



2024:DHC:7097-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 920/2024 & CM APPL. 53329/2024, CM APPL. 53330/2024

MANAGING COMMITTEE MASJID SYED FAIZ
ELAHI

.....Appellant

Through: Mr. Wajeeh Shafiq and Mr. Nimish
Chib, Advocates.

versus

DELHI WAQF BOARD & ORS.

.....Respondents

Through: Mrs. Rashmi Chopra, Mrs. Farhat
Jahan Rehmani, Mr. Parikshit and Mr.
Monis Faridi, Advocates.

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Date of Decision: 12th September, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)****CM APPL. 53331/2024 (Exemption)**

1. Exemption is allowed subject to all just exceptions.
2. Application is disposed of.

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3. Present appeal has been filed challenging the order dated 20th August, 2024 passed by the learned Single Judge in CM Appl. No.41921/2024 (Application seeking stay of the impugned order) in W.P. (C) 10210/2024 to the extent that the learned Single Judge has directed the Appellant to deposit 50% of impugned demand within a period of thirty days from the date of the order and has granted a stay of the impugned notices dated 1st February,

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LPA 920/2024

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2024 and 12th July, 2024 subject to the deposit of the said amount.

4. Learned counsel for the appellant states that the Delhi Waqf Board *vide* office order dated 15th March, 2004 dissolved the managing committee constituted on 22nd July, 2002 and constituted a fresh committee and it was stated in the office order that the appellant shall give 33% out of the income of the Waqf under reference to Delhi Waqf Board on monthly basis.

5. He states that it is alleged by Delhi Waqf Board that due to the default of non-payment of 33% of income to Delhi Waqf Board, an inquiry was set up by Delhi Waqf Board *vide* its Resolution no.10 dated 13th June, 2006 and a report was submitted recommending removal of the appellant. He states that the appellant is not aware of any such inquiry.

6. He further states that it is the case of Delhi Waqf Board that the report of the said enquiry committee was presented before Delhi Waqf Board on 20th September, 2006 which was accepted and Delhi Waqf Board resolved to remove the appellant committee and informed the appellant committee to handover the possession, cash and accounts etc. He emphasises that as per appellant's record, no such communication was sent to the appellant.

7. He also states that it is the case of Delhi Waqf Board that the appellant's case was presented before Delhi Waqf Board in its meeting dated 22nd February, 2014 and it was resolved that the Ex-Managing Committee will clear the arrears of dues payable to Delhi Waqf Board @ 20% (7% as Waqf Contribution and 13% as donation) within a month.

8. He submits that Section 72 of the Waqf Act, 1995 only empowers the State Waqf Board to collect 7% of the net annual income of the Waqf under reference from the appellant, which is already paid to Delhi Waqf Board, whereas, the additional demand of 13% of the net annual income of the



Waqf under reference, termed as 'donation' is without any enabling provision of the Waqf Act, 1995.

9. He states that respondent no.1 being a creature of statute cannot travel beyond that statute. In support of his submissions, he relies upon the judgment of the Supreme Court in **Gaurav Kumar vs. Union of India & Ors., 2024 (9) SCALE, 336** the relevant paragraphs of which are as under:

“31. In CIT v. McDowell and Co. Ltd., a three-Judge Bench of this Court enunciated the principles for interpreting Article 265 read with Article 366(28):

“21. “Tax”, “duty”, “cess” or “fee” constituting a class denotes various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kinds of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestations only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no “tax” shall be levied and collected except authorised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.

22. Under Article 366(28) “Taxation” has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. “Impost” means compulsory levy. The well-known and well-settled characteristic of “tax” in its wider sense includes all imposts. Imposts in the context have following characteristics:

- (i) The power to tax is an incident of sovereignty.*
- (ii) “Law” in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.*
- (iii) The term “tax” under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees.*
- (iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a “tax” in its technical sense as an impost, general, local or special.*



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34. The principles that flow from the above discussion are : (i) a fee is an impost in terms of Article 366(28); (ii) the expression "tax" occurring in Article 265 means all imposts, including fees and therefore any fee must be levied by the authority of a valid law; (iii) fees being a compulsory exaction of money, the power to levy fees cannot be implied; (iv) delegation of the power to levy fees to a delegate of the legislature should be specifically provided for under the parent legislation and (v) the delegate must strictly act within the parameters of the legislative policy laid down by the parent legislation when levying fees and taxes.

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66. From the above discussion, we can cull out the following principles : (i) a delegate cannot act contrary to the express provisions and object of the parent legislation; (ii) a delegate cannot widen or constrict the scope of the parent legislation or the legislative policy prescribed under it; and (iii) a fiscal provision has to be construed strictly and a delegate cannot consider any circumstance, factors or condition not contemplated by the parent legislation."

10. *Per Contra*, learned counsel for the respondents has taken this Court through the office order dated 15th March, 2004 which reads as under:

**"TRANSLATION URDU INTO ENGLISH VERSION
DELHI WAKF BOARD**

DARYA GANJ, NEW DELHI – 110002

Date: 15.03.2024

No.GA/MQ/3/GP IX/40/91/2004

OFFICE ORDER

In response to your application regarding formation of Managing Committee for the Masjid Faiz Ilahi, Dargah Faiz Ilahi and its adjacent land, the Chairman of Delhi Wakf Board, anticipating approval by the Board has dissolved and nullified the previous committee that was formed on 22nd July 2002 forming a new Committee for the same. The names of Office Bearers and the Members of new Committee are given below:-



S.NO.	NAME	POST	ADDRESS
1.	Nooruddin	Patron	DDA Flats, Turkman Gate, Delhi
2.	Ch. Qayamuddin	President	DDA Flats, Turkman Gate, Delhi
3.	Haji Rafiuddin	Vice-President	DDA Flats, Turkman Gate, Delhi
4.	Hafiz Matlub Karim	Gen. Secy.	198, Turkman Gate, Delhi.
5.	Mohd. Dilshad	Member	3161, Turkman Gate, Delhi.
6.	Haji Naimuddin	Member	2042, Turkman Gate, Delhi.
7.	Haji Idrees	Member	1864, Turkman Gate, Delhi.
8.	Shafi Dehlvi	Member	DDA Flats, Turkman Gate, Delhi.
9.	Haji Ashiqeen	Member	3182, Turkman Gate, Delhi.
10.	Abdul Latif	Member	3200, Turkman Gate, Delhi.
11.	Haji Manzoor	Member	2746, Bhojla Pahari, Turkman Gate, Delhi.
12.	Haji Jamaluddin	Member	DDA Flats, Turkman Gate, Delhi
13.	Haji Shahabuddin	Member	DDA Flats, Turkman Gate, Delhi
14.	Haji Mohsin Ali	Member	DDA Flats, Turkman Gate, Delhi

TERMS

1. The Managing Committee will manage the affairs of the mosque, Dargah and lands related to it, and will give monthly emoluments to the Imam and the Muezzin, along with providing necessary requirements of the mosque.
2. It will keep proper account of income and expenditure of the land related to it that is rented for occasions. It will pay from its income 33% to the Board monthly.
3. It will not do any construction or alteration work in the mosque or the adjacent building, nor will it open any Madrasa in it.

Sd/-

FAIZI AZIZ HASHMI

Chief Executive Officer

To: **Hafiz Matloob Karim**
General Secretary
Masjid & Dargah Faiz Ilahi
3198, Tukman Gate, Delhi-110006.”

(emphasis supplied)

11. She has also drawn this Court's attention to the Minutes of 28th meeting of the Delhi Waqf Board held on 22nd February, 2014. The relevant



portions of the said Minutes of meeting are reproduced hereunder:

“DELHI WAQF BOARD

(Govt. of NCT of Delhi)

5028, Daryaganj, New Delhi-110002

Minutes of the 28th meeting of Delhi Waqf Board held on 22-02-2014 at 4.00 P.M. in the office of Delhi Waqf Board

The 28th meeting of the Board was held on 22-02-2014 at 4.00 P.M. in the office of Delhi Waqf Board under the Chairmanship of Ch. Mateen Ahmed.

The following were present.

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| 1. Janab Ch. Mateen Ahmad | Chairperson |
| 2. Mrs. Rana Parveen Siddiqui | Member |
| 3. Janab Azimul Haque | Member |
| 4. Janab Raza Mehdi | Member |
| 5. Janab Mufti Aijaz Arshad Qasmi | Member |
| 6. Janab Khursheed A. Farooqui | Section Officer
(C.E.O. is on medical leave) |

Mr. Mohammed Qaseem, Chief Legal Officer was present to assist the Board.

The following agenda items were taken up:-

(1) Matter regarding disruption and meddling in the affairs of Managing Committee of Dargah Hazrat Khawaja Qutubuddin Bakhtiyar Kaki, Mehrauli, New Delhi

An intimation regarding disruption and meddling in the affairs of Managing Committee of Dargah Hazrat Khawaja Qutubuddin Bakhtiyar Kaki, Mehrauli, New Delhi has been received in the office of Delhi Waqf Board on 15-02-2014. The President of the said Committee, Mr. M. Omar Faridi has requested that Mr. Fakhruddin one of the Members of the said Committee, is also involved in causing disruption in the functioning of the said Committee and has been extorting money from the Zaireens, may be replaced and some more Members from amongst the local residents may be inducted in the Managing Committee for its better management and smooth functioning. The request was considered by the Board and it was-

"Resolved that Mr. Fakhruddin, Member of Managing Committee of Dargah Hazrat Khawaja Qutubuddin Bakhtiyar Kaki, Mehrauli,



New Delhi be replaced by Mr. Mohd. Khalid with immediate effect.

Further resolved that the following Members may be inducted in existing Committee of the above said Dargah. An intimation letter regarding replacement/removal be issued to Mr. Fakhruddin".

- (1) Mr. Mohd. Shamim Saifi,
S/o Mr. Mohd. Yamin,
1061, Ward No.7, Mehrauli,
New Delhi-110030.*
- (2) Mr. Sher Ali
S/o Mr. Khuda Baksh
H. No.31/1, Ward No.1,
Mehrauli, New Delhi-110030.*
- (3) Mr. Irfan Ali,
S/o Mr. Inayat Ali,
T-29/8, Ward No.7,
Mehrauli, New Delhi-110030.*
- (4) Mr. Shabbir Ahmed,
C/1233, Gali No.6,
R.K. Marg, Chauhan Bangar,
Delhi*
- (5) Mr. Mohd. Akhtar Rizwi
Addl. DCP, Outer Delhi*

(2) Any Other Item with the permission of the Chair:-

- (i) Matter regarding formation of a Managing Committee of Dargah Faiz-e-Ilahi, Turkman Gate, Delhi.**

An application has been received in the office of Delhi Waqf Board regarding formation of a Managing Committee of Dargah Faiz-e-Ilahi, Turkman Gate, Delhi. The representative of Ex-Managing Committee of the said Dargah, Mr. Matloob Karim has agreed to pay arrears of Waqf contribution of the said Dargah @ 20% per annum of the net income of the Dargah instead of 33% which was asked by the Board. The matter was discussed and deliberated upon and it was-

"Resolved that the Ex-Managing Committee of Dargah Faiz-e-Ilahi will clear the arrears of dues of Waqf contribution @ 20% (7% Waqf contribution and 13% as donation) within a month from the date.



Further resolved that the process for formation of new Managing Committee should be expedited".

(ii) Matter regarding security arrangements in the office premises of Delhi Waqf Board.

Matter regarding security arrangements in the office premises of Delhi Waqf Board was discussed and in order to check the entry of undesirable elements and keep record of the visitors in the office premises. It was-

"Resolved that eight CCTV Cameras may be installed in the office premises and arrangements for displaying pictures be made in the room of Chairman as well as C.E.O."

(iii) Matter regarding mismanagement of the affairs of Majeedia Masjid, Moti Lal Nehru Marg, New Delhi

Matter regarding mismanagement of the affairs of Majeedia Masjid, Moti Lal Nehru Marg, New Delhi was discussed before the Board and it was-

"Resolved that Mrs. Rana Parveen Siddiqui, Member of the Board will visit the said Mosque and take stock of the situation and thereafter only requisite action would be taken, if required".

(iv) Matter regarding payment of Darbans, Masjid Fatehpuri, Delhi

Matter regarding pending court cases filed by Darbans of Masjid, Fatehpuri, Delhi was discussed and deliberated upon. It was-

"Resolved that Mr. Mufti Aijaz Arshad Qasmi, Member of the Board shall along with the Board officials will meet the Imam and Darbans of Masjid Fatehpuri and shall by to resolve the dispute between Imam and Darbans".

12. Learned counsel for the respondent also states that there is a large vacant piece of land adjacent to the mosque and part of the same complex which is hired out for marriages and other functions. She states that the appellant earned substantial sums of money during that period and that too mostly in cash.

13. In rejoinder, learned counsel for the appellant states that, as on date, the balance in the account of the appellant is Rs.64,304/-. He denies that the



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appellant had received any income in cash.

14. Having perused the office order dated 15th March, 2004 and the Minutes of meeting dated 22nd February, 2014, wherein *prima facie* a consensual arrangement was arrived at between the parties, this Court is of the view that nothing prevented the appellant from agreeing to pay a larger contribution to the Delhi Waqf Board.

15. This Court is also of the view that the learned Single Judge has only made an interim arrangement pending disposal of the final writ petition. By virtue of the said arrangement, the money has only been asked to be deposited with the Registry of this Court and said deposit will abide by the final order to be passed.

16. Considering the above, the impugned order calls for no interference.

17. Accordingly, the appeal along with applications is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 12, 2024

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