

Form No.16

[Chapter XIII, rule 28 (1)]

IN THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

(Writ of Mandamus/Prohibition/Certiorari/Quo Warranto)

Writ Petition No. 6978 of 2011

CAUSE TITLE

PETITIONER

- 1 **MANAGING COMMITTEE, DARGAH SHARIF PILI KOTHI, SAGAR,**
THROUGH ITS PRESIDENT SHAHEED KHAN S/O HAMID KHAN,
AGED ABOUT 75 YEARS, WORKING AS PRESIDENT OF MANAGING
COMMITTEE OF DURGHA SHARIF PILI KOTHI, SAGAR R/O
CHANDRASEKHAR WARD, SAGAR, M.P.
- 2 **SHAHEED KHAN S/o HAMID KHAN, AGED ABOUT 75 YEARS,**
WORKING AS PRESIDENT OF MANAGING COMMITTEE OF DURGHA
SHARIF PILI KOTHI SAGAR R/O CHANDRASHEKHAR WARD,
SAGAR, M.P.

VERSUS

RESPONDENTS

- 1 **M. P. WAKF BOARD, THROUGH ITS CEO,**
TAJ CAMPUS, NEAR TAJUL MASJID, BHOPAL M.P.,
- 2 **CHARIMAN, M.P. WAKF BOARD**
TAJ CAMPUS NEAR TAJUL MASJID BHOPAL, M.P.
- 3 **AFSAR ALI S/o HAMID ALI**
R/O PARKOTA WARD H.NO.98 SAGAR, M.P.
- 4 **AFSAR ALI S/o HAMID ALI**
R/O PARKOTA WARD, H.NO. 416, SAGAR, M.P.
- 5 **MOHD. ARIF S/O MOHD. ISHAK**
R/O SHUKRAWARI WARD, H.NO.202 SAGAR,
- 6 **IRFAN KHAN S/o NASEER KHAN**
R/O SHANICHREY, H.NO.312 WARD SAGAR,
- 7 **SHIKH FAHEEM S/o SHEIKH VAHEED**
R/O SHUKRWARI H.NO.55 WARD SAGAR,
- 8 **JAFAR HUSSAIN S/o MUKHTAR HUSSAIN**
R/O SANICHRY H.NO.64 WARD SAGAR,
- 9 **MOHD. YAKUB S/O MOHD. YUSUF**
R/O GALI NO.12, H.NO.112 SADAR BAZAR SAGAR,
- 10 **MOHD. ISMAIL S/o SHIEKH CHOOTE**
R/O MACHHARHAI, H.N O.414 SAGAR,
- 11 **AZIZ ANSARI S/o SHAKOOR ANSARI**
R/O KESHAVGANJ, H.NO.816 WARD SAGAR,

To,

16-4-2012
M. P. WAKF BOARD BHOPAL
THROUGH ITS C.E.O.,
TAJ CAMPUS,
NEAR RAJUL MASJID,
BHOPAL M.P.,

Whereas a petition has been made to this Court Under Article 226 of the Constitution of India on behalf of the petitioner, the Single Bench of the High Court, presided over by the HON'BLE SHRI JUSTICE K.K. TRIVEDI in presence of AMIT KHATRI, Counsel for the petitioner and ALOK BAGRECHA, Counsel for the respondents No. 1 and 2 and SHRI S.D. MISHRA, Counsel for the respondents No. 3 to 11 and ordered that -

The petition succeeds & is allowed to the extent indicated below :-

The impugned order passed by the respondent No.2, in purporated exercise of power of respondent No.1 is unsustainable in the eye of law and is quashed. The Wakf Board is directed to act according to the Scheme for appointment of Managing Committee/Mutawali Committee in Majar Dargah Sharif Pili Kothi, Sagar afresh after due consultation with the District Wakf Committee, Sagar. Till such a Committee is constituted, the petitioner No.1 to function as Committee.

There shall be no order as to costs.

Given under my hand and the seal of the High Court of Madhya Pradesh at Jabalpur, this 9th day of April, 2012.

Encl.:- Copy of order



BY ORDER OF THE HIGH COURT

9/4/12
(NAVEEN KUMAR SAXENA)
REGISTRAR (J-II)

HIGH COURT OF MADHYA PRADESH : JABALPUR.**Writ Petition No.6978/2011**

Managing Committee Dargah Sharif

Pili Kothi, Sagar & another

-Versus-

M.P. Wakf Board and others.

PRESENT : Hon'ble Shri Justice K.K. Trivedi.

Shri Amit Khatri, learned counsel for the petitioners.Shri Alok Bagrecha, learned counsel for the
respondents No. 1 and 2.Shri S.D. Mishra, learned counsel for respondents
No. 3 to 11.**ORDER**
(27.3.2012)

1: This petition, by these two petitioners challenges the order dated 11.4.2011 issued by the respondent No.1, by which a Managment Committee/Mutawali appointment order has been issued for a period of one year, to manage the Wakf Majar Dargah Sharif, Pili Kothi, Bazar, Sagar, District Sagar (hereinafter referred to as Wakf for brevity) and respondents No. 3 to 11 have been made the member of the said Committee. It is contended by the petitioners that such a Committee was appointed in complete violation of the Wakf Act, 1995 (hereinafter referred to as the Wakf Act for short). A Managing Committee was constituted under the Chairmanship of petitioner No.2 which was looking after the affairs of the Wakf. It is the contention that the registration of the said Wakf in the M.P. Wakf Board (hereinafter referred to as the Wakf

Dn

Board for short) was on the instance of the petitioner No.2. A regular deposit of the contribution as per the provisions of the Wakf Act is being done by the Committee. There were no complaints whatsoever from any corner regarding the function of the petitioner Managing Committee, but all of a sudden such an impugned order was issued in complete violation of the Wakf Act as also the provisions of the Wakf Committee Scheme. Some of the persons who have been now named as member of the Committee have a bad record and as per the law, they cannot be included as member in the Managing Committee. It is further contended that as per the Notification, the Managing Committee is to be constituted and it has to remain in operation for the period prescribed. As the period for which the petitioner Managing Committee was appointed, was coming to an end, an application was made to the Wakf Board, but instead of considering the said application, in complete violation of the conditions stipulated under the Scheme formulated, without obtaining the recommendations of the District Wakf Committee, the order impugned has been issued and, as such, the order is bad in law and is liable to be quashed. Various allegations have been made against the members of the Committee so constituted by the respondent Wakf Board, but the only aspect which is highlighted is that the act of the respondent Wakf Board was violative of its own Scheme and there was no delegation of power in favour of the Chairman of the Wakf Board to issue such an order.

2 : The response to the notices of the writ petition issued by this Court, have been filed by the respondents No. 1 and 2 and they have raised a preliminary objection with respect to maintainability of the writ petition. It is contended that there were complaints received with respect to receiving of the amount of donations or gifts which were required to be collected in a box kept in the Wakf and for the proper management of the same a three members Committee was required to be constituted under the chairmanship of a Deputy

Collector at Sagar, of which Nazir and Assistant Grade-III of Collectorate Sagar were made members. Only two were the Non-Government members in the said Committee. This was required to be done to see whether the amount so collected in the said box is properly managed or not. The respondents No. 3 to 11 have also filed the similar return and have contended that there were complaints with respect to illegal acts of the President of the petitioner Managing Committee and in respect of such complaint actions were required to be taken. It is contended that keeping in mind all such facts, the Wakf Board was required to take action and order impugned was required to be passed. It is contended that such an act was done in accordance to the provisions of law and, therefore, interference in the order of the respondent Wakf Board was not called for. Though a rejoinder has been filed and many facts have been contended, allegations have been made with respect to the improper working of the Wakf Board itself, but all that are not required to be looked into or considered in view of the fact that this Court is required to examine whether there was a proper action on the part of the Wakf Board or not in removing the Managing Committee and constituting a new Committee.

3: The petitioners have placed on record a copy of the M.P. Gazette dated 23.6.1995 in which a Scheme for the purposes of constitution of the Managing Committee for looking after management of a Wakf is prescribed. It is categorically said that this Scheme is made under the provisions of Wakf Act, 1954. A question was raised whether such a Scheme is still in operation or a new Scheme has been made after coming into force of the Wakf Act, 1995? This has been categorically stated by learned counsel appearing for respondents that no new Scheme has been made after coming into force of the Wakf Act, 1995 nor any such Scheme has been published in the Gazette of Madhya Pradesh. Now to examine whether such a Scheme is still continue or the same has come to an end after coming into force of Wakf Act, the provisions of the Wakf Act

are required to be examined. There is a special power conferred on the State Government to make Rules under the provisions of Wakf Act, in Section 109 wherein it is prescribed that the State Government by Notification in the Official Gazette, may make Rules to carry out the purposes of this Act other than those of Chapter-III. Chapter-III of the Wakf Act deals with Central Wakf Council. Since the appointment of Management Committee is not specifically dealt with, the same will fall within the purview of rule making power of the State Government under sub-clause (XXV) of Sub-section (2) of Section 109 of the Wakf Act. However, till such an act is done, the Rules are made, the operation of the corresponding previous law are saved by provisions of sub-section (3) of Section 112 of the Wakf Act. Therefore, if no Scheme was made under the provisions of the Wakf Act, the previous Scheme as notified on 23.6.1995 in the Gazette was to remain in operation.

4: A perusal of this Scheme, makes it clear that there is a specific provision made for constitution of a Mutawali Committee or better to call a Management Committee. Sub-clause (1) of Para 4 of this Scheme specifically lays down that a Committee is to be constituted on the recommendation of the District Wakf Committee and in case there is failure to submit such a recommendation for more than a month's period, then only the Chairman Wakf Board would be competent to appoint Management Committee. The period of such a Committee is prescribed under the said Scheme which is three years. However, it is further provided that the said Committee will continue to function till a new Committee is constituted. The responsibilities are also prescribed. Paragraph 5 of this Scheme specifically lays down the eligibility conditions for being a member of the Management Committee of Mutawali Committee of the Wakf. There are conditions laid down that a person who is a tenant or is having a disputed right in the Wakf property will not be a member of the said Committee. If a

person is a member of the District Wakf Committee, unless he resigns from the said Committee, he cannot become a member of the Mutawali Committee. Paragraph 6 of this Scheme lays down the ineligibility to become a member of the Committee. A person who is involved in a criminal case, cannot be a member of the Mutawali Committee. To this extent, now it is to be examined whether any of the members nominated in the said Committee, namely, the respondents No. 3 to 11 were ineligible or not. By application dated 8.3.2011 (Annx.P/4) allegations were made with respect to respondents No. 3 to 11 that they were ineligible to become a member of the Committee. Though specific allegations in this respect have not been made in the petition, but the application says that these persons were ineligible and in that respect the complaint was made with affidavit. To this, the Wakf Board has given no response and merely it is said that such allegations are false and misleading and are based on wrong interpretation of law. However, it is nowhere said that why the recommendations of the District Wakf Committee is not necessary at all or mandatory or binding on the Board. It is simply stated that the Rules quoted by the petitioners are not applicable to the present case. Such an argument of respondents No. 1 and 2 is not acceptable in view of the fact that the law is very clear. If a Scheme is made even under the old Act, for the purposes of appointment of Management Committee, the same has to remain in operation till a new Scheme is made under the Wakf Act. Fairly it has been admitted by learned counsel appearing for respondents No. 1 and 2 that no new Scheme has been made and, therefore, the old Scheme will have to be followed as per the provisions of Section 112 of the Wakf Act. Thus, if such a fact is taken note of, it will be crystal clear that there was constitution of the Committee by the respondents No. 1 and 2 without the consultation of District Wakf Committee and those who were ineligible, were included in the said Committee. Such an order of the respondent Wakf Board is, thus, not acceptable in the eye of law.

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5 : Now the only question which is raised after this submission is that the Chairman of the Wakf Board was not competent to make a Committee under the provisions of the Rules. Of course, there is a provision made for appointment of a Wakf Committee, but in all such appointment of Mutawali or Wakf Committee, the power is conferred on the Wakf Board and not on the Chairman of the Board. There is nothing placed on record to indicate that such a power could be delegated by the Board to the Chairman of the Wakf Board. Apart from this, if such a power was required to be exercised even by the Board, it was necessary on the part of the respondent Wakf Board to issue a show cause notice as is specifically prescribed in Section 64 of the Wakf Act. If a Mutawali is to be removed, an enquiry is required to be conducted in the prescribed manner and then a decision is to be taken by majority of not less than 2/3rd members of the Wakf Board. If an enquiry is required to be conducted, opportunity of hearing is required to be granted. If this is not done, it will be nothing, but dictatorial power of the Wakf Board to pick any person or to remove any person from the management of the Wakf Committee. This cannot be allowed in this country which is governed by the Constitution of India. Though full respect is given to the personal Laws, but such powers cannot be conferred on any of the Community. This Court on many occasions has examined these aspects whether a removal of the Wakf Committee or a member of the Wakf Committee was proper or not. Recently also this has been examined and it has been found that all such actions are taken in complete violation of the provisions of law and the Wakf Act by the Wakf Board in appointing a Committee and removing the Mutawali. [Please see **Hazi Abdul Aziz Ansari Vs. M.P. Wakf Board Bhopal and another, [ILR (2012) MP 252]**. Thus, it is clear that the order impugned passed by the respondent No.2, in purported exercise of power of respondent No.1 is unsustainable in the eye of law and, deserves to be and is hereby quashed. The Wakf Board is

directed to act according to the Scheme for appointment of Managing Committee/Mutawali Committee in Majar Dargah Sharif Pili Kothi, Sagar, afresh after due consultation with the District Wakf Committee, Sagar. Till such a Committee is constituted, the petitioner No.1 to function as Committee.

6: The petition succeeds and is allowed to the extent indicated hereinabove. There shall be no order as to costs.

(K.K.Trivedi)
Judge

27/03/2012

A.Praj.