

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1511 of 2020**

Muslim Welfare Society Masalke Aala Hazrat Hanifi Sunni Mazjide Bilaal Rajendranagar, Bilaspur Through President Sayyed Asif Ali Son Of Sayyed Shamsheer Ali, Aged About 53 Years, R/o House No. 17, Ward No. 10, Mainroad, Rajendranagar, Bilaspur District Bilaspur Chhattisgarh.

---- **Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary, Disaster Management, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur District Raipur Chhattisgarh.
2. Chhattisgarh State Waqf Board Through Chief Executive Officer, Office At Ghadi Chowk, Raipur, District Raipur Chhattisgarh.
3. The Registrar Chhattisgarh Firms and Society, Bilaspur Range, District Bilaspur Chhattisgarh.
4. Mohd. Sarfaraz Khan S/o M.A. Shameesh Khan Aged About 41 Years R/o Ward No. 8 Tiwari Chahal, Rajendra Nagar, Tehsil and District Bilaspur Chhattisgarh.
5. Sayyed Sabir S/o Late Sayyed Ashraf Ali Aged About 46 Years R/o Rajendra Nagar, Bilaspur Chhattisgarh.
6. Mohd. Arif Islam S/o Late M.Z. Islam Aged About 46 Years R/o House No. 473, Ward No. 8, Rajendra Nagar, Tehsil and District Bilaspur Chhattisgarh.

---- **Respondents**

For Petitioner	:	Shri Sumit Singh Rathore, Advocate.
For State	:	Shri Sidharth Dubey, Dy. Govt. Advocate.
For respondents No.4to6	:	Shri KA Ansari, Sr. Advocate along with Shri Aman Ansari, Advocate.
For Respondent No.2	:	Shri Prateek Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

12.10.2020

1. The challenge in the present writ petition is to the impugned order Annexure P/1 dated 23.06.2020 whereby the respondent-Chhattisgarh Waqf Board has appointed an adhoc committee to run and manage the affairs of the Masjid Bilal, Rajendra Nagar, Bilaspur.
2. The petitioner had filed the present writ petition claiming themselves to be the owner of the property that situates in Plot No.67/1 and 67/2 measuring

1195 sq.ft. Situated in Ward No.10 (Old No.8) at Rajendra Nagar, Bilaspur. According to the petitioner, they had purchased the property by a registered sale deed executed in the year, 2009 from one Shri Biju C. Kora.

3. The contention of the petitioner was that the said property is exclusively a private property where they had constructed a Mosque and few of the members of their society and their community gathered for offering the daily prayers. It was also the contention of the petitioner that the said property was never under the control of the Chhattisgarh Waqf Board earlier, nor is it at any point of time notified or published anywhere to be a Waqf property. Therefore, the impugned order to that extent is bad in law. It was also the contention that unless the property is declared to be a Waqf property by specifically notifying the same as is required under the provisions of the Waqf Act, 1995 (in short, the Act, 1995), the same cannot be said to be a property of Waqf Board. Similarly, unless the property was duly taken over by the Waqf Board at any point of time and was duly managed by the same in accordance with law, the order of appointment of internal adhoc committee by the Waqf Board is apparently contrary to the provisions of the Act, 1995. That it also amounts to directly interfering with peaceful possession of the private property belonging to the petitioner by the respondents thus it would be violative of the right to property of the petitioner.
4. According to the petitioner, they are a registered body registered under the Chhattisgarh Societies Registration Act. Since they are a registered body and have their own bylaws, they are bound and regulated by the bylaws and it was petitioners who were managing the affairs of the said mosque and the property situated therein when abruptly the impugned order has been passed on 23.06.2020 treating the property as Waqf property and have appointed 4 members of the community, as an adhoc committee to

take care of the management and affairs of the said mosque.

5. The challenge is on the ground that the impugned order is without jurisdiction inasmuch as the property is not a Waqf property, therefore, the Waqf Board would not have any authority to pass such orders to manage the affairs of the said private property exclusively belonging to the petitioner society. They were only answerable and accountable to the Registrar, Societies Registration Act and that they are not in any manner under the control of the Waqf Board.
6. It was further the contention of the petitioner that the impugned order is also in violative of the principles of natural justice for the reason that no notice was served before the impugned order was passed. Likewise, it was also the contention that the respondents also not have followed the due process of law as is required for declaring a property to be a Waqf property, inasmuch as, a certification as is required under Section 4 of the Act, 1995 and publication under Section 5 of the Act, 1995 etc. have not been followed with before the impugned order was passed.
7. According to learned counsel for the respondents both appearing for the Chhattisgarh Waqf Board as also for the private respondents No.4 to 6, there are serious material suppression of facts by the petitioner, so also there are fake and created documents produced along with the writ petition in order to mislead the court and thereby the petitioners got the interim order which continues in their favour for more than couple of months now. According to the respondents, the first misrepresentation by the petitioner is to the very name of the petitioner itself in the writ petition. According to the respondents, a plain reading of the name of the petitioner's society reflects it to be religious organization whereas the actual name of the petitioner society is only "Muslim Welfare Society" and nothing more. It is a pure society registered for non religious activities under the provisions of

the Chhattisgarh Societies Registration Act.

8. It was also the contention of the respondents that even the sale deed on the basis of which the property was purchased does not disclose it to be purchased for the purpose of private use. Neither does the bylaws of the petitioner society reflect the same to have been framed for the management and running affairs of the mosque. It was further contended that even the bylaws which have been enclosed along with the writ petition is a fake and fabricated document. The respondents along with their reply have produced a duly certified bylaws of the society and highlighted the fact that many of the provisions of the certified bylaws are missing from the bylaws which have been annexed along with the writ petition. At the same time, there are many of the bylaws which seems to have been altered by the petitioner without any authority or force of law. Nor was such altered bylaws produced before the Registrar for his approval which again is mandatorily required under the law.
9. The counsel for the respondents vehemently argued that infact the writ petition should be dismissed with both heavy cost imposed as also by taking appropriate action against the petitioner who has tried to mislead the court and has also abused the process of law.
10. According to respondents, the property also becomes a Waqf property by its very use. As per the counsel for the respondent Waqf Board, undoubtedly there is a mosque constructed and situated at the aforesaid site. The said mosque is being used for offering prayers by the people from the community staying in the nearby vicinity and it is being used as Mosque for quite sometime now. Therefore, under the provisions of Section 3(r) of the Act, 1995 it becomes a Waqf by user. It was also the contention of the counsel for the Waqf Board that under the Muslim Law there is no concept of a private Mosque.

- 11.** According to counsel for the Waqf Board, since there were some serious dispute among the members of the petitioner society, an application was moved by one of members of the petitioner society to the Waqf Board. The Waqf Board had initiated the proceeding for registering the same. Pending the registration, taking into account the dispute between the members, the Waqf Board thought of appointing an adhoc committee, as such, there is no illegality or malafide on the part of respondents in issuing the impugned order Annexure P/1 and prayed for dismissal of the writ petition.
- 12.** Having heard the contentions put forth on either side and on perusal of records, what is apparently revealed is that the petitioner for reasons best known has modified the name of the society in a manner to give it a status of a religious body whereas the name of the society registered before the Registrar, Chhattisgarh Societies Registration Act, as reflected from the bylaws itself, is only "Muslim Welfare Society" and it does not have any prefix ahead of it. In addition, there is also no doubt on the fact that the bylaws enclosed by the petitioner along with the writ petition is not the original bylaws or a true copy of the original bylaws. During the course of hearing, the counsel for the petitioner fairly conceded both these aspects and submitted that the same was bonafide mistake without any ulterior motive and without properly verifying the original documents.
- 13.** Another aspect which needs to be considered is the registered sale deed on the basis of which the property actually came in possession of the petitioner. The property was not at that point itself purchased as a private property, but was purchased by a committee known as Sunni Masjid Committee, Rajendra Nagar, Bilaspur. A plain reading of the sale deed itself would be sufficient to clearly draw an inference that the property was purchased by a Masjid Committee and it was not a private property at all for private purpose.

- 14.** Another fact which is required to be taken note of is that even the committee which has been now constituted by the Waqf Board consist of the members of the petitioner society and who have not disputed the action of the Waqf Boad, therefore, it seems to be more a dispute by the person who has filed the writ petition rather than a dispute on behalf of the society as a whole.
- 15.** At this juncture, it would be relevant to take note of the fact that Sub section-2 of Section 83 of the Act, 1995 deals with the judicial proceeding. It envisages the remedies available for an aggrieved person against the order or action of Waqf Board. For ready reference Sub section 2 is being reproduced hereinunder:
- “(2) Any mutawalli, person interested in a [waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the [waqf].”
- 16.** Given the said facts and circumstances and also considering the nature of dispute raised by the petitioner being in respect of his authority over the property, which otherwise is being claimed by the Waqf Board to be a Waqf property, the dispute in the opinion of this court is one which would require recording of evidences and appreciation of documentary proof and for which there is already a mechanism provided under the law i.e. by approaching the concerned Tribunal under the Waqf Act.
- 17.** At this juncture, this court would like to express a word of idispleasure on the conduct of the petitioner, in trying to mislead the court by furnishing firstly false status of the petitioner and also by producing fabricated

documents with an intention to mislead the court. The petitioner is warned not to repeat this act any further either before this court or before any other forum.

- 18.** In the circumstances, it would not be proper for this court to proceed further with the writ petition and the writ petition accordingly stands rejected, reserving the right of the petitioner to avail the remedies available under Sub-section-2 of Section 83 of the Act, 1995.

Sd/-
(P. Sam Koshy)
Judge

inder