

PETITIONER:

U. P. SUNNI CENTRAL WAKF BOARD

Vs.

RESPONDENT:

Md. ALIM & ORS.

DATE OF JUDGMENT 07/05/1971

BENCH:

GROVER, A.N.

BENCH:

GROVER, A.N.

VAIDYIALINGAM, C.A.

CITATION:

1971 AIR 1396

1971 SCR 810

ACT:

Uttar Pradesh Muslim Waqfs Act, 1960-Religious Endowment Act, 1861 Act 20 of 1863-District Judge has no power to fill in vacancy on the committee constituted under the latter Act.

HEADNOTE:

The Waqf of the Durgah at Fatehpuri is one of the Waqfs to which the provisions of the Uttar Pradesh Muslim Waqfs Act, 1960 applied. When vacancies arose on the committee of Management constituted under the Religious Endowment Act, 1861 (Act 20 of 1863) and these were not filled by election in terms of s. 10 of this Act, the appellant Board, constituted under the 1960 Act, filled in the vacancies acting under the provisions of the Act. Thereupon respondent no. 1 filed an application in the court of the District Judge under Act 20 of 1863 to appoint persons to fill in the vacancies. The District Judge held that he had the power to reconstitute the managing committee under s. 10 of Act 20 of 1863 and directed that the vacancies be filled in according to the rules. The High Court in revision came to the conclusion that there was no provision in the 1960 Act corresponding to s. 13 of Act 20 of 1863 which cast an additional responsibility on the committee to keep in its custody accounts and consequently held that the Committee constituted under Act 20 of 1863 could still continue to discharge some of the functions assigned to it, and the District Judge was thus competent to entertain an application under s. 10 thereof.

HELD: The District Judge had no jurisdiction or power to fill in, vacancies on the Committee constituted under the provisions of Act 20, of 1863.

Sections 49 and 50 of the 1960 Act leave no room for doubt that accounts, which would include books of account, and all relevant records, deeds and documents have to be in Mutawalli's custody and he is bound to produce them for inspection by the Board whenever so desired and Mutawalli according to the definition includes a committee of management. The Act is self contained and makes provision for complete superintendence, administration and control of the Waqfs over which the boards established under s. 10 of the 1960 Act, have jurisdiction.

Therefore, there cannot be an independent existence of a

committee constituted under Act 20 of 1863 only for the purpose of having custody of books of account particularly when the 1960 Act fully contemplates and provides for the maintenance, custody etc. of accounts and account books by the mutawalli. There is a clear inconsistency between its provisions and those of Act 20 of 1860 relating to committees, their functioning and control. [814F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1021 of 1966.

Appeal by special leave from the judgment and decree dated September 8, 1965 of the Allahabad High Court in Civil Revision, No. 76 of 1964.

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C. B. Aggarwala, K. L. Hathi, Quayamuddin Shah and P. C. Kapoor, for the appellant.

M. C. Chagla and S. S. Shukla, for respondent No. 1(ii).

S. K. Bagga and S. Bagga, for respondent Nos. 2(i) to (iii).

The Judgment of the Court was delivered by Grover, J.-This is an appeal by special leave from a judgment of the Allahabad High Court made in exercise of the revisional jurisdiction.

The appellant is a statutory board established under the provisions of s. 10 of the Uttar Pradesh Muslim Waqfs Act, 1960, hereinafter called the 'Act'. The Act applies to all waqfs which at the time of its coming into force were under the superintendence of the Shia Central Board and the Shia Central Board constituted under the U.P. Muslims Waqfs Act 1936.

The present proceedings relate to the famous Durgah of Hazrat Sheikh Saleem Chishti at Fatehpuri Sikri in the district of Agra said to have been established by Emperor Akbar. The Durgah was administered originally by the Moghuls and thereafter by the Board of Revenue established by the British Government under the Bengal Regulation No. 19 of 1810. Subsequently the Religious Endowment Act 1861 (Act 20 of 1863) was passed which provided for the management of mosques, temples and other religious establishments. Section 7 of Act 20 of 1863 provided for the appointment and constitution of the committees which were to be appointed by the State Government for the management of religious establishments mentioned in s. 3 of that Act. Section 10 provided for election when a vacancy occurred in the committee. By G.O. dated July 7, 1925 and a subsequent notification dated February 27, 1927 rules for the election of the managing committee were framed and a committee was formed.

The Waqf of the Durgah was registered as one of the waqfs under the superintendence of the Board as provided by s. 5 of the U. P. Muslim Waqfs Act 1936. It is common ground that the waqf is registered and it is one of the waqfs to which the provisions of the Act would be applicable. The term of four members of the committee constituted under the provisions of Act 20 of 1863 expired in 1962 and as the vacancies were not filled in by election the President of the appellant board filled in the vacancies acting under the provisions of the Act. Respondent No. I filed an application in the court of the District Judge at Agra purporting to be an application under Act 20 of 1863 stating inter alia that the President of the appellant board had constituted a committee

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of five persons under the provisions of the Act by filling in the four vacancies. It was further averred that the provisions of the Act, particularly s. 48, did not obviate the necessity of the appointment of the committee by the District Judge under s. 10 of Act 20 of 1863. It was, therefore, prayed that the District Judge may appoint persons to fill in the vacancies. The appellant board contested that application principally on the ground that after the enactment of the Act the provisions of s. 10 of Act 20 of 1863 were no longer applicable. The appellant board also maintained that the appointment of the committee by the court would be inconsistent with the appointment of a managing committee by the board under the provisions of the Act.

The District Judge by his judgement dated November 23, 1963 held that he had the power to reconstitute the managing committee under s. 10 of Act 20 of 1863. He directed that the vacancies shall be filled up according to the prescribed rules. The appellant moved the High Court under s. 115 of the Code of Civil Procedure for revising the order of the District Judge. The High Court referred to the relevant provisions of the Act as well as Act 20 of 18-63. It was of the view that for the purpose of Act 20 of 1863 mosques, temples and other religious establishments could be divided in two main groups. One was that to which the provisions of the Bengal Regulation No. 19 of 1810 or Madras Regulation No. 7 of 1817 were applicable. The other group was the one to which the provisions of these Regulations did not apply. The first group could be sub-divided into two depending upon the mode of nomination or appointment of the trustee, manager or superintendent. Section 3 of Act 20 of 1863 applied to religious establishments falling in the sub-group in which the nomination of a trustee, manager or superintendent thereof was vested in, or was exercised by or was subject to the confirmation of the government or any public officer. In case of establishments covered by s. 3 it was necessary for the State Government to proceed under s. 7 and to appoint one or more committees. On the appointment of the committee the Board, of Revenue and the local agents ceased to exercise the functions assigned to them under the Regulation and they were to transfer to such committee all landed or other property belonging to the establishment. After referring to the relevant provisions of the Act the learned judge held that the general power of superintendence conferred on the committee constituted under s. 7 of Act 20 of 1863 became vested in the appellant board constituted under the Act. The continuance of the committee for the general supervision of waqfs was, therefore, inconsistent with the provisions of s. 19 of the Act and in such circumstances the corresponding provisions of Act 20 of 1863 stood repealed with the result that the committee appointed under s. 7 of that enactment could not discharge the general

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power of supervision and superintendence of waqfs to which the Act applied. However, in the opinion of the learned judge there was no provision in the Act corresponding to s. 13 of Act 20 of 1863. That section casts an additional responsibility on the committee in that it has to keep in its custody accounts regularly submitted by the trustee, manager or superintendent of the mosque or religious establishment. Clauses (g) and (i) of s. 19(2) and s. 27 of the Act did not show any inconsistency with the provisions of s. 13 of Act 20 of 1863. It was consequently held that

the committee constituted under s. 7 of Act 20 of 1863 could still continue to discharge some of the functions assigned to it and the District Judge was thus competent to entertain an application under s. 10 thereof and fill the vacancy among the members of the committee.

We are unable to share the view of the High Court. On his own reasoning the learned judge could not have come to the conclusion at which he arrived, namely, that although the power of general superintendence of the waqf in question vested in the appellant board and that the committee constituted under s. 7 of Act 20 of 1863 could not exercise those powers which were exercisable by the board a committee under the old Act could still function for the purpose of s. 13 of that Act inasmuch as such a committee would still have the custody of the accounts of the Waqf.

The Act has been enacted to provide for better governance, administration and supervision of certain classes of waqf in the State of U.P. Section 3(5) defines the word "mutawalli" to mean:

"a manager of a waqf and includes an amin, a sajjadanashin, a khadim, naib-mutawalli and a committee of management, and also includes any person who is for the time being in charge of, or administering, waqfs."

Section 10 provides for the establishment of Central Boards. Section 19 contains the functions of the Board. Sub-s. (1) says that the Board shall do all things reasonable or necessary to ensure that the waqfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly appropriated to the purpose for which they were founded or for which they exist. The following clauses of sub-s. (2) may be noticed :-

"(g) to inspect or cause inspection of waqf properties accounts or records or deeds and documents relating thereto

(h) to investigate into the nature and extent of waqf properties and call, from time to time, accounts and other returns and information

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from the mutawallis and give directions for the proper administration of waqfs;

(i) to arrange for the auditing of accounts submitted or required to be submitted by the mutawallis ;

(k) to administer the Waqf Fund

(1) to keep regular accounts of the receipts and disbursement and submit the same to the State Government in the manner prescribed;

Section 48 relates to appointment of mutawallis and s. 49 to their duties. The mutawalli is bound to carry out all directions issued by the board and to furnish such returns and supply such information as may be required by the board or the sub-committee from time to time. The mutawalli has also to allow inspection of waqf property, accounts or records or deeds and documents relating thereto. Under s. 50 he has to prepare every year a budget for the next financial year and submit to the board before the first day of May in every year a full and true statement of accounts. Section 85(1) provides that nothing in any other enactment which is inconsistent with the provisions of the Act shall apply to any waqf to which the Act applied.

As has been stated before, it is not disputed that the waqf of the Durgah is governed by the provisions of the Act. The entire scheme of the Act shows that the control and

supervision over the waqf is that of the board constituted under s. 10. It is the board that has full powers with regard to inspection of accounts, their auditing, administration of the waqf funds and all such matters. Sections 49 and 50 leave no room for doubt that accounts which would include books of account and all relevant records, deeds and documents have to be in Mutawalli's custody and he is bound to produce them for inspection of the board whenever so desired. "Mutawalli", according to the definition, includes a committee of management. The Act appears to be self-contained and makes provisions for complete superintendence, administration and control of the waqfs over which the boards established under s. 10 have jurisdiction. It is barely possible to envisage the independent existence of a committee constituted under Act 20 of 1863 only for the purpose of having custody of the books of account particularly when the Act fully contemplates and provides for the maintenance, custody etc. of accounts and account books by the mutawalli. It is common ground that the Act was passed with the approval of the President of India. There is a clear inconsistency between its provisions and those of Act 20 of 1863 relating to committees, their functioning and control.

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We accordingly hold that the District Judge had no jurisdiction or power to fill in vacancies on the committee constituted under the provisions of Act 20 of 1863., The appeal is therefore allowed and the orders of the High Court and the District Judge are hereby set aside. The application under the provisions of Act 20 of 1863 shall stand dismissed. The parties will bear their own costs in this Court.

K.B.N.

Appeal

allowed.

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