

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 140 OF 2012

Managing Committee/Panch Committee
Masjit Bard Imam .. Petitioner

Versus

1. Maharashtra State Board of Wakfs
and others .. Respondents

Shri S. S. Kazi, Advocate for the Petitioner.

Shri Y. B. Pathan, Advocate for Respondent Nos. 1 and 2.

Mrs. T. W. Pathan, Advocate for the Respondent No. 3.

CORAM : S. V. GANGAPURWALA, J.

DATE : 07TH SEPTEMBER, 2015.

PER COURT :

. Mr. Kazi, the learned counsel for the petitioner submits that, though the Tribunal had come to the conclusion that it was not necessary to register the wakf for the second time, still it has rejected the prayer of the petitioner. The petitioner is a Committee appointed by the board to manage the affairs of the wakf i. e. Masjid Bara Imam and Dargah Syed Sadat Ashoorkhana, Graveyard and Chilla Madar Sahab, Nanded. The learned counsel submits that, the wakf was already registered under the 1954 Act. Even it was notified in Gazette duly published under the said Act. When the Tribunal came to the

conclusion that it was not necessary to register the wakf for the second time, then the application ought to have been allowed in toto. According to the learned counsel the person who had got the trust registered and his name is incorporated as Mutwalli is also dead. According to the learned counsel the petitioner committee is working as *de-facto* Mutwalli and managing the affairs of the wakf.

2. Mr. Y. B. Pathan, the learned counsel for respondent Nos. 1 and 2 submits that, the application for renewal on behalf of petitioner and application of the respondent No. 3 to be appointed as Mutwali are pending with the Wakf Board. It is for the Wakf Board to take decision upon the same, which decision would be taken by the Board.

3. Ms. T. W. Pathan, the learned counsel for the respondent No. 3 submits that, the respondent No. 3 is entitled to be recognized as hereditary Mutwalli. According to the learned counsel the Tribunal has considered the matter in its correct perspective.

4. I have gone through the order passed by the Tribunal. The Tribunal in no uncertain words has observed that, the Wakf Board should not have entertained the application U/Sec. 36 of the Wakf Act filed by the respondent No. 3, as the said Wakf

was already registered under the Wakf Act, 1954 and therefore was exempted from re-registration under the new Wakf Act. It has also observed that, the tenure of the petitioner is over and had relied on provisions of Sec. 67 of the Wakf Act.

5. Whether the respondent No. 3 would be entitled to be recognized as hereditary Mutwalli or the present petitioner is required to be continued as Committee is to be decided by the Wakf Board, which is a competent authority under the Wakf Act. Even the Tribunal has observed in the order that, the names of the Mutwalli can be corrected at any time by necessary amendments carried in the Wakf registered U/Sec. 41 and 42 of the Wakf Act, 1995. It has also further observed that, the dispute to act as Mutwalli is to be decided by the Wakf Board and it is ceased with the issue. As already observed by the Tribunal that subsequent registration was an administrative and ministerial act and does not affect the existence of Wakf, which was already in existence. As such, the said aspect need not be considered.

6. In the light of the above, the Wakf Board/competent authority shall take decision on the application of the respondent No. 3, so also on the application of the petitioner regarding appointment of the respondent No. 3 as Mutwalli and/or continuation of petitioner as Committee of the said Wakf i. e.

Masjid Bara Imam and Dargah Syed Sadat Ashoorkhana, Graveyard and Chilla Madar Sahab, Nanded expeditiously. The civil revision application accordingly is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15