

A CHHEDI LAL MISRA (DEAD) THROUGH LRS.

v.

CIVIL JUDGE, LUCKNOW AND ORS.

FEBRUARY 13, 2007

B [TARUN CHATTERJEE AND ALTAMAS KABIR, JJ.]

C *Wakf—Creation of Wakf—Registered and notified in Official Gazette—In a collusive suit by Wakif and Mutwalli, compromise decree to the effect that property in question did not constitute Wakf—Wakf Board not made party to the suit—Transfer of the property by Wakif and Mutwalli—Notice to the transferee of the property to hand over possession of the same to the Wakf Board—Notice upheld by courts below—On appeal, held: Notice directing handing over the property to Board justified—Once Wakf is created it continues to retain such character which cannot be extinguished by the act of Mutwalli or anyone claiming through him—U.P./Muslim Wakfs Act, 1936—Section 38—U.P. Muslim Wakfs Act, 1960—Section 49-A r/w Section 57 A.*

E In the year 1926 a Wakf was created. Son of the Wakif was appointed as Mutwalli thereof. The Wakf was registered under Section 38 of U.P. Muslim Wakfs Act, 1936 which is para materia with Section 29 of U.P. Muslim Wakfs Act, 1960. It was notified in Official Gazette in 1954. The Wakf and its properties were duly registered in the register maintained by the Board of Wakfs. In 1958 Wakif filed a suit against the Mutwalli for a declaration that the properties in question did not constitute a Wakf. Board of Wakf was not made party to the suit. The suit was collusively decreed on compromise. F Thereafter Wakif and the Mutwalli transferred the property to the appellant. Name of the appellant was recorded in the revenue records. When the matter come to notice of Wakf Board, it requested the Deputy Commissioner to issue notice to the appellant directing him to hand over the possession of the properties in dispute to the Wakf Board. Notice was issued accordingly. Appellant questioned the notice in appeal and the same was dismissed by G District Judge. This was challenged in Writ Petition. High Court dismissed the Writ Petition. Hence the present appeal.

Dismissing the appeal, the Court

H HELD: Once a Wakf is created, the Wakif stands divested of his title to

the properties which after the creation of the Wakf vests in the Almighty. It is no doubt true that in a given case the creation of a Wakf may be questioned if it is shown that the wakif had no intention to create a Wakf but had done so to avoid a liability. But in the instant case, such a stand is not available to the Wakif or the Mutwalli since the Wakf was created in 1926 and was registered under Section 38 of U.P. Muslim Wakfs Act, 1936 and was also notified in the Official Gazette in 1954. It was only thereafter in 1958, i.e. after 32 years that the Wakif filed a collusive suit which was decreed on compromise. The Wakif did not, however, question the registration of the Wakf under the provisions of the 1936 Act, nor did he challenge the gazette notification published in January, 1954. It also cannot be said that since the revenue records were altered to show the properties to be the secular properties of the appellant, the Wakf character of the properties had been obliterated. The law is well settled that once a Wakf is created it continues to retain such character which cannot be extinguished by any act of the Mutwalli or anyone claiming through him. [Paras 7 and 8] [571-F, G, H; 572-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4816 of 2000.

From the final Judgment and Order Dated 13.10.1998 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 4272 of 1983.

K.K. Mohan and Geetanjali Mohan for the Appellants.

Malvika Trivedi and Prashant Kumar for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. This appeal is directed against the judgment and order dated 13th October, 1998 passed by the High Court of Judicature at Allahabad, Lucknow Bench, dismissing the Writ Petition, being No. 4272/1983, filed by the appellant herein.

2. The admitted case of the parties is that one Mirza Mohammed Haider created a wakf of his entire properties, including the property in question, in 1926 and appointed his son Piarey Mirza as the Mutwalli thereof. The said wakf was registered under Section 38 of the U.P. Muslim Wakfs Act, 1936, (for short 'the 1936 Act') which is *para materia* with Section 29 of the U.P. Muslim Wakfs Act, 1960 (for short 'the 1960 Act'). In view of Section 5 (1) of the 1936

A Act, a notification was issued in the Uttar Pradesh Gazette of 23rd January, 1954 as per the report of the Commissioner of Wakfs, U.P. The wakf and its properties are duly registered in the register maintained by the Board of Wakfs.

B 3. Subsequently, in 1958, the Wakif (creator of the wakf) filed a suit against the Mutwalli for a declaration that the properties in question did not constitute a wakf. Significantly, the Board of Wakfs was not made a party to the suit and the suit was collusively decreed on compromise. Immediately thereafter, the Wakif, namely, Mirza Mohammed Haider, and his son Piarey Mirza transferred the disputed plots to the present appellant by a registered conveyance dated 19th April, 1958. At that point of time, the said Mirza Mohammed Haider and his son Piarey Mirza were purportedly recorded as *Bhumidars* in the revenue record and the plots in question were recorded as *Baghat Kalmi* (Mango Groves for Kalmi varieties of mangoes). Consolidation proceedings are said to have taken place in 1962 during which no objections were raised and the Wakif, as also the Mutwalli, transferred the properties in question to the appellant and his name was accordingly recorded in the revenue records.

E 4. When the aforesaid facts came to the notice of the Shia Central Board of Wakf, Lucknow, it requested the Deputy Commissioner to issue notice to the appellant and to direct him to hand over possession of the plots in dispute to the Secretary of the said Board. The said Notice dated 18th March, 1973 was received by the appellant on 12th April, 1973 and on receipt thereof, the appellant filed an appeal in the court of District Judge, Lucknow, for quashing the same. The said appeal, being Misc. Appeal No. 44/1973, was dismissed by the Civil Judge, Lucknow, by his judgment dated 31st March, 1983 upon holding, *inter alia*, that the compromise decree effected between the Wakif and the Mutwalli was not binding on the Board as the Board had not been made a party to the suit and the suit had been decreed on compromise. The said decision of the Civil Judge, Lucknow, was questioned by the appellant herein by way of Writ Petition No. 4272/1983 before the High Court of Judicature at Allahabad (Lucknow Bench). The High Court by its judgment impugned herein considered the matter in great detail, both factually as well as from the legal stand point, and ultimately came to a finding that since the registration of the wakf in the Register of Wakfs maintained by the Board, its notification in the Official Gazette, the notification issued under Section 5 of the 1936 Act and the entries made in the Wakf Register maintained under

Section 30 of the 1960 Act, had not been challenged, such questions could not be raised in the appeal preferred under Section 49 (4) of the 1960 Act. A

5. Assailing the said judgment of the High Court, learned counsel, Mr. K.K. Mohan, contended that once the revenue record stood altered and the properties in question were recorded as the secular properties of the appellant and having further regard to the decree passed in the suit filed by the Wakif, the existence of the wakf, if any, stood obliterated. Even though the properties continued to be on the register of the Board of Wakfs, they ceased to be wakf properties and the Deputy Commissioner had no authority to issue the impugned notice under Section 49 A read with Section 57A of the 1960 Act and the same was liable to be quashed and the order of the Allahabad High Court challenged in this appeal was liable to be set aside. B C

6. Counsel appearing for the Shia Central Board, on the other hand, contended that the writ petition filed by the appellant herein had been rightly dismissed upon a correct understanding of the law relating to the creation of Wakfs. It was submitted that the Allahabad High Court had very correctly held that after the execution of the Wakf Deed the properties in question vested in the Almighty in perpetuity and neither the Wakif, Mirza Mohammed Haider, nor the Mutwalli, Piarey Mirza, had any authority to transfer the said properties to the appellant as the Wakif as well as the Mutwalli ceased to have any right over the property. It was urged that the status of Mutwalli is like that of a manager appointed to look after the wakf properties but not to treat the same as his personal properties. The collusive decree between the Wakif and his son was patently a void transaction and could not be acted upon in law. D E

7. Having gone through and considered the judgment of the learned Single Judge of the Allahabad High Court, we see no reason to take a view different from those expressed therein. In our view, the law relating to the creation and continuation of wakfs has been correctly explained by the learned Judge in keeping with the well-established principles that once a wakf is created, the wakif stands divested of his title to the properties which after the creation of the wakf vests in the Almighty. It is no doubt true that in a given case the creation of a wakf may be questioned if it is shown that the wakif had no intention to create a wakf but had done so to avoid a liability. But in the instant case, such a stand is not available to the Wakif or the Mutwalli since the wakf was created in 1926 and was registered under Section 38 of the 1936 Act and was also notified in the Official Gazette in January 1954. It F G H

A was only thereafter in 1958, that is, after 32 years that the Wakif filed a collusive suit which was decreed on compromise. The Wakif did not, however, question the registration of the wakf under the provisions of the 1936 Act, nor did he challenge the gazette notification published in January, 1954.

B 8. Lastly, we do not also find any force in the submission that since the revenue records were altered to show the properties to be the secular properties of the appellant, the wakf character of the properties had been obliterated. The law is well settled that once a wakf is created it continues to retain such character which cannot be extinguished by any act of the Mutwalli or anyone claiming through him.

C 9. The appeal, therefore, fails and is dismissed without any order as to costs.

K.K.T.

Appeal dismissed.