

Received On : 27.02.2023
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Decided On : 30.10.2023
Duration : Y. M. D.
00.07.28
Exhibit No. : 31

BEFORE THE
MAHARASHTRA STATE WAQF TRIBUNAL, AT
AURANGABAD
Presided over by

- 1) Mr. M. T. Asim: District Judge/ Chairman
2) Mr. Mohd. Mohiuddin Moied: Having knowledge of
Muslim Laws &
Jurisprudence/Member

WAQF APPLICATION NO.21/2023

- 1) Sayyad Gafar Sayyad Yusuf,
Age – 56 Yrs. Occ. Business & Agri.
2) Rafik Sayyad Chunnu Miya,
Age – 50 Yrs. Occ. Business & Agri.
3) Majid Khan Hamid Khan Pathan,
Age – 30 Yrs. Occ. Business & Agri.
4) Sayyad Mabud Sayyad Maheebub,
Age – 50 Yrs. Occ. Business & Agri.
5) Sayyad Alam Sayyad Mahemud,
Age – 47 Yrs. Occ. Business & Agri.
6) Sayyad Maujud Sayyad Maheebub,
Age – 48 Yrs. Occ. Business & Agri.
7) Kureshi Shagir Mushtak,
Age – 28 Yrs. Occ. Business & Agri.
8) Shaikh Mazhar Shaikh Shafiyoddin,
Age – 48 Yrs. Occ. Business & Agri.

Waqf Application No. 21/2023

Sayyad Gafar Sayyad Yusuf & Ors. Vs. Sayyed
Iftexhar Alam s/o Sayyed Fakre Alam & Ors.
Judgment Exh. No.: 31

- 9) Sayyad Rajjak Sayyad Chunnu Miya,
Age – 54 Yrs. Occ. Business & Agri.
- 10) Sayyad Najeer Sayyad Khaja Miya,
Age – 61 Yrs. Occ. Business & Agri.

All R/o. Mauje Bamni Budruk (Bk),
Tq. Jintur, Dist. Parbhani.

...APPLICANTS

Versus

- 1) Sayyed Iftexhar Alam s/o Sayyed Fakre Alam
@ Sayyed Iftexhar Alam s/o Sayyed Zaker Alam
Age – 63 Yrs. Occ. Retired.
R/o. Behind Arif Masjid, Arif Colony,
Aurangabad – 431001.
- 2) Chief Executive Officer,
Maharashtra State Board of Waqfs,
Panchakki, Aurangabad.
- 3) Maharashtra State Board of Waqfs,
Through its Chief Executive Officer,
Panchakki, Aurangabad.

...RESPONDENTS

Advocates: Mr. U. D. Dalvi for the applicants.
Mr. N. A. Khan for respondent No.1.

[J U D G M E N T]

[DELIVERED ON 30.10.2023]

[DICTATED BY MR. M. T. ASIM]

- 1) Present application is filed under Section 83 (2) of the
Waqf Act, 1995 (hereinafter in short referred as “the Act”)
being aggrieved by the impugned order bearing outward No.
MSBW/Atiyat-56/962/2023 dtd. 25.01.2023 passed by

respondent No.2 Chief Executive Officer (hereinafter in short referred as “the C.E.O.”) and resolution No. 17 (B) dtd. 11.12.2022 passed by respondent No.3 Maharashtra State Board of Waqfs, Aurangabad (hereinafter in short referred as “the Board”) in relation to Waqf Institution Jama Masjid situated at Bamni (Bk), Tq. Jintur, Dist. Parbhani bearing registration No. MSBW/PBN/215/2015.

2) The brief facts of the case are as under :

There is Waqf Institution namely Jama Masjid situated at Bamni (Bk), Tq. Jintur, Dist. Parbhani (hereinafter in short referred as “the Waqf Institution”). The Waqf Institution is registered with respondent No.3 the Board having registration No. MSBW/PBN/215/2015. There is an agricultural land bearing new Gut Nos. 12 and 13 situated at Bamni (Bk.), Tq. Jintur, Dist. Parbhani belonging to the Waqf Institution. It is the contention of applicants that, in pursuance of order dtd. 05.07.2000, managing committee including some of applicants and others had been appointed by the Board under Section 18 of the Act bearing Outward No. Waqf/353/2000. During the course of time, some of the members of managing committee

have changed and presently applicants are managing the affairs of the Waqf Institution and rendering services to the Waqf Institution. In pursuance of complaint of applicants, Revenue Authorities had taken Waqf property under direct supervision of the Government. Said order was assailed up to the Hon'ble High Court. In Appeal the Board has taken stand that, Waqf Institution is being managed by the managing committee appointed through the Board. Ultimately, the order dtd. 31.12.2004 passed by the Additional Collector Atiyat, Parbhani confirmed in Revision Petition No. 5/B/2005/Parbhani. Thereafter, it was assailed in Writ Petition No. 3159/2007 which was dismissed by the Hon'ble High Court vide order dtd. 26.02.2008.

3) It is further contended that, villagers of Bamni came to know that, one Sayyed Farooq Alam Sayyed Nooruddin R/o Partur filed an application for obtaining service rendering certificate before the C.E.O. of the Board and villagers filed objection to it on 03.06.2016. The proposal for scheme is also filed by the applicants on 09.03.2017 vide File No. 69/132/2017. On 11.02.2021, respondent No.1 filed

objection to it. The respondent No.1 had also filed proceeding for succession and anyhow wants to get management of the Waqf Institution. It is further contended that, the Board without verifying the record, without proper inquiry and relying on false and wrong information given by the respondent No.1, passed the impugned order in relation to appointment of respondent No.1. Applicants being aggrieved by the impugned order and the impugned resolution filed present application on following amongst other grounds :

The impugned order is obtained by the respondent No.1 by suppressing material facts. The respondent Nos. 2 and 3 failed to consider that, as per custom, Waqf Institution is managed by managing committee appointed by villagers since last more than 40 years. The impugned resolution and order are passed as respondent No.1 is ex-employee of the Board. The respondent Nos. 2 and 3 failed to consider that, the Board in the proceeding before the Revenue Authorities admitted that, managing committee is looking after and rendering services to the Waqf Institution. The respondent Nos. 2 and 3 failed to consider the order passed by the Additional Collector,

Divisional Commissioner and Hon'ble High Court and also failed to consider various reports of Tahsildar, Bamni. The respondent Nos. 2 and 3 failed to consider that, respondent No.1 is not resident of village Bamni and his permanent residence is at Aurangabad. The respondent Nos. 2 and 3 failed to consider that, members of managing committee already filed an application for framing scheme in relation to the Waqf Institution and respondent No.1 filed objection to it. The impugned order is passed without proper inquiry and verifying the record. The impugned resolution and impugned order are passed without following due process of law. The impugned resolution and order are passed without considering the provisions of the Act. The impugned order and resolution are passed without giving an opportunity of hearing to the applicants who are in management of the Waqf Institution. Accordingly, they prayed to quash and set aside the impugned resolution and order.

4) Respondent No. 1 filed his say vide Exh.20 and resisted the application. It is his contention that, applicants have no lucus-standi to challenge the impugned order as they are not

claiming any right of inamdar or hereditary mutawalli. The applicants have no right to challenge the impugned order only on the count that, they are resident of said village in absence of any legal right. They are neither mutawalli nor the Board appointed them as mutawalli or member of managing committee. So, question of issuing notice to them does not arise.

5) The respondent No.1 is hereditary mutawalli and inamdar. His ancestors, great grandfather, grandfather and father were hereditary mutawallis and inamdars of the Waqf Institution. In muntakhab of the Waqf Institution, it is specifically mentioned that, inamdar or mutawalli is to be appointed from the family of Syed Abdul Raheem and thereafter from the generation of Syed Alam in whose name the succession was sanctioned by the Atiyat Court. Therefore, the Board considering documentary evidence on record, appointed the respondent No.1 as hereditary mutawalli and further there was no occasion for the Board to change the mode of succession. In muntakhab, land alongwith management of Jama Masjid is entrusted to the family of

Waqf Application No. 21/2023

Sayyad Gafar Sayyad Yusuf & Ors. Vs. Sayyed
Iftekhhar Alam s/o Sayyed Fakre Alam & Ors.
Judgment Exh. No.: 31

respondent No.1. The object of creating said inam has been clearly mentioned that it is for the maintenance and supervision of Jama Masjid and performing religious ceremonies in the Jama Masjid and taking care of it from the property which is given in inam to the family of respondent No.1. The applicants are strangers to the Waqf Institution and its property, therefore they cannot claim any right in the management. It is settled law that, when mutawalliship is entrusted with the family of inamdar, no stranger can be appointed and mode cannot be changed except where no one in the family is alive. In the present case, succession was sanctioned in favour of great grandfather of respondent No.1. Thereafter, father of respondent No.1 had filed an application for grant of succession and during pendency of said proceeding, his father died. Thereafter, respondent No.1 moved an application for grant of succession and said proceeding is pending before the Atiyat Court. Even, the Waqf Institution has been registered under Section 36 of the Act in pursuance of application made by the respondent No.1 and his uncle Farooq Alam s/o Syed Nooruddin. He denied that,

Waqf Institution is being managed by the managing committee appointed by the villagers. The copy of alleged appointment placed on record by the applicants bears signature of District Waqf Officer. However, as per provisions of Section 18 of the Act, the Board can appoint an area committee for supervision of waqfs or any particular purpose and not solely for any Waqf institution. There cannot be any appointment under Section 18 of the Act. The appointment of committee can be done as per the provisions of Section 67 of the Act. The District Waqf Officer has no power to appoint managing committee. When the Waqf Institution was not registered in the year 2000, so the order dtd. 05.07.2000 is false and bogus. Even otherwise, said appointment is for one year from 05.07.2000 which is already over and no request has been made to register the Waqf Institution by the present applicants who are claiming the right to manage.

6) It is further contended that, grandfather of respondent No.1 namely Syed Nooruddin s/o Syed Alam was the sanctioned inamdar and hereditary mutawalli. Thereafter, the Board after conducting inquiry found that, there is

muntakhab and succession was sanctioned by the Atiyat Court in favour of great grandfather and grandfather of respondent No.1 and he is one of the heirs of the original inamdar. Considering the right of respondent No.1, the Board rightly appointed him as hereditary mutawalli. The impugned order is already implemented and Revenue Authorities handed over the possession to the respondent No.1. It is further contended that, neither respondent No.1 nor his ancestors were parties to the proceeding before the Revenue Authorities which was filed for taking the land under the supervision of the Government. So, order in those proceedings are not relevant for the purpose of appointment made under Section 63 of the Act. It is further contended that, scheme filed under Section 69 of the Act has no relevancy when mode of succession is given in muntakhab. The applicants have evil eye over the Waqf Institution and its management. They are interested to grab land without having any legal right. In light of these contentions, it is prayed that, application be rejected.

7) Respondent Nos. 2 and 3 failed to file their say. Application deemed to have proceeded without their say.

8) Perused record and proceeding of present matter and record and proceeding relating to the impugned order received from the Board.

9) Heard learned advocate for applicants, learned advocate for respondent No.1 and learned advocate for respondent Nos. 2 and 3 at length.

10) Following points arise for our determination and we have recorded our findings to the same with reasons to follow as under ;

Sr. No.	POINTS	FINDINGS
1.	Whether impugned resolution and impugned order are legal, correct and proper?	In the Negative.
2.	Whether impugned resolution and impugned order call for interference?	In the Affirmative.
3.	What order?	As per final order

REASONS

AS TO POINT NOS.1 TO 3 :

11) We have carefully gone through the record and proceeding relating to the impugned order and also perused certified copy of the relevant resolution No.17 (B) dtd. 11.12.2022 of respondent No.3 the Board. It is clear that, respondent No.1 has made application to In-charge Chairperson of the Board for appointing him as mutawalli of Jama Masjid, Bamni. It seems that, District Waqf Officer, Parbhani submitted report dtd. 07.09.2022 and mentioned there in that applicant therein is hereditary inamdar and requested to pass appropriate order on the application filed by the respondent No.1. It seems that, consequently the impugned resolution was passed by the respondent No.3 and thereafter the impugned order came to be passed by respondent No.2 the C.E.O. of the Board. It is apparent from the impugned order that, respondent No.1 has been appointed as temporary mutawalli of Waqf Institution Jama Masjid, Bamni, Tq. Jintur, Dist. Parbhani for the period from 14.01.2023 to 13.12.2023 under Section 63 of the Act. It is also clear from the impugned order that, it is passed in pursuance of impugned resolution No. 17 (B) dtd. 11.12.2022

passed by the respondent No.3. It is apparent from the impugned order that, no reason is mentioned in the impugned order in relation to appointment of respondent No.1 as temporary mutawalli of the Waqf Institution. It is passed in consequence of impugned resolution. Therefore, we perused the impugned resolution. It seems that, appointment of temporary mutawalli in relation to different waqf institutions has been made in pursuance of said resolution including the Waqf Institution in question. It seems from the impugned resolution that, it was resolved to accept proposal for appointment of temporary mutawalli of respondent No.1 in relation to the Waqf Institution considering the application of respondent No.1, report of District Waqf Officer dtd. 07.09.2022 and that no objection has been received in relation to said application. So, it is necessary to see whether any objection was called from any person by issuing notice prior to accepting the proposal for appointment of respondent No.1 as temporary mutawalli of the Waqf Institution.

12) We have carefully gone through the record and proceeding relating to the impugned order. We do not find

Waqf Application No. 21/2023

Sayyad Gafar Sayyad Yusuf & Ors. Vs. Sayyed
Iftexhar Alam s/o Sayyed Fakre Alam & Ors.
Judgment Exh. No.: 31

that, any notice has been issued prior to making appointment of respondent No.1 as temporary mutawali of the Waqf Institution. On perusal of said record, it is clear that, copy of objection dtd. 27.06.2022 raised before the Atiyat Authority for grant of succession in favour of respondent No.1 in relation to properties of Jama Masjid, Bamni filed by some of the applicants herein is filed. In the said objection, it is also contended that, respondent No.1 herein is not rendering services of Jama Masjid, Bamni. It is also apparent that, some of applicants herein were parties in the proceeding before the Additional Collector, Parbhai in File No. 2004-Appeal-Atiyat which has been decided on 31.12.2004 whereby direction was issued to take properties of Jama Masjid, Bamni under the supervision of Government. In that order, it is observed that, services of mosque are rendered by managing committee. Said order was also assailed in Atiyat Revision Petition No. 5/B/2005/Parbhani and said revision petition was dismissed by Divisional Commissioner, Aurangabad on 16.04.2007. Said order was assailed in Writ Petition No. 3159/2007 which was dismissed on 26.02.2008 by the Hon'ble High Court. No

doubt, respondent No.1 was not party to the proceedings but some of the applicants were parties to those proceedings. The applicants have also annexed copy of order dtd. 05.07.2000 bearing outward No. Waqf/353/2000 issued by the District Waqf Officer, Parbhani to show that, some of the applicants herein were members of managing committee appointed for one year to look after the affairs of the Waqf Institution, Jama Masjid, Bamni. Although, respondent No.1 has raised contention about the legality of order of appointment of managing committee, but material placed on record demonstrate that, they are person interested in the Waqf Institution within the meaning of Section 3 (k) of the Act and they have also connection with the Waqf Institution. That being so, we do not find merits in the objection of the respondent No.1 that, applicants cannot be said to be aggrieved by the impugned resolution and order. We would like to mention that, in view of Section 83 (2) of the Act, even person interested in the Waqf can challenge the order passed by the Authority under the said Act. So, objection about the

locus of applicants to assail the impugned resolution and order holds no water.

13) We have already pointed out that, before passing the impugned resolution and the impugned order in relation to appointment of respondent No.1 as temporary mutawalli of the Waqf Institution, no notice has been issued by the respondent Nos. 2 and 3. It is apt to mention Section 63 of the Act, which read as under :

63. Power to appoint mutawallis in certain cases :

“When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.”

On plain reading of said provision, it is clear that, the Board is empowered to appoint mutawalli for certain period when such office is vacant and no one is available to be appointed under the terms of waqf deed or where there is dispute in relation to right of any person to act as mutawalli.

14) It is to be noted that, when application was made by the respondent No.1 for his appointment as mutawalli, the Maharashtra State Waqf Rules, 2003 were in force. Rule 27 of said Rules speaks about notice regarding filling of vacancy of mutawalli.

Sub-Rule 1 of Rule 27 provides that ;

“Whenever there is a vacancy in the office of the Mutawalli of a Waqf and there is no one to be appointed under the terms of the Deed of Wakfs, the Chief Executive Officer or an authorized Officer on his behalf shall issue a Public Notice in Form AN in respect of appointment of Mutawalli.”

Sub-Rule 2 of Rule 27 provides that ;

“Whenever there is a vacancy in the office of the Mutawalli of a Wakf and the right of any person to act as Mutawalli is disputed, such Notice shall be in Form AO.”

15) It is clear that, both these forms speak about the appointment of mutawalli in light of Section 63 of the Act in

different situations. Learned advocate for respondent No.1 submitted that, when the impugned resolution and the impugned order were passed, Rule 27 of Maharashtra State Waqf Rules, 2003 was not in existence. It is true that, Maharashtra State Waqf Rules, 2022 came into force from 15.06.2022 in suppression of Maharashtra State Waqf Rules, 2003. So, on the date of passing the impugned resolution and the impugned order, Maharashtra State Waqf Rules, 2022 was and is in force. May it be so, when application was made by the respondent No.1 for his appointment as temporary mutawalli, Rule 27 of Maharashtra State Waqf Rules, 2003 was in force and it ought to have been followed. But no compliance of it is made.

16) We have carefully gone through the Maharashtra State Waqf Rules, 2022. Rule 32 of the said Rules provides in relation to notice regarding filling up of vacancy of mutawalli.

Sub-Rule 1 of Rule 32 provides that ;

“Whenever there is a vacancy in the office of the Mutawalli of a Waqf and there is no one to be appointed under the terms of the Deed of Waqfs, the

Chief Executive Officer or an authorized Officer on his behalf shall issue a Public Notice in Form 40 in respect of appointment of a Management Committee in place of the outgoing mutawalli. The Board shall modify the scheme of the concern Waqf accordingly as per the provisions of sub-section (4) of Section 69 of the Act.”

Sub-Rule 2 of Rule 32 enumerated that ;

“Whenever there is a vacancy in the office of the Mutawalli of a Waqf and the right of any person to act as Mutawalli is disputed, such Notice shall be in Form 41 in respect of appointment of a Management Committee in place of the outgoing mutawalli. The Board shall modify the scheme of the concerning Waqf accordingly as per the provisions of sub-section (4) of Section 69 of the Act.”

17) We have carefully gone through the Form 40 and Form 41 which clearly mentioned about applicability of Section 63 of the Act in case of filling of vacancy of mutawalli in different situations. Thus, it is clear that, from earlier Rules and so

also in new Rules, there is provision in relation to issuance of notice prior to filling the vacancy of mutawalli in the Waqf Institution in pursuance of Section 63 of the Act. Although, in resolution, there is mention about non receipt of any objection relating to application made by the respondent No.1 for his appointment as mutawalli but when notice as contemplated under the relevant Rule has not been issued calling objection for appointment of mutawalli, then question of filing of objection to the application of respondent No.1 did not arise. We have already pointed out that, no notice as per prescribed Rule is issued prior to making appointment of respondent No.1 as temporary mutawalli of the Waqf Institution, thus respondent Nos. 2 and 3 committed serious infirmity in compliance of relevant provision.

18) We have carefully gone through the impugned resolution and the impugned order. We do not find that, either respondent No.3 or respondent No.2 have recorded their satisfaction that, there is vacancy in the office of mutawalli and there is no one to be appointed under the terms of deed of waqf or right of any person to act as mutawalli is disputed.

For this reason also, the order does not with stand on touch stone of test of legality, correctness and propriety.

19) Learned advocate for respondent No.1 has placed reliance upon the authority in the case of **Ganesh Raghunath Dhadphale Vs. Deputy Charity Commissioner & Ors.** reported in **2007 (12) LJSOFT 135** which relates to framing of scheme. Learned advocate for respondent No.1 failed to show relevancy of said authority in the context of dispute in present proceeding. Therefore, it is not of help to respondent No.1.

20) In light of discussion made above, we hold that, the impugned resolution and the impugned order are not legal, correct and proper. Hence, we answer point No.1 in negative.

21) In view of our findings to point No.1 in negative, the impugned resolution and the impugned order relating to appointment of the respondent No.1 as temporary mutawalli of the Waqf Institution need to be interfered by quashing and setting aside same and matter needs to be remanded to respondent No.3 the Board for deciding application of respondent No.1 afresh. Therefore, the impugned resolution

and the impugned order call for interference. Hence, we answer point No.2 in affirmative.

22) In light of our findings to point Nos. 1 and 2, the application deserves to be allowed and matter is required to be remanded to respondent No.3 the Board for deciding application of respondent No.1 afresh by giving opportunity of hearing to the applicants and respondent No.1. Hence, we pass the following order.

ORDER

- 1) Application is allowed.
- 2) The impugned resolution bearing No. 17 (B) dtd. 11.12.2022 passed by respondent No.3 the Board and the impugned order bearing outward No. MSBW/Atiyat-56/962/2023 dtd. 25.01.2023 passed by respondent No.2 the C.E.O. of the Board in relation to appointment of respondent No.1 as temporary mutawalli of Jama Masjid, Bamni are hereby quashed and set aside and matter is remanded to respondent No.3 the Board with direction to decide application filed by the respondent

Waqf Application No. 21/2023

Sayyad Gafar Sayyad Yusuf & Ors. Vs. Sayyed
Iftekhhar Alam s/o Sayyed Fakre Alam & Ors.
Judgment Exh. No.: 31

No.1 by following due procedure of law and after hearing
the applicants and respondent No.1 herein.

3) Record and proceeding relating to the impugned order be
sent back to respondent No.3.

4) Accordingly, application is disposed of.

Date: 30.10.2023

Place: Aurangabad.

Sd/-

(M. T. Asim)

District Judge/Chairman
Maharashtra State Waqf Tribunal
Aurangabad.

Sd/-

(Mohd. Mohiuddin Moied)

Having knowledge of Muslim law
& Jurisprudence/Member,
M.S.W.T. Aurangabad.

(Member)

Vacant