

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22766 of 2011

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Abdur Rahman S/O Late Abdul Ghani, resident of Village- Gopalpur Gopal, P.O
and P.S- Sharfuddinpur, District- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary Department Of Minority Affairs Govt. Of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The Chairman Bihar State Sunni Wakf Board, 34 Haj Bhawan, Ali Imam Path
(Harding Road), Patna-1
5. The Bihar State Sunni Wakf Board through its Secretary Haj Bhawan, Ali
Imam Path (Harding Road), Patna-1
6. Inspector of the Board (Enquiry Officer), 34 Haj Bhawan, Ali Imam Path
(Harding Road), Patna-1
7. Bibi Anisha Khatoon D/O Late Abdur Rahman & wife of Md. Taiyab, resident
of village- Gopalpur Gopal, P.O And P.S- Sharfuddinpur, District-
Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Md. Anis Akhtar, Advocate Mr. Arif Daula Siddiqui, Advocate
For the State	:	Mr. Ajit Kumar, AC to G.A.-7
For respondent no. 4 to 6:	:	Mr. Helal Ahmad, Advocate
For respondent no. 7	:	Mr. Khatim Raza, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-11-2017

The prayers of the petitioner in the writ petition read as
under :-

(A) For issuance of an appropriate writ order or



direction setting aside the order dated 27.09.2011 (Annexure-12) passed in Wakf Appeal No. 12 of 2011 by Sri Md. Akram Rizvi, Presiding Officer Bihar Wakf Tribunal, Patna whereby appeal filed by the petitioner against the order dated 03.11.2003 passed by the chairperson of the Bihar State Sunni Wakf Board (hereinafter called the Board) removing the petitioner from the post of Mutawalli of Hazi Gaushan Wakf Estate No-446 of Sharfuddin, District Muzaffarpur and appointing respondent no. 7 as Mutawalli of said wakf estate, has been dismissed.

(b) For issuance of an appropriate writ order or direction setting aside the order dated 03.11.2003 (Annexure-6) passed by the Chairperson of the Bihar State Sunni Wakf Board (hereinafter called the Board) removing the appellant from the Mutawalli of the Haji Gaushan Wakf Estate No.446 of Sharfuddin, District Muzaffarpur and appointing respondent no. 7 i.e. Bibi Anisha Khatoon, as Mutawali of the said wakf estate.

(c) For issuance of an appropriate writ order or direction restraining the respondents from implementing or giving effect to the aforesaid orders or interfering in any manner in the management and administration of the said wakf estate by the petitioner.

(d) For issuance of appropriate writ order or direction granting any relief or reliefs to which the



petitioner is found entitled in the facts and circumstances of the case in the opinion of this Hon'ble Court."

2. Mr. Anis Akhtar, learned counsel has appeared for the petitioner, Mr. Helal Ahmad, learned counsel has appeared for the Bihar State Sunni Waqf Board (for short 'the Board'), Mr. Khatim Raza, learned counsel has appeared for the private respondent no. 7 Bibi Anisha Khatoon and Mr. Ajit Kumar, learned A.C. to Government Advocate-7 has appeared for the State.

3. The brief facts of the case are that one Haji Gaushan Ali executed a registered deed of Waqf in favour of village mosque situated at village- Gopalpur @ Chak Haji Sunder on 09.07.1906 with respect to certain properties for upkeep of the said mosque and stipulated a line of succession. The said Waqf was registered in the Board as Waqf Estate No.446. Vide paragraph-5 of the said Waqf deed, it was stipulated that Haji Gaushan Ali shall remain as Mutwalli of the Waqf property during his lifetime and after his death Md. Haroon shall succeed as Mutawalli and after his death, Md. Ibrahim and, thereafter, Md. Yaqub shall be the Mutawalli and after the death of all those three persons, Aulad-e-Akbar from Md. Haroon shall become the Mutawalli and in case, Md. Haroon remained issueless then the Aulad-e-Akbar of Md. Ibrahim and if



Md. Ibrahim remained issueless then Aulad-e-Akbar of Md. Yaqub shall become Mutawalli and this pattern of line of succession shall continue for the purpose of appointment of Mutawalli of the said Waqf Estate. Accordingly, as per recital of the Waqf deed, upon the death of Md. Haroon, the grandfather of respondent no. 7 Bibi Anisa Khatoon, her father Abdur Rahman was made Mutawalli. After death of Abdur Rahman, the petitioner Abdur Rahman, son of late Abdul Ghani was appointed as Mutawalli in 1996. Subsequently, respondent no. 7 Bibi Anisha Khatoon represented before the Board claiming that the petitioner is male descendant from Md. Ibrahim and by misleading interpretation of Waqfnama, he projected that there was no male child from the branch of Md. Haroon especially from Abdur Rahman and, hence, being the only male child from the branch of Md. Ibrahim, he was entitled to become Mutawalli. According to her, after demise of her father Abdur Rahman, it was to be seen as to who was legally entitled to become Mutawalli as per Waqfnama. Respondent no. 7 also made complaint against the petitioner for committing misappropriation of the Waqf Estate. On receipt of such complaint, the Board appointed one Md. Kalimuddin, an inspector of the Board to enquire into the complaint. The inquiring officer inquired into the allegations by visiting the place on 15.11.2001 and submitted his report on 07.01.2002 after collecting



evidences to the Board.

4. After perusing the inquiry report and hearing the parties, the Board passed an order on 05.08.2002 whereby the petitioner was removed in the light of the inquiry report and respondent no. 7 was found eligible to be Mutawalli as per Waqfnama. Hence, the Board appointed respondent no. 7 as Mutawalli. The aforesaid order dated 05.08.2011 passed by the Board was challenged by the petitioner before this Court, vide CWJC No. 11100 of 2002, which was remanded, vide order dated 22.04.2003, directing the Board to supply a copy of the inquiry report dated 07.01.2002 to the petitioner and give him an opportunity to submit his objection and comment on the said report and then to pass speaking order after hearing the parties. Thereafter, the Board in compliance of the order dated 22.04.2003 passed in CWJC No. 11100 of 2002 sent a copy of inquiry report dated 07.01.2002 to the petitioner as well as the respondent no. 7. The petitioner filed his objection dated 02.06.2003 on the inquiry report to which respondent no. 7 filed reply dated 17.06.2003. Thereafter, the Board after hearing both the parties passed a speaking order dated 03.11.2003 whereby the petitioner has been found to have committed misappropriation of the waqf property and has been removed under Section 64(1) of the Waqf Act, 1995. Further,



respondent no. 7 was found eligible to be Mutawalli as per Waqfnama, as she belonged to the category of Aulad-e-Akbar from the branch of Md. Haroon.

5. The operative part of the finding of the Board in the aforesaid order dated 03.11.2003 reads as under :-

“ On patient hearing of the lawyers of both the parties and perusal of documents filed on their behalf it is essential to look into the relevant paragraphs of the registered Wakf deed, dated 09.07.1906 executed by Haji Ghausan. In paragraph no. 5 of the Wakf deed it is expressly stipulated that the Wakif will continue as Mutawalli till his death and after his death Md. Haroon shall succeed as Mutawalli and after his death Md. Ibrahim and thereafter Md. Yaqub shall be the Mutawalli and after the death of those three sons of dedicator. Aulad-e-Akbar of Md. Haroon will become, Mutawalli and in case Md. Haroon remained issueless then the issue of Md. Ibrahim and if Md. Ibrahim remained issueless then the issue of Md. Yaqub shall become Mutawalli and this pattern of line of succession will continue. Md. Haroon remained Mutawalli during his lifetime and after his death his son Abdur Rahman and father of Anisa Khatoon became Mutawalli and after the father of Anisa Khatoon, the writ petition was appointed as Mutawalli of Wakf estate no. 446 but due to his misconduct and



acting against the wishes of the Wakif, failed to maintain regular accounts for two consecutive years and to submit in two consecutive years, the yearly statements of accounts as required U/S 46(2) and continuous neglect of his duties and committed misfeasance, malfeasance, misapplication of funds and breach of trust in relation to the Wakf and in respect of money and other Wakf properties was removed vide order dated, 05.08.2002 by the Board and Bibi Anisa Khatoon was appointed Mutawalli being in the line of Md. Haroon as per Wakf deed and even after the direction of the Hon'ble High Court, the copies of enquiry report dated, 07.01.2002 was supplied to A. Rahman who submitted his objection on 2.6.2003 after hearing the lawyers nothing new has come forward which can attract that he will be continued in the office of Mutawalli although he is not acting as Mutawalli which Anisa Khatoon has proved by filing the return and payment of the Wakf contribution of Rs.1995 on 02.06.2003 vide Wakf receipt no.4650 Book No.47. The copy of the Rehan deed dated, 20.09.2001 executed by A. Rahman in his personal capacity with one Sita Ram Saha with respect to the Wakf properties and receipt of Rs.45,000/- is speaking his mismanagement and misappropriation of Wakf property which is the express contravention of Section 64(1)(j)(h) and



(i) of Wakf Act, 1995 and Wakf deed which is sufficient to exhibit unworthiness of A. Rahman to become or continue as Mutawalli of Wakf Estate No.446. He has not submitted budget and return in the office of Board which can prove his fair dealing. He has also not paid the Wakf contribution during this tenure of Mutawalliship so he is unfit to become Mutawalli on this count. As to eligibility to become Mutawalli it is essential to look into the meaning of “Aulad-e-Akbar”. The word “Aulad” means the issue, male or female and it does not mean as “son” as wrongly alleged. The word “Akbar” means “elder” and as such the meaning of the word “Aulad-e-Akbar” is eldest issue, either male or female. Anisa Khatoon is daughter is the son of Md. Haroon and she is eldest issue of Abdur Rahman who was son of late Md. Haroon so according to Wakf deed there is no bar to appoint her as Mutawalli of Haji Ghausan Wakf estate no. 446 to look after and manage the affairs of the said Wakf estate. So far as litigation in between A. Rahman and Anisa Khatoon in different courts at Muzaffarpur is concerned which will the Court will adjudicate according to its merit and it would not affect the factum of the appointment of Mutawalli and it will not preclude or debar Anisa Khatoon to appoint her as Mutawalli. Keeping in view all the facts and circumstances of the case



and delegation of power to the Chairperson by the Board U/S 27 of the Wakf Act, 1995, it is held and ordered that Abdur Rahman is removed from the post of Mutawalli of the said Wakf estate and Bibi Anisa Khatoon is appointed as Mutawalli of Haji Ghausan Wakf estate no.446 to look after and manage the affairs of the Wakf property in view of the wishes of the Wakif (dedicator) and endeavour hard to recover the Wakf property from illegal transfer and encroachment.”

6. The order passed by the Board was challenged by the petitioner before the Bihar Waqf Tribunal in Waqf Appeal No. 12 of 2011. After hearing the parties, the Tribunal did not find any illegality in the order passed by the Board and finding no merit in the appeal, dismissed the same, vide order dated 27.09.2011.

7. Assailing the aforesaid appellate order dated 27.09.2011, Mr. Anish Akhtar, learned counsel appearing for the petitioner submitted that the Board and the Appellate Tribunal have failed to appreciate that a Mutawalli is required to call Azan and perform Imamat and a lady cannot perform such religious things and without appreciating the same, the Board and the Appellate Tribunal have passed adverse order against the petitioner. He submitted that the impugned order passed by the Board is illegal and without jurisdiction, as the same has been passed by the Chairperson of the



Board. According to him, under the provisions of the Act, the Chairman has no jurisdiction to exercise such power to remove or appoint a Mutawalli and the said power lies with 2/3rd majority decision of the member of the Board. He submitted that the said order has not even been approved by the Board. He submitted that respondent no. 7 Bibi Anisha Khatoon had been fighting cases after cases to grab the property of Waqf and she could not have been appointed against wishes of Waqif as contemplated in the Waqf deed, as she is not the Aulad-e-Akbar from the branch of Md. Haroon. He submitted that the allegation of misappropriation of assets of Waqf has not been proved by any cogent evidence and the findings recorded by the Board and the Tribunal are perverse.

8. *Per contra*, Mr. Helal Ahmad, learned counsel appearing for respondent nos. 4 to 6 referring to the counter-affidavit filed on their behalf submitted that there is no force in the submissions made by the learned counsel for the petitioner. He would submit that the Board in its meeting held on 10.11.2001 delegated power to the Chairperson of the Board under Section 27 of the Waqf Act, 1995 to hear the matter under Section 64 of the Waqf Act, 1995. He contended that the order passed by the Chairperson is not without jurisdiction in view of the aforesaid delegation of power to the Chairperson of the Board. He would submit that in terms of



the order dated 22.04.2003 passed by this Court in CWJC No. 11100 of 2002, the Chairman of the Board after hearing the parties and considering the entire materials on record and looking into the facts and circumstances of the case passed a reasoned order dated 03.11.2003 and, thus, it is wrong to allege that the allegation of misappropriation of Waqf Estate was not based on any cogent material.

9. Mr. Khatim Raza, learned counsel appearing for respondent no. 7 would submit that the Board had got an inquiry conducted pursuant to the receipt of complaint from the respondent no. 7 into the allegation of misappropriation of Waqf Estate and on perusal of the report of inquiry officer and after hearing the parties, the Board gave its categorical finding that the petitioner was responsible for misappropriating the Waqf property and, thus, he was removed by the Board in exercise of powers conferred under sub-section (1) of Section 64 of the Waqf Act. He would submit that there are concurrent findings of fact against the petitioner and there being no illegality in the order passed either by the Board or by the Appellate Tribunal, the writ petition is fit to be dismissed.

10. I have heard learned counsel for the parties and carefully perused the record.

11. There is no dispute to the contention of the respondent



nos. 4 to 6 that the Board in its meeting held on 10.11.2011 delegated power to the Chairperson vide its decision as contained in Annexure-A to the counter-affidavit under Section 27 of the Waqf Act, 1995 to hear the matter under Section 64 of the Waqf Act, 1995. Section 27 of the aforesaid Act authorizes the Board to delegate to the Chairperson or any other member or the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under the Act, as it may deem necessary, except the powers and functions of the Board mentioned in Clauses (c), (d), (g) and (j) of sub-section (2) of Section 32. Thus, the objection raised by the petitioner that the Chairman of the Board, who had passed the order removing the petitioner as a Mutawalli and appointing the respondent no. 7 in his place had no authority to pass such order and the said power lies with 2/3rd majority decision of the Board is erroneous in law and has got no substance. Moreover, the decision of the Chairman dated 03.11.2003 was also placed before the Board in its meeting on 06.11.2003 and the Board approved the order of Chairman dated 03.11.2003.

12. Also, I do not find any substance in the submissions of the petitioner that a Mutawalli is required to call Azan and perform



Imamat and respondent no. 7 being a lady cannot perform such religious functions. It would be evident from para-4 of the Waqf deed the words used in Waqfnama is “Muazzin deendar moqarar karengay jo Azan diya kare wo Imamat kiya kare”. Thus, the duty of the Mutawalli is to appoint Muazzin Deendar, who shall call Azan and perform Imamat and not to himself call Azan and perform Imamat, as per Waqf deed.

13. So far as the plea of the petitioner that respondent no. 7 being a female cannot be called Aulad-e-Akbar is concerned, the same has rightly been considered by the Board while passing the impugned order dated 03.11.2003. The word ‘Aulad’ means the issue, male or female and the word ‘Akbar’ means ‘elder’, ‘great’. Thus, the phrase Aulad-e-Akbar does not mean only male issue. Further, there is no dispute to the fact that Bibi Anisha Khatoon (respondent no. 7) is the issue of late Abdur Rahman, who was son of late Md. Haroon. Thus, as per the Waqf deed, she ought to have been appointed Mutawalli after the demise of her father. So far as the petitioner is concerned, admittedly, he is son of Abdul Ghani, who is descendant of Md. Ibrahim. He could have been appointed as a Mutawalli in terms of the Waqf deed only if father of the respondent no. 7 Bibi Anisha Khatoon would have died issueless. However, there being a surviving issue from the branch of Md.



Haroon, there was no question of the petitioner being appointed as a Mutawalli of the Waqf estate as per the Waqf deed executed by the Waqif late Haji Gaushan. The initial appointment of the petitioner as a Mutawalli itself was wholly illegal.

14. As far as misappropriation of the Waqf estate is concerned, the Board after perusing the inquiry report and hearing the parties passed a detailed speaking order whereby the petitioner having been found to have committed misappropriation of Waqf estate and also that he failed to submit budget and return. The Board also found that during his tenure he did not deposit the Waqf contribution. He executed rehan deed dated 20.09.2001 in his personal capacity with one Sita Ram Sah with respect to Waqf property.

15. I do not see any illegality in the findings recorded by the Board whereby it has held that on the basis of materials on record, there were sufficient evidences to show that the petitioner had misused the Waqf property for personal gain. In that view of the matter, his removal in exercise of power conferred under sub-section (1) of Section 64 of the Waqf Act cannot be held to be bad.

16. Even otherwise, there is no reason to interfere with the concurrent findings on facts by the Board and the Appellate Tribunal, as while exercising the writ jurisdiction, this Court has



undoubtedly the power to review the concurrent findings on fact, however, usually this Court does not interfere with such findings, except in exceptional circumstances where the findings are illegal or perverse. There are no such circumstances in the present case. The findings are based upon relevant inquiry report submitted by the inquiry officer and also on perusal of relevant document. The findings have been recorded under the legal process after affording reasonable opportunity of hearing to the petitioner having regard to the facts of the case.

17. In the circumstances taken note of and discussed hereinabove, this Court does not find any merit in the present application. It is dismissed, accordingly. No costs.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.11.2017
Transmission Date	NA

