***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 13th October, 2015**

\+ **W.P.(C) 6434/2013**

ABRAR AHMAD & ANR **..... Petitioners**
Through: Mr. Syed Hasan Isfahani, Adv.

Versus

THE DELHI WAQF BOARD AND ANR **..... Respondents**
Through: Mr. Asutosh Lohia, Ms. Soumya Kumar and Mr. Sagar Chauhan, Advs. for R-1.
Mohd. Akram, Adv. for R-2.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The petition impugns (a) the order dated 24th September, 2013 of the respondent No.1 Delhi Waqf Board (DWB) superseding the Management, Committee [of Masjid and Graveyard, Kharsa Nos.60-61, Azadpur (Kewal Park) Delhi] of which the two petitioners namely Mr. Abrar Ahmad and Mr. Irshad Ahmad were members; and, (b) seeks a direction to the respondent No.1 DWB and respondent No.2 the present Managing Committee of the waqf property aforesaid to not cause any hindrance in the functioning of the Managing Committee of which the two petitioners were the members.

2. Notice of the petition was issued, though the interim relief sought not granted. A counter affidavit has been filed by the respondent No.1 DWB. No counter affidavit has been filed by the respondent No.2 the new Managing Committee, though the counsel appears.

3. The counsel for the petitioners and the counsel for the respondent No.1 DWB have been heard.

4. It is not in dispute that the respondent No.1 DWB by office order dated 9th May, 2013 constituted a Managing Committee of Waqf property aforesaid of Masjid and Graveyard Khasra Nos.60-61, Azadpur (Kewal Park), Delhi. The petitioner No.1 Mr. Abrar Ahmad, in the office order dated 9th May, 2013, was described as the Vice-President and the petitioner No.2 Mr. Irshad Ahmad was described as the General Secretary, of the said Managing Committee. Besides the two petitioners, the said Managing Committee also comprised of one President, one Joint Secretary, one Treasurer, two Consultants and four members i.e. in all eleven persons.

5. The respondent No.1 DWB vide another office order dated 24th September, 2013 "in supersession of all previous office orders in this regard" again constituted a Managing Committee in respect of the same

waqf property. The Managing Committee so constituted vide office order dated 24th September, 2013 comprises of twenty four persons and of whom the President and two other members are the same, as of the earlier Managing Committee of which the petitioners were the members.

6. The contention of the counsel for the petitioners is that though the respondent No.1 DWB, in exercise of powers under Section 67(1) of the Waqf Act, 1995, is empowered to supersede a Managing Committee but only after following the procedure prescribed in Sub-section (2) of Section 67. It is argued that the Managing Committee of which the two petitioners were part was not for any specific duration and was to remain in force till superseded and could have been superseded, in accordance with the Section 67(2) only if found to be not functioning properly or satisfactorily or mismanaging the Waqf property or in the interest of the management of the Waqf and that too after issuance of a notice setting forth the reasons for the proposed action and calling upon the Managing Committee to show cause within such time, of not less than one month, as to why such action should not be taken. It is the contention of the counsel for the petitioners that in the present case, the Managing Committee, of which the petitioners was members, was superseded without any allegation of it not functioning

properly or satisfactorily or mismanaging the affairs of the Waqf and without giving any opportunity of hearing.

7. I may notice that Sub-section (3) of Section 67 also provides that an order under Section 67(2) of supersession of Managing Committee shall be published in the prescribed manner and only on such publication is to be binding on the mutwalli and all other persons having any interest in the Waqf. Further, under Sub-section (5) of Section 67, the new Managing Committee can be constituted simultaneously with the order under Section 67(2).

8. Section 67(4) however provides for an appeal to the Tribuanl against an order under Section 67(2). It has as such at the outset been enquired from the counsel for the petitioners, that in the light of the alternative remedy of appeal before the Tribunal constituted under the Waqf Act, how is this writ petition maintainable.

9. The counsel for the petitioners states that though the remedy of appeal is available but only against an order passed, after following the procedure prescribed in Section 67(2) supra and since the respondent No.1 DWB in the

present case has admittedly not followed the said procedure, the appeal remedy is not available.

10. I tend to agree with the counsel for the petitioners.

11. The office order dated 24th September, 2013 does not state any reason for issuance thereof. In fact, the same is an order in supersession of all previous orders and not even an order of supersession of the Managing Committee earlier constituted vide office order dated 9th May, 2013, of which the petitioners were a part. The same, in my view, cannot qualify as an order under Section 67(2).

12. Though the order dated 24th September, 2013 in effect does what can be done under Section 67(2) but without following the procedure prescribed under Section 67(2). Merely because the effect of the impugned order is the same as an order under Section 67(2) would not make it an order under Section 67(2).

13. I may in this regard notice that the respondent No.1 DWB in its counter affidavit to the petition also has not referred to Section 67(4) and on the contrary pleaded that the remedy of the petitioners, under Section 83, is before the Tribunal. Section 83(1) requires the State Government to

constitute Tribunal/s for the determination of "any dispute, question or other matter relating to a Waqf or Waqf property, eviction of a tenant or determination of rights and obligations of the lessor and lessee of such property". Section 83(2) enables any mutwalli or person interested in a Waqf or any other person aggrieved by an order made under the Act to make an application to the Tribunal for determination of any dispute, question or other matter relating to the Waqf.

14. It thus appears that the respondent No.1 DWB also is not treating the impugned order dated 24th September, 2013 as an order under Section 67(2) of the Act.

15. I may in this regard notice that the High Court of Madras in ***M. Ali Hussain Vs. The Tamil Nadu Wakf Board*** MANU/TN/1414/2008 has taken a view that the powers of the Tribunal under Section 83 (2) are original in nature while the powers of the Tribunal under certain other provisions of the Act including under Section 67(4) are appellate in nature. However since the counsels have not addressed on the said aspect and the same is not essential to be adjudicated for the present lis, need is not felt to render any final opinion on the said aspect.

16. The rule of availability of alternative remedy being a bar to entertain a petition under Article 226 of the Constitution of India is even otherwise not an absolute bar. In the facts and circumstances aforesaid and also considering the fact that this petition is pending in this Court for the last more than two years, it is deemed expedient to now adjudicate the same on merits.

17. The respondent No.1 DWB having constituted the Managing Committee to manage the affairs of the Waqf aforesaid vide office order dated 9th May, 2013 could not, in my opinion, at its *ipsi dixit* appoint another Managing Committee of the same waqf property. The scheme of Section 67 is indicative of the Managing Committee once constituted being not liable to be removed / superseded, save in accordance with the manner prescribed therein and which has admittedly not been done in the present case.

18. The question which next arises for consideration is, whether the respondent No.1 DWB could have done what it has been empowered to do under Section 67(2) of the Act i.e. of supersession of Managing Committee of a Waqf, in a manner other than as provided in Section 67(2)&(3) of the Act.

19. The answer has to be a emphatic no. The age old principle enshrined in the Latin maxim *expressio unius est exclusio alterius* i.e. if a statute provides for a thing to be done in a particular manner then it has to be done in that manner and in no other manner and following any other course is not permissible, is squarely attracted. The principle was recently reiterated by the Supreme Court in ***Selvi J. Jayalalithaa Vs. State of Karnataka*** (2014) 2 SCC 401 and in ***Mackinon Mackenzie and Company Ltd. Vs. Mackinnon Employees Union*** (2015) 4 SCC 544. In the latter, it was further held that if the procedure prescribed is not followed, then such act of the authority has to be held to be null and void *ab initio* in law. The principle was yet again reiterated in ***Zuari Cement Ltd. Vs. Regional Director E.S.I.C. Hyderabad*** (2015) 7 SCC 690.

20. The High Court of Karnataka in ***Managing Committee, Masjid-E-Idgah, Mysore Vs. State of Karnataka*** 1997 SCC Online Kar 147 held that once a Managing Committee is constituted, under the legislative mandate, it can be superseded only in compliance with the requirements as envisaged under Section 67 of the Act. The stand of the Waqf Board in that case that it can at any point of time without assigning any reason whatsoever revoke its pleasure leading to a civil death of the Committee and proceed to appoint

another Committee at its sweet will and pleasure was held to be in teeth of statutory provisions and to which the Waqf Board owes its existence. It was held that the Waqf Board thus cannot take upon itself any authority beyond such provisions. The counsel for the petitioner also in this respect has relied on the judgment of Hon'ble the Chief Justice of this Court in the High Court of Andhra Pradesh in ***Sk. Abdul Saleem Vs. A.P. State Wakf Board*** 2006 (2) ALT 76, further holding that the Waqf Board, while passing an order of supersession, is bound to record reasons and the satisfaction of the Waqf Board under Section 67(2) has to be reflected from the reasons assigned in the order of supersession. It was further held that an order of supersession of Managing Committee, which is devoid of reasons, is in violation of the principles of natural justice and constitutes a valid ground for exercising judicial review under Article 226 of the Constitution of India. Reliance in this regard is also placed by counsel for the petitioner on ***Mohd. Izhar Vs. Delhi Waqf Board*** 106 (2003) DLT 514 also holding that since the statutory provisions of Section 67(2) clearly provide for a minimum period of one month notice, that ought to have been followed because the non following of such a clear statutory provision creates a doubt in the minds of the people that principles of natural justice have been violated.

21. The action of the respondent No.1 DWB is thus clearly in violation of the statute and reeks of favouritism and arbitrariness. Statutory bodies as the respondent No.1 DWB ought to act within the strict confines of the statute and ought not to indulge in any extra statutory actions and if do so, would be liable to be superseded under Section 99 of the Act. The respondent No.1 DWB is cautioned to be careful in future. A copy of this judgment be placed before the respondent No.1 DWB in its next meeting for consideration and introspection by all the members of the Board.

22. Though the office order dated 24th September, 2013 does not contain any reason for constitution of a new Managing Committee of the same Waqf Board, when a Managing Committee had been constituted on 9th May, 2013 but the counsel for the respondent No.1 DWB states that in the counter affidavit the reasons for constituting a new Managing Committee are stated. It is argued that there were complaints against the Managing Committee of which the petitioners were members and copies of which have been filed along with the petition and owing whereto the respondent No.1 DWB deemed it appropriate to constitute a new Managing Committee. It is further stated that there was no time to give a notice of one month, as statutorily required.

23. However, there is only one complaint dated 14th September, 2013 of Masjid, Eidgah & Muslim Qaddimi Qabristan, Kewal Park, Azadpur, Delhi filed as annexure to the counter affidavit and a perusal whereof does not show any specific allegation having been made or any such urgency, as to require the respondent No.1 DWB to act in such haste, as it has done in the present case. Also, once the statute has provided for the procedure to be followed for supersession of a Managing Committee, the haste, if any is irrelevant. Nothing is shown to the effect that the respondent No.1 DWB has any emergent powers, as are purported to have been exercised.

24. The fact however still remains of the order to be passed in the present petition, notwithstanding the illegality of the action of the respondent No.1 DWB. The petitioners are but two of the members of the eleven member Managing Committee. Of the said eleven, three are members of the new Managing Committee and the remaining members have chosen not to contest the supersession. They are not even parties before this Court, for this Court to know whether they are willing to continue working as a Managing Committee, as created on 9th May, 2013. Without the entire Managing Committee willing to function, no purpose would be served in setting aside the order of the respondent No.1 DWB or to remove the new Managing

Committee or to restore the management of the subject Managing Committee of which the two petitioners were members.

25. The counsel for the petitioners has again drawn attention to ***Mohd. Izhar*** supra where, in a similar situation, a direction was given to the Waqf Board to take a fresh decision, after serving a notice in accordance with Section 67(2) of the Act to the Managing Committee sought to be ousted.

26. The counsel for the respondent No.1 DWB states that the same procedure can be followed in the present case also.

27. Accordingly, the petition is disposed of with a direction to the respondent No.1 DWB to, within two weeks from today, give a notice to the Managing Committee of which the petitioners were a part, as well as to all the individual members of the said Managing Committee, setting out the grounds on which the said Managing Committee is sought to be removed and giving an opportunity of hearing to the Managing Committee of which the petitioners were a part to file their replies.

28. Upon such notice being given, the petitioners and / or Managing Committee of which they were a part shall file their replies within one month therefrom. An opportunity of hearing shall be given to the petitioners

and to such of other members of the Managing Committee who are willing to avail of the same.

29. A decision in this regard shall be taken within two months of submission of the replies by the petitioners.

30. The petitioners, if remain aggrieved, shall have remedies in law.

No costs.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

OCTOBER 13, 2015
bs/gsr