

CASE NO.:
Appeal (civil) 11988 of 1995

PETITIONER:
THE U.P. SUNNI CENTRAL BOARD OF WAKFS

Vs.

RESPONDENT:
MAZHAR HASAN & ORS.

DATE OF JUDGMENT: 09/08/2001

BENCH:
D.P.Mohapatro, S.R.Babu

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

On the registration of certain properties as wakf a reference was made by the respondents under Section 29(8) and Section 33 of the Uttar Pradesh Muslim Wakfs Act, 1960 [hereinafter referred to as 'the Act'] for cancellation of registration. The property in question is stated to be a Muslim Musafirkhana situate in Kazipura, City Bahraich, consisting of 24 rooms, one court-yard, varendah, open land, passage, four shops, office room and some portion under construction indicated in the plaint and there exists within that accommodation a Mosque but that had not been included in the plaint. The case put forth by the respondents is that the property in question was owned by a Society of which the respondents have been office bearers; that they have been in possession of the suit property; that they purchased the said land, on which the accommodation exists, on October 18, 1966 for a sum of Rs. 6,100/- from two ladies and thereafter got the Musafirkhana constructed on that land; that the provisions of Sections 29 to 33 of the Act did not apply and so the registration of property in dispute as wakf had been illegal, null and void. The reference was resisted by the appellant on the grounds that the land in question was purchased from the subscription given by Musalman public and building was also constructed out of such donations given by the general public; that the purpose of the collections of this fund or donation made by Musalmans in general was charitable one, namely, the construction of Muslim Musafirkhana; that in order to relieve them from the shortage of accommodation and for religious purposes a Mosque was also constructed within the Musafirkhana; that, therefore, the registration was in accordance with law.

The Tribunal held that the Mosque is part and parcel of Musafirkhana and has got a religious purpose and the Musafirkhana is meant for charitable purposes and is also of a religious character by the reason of the existence of a Mosque as a part and parcel of Musafirkhana. However, on the basis that the property alleged to be wakf property should be proved to have been dedicated permanently by one professing Musalman faith and the purposes of dedication must be proved to be religious, pious and charitable, it is only in such a case wakf may be said to have come into existence and in the absence of proof of dedication by a dedicator having Muslim faith the property in dispute could not be said to be wakf property and cannot be deemed to be wakf property, the Tribunal allowed the reference and set aside the

registration. The matter was carried by way of revision petition to the High Court which affirmed the view taken by the Tribunal and dismissed the revision petition. Hence this appeal by special leave.

The High Court recorded the following finding :-

"In the present case, creation of or construction of a Musafirkhana for the Muslim public can be said to be benevolent, pious and charitable object beyond any doubt as has been found by the court below. It may even be religious one, i.e., the purpose for which the subscriptions were demanded from people. The object of or purpose of subscription, i.e., the construction of Musafirkhana, no doubt, is pious, charitable and religious but the other ingredients, as I have mentioned earlier, are that there should be voluntary dedication and dedication should be one made by persons professing Musalman faith. In the present case, the evidence on record as found by the court below as well indicates that a meeting was called for and money came from subscription from the people of Bahraich after the appeals had been issued demanding the subscription. Ext. A12 - on record is the appeal which had been issued demanding donations and in pursuance thereof money came from the public of Bahraich as per deposition of P.W. 1 Nizamuddin and other witnesses those who offered subscription or donations. There is no evidence that they made donations with the intent to derive spiritual benefit."

The High Court is of the view that the dedication carries with it an idea of voluntary self donation without any demand or appeal for the same and that subscription or donation made on appeal being made by people at large cannot be taken to be the donation of property of permanent character which is the essential ingredient of the definition of 'wakf' under the Act. If a property is set apart for a definite purpose, such property would become 'dedicated' for a purpose. It cannot be said that it is only in cases when an individual divests himself of the property and after declaration of trust it is binding on the settlor with the object for which the property thereafter to be held. If out of the moneies given by the general public a property is purchased for a public purpose which is religious or charitable in character, we do not think, such property will lose the character of a 'wakf' as defined under the Act. The finding reached by the High Court, by affirming the view taken by the Tribunal, itself indicates that the object for which the property in question has been set apart or dedicated is charitable, pious or religious in nature and, therefore, the dedication was complete and it could not be divested for any other purpose. Therefore, when the property can be used only for religious or charitable purposes it acquires a permanent character. In that view of the matter, we do not think, the High Court is justified in holding that the cancellation of registration by the Tribunal is in order. The order of the High Court affirming the order of the Tribunal is set aside and the reference made by the respondents shall stand dismissed.

The appeal is allowed accordingly. No costs.

JUDIS