

**Court No. - 24**

**Case :-** MISC. BENCH No. - 1318 of 1998

**Petitioner :-** Shabbir Ahmad

**Respondent :-** U.P.Sunni Central Board Of Waqfs,

**Counsel for Petitioner :-** Z.Jilani

**Counsel for Respondent :-** S.Mohd.Abid Ali,Q H Rizvi

**Hon'ble Rajiv Sharma,J.**

**Hon'ble Rakesh Srivastava,J.**

Heard Mr. Z.Jilani, learned Counsel for the petitioner and Mr. Q.H. Rizvi, learned Counsel for the opposite party No.1.

In the instant writ petition, the petitioner has assailed the validity of the order dated 21.5.1996 passed by the Officiating Secretary of U.P. Sunni Central Board of Waqf on the ground that not only the impugned order is in violation of the principles of natural justice but is without jurisdiction as under the Waqf Act, 1995, no powers of the Board can be exercised by the Secretary appointed under the Waqf Act, 1960. In the impugned order, the Officiating Secretary has observed that since there is no dispute regarding the existence of Waqf, the same may be registered as Wakf-Alal-Khair under the Tauliat of Mst. Akbar Ali as Secretary of the the Committee mentioned in Column No.3 of the registration form. It has also observed that the term of the above Tauliat will be two years. Feeling aggrieved, the petitioner has preferred the instant writ petition.

While entertaining the instant writ petition, a Co-ordinate Bench of this Court, vide order dated 13.5.1998, provided that the opposite party No.3 under whose Tauliat, the Waqf has been registered and Tauliat being for a period of two years which expires on 21.5.1998, shall not continue as such on expiry of the aforesaid period as indicated in the order dated 21.5.1996 as copy of which has been filed as Annexure No. 8 to the writ petition.

Having heard learned counsel for the parties and perusing the records, we are of the view that a very short question is involved in this writ petition viz. whether the Controller had any authority to pass the impugned order after the enforcement of Waqf Act, 1995 which came into force on 1.1.1996.

A Co-ordinate Bench of this Court, while adjudicating the similar controversy in Writ Petition No.247 (M/B) of 1999, has held that in view

of the promulgation of Wakf Act, 1995, the Controller has no authority to pass the orders regarding the impugned Wakf.

It is noteworthy to mention here that under Section 14 of the U.P. Muslim Waqfs Act, 1960 there was a provision in Section 14 (2) of the Act, which is being reproduced below:-

*"(2). Whereas a result of any interim order of any Court, either the State Government is unable to issue a notification of due constitution of the new Board or after such notification is issued the new Board is unable to function the State Government may for the duration of such other other appoint a Sunni Muslim or Shia Muslim, as the case may be, as Controller of the Board and such Controller shall perform, exercise and discharge the function, powers and duties of the Board as well as of its President and Members."*

Under the Waqf Act, 1995, there is no such provision and, as such the institution of Controller has lost its sanctity and is nonest under the new Act. Hence, the impugned order passed by the opposite parties deserves to be quashed.

It is relevant to mention here that under the Waqf Act, 1995 it is the Waqf Board which is the statutory authority recognized under the Act and when the Waqf Board superseded there are specific provisions under Section 99 of Waqf Act 1995, under which if Waqf Board is superseded the State Government may appoint such person or persons to exercise and perform the function of Board, as provided under Sub Section (2) (b) of Section 99 of the Act, which runs as follows:-

***"99. Power to supersede Board.***

*(2) Upon the publication of a notification under sub- section (1) superseding the Board,-*

*(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;*

*(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State, Government may direct; and*

*(c) all property vested in the Board shall, during the period of supersession vest in the State Government."*

In view of the aforesaid legal position and the order being in breach of the principles of natural justice cannot be sustained.

Accordingly, the writ petition is allowed and the impugned order dated 21.5.1996 is quashed. However, liberty is granted to the newly constituted Board under the Waqf Act, 1995, to pass appropriate orders, in accordance with law.

**Order Date :- 24.3.2015**

Ajit/-