

(2011) 05 AHC CK 0352

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 4907 (M/B) of 2011

Waqf Mirza Abid Ali Beg and
another

APPELLANT

Vs

U.P. Sunni Central Board of
Waqfs and others

RESPONDENT

Date of Decision: May 25, 2011

Acts Referred:

- Waqf Act, 1995 - Section 64

Citation: (2011) 6 ADJ 6376

Hon'ble Judges: Vedpal, J; Pradeep Kant, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Pradeep Kant and Vedpal, JJ.

Heard Sri Shafiq Mirza, learned senior advocate appearing for the petitioners.

Notice on behalf of opposite parties No. 1 to 3 has been accepted by Sri Mohammad Sayeed. The opposite party No. 4 has filed his caveat. Notice has also been thus served upon him.

Learned counsel for the petitioners Sri Shafiq Mirza says that learned counsel for the caveator/opposite party No. 4 has also been informed about today's date fixed in the case, but he is not present.

Counsel for the parties agree that this matter may be disposed of finally.

2. The petitioner No. 2. who is mutwalli of the waqf in question, feels aggrieved by an order dated 20.4.2011. passed by the Chairman Central Waqf Board, contained in Office Memorandum dated 29.4.2011. by means of which the earlier order, passed by the then Chairman of the Board dated 18.4.2007. has been stayed and direction has been issued that the matter be decided by the Board after affording opportunity

to the persons concerned.

In short, facts of the case are that the petitioner, admittedly is duly appointed mutwalli of the waqf which he claims to be In the nature of waqf alal aulad.

3. Some complaints were made against him and his functioning as mutwalli, on which the Chairman of the Board passed an order on 18.4.2007 exonerating the petitioner of all the charges. Against the aforesaid order, reference was made u/s 83 of the Act, wherein an application for stay was also moved by the complainant but the same was rejected. The reference is still pending. In the meantime, Siraj Wali Khan and Fareed Pindari made some complaint regarding misappropriation of the waqf property and malfunctioning of the mutwalli. It was also alleged that in the earlier notice, issued u/s 64 of the Act. all the charges were not levelled against the petitioner, but only on minor charges, notice was issued, of which charges the petitioner stood exonerated. Inspector waqf also submitted a report on 20th April, 2011 which was approved by the Chairman and consequently on the complaint made against the petitioner, the impugned order of stay has been passed.

4. Learned counsel for the petitioners submitted that by the impugned order of stay, staying the operation of the order passed by the Chairman of the Board dated 18.4.2007, by means of which, the Chairman had exonerated the petitioner from all charges in proceeding u/s 64 of the Act, practically stands annulled. which is per se illegal, erroneous and without jurisdiction.

His further submission is that the Chairman was having no authority to stay the order finally passed more than four years back, particularly when that order has already been given effect.

5. Mr. Mohammad Sayeed appearing for the Waqf Board made an attempt to justify the aforesaid order saying that serious complaints did exist against the petitioner regarding the misappropriation of the waqf property and fund, which is evident from the report of the Inspector but the notice which was issued earlier u/s 64, did not contain all the charges and, therefore, on this fact being brought to the notice of the Board, an enquiry was made by the Inspector and on the report of the Inspector, aforesaid order was passed. He further says that the petitioner cannot be said to be an aggrieved person for the reason that he has not been removed from the office of mutwalli and he will be given full opportunity during the proceedings.

6. We have considered the aforesaid arguments and we find that once on notice issued u/s 64, a decision was taken by the Chairman of the Board, exonerating the petitioner from all the charges, there would be neither any occasion nor the authority or jurisdiction of the present Chairman of the Waqf Board to stay the operation of the said order, passed by the earlier Chairman as far back on 18.4.2007.

7. Proceedings u/s 64 of the Act do start on the issuance of notice containing allegations/charges against the functioning of mutwalli and he is afforded

reasonable opportunity to submit the explanation to the charges levelled against him. On getting reply of the charges after adopting the procedure as prescribed under Rules to get the charges substantiated or in other words to find out whether charges have been established or not as in case after giving full opportunity of hearing the Board comes to the conclusion that all the charges or any of the charges are sufficient to remove the mutwalli, it would pass an order to that effect but where the Board finds that charges cannot be substantiated, then it will have no option but to exonerate the mutwalli. This would finish the proceedings initiated u/s 64 of the Act, though it can be subjected to further challenge in the appropriate forum by the person aggrieved and on challenge so made the order passed by the superior forum would be final.

8. In case after passing of the aforesaid order by the Board exonerating the mutwalli from all the charges levelled against him. it is detected, on complaint or otherwise, that there were some charges which were in existence but were not the subject-matter of the notice issued or there are certain acts of omission and commission of mutwalli of subsequent period after earlier notice was issued or may be orders have been passed, the Board still would have the authority to consider such complaint and issue fresh notice u/s 64 levelling such charges, and after giving opportunity to explain and after affording opportunity to him may pass fresh orders. But the Board or Chairman would have no authority to recall/review the earlier order passed in previous proceedings, if any u/s 64 of the Act or to stay the operation of the same, that too, at such a belated stage, more so, when reference is also pending before the Tribunal.

9. In our opinion, the order of the Chairman, staying the operation of the order dated 18.4.2007, passed by the earlier Chairman in separate proceedings initiated u/s 64 of the Act can neither be stayed nor be revived. The order dated 20.4.2011, passed by the Chairman of the Board and office memorandum dated 29.4.2011 both are thus liable to be quashed and are hereby quashed. Setting aside the office memorandum and the order aforesaid will not mean that this Court has restrained the Board/Chairman from taking fresh proceedings which may be initiated in accordance with law u/s 64 of the Act. Of course the procedure as given under the Act and Rule has to be followed while dealing with allegations and charges against the mutwalli.

10. Petition is disposed of accordingly.