

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 91 OF 2014

Managing and Construction
Committee Masjid Sarai Fakhruallah
Shah, Itwara Bazar, Nanded

....Petitioner

Versus

Rahmatulla Shah s/o. Turab Ali Shah
and Another

....Respondents.

Mr. S.S. Kazi, Advocate for petitioner.

Mr. Y.B. Pathan, Advocate for respondent No. 1.

Mr. S.A.G. Qureshi h/f. Mr. Sameer S. Patel Shaikh, Advocate for
respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 12th August, 2015.

ORDER :

1. The proceeding is filed to challenge the judgment and order of Waqf Tribunal made in Waqf Application No. 92/2012. By this order, the application made by present applicant to challenge the order of Chief Executive Officer by which respondent No. 1 was asked to work as Mutwalli is dismissed. Both the sides are heard. The learned counsel for Waqf Board supported the order.

2. There is dispute over the management of Masjid by

name Masjid Sarai situated at Itwara Bazar, Nanded. It is the case of applicant, so called committee that one Sayyad Azmatulla Shah was Mutwalli of this Masjid, but he had keen interest in 'Shayari' and so, he used to remain out of station and even out of India. It is contended that due to his other interest, he was not able to render services as Mutwalli to the Masjid and he had requested Waqf Board in letters given in 1995 to appoint some committee for the management of the affairs of the Masjid. It is contended that local residents had appointed a committee and they had also informed to Waqf Board for appointing committee to the management of the Masjid. It is contended that the committee of 15 members was accordingly appointed by the local residents and the copies of appointment letters were sent to Waqf Board and also to Waqf Minister. It is contended that for some time, this committee was given appointment to manage the affairs by the Waqf Board also. It is contended that respondent No. 1 - Rahamatulla Shah then came to be appointed as Mutwalli by Chief Executive Officer of Waqf Board even when the committee was in existence and working as Mutwalli. It is the case of applicant that Chief Executive Officer has no such power and the committee cannot be replaced by respondent No. 1 under the provisions of Waqf Act.

3. It appears that in the past, the applicant committee was appointed for some purpose by Waqf Board and it was assigned the work of construction of Masjid Sarai and this order was challenged by respondent No. 1 by filing Waqf Application No. 17/2012. The respondent has contended that he was there as Mutwalli and he is responsible for making the construction and he can spend for making construction of Masjid and so, the order made by the Chief Executive Officer needs to be set aside. This application of respondent No. 1 came to be allowed on 19.3.2014. Thus, in the past, the order made on 9.2.2012 in favour of applicant is also set aside by the Waqf Tribunal. This order is not challenged by the present applicant.

4. It is not disputed that a proceeding was filed by respondent No. 1 in Atiyat Court and in that proceeding, succession was granted to respondent No. 1 in respect of the rights of Mutawalli. The order shows that in the past, there was the order in favour of father of respondent No. 1 namely Turab Ali and then the names of his two sons including respondent No. 1 were shown as Shikmidar. The brother of respondent No. 1 then gave no objection for respondent No. 1 to appoint respondent No. 1 as Mutwalli. In view of this development and subsequent orders made by Atiyat Court, respondent No. 1 came

to be appointed though under the signature of Chief Executive Officer. Prior to that, inquiry was made and report was given by Regional Waqf Officer. There is record to show that respondent No. 1 was rendering the services to the aforesaid Masjid and graveyard and there are such certificates issued by Regional Waqf Officer right from 1978. This succession is not challenged.

5. On the other hand, the applicant is relying on order made by Waqf Board in 1995 which shows that committee of few persons was appointed for the period of one year, for doing the work like construction and supervision. No further order was issued by Waqf Board. There is correspondence of the year 2013 made by Waqf Office with police and other authorities to inform that this committee was allowed only to look after the construction of Masjid Sarai.

6. Some record is produced to show that the Waqf Board had made resolution in the year 2011 and the powers were delegated to the Waqf Board under sections 18, 32 (except 32-J) 36, 40, 41, 42, 43, 52, 56, 63, 64, 65, 70 and 71 of Waqf Act, 1995.

7. The learned counsel for applicant placed reliance on

one case of **Karnataka High Court** delivered in **Writ Petition No. 21667/2001 dated 14.7.2005 between Saheblal Vs. The Karnataka State Board of Wakfs and Anr.** In this case, the High Court has observed that the provisions of section 63 of Waqf Act supersede the provisions of section 25 and the power to appoint Mutwalli in the circumstances narrated in section 63 is exclusively conferred on the board of Wakf. This point is not at all involved in the present matter.

8. The record of the present proceeding shows that necessary procedure and inquiry was made and when it was realized that under the Atiyat Act, succession is granted in favour of respondent No. 1 and there was grant in favour of predecessor in title of respondent No. 1 for rendering services to this Masjid, which is more than 150 years old and the succession is granted by Atiyat Court, the order came to be made by Chief Executive Officer. There are also aforesaid circumstances. The Waqf Board had made order for particular purpose and for particular period and the original Mutwalli and his successors were rendering services for which grant was made. This Court sees no reason to interfere in the decision given by the Waqf Tribunal.

9. In the result, the revision stands dismissed.

[T.V. NALAWADE, J.]

ssc/