

(2010) 04 AHC CK 0122

Allahabad High Court

Case No: Civil Revision No. 30 of 1995

Ahmad Husain Shah

APPELLANT

Vs

Mahboob Ali Shah and others

RESPONDENT

Date of Decision: April 29, 2010

Acts Referred:

- Uttar Pradesh Muslim Waqfs Act, 1960 - Section 17, 20, 55

Hon'ble Judges: Rajiv Sharma, J

Final Decision: Allowed

Judgement

Rajiv Sharma, J.

Mr. Z. Jilani, learned Counsel for the revisionist is present, however, none responds for the opposite parties. The case is quite old and pertains to the year 1995. Therefore, I proceed to hearing the case finally.

2. It has been stated by the learned Counsel for the revisionist that proceedings have been initiated under section 55 of the U. P. Muslim Waqfs Act for the removal of Sri Mahboob Ali Shah from the tauliat of Waqf Nos. 57 and 58Kheri, which was registered at the office of the Waqf Board in the year 1981 and given registration Nos. 57 and 58Kheri. While Mahboob Ali Shah was working as Mutawalli of these Waqfs, his younger brother Sri Ahmad Husain Shah moved an application complaining against Mutawalli, which was enquired and on the basis of enquiry, six charges were framed and the term of Mahboob Ali Shah was lastly extended on 1.8.1986 for a period of three years, which was expired on 31.7.1989 and as such, vide order dated 15.6.1990, Sri Ahmad Husain Shah was appointed as Mutawalli for the aforesaid Waqfs.

3. Being aggrieved by the aforesaid orders, reference has been preferred under section 17 of the U.P. Muslim Waqfs Act, 1960. After evidence led by the parties, following issues were framed:

A perusal of all issues it reflects that issue No. 1 relates as to whether the removal of Mahboob Ali Shah from the post of Mutawalli is in accordance with the provisions of law or not. A finding of fact has been recorded that the removal of Mahboob Ali Shah from the post of Mutawalli is not in accordance with law. The Trial Court has lost sight of the fact that there was no order of removal of Mutawalli, but his term has not been extended on 31.7.1989. It is only on the vacancy created therein, Sri Ahmad Husain Shah has been appointed as Mutawalli.

4. In view of the provisions of section 20 of the U. P. Muslim Waqfs Act, 1960, the Board may delegate to the President or to the Secretary or any other servant of the Board or to any member, such of its powers and duties under the Act, as it may deem necessary, may likewise withdraw any such delegation.

5. In the instant case, an application under section 55 of the Act has already been moved for removal of Mutawalli. When the order was passed by the Controller of the Board in the said removal proceedings, the said term of the opposite party No. 1 had already expired and as such, instead of passing for his removal, the Controller of the Board had observed in his order dated 15.6.1990 that the term of the opposite party No. 1 need not be extended any further and the revisionist was appointed as Mutawalli of Waqf for a period of three years. Being aggrieved, the reference was filed by the opposite party No. 1 before the Muslim Waqf Tribunal/Civil Judge, Kheri. The aforesaid order was challenged mainly on the ground that the Board had no authority to fix any period for the tauliat of the opposite party No. 1. The said reference was allowed on the ground that the said order dated 15.6.1990 was to be treated as an order of removal, Further, there was no averment in the plaint/reference filed by the opposite party No. 1 that his term had been extended by means of the order dated 18.10.1988. Without looking into the account that the said reference was not maintainable, the reference was allowed by the impugned judgment and award dated 19.12.1994/5.1.1995. Therefore, it is liable to be set aside.

6. Under these circumstances, the civil revision is allowed and the impugned judgment and award dated 19.12.1994/5.1.1995 is set aside.

Revision Allowed.