

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 261 OF 2011

Peer Syed Ishaque Shah Qadri Dargah
and Masjid Trust

.. Applicant

vs.

Maharashtra State Board of
Wakf and ors.

.. Respondents

Mr. S.S. Shah a/w. H. Rahman i/b Mr. Sanjay Sinha for the
Applicant.

Mr. M.S. Ansari h/f. Mr. R. M.Monin for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 15 April, 2015.

P.C. :-

1] This Civil Revision Application instituted under the proviso to Section 83 (9) of the Wakf Act, 1995 (said Act), challenges the order dated 22 December 2010 made by the Wakf Tribunal, Aurangabad dismissing the applicant's appeal against the order dated 1 December 2009 made by the Wakf Board under Sections 63 and 64 of the said Act, at the instance of Late Sayed Muzaffer Hussain (original respondent No.3 herein).

2] By the order dated 1 December 2009, the Wakf Board appointed Late Sayed Muzaffer Hussain as the Managing Trustee of the Wakf and issued directions to the applicant to hand over the charge of Managing Trustee to Late Sayed Muzaffer Hussain, who was to administer Wakf alongwith the applicant and two other Mutwallis. There is no clear statement in the order dated 1 December 2009 made by the Wakf Board that the applicant and two other Mutwallis, whose removal was applied for by Late Sayed

Muzaffer Hussain, were in fact removed as Mutwallis by the Wakf Board.

3] The applicant, instituted Wakf Appeal No. 9 of 2009 before the Wakf Tribunal invoking the provisions contained in Section 83 of the said Act. The same came to be disposed of by the impugned order dated 22 December 2010, the operative portion of which, reads thus:

1. *Application No.09/10 stands dismissed with costs.*
2. *The Wakf Board is directed to conduct proper enquiry with respect to other allegations against the applicant and take necessary steps according to law.*
3. *The Wakf Board is further directed to constitute proper Board of mutwallis as prescribed by the scheme and correct the records accordingly.*
4. *Applicant shall pay costs of respondent No.1,3 and 4 and bear his own.*
5. *No order as to cost so for respondent No.5 is concerned.*

4] This Court, by order dated 1 April 2011, whilst admitting this Revision Application, stayed the paragraphs 2 and 3 of the operative portion of the impugned order. Mr. Shah, learned counsel for the applicant, submits that in pursuance of the interim order, the applicant continues as Mutawallis and Managing Trustee of the Wakf alongwith two other Mutawalis.

5] During pendency of this Revision Application, Late Sayed Muzaffer Hussain (original respondent No.3) has also expired. The legal heirs of Late Sayed Muzaffer Hussain have been brought on record and same have been duly served in the present proceedings.

6] Mr. Shah, learned counsel for the applicant, made the following submissions in support of the Civil Revision Application:

a} That consequent upon the demise of Late Sayed Muzaffer Hussain, the direction to appoint him as Managing Trustee is rendered infructuous. The legal heirs of Late Sayed Muzaffer Hussain, have, by application dated 12 August 2014 applied for appointment as Mutawallis and Managing Trustees of the Wakf. Such application, is pending consideration before the Wakf Board; and

b} The Wakf Board, by its order dated 1 December 2009, had never removed the applicant as Mutawalli. Accordingly, the applicant's appeal was only against the directions to appoint Late Sayed Muzaffer Hussain as Managing Trustee of the Wakf Board. In such an appeal, the Wakf Tribunal, exceeded jurisdiction by issuing directions in paragraphs '2' and '3' as aforesaid.

7] As noted earlier, although the legal heirs of Late Sayed Muzaffer Hussain have been served in the matter, they have chosen not to appear by themselves or through counsels.

8] At least, *prima facie*, Mr. Shah is right in his submission that consequent upon the demise of Late Sayed Muzaffer Hussain, the directions to appoint him as the Managing Trustee of the Wakf has been rendered infructuous. The legal heirs of Late Sayed Muzaffer Hussain, have already applied for their appointments as Mutawallis/Managing Trustees, in place of Late Sayed Muzaffer Hussain, on basis of succession. The said heirs can also be permitted

to file an additional application, or to amend their existing application for seeking appointment as Mutawallis/Managing Trustees, independent of their claim of heir-ship to Late Sayed Muzaffer Hussain. Such liberty, is accordingly, granted to the legal heirs of Late Sayed Muzaffer Hussain. In light of this, however, there is no necessity to go into the issue as to whether the appointment of Late Sayed Muzaffer Hussain as a Managing Trustee by the Wakf Board in its order dated 1 December 2009 was right or not. In view of the changed scenario, it is only appropriate that the Wakf Board to reconsider this issue, in the context of the application already made by the legal heirs of Late Sayed Muzaffer Hussain or the application, which such heirs may make/amend in terms of the liberty granted by this order.

9] Mr. Shah, is also partially right in his submission that the Wakf Tribunal should not have itself gone into the issue as to whether the appointment of the applicant as Mutawalli was right, in the appeal instituted by the applicant questioning the order dated 1 December 2009 made by the Wakf Board. At the highest, the Tribunal could have remanded the matter to the Wakf Board for taking a decision on the issue, particularly since the Tribunal, in paragraph 18 of the impugned order, has observed that the Wakf Board did not look into the allegation on the mismanagement against the applicant and other Mutawallis whilst exercising powers under Sections 63 and 64 of the said Act.

10] Accordingly, it would be appropriate if the impugned order dated 22 December 2010 is set aside and the matter is remanded to

the Wakf Board for the decision on the following aspects:

A] The application dated 12 August 2014 made by the legal heirs of Late Sayed Muzaffer Hussain for appointment as Managing Trustees/Mutawallis;

B] The amended application/fresh application by the legal heirs of Late Sayed Muzaffer Hussain for appointment as Managing Trustee/Mutawallis, irrespective of the issue of heirships, which the said legal heirs are granted liberty to make within a period of eight weeks from the date the said heirs receive notice of this order from the Wakf Board;

C] The issue of appointment and continuance of the applicant and other Mutawallis, on basis of the allegations contained in original application made by the Late Sayed Muzaffer Hussain , which may be continued by the legal heirs of Late Sayed Muzaffer Hussain or on such other grounds as they may choose to raise in the proceedings.

11] For the aforesaid purpose, the applicant to appear before the Wakf Board on 27 April 2015 at 11.00 a.m. and produce an authenticated copy of this order. Thereafter, Wakf Board shall issue notice to the legal heirs of Late Sayed Muzaffer Hussain as indicated in the cause title to this petition apprising them of this order. Thereafter, the Wakf Board to proceed in the matter in accordance with law.

12] The Wakf Board is requested to dispose of this proceedings as expeditiously as possible and in any case within a period of one year from the date of this order.

13] It is clarified that this Court has not gone into the *inter se* disputes between the parties and therefore, it shall be open for the Wakf Board to decide the aforesaid matters in accordance with law and on their own merits.

14] It is further clarified that the position, which prevails in view of the interim order granted by this Court on 1 April 2011, shall prevail until the Wakf Board finally disposes of the matter.

15] Since the impugned order dated 22 December 2010 has been set aside, it goes without saying that the Wakf Board shall decide the matter fresh without being influenced by any observations contained in the impugned order dated 22 December 2010.

16] Rule is accordingly made absolute to the aforesaid extent.

17] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)