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

CIVIL REVISION APPLICATION NO.156 OF 2015

1. Maharashtra State Board of Wakfs,
Through its Chief Executive
Officer, Office at Panchakki,
Aurangabad, Dist. Aurangabad.
2. Chief Executive Officer,
Maharashtra State Board of Wakfs,
Office at Panchakki, Aurangabad,
District Aurangabad. ..APPLICANTS

VERSUS

1. Peer Qamar Ali Durvesh and
Gudjibaba Trust,
At post Khed-shivapur,
Tq. Havelli, Dist. Pune
Through its Adhoc committee
members.
2. Akhalaque Ahmed Shaikh,
Age: 52 years, Occ: Advocate,
Office at 13, Mayfair complex,
2125/2126 v.p. Street, Camp,
Pune.
3. Alim Abbas Mujawar,
Age: major, Occ: Business,
R/o. At post Khed-shivapur,
Tq. Havelli, Dist. Pune. ..RESPONDENTS

Mr S.V. Dixit, Advocate for applicants;
Mr V.D. Salunke, for respondent Nos.2 & 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 18th JULY, 2017

(2)

ORAL ORDER :

Heard.

2. Respondent Nos. 2 and 3 were appointed as adhoc trustees of respondent No.1 trust/wakf.

3. Clauses 9 and 10 of the Scheme, by virtue of which, Wakf in question is to be governed, provides for qualification of trustees and tenure of trustees.

4. The Regional Wakf Officer, Pune Region, Pune, on 5th April, 2015, pursuant to the provisions of Section 25 of the Wakf Act, 1995, submitted report to the Maharashtra State Wakf Board, Aurangabad, in which, it was brought to the notice of Wakf Board that adhoc committee of three persons, of which respondent Nos. 2 and 3 are members, have been appointed pursuant to the order dated 12th September, 2011. Two members viz., respondent Nos. 2 and 3 are closely related to each other and one member namely Alim Mujawar, an employee of the State Wakf Board sought discharge

(3)

from the adhoc committee of the said board.

5. Respondent Nos. 2 and 3, as such, were directed to submit accounts, however, these two members have failed to submit accounts as directed by the Chief Executive Officer of the Wakf Board.

6. As a consequence, the Chief Executive Officer of the Wakf Board, in exercise of powers under Section 25(1)(c) of the Wakf Act, 1995 dissolved the adhoc committee with further direction to form managing committee as per clauses 9 and 10 referred supra of the Scheme of Wakf Board.

7. The Regional Wakf Officer also directed that against respondent Nos. 2 and 3 for misappropriation and defaults committed by them, first information report be lodged, as reflected in the communication dated 21st May, 2015.

8. Respondent Nos. 2 and 3 approached the

(4)

Maharashtra State Wakf Tribunal, Aurangabad questioning the order dated 6th April, 2016, whereby respondent Nos. 2 and 3 were removed from the adhoc committee. The said proceedings were registered as Wakf Application No.17 of 2015.

9. The Wakf Tribunal allowed the said application and set aside the order dated 6th April, 2015 passed against respondent Nos. 2 and 3 with further direction to remove respondent Nos. 2 and 3 by following due process of law under the Wakf Act. As such, this Civil Revision Application through its Chief Executive Officer.

10. Heard Mr. Dixit, learned Counsel for the applicants and Mr. Salunke, learned Counsel for respondent Nos. 2 and 3. According to Mr. Dixit, learned Counsel for applicants, power to appoint adhoc trustees includes power to remove them and purpose and object with which respondent Nos. 2 and 3 were appointed, since was not achieved in view of alleged misappropriation of the wakf, the order of removal of respondent Nos. 2 and 3 was very much

(5)

justified. According to him, plain reading of the provisions of Section 25 of the Wakf Act, 1995, particularly Section 25(1)(c) empowers competent authority i.e. Chief Executive Officer to do such act as may be necessary for the control, maintenance and superintendence of the wakf. He would then urge that power to appoint includes power to remove and for the said proposition of law, he would draw support from the judgment of the Apex Court in the matter of **M/s. Heckett Engineering Co. vs Their Workmen**, reported in **1977(4) SCC 377** and **Pradyat Kumar Bose vs The Hon'ble The Chief Justice of Calcutta High Court**, reported in **AIR 1956 SC 285**. Mr. Dixit, learned Counsel for applicants, in addition, would urge that respondent Nos. 2 and 3 never appointed as *Mutawali* but their appointment was only of Ad-hoc trustees. Section 3 (i) of the Wakf Act defines *Mutawali* and respondent Nos. 2 and 3 in any case cannot fit into requirement of the said definition. He would urge that the order impugned passed by learned Tribunal is not sustainable.

(6)

11. Per contra, Mr. Salunke, learned Counsel for respondent Nos. 2 and 3 would urge that the appointment of respondent Nos. 2 and 3 has to be termed as *Mutawali*. He would draw support from the provisions of Section 67 of the Wakf Act so as to submit that the Committee of Management cannot be removed without following due process of law. According to him, the order impugned passed by learned tribunal is just and proper and it shall be always open for the applicants to take out appropriate proceedings against respondent Nos. 2 and 3 in accordance with law. He sought dismissal of the Civil Revision Application.

12. Considered rival submissions. Vide order dated 12th September, 2011, respondent Nos. 2 and 3 were appointed as members of adhoc committee of respondent No.1 trust by the order of Chief Executive Officer of Wakf Board. The said appointment was in exercise of power under Section 25 of the Wakf Act, which speaks of duties and powers of Chief Executive Officer.

(7)

13. The appointment of respondent Nos. 2 and 3 was subject to certain conditions incorporated in the said order.

14. After appointment of respondent Nos. 2 and 3 as adhoc committee members was made, vide order 12th December, 2011 enquiry proceedings came to be registered with the State Wakf Board wherein these respondents were directed to produce accounts and record of the wakf. The Regional Wakf Officer has forwarded the report against respondent Nos. 2 and 3 as regards their misconduct in managing wakf in question. As such, the applicants had put embargo on the rights of respondent Nos. 2 and 3 to operate accounts of respondent No.1 Wakf with further warning that if statement of account is not produced, first information report will be registered.

15. The fact remains that the very appointment of respondent Nos. 2 and 3 is for adhoc purpose and only with an intention to manage the affairs of

(8)

Wakf till regularly elected/nominated body takes over charge of the Wakf.

16. The Chief Executive Officer has also ordered, pursuant to defaults committed by the respondents, to file first information report against them. Amongst other, the mis-conduct of respondents as is reflected from the documents on record is, removal of cash from the donation box without any authority. The said act was contrary to the order of status quo passed in the proceedings which are pending qua removal of respondent Nos. 2 and 3.

17. In the wake of conduct of respondent Nos. 2 and 3, particularly as could be noticed from the appointment of respondent Nos. 2 and 3 is, pursuant to the provisions of Section 25 of the Wakf Act, that too, as a member of adhoc committee. The object with which the appointment of respondent Nos. 2 and 3 was made by the applicants is noticed to have been frustrated, as the conduct of respondent Nos. 2 and 3 was noticed contrary to the

(9)

interest of the trust. As such, the order of removal of adhoc trustees came to be passed, which was reversed by the Wakf Tribunal on the ground that the power under Section 25(1)(c) of the Wakf Act does not empower removal of adhoc trustees.

18. While making such observations in paragraph-40 of the impugned order, the Presiding Officer, Wakf Tribunal has lost sight of the provisions of General Clauses Act, wherein power to appoint must read to include power to remove.

19. In the present case, respondent Nos. 2 and 3 being adhoc committee members cannot claim to remain in power in perpetuity. The powers under the Act if are exercised under Section 25, it has to be inferred that the said authority, who has power to appoint, has also power to order removal of adhoc committee member.

20. Apart from above, it is required to be noted that even in the order impugned, particularly paragraphs-24, 25, 26 and 29 it is ex-facie clear that respondent Nos. 2 and 3 have committed serious

(10)

defaults in managing trust and in view thereof, the order of removal of respondent Nos. 2 and 3 is very much justified, as source of such power could be noted from Section 25 of the Wakf Act, 1995.

21. In the wake of above, it is noticed the impugned order cannot be said to be to the tune of provisions of Sections 25(1)(c) of the Wakf Act, 1995. As such, the impugned order dated 30th July, 2015 passed by the Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad in Wakf Application No. 17 of 2015 is hereby quashed and set aside.

22. Civil Revision Application stands allowed in above terms.

(NITIN W. SAMBRE, J.)

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