

Board Of Wakf, West Bengal vs Anis Fatma Begum & Anr on 23 November, 2010

Author: Markandey Katju

Bench: Gyan Sudha Misra, Markandey Katju

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5297 of 2004

Board of Wakf, West Bengal .. Appellant (s)

-versus-

Anis Fatma Begum & Anr. .. Respondent (s)

JUDGMENT

Markandey Katju, J.

1. This appeal has been filed against the impugned judgment of the Division Bench of the Calcutta High Court dated 02.5.2003 in A.P.O.T. No. 775 of 2002.

2. Heard learned counsel for the parties and perused the record.

3. The facts of this case have been stated in the impugned judgment and hence we are not repeating the same here, except where necessary.

4. The dispute pertains to the Wakf estate of Shahzadi Begum which was created by a Registered Deed of Wakf dated 22.09.1936 by one late Shahzadi Begum. By the said Wakf Deed the Wakf was created with the object of dedicating the property being Premises No. 33, Shakespeare Sarani, (formerly Theatre Road), Calcutta-700 017, partly for the benefit of the Wakifa, her family and descendants and partly for pious and religious purposes. In order to give effect to the object of the Wakf, the property had been demarcated and/or divided into two portions having 75% share for Wakf-al-al-aulad and 25% share for pious and religious purposes. The Wakf had been enrolled

under the appropriate laws then prevailing, and registered as a Wakf Estate. The aforesaid property has been partitioned by metes and bounds by keeping 75% thereof for the benefit of the descendants of the family of the Wakifa in terms of the Wakf Deed and the remaining 25% for a religious and charitable purposes.

5. Suit No. 488 of 1999 was filed in Original Summons jurisdiction for answers to be given for the following two questions:

7 Whether the demarcation of the Wakf property being Premises No. 33, Shakespeare Sarani, Calcutta - 700 017, made as above in dividing the said property in two distinctive parts, one for Wakf-al-al-aulad and the remaining portion for pious and religious purposes, is correct and has been made in consonance with the provisions of the Wakf Deed ?

7 Whether the Wakf Act, 1995 is applicable for the portion of the said property divided and earmarked for Wakf-al-al-aulad ?

6. By the order dated 30.02.2000 the Learned Single Judge answered the first question in the negative and the second question in the affirmative.

7. However, in appeal, the Division Bench by the impugned judgment has answered both the questions in the negative. Hence, this appeal.

8. It was submitted by Dr. Rajeev Dhawan, learned Senior Counsel appearing for the appellant, that only the Wakf Tribunal has jurisdiction in the matter under the Wakf Act, 1995 and hence the Suit filed in the High Court was without jurisdiction. We agree.

9. The dispute in the present case relates to a Wakf.

10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

11. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Wakfs were being filed in the courts in India and they were occupying a lot of time of all the Courts in the country, which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.

12. Section 83 (1) of the Wakf Act, 1995 states, "83. Constitution of Tribunals, etc. - (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Act and define the local limits and jurisdiction under this Act of each or such

Tribunals."

13. Section 84 of the Act states, "84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision - Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute".

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3 (r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3 (r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

15. Under Section 83 (5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property.

16. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83 (1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83 (2) refers to the orders passed under the Act, but, in our opinion, Sections 83 (1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Sections 83 (1) and 84 indicates.

17. We may clarify that under the proviso to Section 83 (9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. This provision make it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a Wakf or Wakf property should first approach the Tribunal before approaching the High Court.

19. It is well-settled that when there is a special law providing for a special forum, then recourse cannot be taken to the general law vide Justice G.P. Singh's Principles of Statutory Interpretation

(9th Edn. 2004, pp 133-

134).

20. In Chief Engineer, Hydel Project & Ors vs. Ravinder Nath & Ors. (2008) 2 SCC 350, this Court held that when the matter fell in the area covered by the Industrial Disputes Act, the Civil Court would have no jurisdiction. In the above decision the Court has referred to several earlier decisions on this point.

21. In view of the above, we are of the opinion that since the matter fell under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction in the matter, and not the Civil Court.

22. However, in view of the decision of this Court in Sardar Khan vs. Syed Najmul Hasan (Seth) & Ors. AIR 2007 SC 1447, the Wakf Act will not be applicable to suits/appeals/revisions/proceedings commenced prior to 1.1.1996 when the Wakf Act came into force.

23. Learned counsel for the respondent, however, relied on the decision of this Court in Ramesh Gobindram vs. Sugra Humayun Mirza Wakf (2010) 8 SCALE 698. In the aforesaid decision it was held that eviction proceedings can only be decided by the Civil Court and not by the Wakf Tribunal.

24. The dispute in the present case is not an eviction dispute. Hence, the aforesaid decision in Ramesh Gobindram's case is distinguishable.

25. For the reasons mentioned above, the impugned judgment of the Calcutta High Court cannot be sustained and it is hereby set aside. We hold that only the Wakf Tribunal has jurisdiction in the matter and the parties can approach the Wakf Tribunal, if so advised. The appeal stands allowed. There shall be no order as to costs.

.....J. (Markandey Katju)J. (Gyan Sudha Misra) New Delhi;

23 November, 2010