Aslam Qureshi And Anr.

Opposite Party :- U.P. Waqf Tribunal, Lucknow And Ors.

Counsel for Revisionist :- Mohammad Aslam Khan, Mohd Shadab Khan

Counsel for Opposite Party :- Farhan Habib, Pawan Kumar Mishra, Syed Aftab Ahmad

Hon'ble Manish Mathur, J.

1. Heard Mr. Mohd. Arif Khan, learned Senior counsel assisted by Mr. Mohd. Shadab Khan & Mr. Aslam Khan, learned counsel for revisionists, Mr. Sanjay Basin, learned Senior counsel assisted by Mr. Farhan Habib, learned counsel for respondents no.2 to 4 & Mr. Syed Aftab Ahmad, learned counsel for respondents no.5 & 6.

2. Revision under Section 83 (9) of the Waqf Act, 1995 has been filed challenging order dated 10.01.2024 passed by Waqf Tribunal whereby appeal preferred by petitioner against the order dated 12.11.2021 passed by Waqf Board superseding the petitioner Committee of Management has been upheld rejecting the appeal. Order dated 12.11.2021 is also under challenge vide amendment.

3. Learned counsel for revisionists submits that order passed by the Waqf Board itself was without jurisdiction for the reason that proceedings against petitioner Committee could have been held only under Section 64 and not under Section 67 of the Waqf Act. It is also submitted that order passed by the Waqf Board is also bad in law since it has primarily been passed only by the Chairperson and not by the Board as constituted under the Act inasmuch as there was no notice of any meeting nor any agenda thereof was ever circulated amongst the Board Members due to which the alleged meeting said to have taken place on 12.11.2021 never took place. It is also submitted that petitioner Committee was in fact a Committee of supervision and not a Committee of Management due to which also provisions of Section 67 of the Act were inapplicable. Learned counsel has also submitted that the Waqf Tribunal has ignored the fact that order passed by the Waqf Board was against material on record since documents indicated that the petitioner Committee had enhanced rental of properties of the Waqf as per direction issued to it. It is therefore submitted that the order impugned being vitiated are required to be set aside restoring the term of petitioner Committee.

4. Elaborating his submissions, it has been submitted by learned counsel for revisionists that the petitioner Committee has been appointed by the Board in exercise of power under Section 32(2)(g) of the Act and therefore the order passed under Section 67(2) of the Act was illegal and without jurisdiction since such a Committee appointed under Section 32(2)(g) is different from a Committee appointed under Section 67(1) of the Act and the petitioner Committee therefore could have been removed only in terms of Section 64(3) of the Act. He has also submitted that complaint allegedly made against the petitioner Committee was not supported by any affidavit and the cognizance thereof was not required to be taken.

5. Learned counsel has submitted that as per Section 3(i) of the Act, a Mutawalli includes a Committee for the time being managing or administering any Waqf or Waqf property and therefore since there was no Waqf deed, the Board exercised its power under Section 32 of the Act to appoint the petitioner Committee and not under Section 67 of the Act.

6. It has also been submitted that the Waqf Board vide its order dated 16.01.2019 had extended the term of petitioner Committee to manage the affairs of Waqf for a period of five years with effect from 18.03.2019 but due to passing of impugned orders, petitioner Committee was unable to complete its term and therefore exercising the principles of restitution, the petitioner Committee is required to be granted liberty to complete its term of five years.

7. Elaborating upon the aspect that there were in effect no meeting of the Waqf Board on 12.11.2021, learned counsel has placed reliance on the U.P. Sunni Central Board of Waqf Bye-laws, 1977 to submit that in terms of bye-laws 5 and 6 thereof, at least 20 clear days notice of an ordinary meeting and seven days clear notice for an extraordinary meeting was mandatorily required to be given to Members of the Board and in terms of bye-laws 6, an advance copy of the agenda of business to be transacted at a meeting was required to be given to every member at least ten days prior to the date of meeting and a certificate of posting of such agenda was also required to be kept in the office. It is submitted that since there is clear violation of bye-laws 5 and 6, the alleged meeting held on 12.11.2021 was therefore incompetent. Learned counsel for revisionist has placed reliance on judgments in the cases of **Satendra Singh, Gram Pradhan versus State of Uttar Pradesh** reported in **2009 LawSuit (All) 226**, **Mrs. Kavita Trehan & Anr. v. Balsara Hygiene Products Ltd.** reported in **JT 1994 (4) S.C. 519**, **V. Senthil Balaji versus State Represented by Deputy Director & Ors.** reported in **(2024)3 Supreme Court Cases 51**

and ***Committee of Management Waqf No.856, Moradabad Now Amroha***) versus ***State of U.P. & Ors.*** passed in ***Writ C No.26916 of 2023*** to buttress his submission.

8. Learned counsel for opposite parties has refuted submissions advanced by learned counsel for revisionist with the submission that revision itself is based on misconceived application of facts and law. It is submitted that enabling power has been conferred upon Waqf Board under Section 32(2)(g) of the Act to appoint and remove Mutawallis in accordance with the provisions of this Act but such a power is exercisable only in terms of Section 63 of the Act due to which super-session of a Committee of Management can be done only in terms of procedure prescribed under Section 67 of the Act and Section 64 in fact would be inapplicable since it pertains to removal of an individual Mutawalli and not super-session of an entire Committee of Management. It is therefore submitted that the power has been rightly exercised under Section 67 of the Act. It is submitted that even otherwise the revisionist has been unable to indicate any prejudice caused to it since the procedure required to be followed under both Sections 64 and 67 of the Act are similar.

9. It is also submitted that as in the present case where there is no Waqf deed, a vacancy created on the post of Mutawalli is required to be filled in terms of Section 63 of the Act due to which it is only provisions of Section 67 which could apply.

10. Learned counsel has also adverted to Section 24 of the General Clauses Act to submit that the bye- laws of 1977 were notified in exercise of powers under Section 79 of the U.P. Muslim Waqf Act, 1960 which stood specifically superseded by virtue of Section 112(3) of the Waqf Act, 1995 and therefore since reenactment was promulgated and there is no express provision for continuance of the aforesaid bye-laws, the same would be inapplicable. It is submitted that even otherwise burden was upon the revisionist to have substantiated by evidence its pleading that no competent meeting of the Board was held on 12.11.2021 particularly when the order issued by the Board itself has been signed by all the Members.

11. Learned counsel has placed reliance on the Division Bench judgment of this Court in the case of ***Committee of Management Waqf Dargah Hazrat Peer Syed Mohammad Sahab (Rh) & Ors. versus U.P. Sunni Central Waqf Board through Chairman Lko & Ors.*** passed in ***Writ Petition No.22480 (M/B) of 2021*** to buttress his submission.

12. Upon consideration of submissions advanced by learned counsel for parties, it is evident that under Section 3(i), a

Mutawalli means and includes a Committee which for the time being manages or administers any Waqf or Waqf Property. Section 32(2)(g) enables the Waqf Board to appoint and remove Mutawallis in accordance with provisions of this Act. Section 63 of the Act inheres power in the Waqf Board to appoint Mutawallis where there is a vacancy in the office of Mutawalli of a Waqf and there is no one to be appointed under the terms of the deed or where the right of any person to act as Mutawalli is disputed.

13. Although admittedly there is no Waqf deed in the present case but the submission of learned counsel for revisionist that the petitioner Committee has been appointed only in terms of Section 32 and not Section 63, though attractive at the first instance, appears to be baseless.

14. It is quite evident that the Board exercises enabling powers for appointment of Mutawalli under Section 32(2)(g) and is required to do so in accordance with provisions of the Act. Thus Section 32(2)(g) does not indicate any independent or distinct power upon the Board to appoint a Mutawalli. The provision itself indicates that the appointment and removal of Mutawallis is to be done by the Board in accordance with provisions of the Act.

15. Learned counsel for revisionist was unable to indicate any other power or provision of the Act or the rules whereunder the Board has been conferred power to appoint a Mutawalli. A perusal of Section 63 of the Act also indicates that the Board is empowered to appoint a Mutawalli in case there is a vacancy and there is no one to be appointed under the terms of the deed of the Waqf or where the right of any person to act as Mutawalli is disputed. Section 63 thus would be applicable not only where there is a Waqf deed but would also operate where right of any person to act as a Mutawalli is disputed whether under the Waqf deed or without it.

16. In the considered opinion of this Court, therefore even in the absence of a Waqf deed, the Board is empowered to appoint a Mutawalli exercising powers under Section 32(2)(g) read with Section 63 of the Act. There is no distinction between the power exerciseable by the Board under either of the provisions.

17. So far as applicability of Sections 64 or 67 is concerned, a bare perusal thereof would indicate that both the provisions operate in distinct fields where Section 64 pertains to removal of an individual Mutawalli and Section 67 pertains to supersession of the entire Committee of Management on the grounds indicated therein. Learned counsel for revisionist has laid much

emphasis on the fact that Section 67 of the Act would be applicable only in case where a Committee has been appointed by the Waqf, meaning thereby that it is appointed by a Waqf deed and would not be applicable where a Committee has been appointed without a Waqf deed as in the present case.

18. In the considered opinion of this Court, such a plea does not appear to be borne out from a perusal of provisions. Section 67 of the Act may indicate super-session of Committee of Management where such Committee has been appointed by the Waqf but nonetheless indicates power of its super-session by the Board or until expiry of its terms by the Waqf. However the provisions of the Act do not indicate any other provision whereunder the Board can exercise powers to supersede a Committee of Management where the Committee is not functioning properly and satisfactorily or that the Waqf is being mismanaged and it would be in the interest of proper management for the Waqf Board to supersede such Committee. Such a strict interpretation of Section 67 as is being sought to be given by learned counsel for revisionist would render the Board powerless to supersede the Committee of Management even in case it is necessary to do so in view of conditions specified under Section 67(2) of the Act. Giving such a meaning to Section 67 would render the powers conferred upon the Waqf Board under Section 32, otiose.

19. A Division Bench of this Court in the case of ***Committee of Management Waqf Dargah Hazrat Peer Syed Mohammad Sahab (Rh)*** (supra) has also in its judgment and order dated 01.10.2021 clearly held that where existing Committee of Management has been appointed under Section 63, it would only be Section 67 which would apply with regard to its super-session. This Court is in respectful agreement with the proposition of law as propounded by the Division Bench.

20. Even otherwise, it is evident that power by the Waqf Board has been exercised in terms of Section 67(2) of the Act which starts with non obstante clause regarding exercise of power of any Waqf on which allegation of mismanagement has been alleged. The aforesaid provisions does not make any distinction between a Waqf created by deed or by the Board exercising its power under provisions of the Act.

21. Another aspect required to be kept in mind is that the revisionist has been unable to demonstrate any prejudice caused to it by exercise of power by the Board under Section 67 of the Act and not under Section 64 of the Act particularly when procedure for removal of Mutawalli or super-session of Committee of Management under both the provisions is the

same and admittedly an opportunity of hearing has been provided to the revisionist to counter the charges levelled against them.

22. So far as the question of incompetence of the meeting of Waqf Board dated 12.11.2021 is concerned, it is quite evident that the bye-laws of 1977 were framed in exercise of power under Section 79 of the U.P. Muslim Waqf Board Act, 1960 which in bye-laws 5 and 6 specified the period of notice of meetings and the business to be transacted at such meeting. It is relevant that by virtue of Section 112(3) of Waqf Act, 1995, the Waqf Act of 1960 stood repealed with the consequence that the bye-laws framed thereunder also became ineffective. It is admitted between the parties that as of now no fresh bye-laws, rules or regulations have been framed pertaining to conduct of meetings of the Waqf Board.

23. A perusal of order dated 12.11.2021 also indicates signatures of all the Members of Waqf Board contained thereupon. Since the revisionist has made a pleading that no prior notice of the meeting nor any agenda was circulated amongst the Members of the Board, burden would clearly fall upon the revisionist to prove the same but such burden has not been discharged by the revisionist. Even otherwise, once the Waqf Act of 1960 and therefore the bye-laws framed thereunder stood repealed and no fresh rules regulations of bye-laws have been framed, even in case of violation thereof, the proceedings of the Waqf Board cannot be held to be vitiated since as of now there is no mandatory statutory provision regarding the same. The submissions of learned counsel for revisionist contrary to the same are therefore rejected.

24. Learned counsel for revisionist has placed reliance on the Division Bench judgment of this Court in the case of ***Committee of Management Waqf Act no.856, Moradabad now Amroha*** (supra) to submit that it has been held that holding of Board meeting without circulation of agenda of prior notice has been held to be vitiated in law. However it appears that the aforesaid judgment does not take into consideration the fact of repeal of the Act of 1960 and the bye-law of 1977 and places emphasis only on Section 17 of the Act which does not prescribe any mandatory provisions regarding conduct of meetings of the Board. It also appears that the aforesaid judgment has been stayed by Hon'ble the Supreme Court in Special Leave to Appeal (C) No. 2060 of 2024.

25. It has also been submitted that the order passed by Waqf Board is against material on record since the Waqf Board itself in its order dated 15.01.2019 has clearly indicated that as per

audit, the Committee of Management has increased the rent of Waqf property as directed. However it is relevant that the said audit had been conducted prior to the current term of the Committee of Management which commenced from 18.03.2019 for a period of five years and allegation levelled against it regarding mismanagement pertains to the current term and not the earlier one.

26. On merits also the order passed by Waqf Board dated 12.11.2021 indicates that despite time having been granted, details of income and expenditure were not provided completely. Nothing contrary to such a finding has been exhibited in the present revision. In the considered opinion of this Court, once an allegation of mis-management was levelled against the Committee, it was incumbent upon them to have demonstrated by documentary evidence the incorrectness of such a charge. Such a course of action having not been adhered to by the petitioner, no benefit therefrom can accrue.

27. Learned counsel has also submitted that even otherwise the complaint made against petitioner Committee was not required to be taken into consideration since it was not supported by any affidavit. With regard to such submission, it is also evident that learned counsel has not been able to indicate any rule, bye-law or notification requiring such a mandatory condition to be followed for a complaint to be entertained. Even otherwise, the Board has ample power under Section 67 of the Act with regard to supervision and super-session of a Committee of Management in case conditions indicated therein stands satisfied. Such a provision is salutatory in nature for the proper and fair management of a Committee of Management and therefore submissions to be contrary are rejected.

28. The aforesaid aspects have already been considered by the Waqf Tribunal in the judgment and order impugned and no exception can be taken thereto. In view of aforesaid, the revision fails and is **dismissed**. Parties to bear their own costs.

Order Date :- 31.5.2024

Subodh/-