

**Waqf Application No. 32/2017**  
Mahmood Ali s/o Gulam-e-Liva & Ors.  
Vs. M.S.B.W. Aurangabad &Ors.  
Judgment Exh. No.: 41

Received On : 07.04.2010  
Registered On : 09.04.2010  
Decided On : 07.12.2023  
Duration : Y. M. D.  
13. 07 .28  
Exhibit No. : 41

**BEFORE THE**  
**MAHARASHTRA STATE WAQF TRIBUNAL, AT**  
**AURANGABAD**  
**Presided over by**

- 1) Mr. M. T. Asim: District Judge/ Chairman  
2) Mr. Mohd. Mohiuddin Moied: Having knowledge of  
Muslim Laws &  
Jurisprudence/Member

**WAQF APPLICATION NO.32/2017**

- 1) Mahmood Ali s/o Gulam-e-Liva,  
Age – 58 Yrs.  
2) Dr. Noman Hamza s/o Mulla Hamza Saheb,  
Age – 73 Yrs.  
3) Ishaque Bhai s/o Anwar Bhai, **[Deleted]**  
Age – 74 Yrs.  
4) Dr. Munavvar Yusuf s/o Dr. Abde Badar,  
Age – 51 Yrs.  
All R/o. Mahdi Bagh Garden,  
Binaki Mangalwari, P.O. Dr.  
Ambedkar Marg, Nagpur – 440 017.

**...APPLICANTS**

**Versus**

- 1) Maharashtra State Board of Waqfs,  
Through its Chief Executive Officer,  
Panchakki, Aurangabad – 431002.  
2) S. S. Ali Quadri,  
The Chief Executive Officer,

Maharashtra State Board of Waqfs  
Panchakki, Aurangabad – 431002.

- 3) The Hon'ble Minister for Aukaf,  
Minorities Development Department,  
Govt. of Maharashtra, Mantralaya,  
Madam Cama Road, Mumbai – 400 032.
- 4) Sk. Abde Habib s/o Sk. Rabib Saheb,  
Age – 89 Yrs.
- 5) Abdullah Zoeb s/o Zoeb M. Habib  
Age – 72 Yrs.
- 6) Yakub Fazal s/o Dr. Fazal,  
Age – 50 Yrs.
- 7) Sayeed Hasan Patel s/o Sk. Hasan Saheb,  
Age – 70 Yrs.
- 8) Mehmood Mansur s/o Mansur S. Haider,  
Age – 62 Yrs.
- 9) Maulana Amiruddin Hasan Noorani Malak Saheb,  
Age – 60 Yrs.

Respondents Nos. 4 to 9 are  
R/o. Mahdi Bagh Garden,  
Binaki Mangalwari, P.O. Dr.  
Ambedkar Marg, Nagpur – 440 017.

**...RESPONDENTS**

- 1) Salimbhai s/o Mukhtar Jafarbai Chimthanawala, **[Deleted]**  
Age : 60 Yrs. Occu. : Business.  
R/o. Hasan Villa, Shantinagar Gardens,  
Near Itwari Railway Station, Nagpur.
- 2) M. Hatimbhai s/o Maulana Imdadali  
Saheb Chimthanawala,  
Age : 80 Yrs.  
R/o. Fatama Villa, Qayemi Bagh,  
Near Itwari Railway Station, Nagpur.

**...INTERVENERS**

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**Advocates:** Mr. R. A. Haque for the applicants.  
Mr. Y. B. Pathan for respondent No.1.  
Mr. Sagheer A. Khan for interveners.

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**[ J U D G M E N T ]**  
**[ DELIVERED ON 07.12.2023 ]**  
**[ DICTATED BY MR. M. T. ASIM ]**

1) Present application is filed under Section 83 (2) of the Waqf Act, 1995 (hereinafter in short referred as “the Act”) challenging the impugned order dtd. 02.02.2010 passed under Section 65 (2) of the Act by respondent No.3 Minister for Auqaf and Minorities Development Department, Government of Maharashtra (hereinafter in short referred as “the Minister”) whereby direction was issued to respondent No.1 Maharashtra State Board of Waqfs, Aurangabad (hereinafter in short referred as “the Board”) to take fresh decision after granting opportunity of hearing to the parties as to whether there is vacancy in the office of mutawalli of the Masjid Mahdi Bagh Waqf situated at Nagpur (hereinafter in short referred as “the Waqf Institution”).

2) Brief facts of the case are as under :

Present application is filed by the applicants being beneficiaries of Masjid Mahdi Bagh Waqf, Nagpur and also as

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person interested in the Waqf Institution. They contended that, the Waqf Institution is created by Waqf Deed dtd. 09.06.1894 for the propagation of the religion of the Jamaat of the followers of His Holiness Maulana Malak Saheb. The members of Jamaat of the followers of His Holiness Maulana Malak Saheb are Dawoodi Bohra Muslims. After His Holiness Maulana Malak Saheb, the religious head of Jamaat was His Holiness Syedna Badruddin Ghulam Hussain Malak Saheb. After His Holiness Syedna Badruddin Ghulam Hussain Malak Saheb, the religious head of Jamaat was His Holiness Maulana Mohammad Ebrahim Riza Malak Saheb and after him, His Holiness Maulana Hasan Noorani Malak Saheb. Thereafter, His Holiness Maulana Amiruddin Hasan Noorani Malak Saheb is the Dai-ul-Mutlaq and religious head of the Jamaat. It is further contended that, according to the religious beliefs and tenets of the Dawoodi Borhas, His Holiness Maulana Malak Saheb was the spiritual head and he was sole mutawalli of the properties of Jamaat and the properties of the Jamaat vests in him for the benefit of the Jamaat. Dai-ul-Mutlaq is the head of the Jamaat and

religious leader of Jamaat. He is enjoying the powers and he is the sole mutawalli of the properties of Jamaat and he has exclusive right to manage and administer the properties and entire management and administration of the properties of the Jamaat. It is under the sole direction and control of Dai-ul-Mutlaq. The status of Dia-ul-Mutlaq is that of mutawalli of the properties of the Jamaat. This fact is also admitted by the Board. Lastly, the mutawalli is Dia-ul-Mutlaq and religious head of the Jamaat and he being Dia-ul-Mutlaq and religious head of the Jamaat, he is sole mutawalli of the properties of the Jamaat. He used to submit account and paying waqf funds to the respondent No.1 the Board from 2003.

**3)** It is further contended that, Respondent No.1 the Board overlooking all factual aspects and giving a complete go-bye to the documents, passed resolution No. 36/2009 seeking to take over administration of the Waqf Institution under Section 65 of the Act. Respondent No.2 C.E.O. of the Board has malafidely exceeded his jurisdiction and without any power and authority stated in the notification that the matter of appointment of trustees and hearing of scheme is pending and at present

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there are no trustees in the management to protect the Trust/Waqf properties and its income and therefore to safeguard properties of the waqf and its income, the Board has resolved in its meeting dtd. 26.07.2009 to take the Waqf Institution with all its properties under its direct management and control under the provisions of Section 65 of the Act. Respondent No.1 the Board realised that, it acted with material illegality, without powers and authority and contrary to the provisions of the Act, therefore the Board again passed resolution No. 10/2009 rectifying resolution passed in meeting held on 26.07.2009 wherein it is stated that, there is vacancy in the office of mutawalli and no suitable person is available for appointment of mutawalli since scheme proceedings at the instance of 2 rival groups are pending decision and therefore decision taken in the meeting dtd. 26.07.2009 was approved. The impugned resolution was illegal and without power and authority and contrary to the provisions of Section 65 of the Act.

**4)** The applicants and others had filed writ petition No. 3240/2009 before the Hon'ble High Court challenging the

illegal action of respondent No.1 the Board in seeking to take over administration of the Waqf Institution under Section 65 of the Act. Simultaneously applicant No.1 had filed representation before respondent No.3 the Minister challenging the illegal action of respondent No.1 the Board. At the time of hearing of Writ Petition No. 3240/2009, it transpired that, the challenge to the illegal action of the respondent No.1 the Board was pending before respondent No.3 the Minister which could be pursued. So, said writ petition was withdrawn with a liberty to pursue the appeal before respondent No.3 the Minister. The Hon'ble High Court passed the order on 07.12.2009 allowing petitioners in said petition to withdraw it with liberty to pursue application dtd. 03.08.2009 or such other proper statutory petition which was to be presented before the Government. After the order passed in said writ petition by the Hon'ble High Court, a detailed application was presented. Respondent No.3 the Minister heard the matter and vide impugned order dtd. 02.02.2010 quashed the resolution passed by the respondent No.1 the Board and directed respondent No.1 to decide as to whether

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there is vacancy in the office of mutawalli of the Waqf Institution before taking over direct control of administration of the Waqf Institution. The direction given by respondent No.3 the Minister is without jurisdiction and contrary to the facts and documents on record and not in consonance with the provisions of Section 65 of the Act. The applicants being aggrieved by the aforesaid direction given by respondent No.3 the Minister to respondent No.1 the Board approached to this Tribunal under Section 83 (2) of the Act.

**5)** It is contended that, according to religious beliefs and tenets of the Shia Muslim Dawoodi Bohras at all times the religious head of the Jamaat is accepted and there cannot be vacancy in the office of religious head of the Jamaat but respondent No.3 overlooking this fact and giving go bye to the religious beliefs and tenets of the Jamaat and directed respondent No.1 to decide as to whether there is vacancy in the office of mutawalli of the Waqf Institution. The aforesaid direction adversely affects the religious beliefs and tenets of the Jamaat and there is violation of the guarantee enshrined under Article 25 (1) and 26(a) (b) (c) and (d) of the Constitution



of India. It is further contended that, there cannot be any proceeding under Section 65 of the Act to ascertain as to whether there is vacancy in the office of mutawalli of the Waqf Institution. The powers under Section 65 of the Act can be exercised by respondent No.1 the Board only if there is already an adjudication in some other independent proceeding that no suitable person is available for appointment as the mutawalli of the Waqf or where the Board is satisfied for reasons to be recorded by it in writing that the filling up of the vacancy in the office of mutawalli of the Waqf is prejudicial to the interest of Waqf. The impugned direction to decide said fact amounts to conferring powers on respondent No.1 the Board to do something regarding which the respondent No.1 has no powers under Section 65 of the Act. Accordingly, it is prayed that, said direction may kindly be quashed and set aside.

**6)** Interveners opposed application vide reply at Exh.20. They denied that, the Waqf Institution is created by Waqf Deed dtd. 09.06.1894. They have not disputed that, belief and tenets of followers of Maulana Malak Saheb are very well mentioned in the Waqf Deed dtd. 09.06.1894. However, they

denied that, Mullaji is the spiritual head and he will be the sole mutawalli of the properties of the Jamaat established by Maulana Malak Saheb called as Atba-e-Malak Jamaat. They contended that, there is no concept of Dia-ul-Mutlab being sole mutawalli. They contended that, this Tribunal has no jurisdiction to try present application. They contended that, every order passed under Section 65 of the Act is final and therefore present application under Section 83 (2) is not maintainable. Accordingly, they prayed for rejection of application.

**7)** Application proceeded ex-parte against the respondent Nos. 3 to 9 in pursuance of order passed below Exh.1 dtd. 12.07.2010 by the then Presiding Officer who was also Principal District Judge, Nagpur.

**8)** After receipt of record and proceeding, in pursuance of formation of Waqf Tribunal post to Amendment of 2013 in the Waqf Act, 1995, order was passed on 12.10.2017 by the Tribunal to issue notice to the parties. Accordingly, appearance was made on behalf of applicant Nos. 1 and 2. Interveners have also been impleaded in the present

application. Thereafter intervener No.1 died, so his name has been deleted from the array of interveners.

9) Perused record and proceeding in present matter.

10) Heard learned counsel for applicants and intervener No.2.

11) Following points arise for our determination and we have recorded our findings to the same with reasons to follow as under ;

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether this Tribunal has jurisdiction to entertain and consider present application on merits?	In the Negative.
2.	Whether the impugned order calls for interference?	In the Negative.
3.	What order?	As per final order

### **REASONS**

#### **AS TO POINT NOS.1 TO 3 :**

12) We have specifically put query to the applicants as to whether proceeding under Section 83 (2) of the Act is

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maintainable against the impugned order passed under Section 65 of the Act. Learned advocate for applicants drawn our attention to the order passed on application at Exh.5 on 06.10.2020 by the then Presiding Officer of the Tribunal who was also Principal District Judge, Nagpur to show that, court found that the application is maintainable. There is no doubt, the then Presiding Officer who was also Principal District Judge, Nagpur held that, the Tribunal has not only jurisdiction to entertain this application but also consider the same on merits of the case. It is to be noted that, said order was challenged before the Hon'ble High Court Bench at Nagpur in Writ Petition No. 4955/2010 and the Hon'ble High Court vide order dtd. 28.10.2010 in said writ petition has observed that,

*“The observation made by the Tribunal clearly show that the proceeding initiated before the Waqf Act were under Section 65 and the impugned order before it was under Section 65 (2), it has therefore, prima facie found that the challenge before it was in accordance with law. However,*

*it has not concluded this position and it is apparent from the words “at this stage” used by it in paragraph No.5.”*

It is further observed that,

*“The provisions of the Waqf Act in totality may be required to be seen to find out the scope of jurisdiction available to the Tribunal under Section 83 (2) and understand nature or extent of finality envisaged in Section 65 (2).”*

However, when his attention was drawn to the order passed by the Hon'ble High Court in Writ Petition No. 4955/2010, he conceded that, Tribunal can consider the scope of jurisdiction. He submitted that, in view of Section 83 (2) of the Act, the Tribunal has wide jurisdiction to entertain and consider present application and requested to allow present application. On the other hand, learned advocate for intervener No.2 opposed the application on the ground of jurisdiction.

**13)** It can be gathered from the said order that, liberty has been granted to the petitioners therein and interveners to raise argument in relation to jurisdiction of Tribunal before the Tribunal and it is observed hat, the Tribunal is free to consider

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the same in accordance with law. Therefore, we consider the objection raised by intervener to the jurisdiction.

**14)** It is clear that, applicants have assailed resolution No. 36/2009 dtd. 26.07.2009 passed by respondent No.1 the Board which was published in Government Gazette dtd. 30.07.2009 taking direct control of the Waqf Institution Mahdi Bagh Waqf, Nagpur by it before the Minister of Auqaf, Minorities Development Department, Government of Maharashtra under Section 65 (2) of the Act. It is also clear that, while disposing of Writ Petition No. 3240/2009 filed by Dr. Noman Hamza s/o Mulla Hamza Saheb and others granted liberty to pursue the application dtd. 03.08.2009, or such other proper petition as may be presented within ten days from the date of order before the Government. It is clear that, the applicants have also remedy under Section 65 of the Act before the Minister of Auqaf, Minorities Development Department, Government of Maharashtra under Section 65 (2) of the Act. It is clear from the notification issued by the respondent No.2 that, said resolution No. 36/2009 dtd. 26.07.2009 passed by respondent No.1 and lis was under the

provisions of Section 65 of the Act. Thus, it is clear that, the Board has taken proceedings under Section 65 of the Act and resolution of the Board taking control of the waqf Institution was assailed before the concerned Minister under Section 65 (1) of the Act. When applicants themselves submitted to the jurisdiction of the concerned Minister under Section 65 (2) of the Act, so now they cannot be said the proceeding under Section 65 (2) of the Act. It is useful here to mention sub-Section 2 of Section 65 of the Waqf Act, 1995 which read as under :

**65. Assumption of direct management of certain [auqaf] by the Board.**

“(1)....

*(2) The State Government may, on its own motion or on the application of any person interested in the 1 [waqf], call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).”*

On plain reading of said provision, it is clear that, order passed by the Minister under the said provision is made final. Under the said provision, nowhere it is mentioned that, order passed by the State Government can be assailed before the Tribunal.

**15)** No doubt, under Section 83 (2) of the Act, mutawalli, person interested or any other person aggrieved by an order made under this Act, or rules made there under, may make an application before the Tribunal for determination of any dispute or other matter relating to the waqf but when Section 65 (2) of Act has made the order of State Government as final then how it can be assailed under Section 83 (2) of the Act.

**16)** Legislature in its Wisdom has given finality to the order of State Government passed under Section 65 (2) of the Act by specifically mentioning about the same. Certainly, Section 83 (2) of the Act can be invoked where no such embargo is there in relation to order made under the Act or Rules. It is useful here to mention authority in the case of ***Berar Muslim Education Conference & Osmaniya Masjid Public Trust & Ors. Vs. Abdul Manna s/o Abdul Gafoor & Ors.*** in ***C.R.A. No. 207 of***



**2018 decided by the Hon'ble Bombay High Court Bench at Aurangabad dtd. 12.04.2023** wherein it is observed that,

8. *"The following provisions of the Act indicate as to the jurisdiction and powers entrusted upon the Tribunal which can be exercised in the manner as prescribed therein.*

Section 6	:	Suit is respect of Dispute regarding Auqaf,
Section 7	:	Power of Tribunal to determine dispute is regarding Auqaf,
Section 35	:	Conditional attachment by Tribunal, on applications of C.E.O. of Board.
Section 38 (7)	:	Appeal against the order of appointment of Executive Officer.
Section 40 (2)	:	Decision of Board is final unless it is revoked or modified by Tribunal regarding decision if property is waqf property.
Section 52 (4)	:	Appeal to the Tribunal against the order of Collector in respect of recovery of waqf property.
Section 64 (4)	:	Appeal by Mutawalli to Tribunal against the order of his removal.
Section 67 (6)	:	Proviso Appeal against removal of Member of Committee.
Section 69 (3)	:	Appeal against framing of Scheme for administration.
Section 73 (3)	:	Appeal against order of payment against bank or any person.
Section 94	:	Power to make application in case Mutawalli fails to discharge his duties.

9. *The aforesaid provisions make it abundantly clear that jurisdiction of the Tribunal has been specified by the aforesaid provisions. The moot question is as to whether the Tribunal can exercise the powers akin to a Civil Court or not. No doubt, Section 83 (5) of the Act declares the Tribunal as deemed Civil Court and it shall have same powers as exercised by the Civil Court. This provision whether would make the Tribunal as a Civil Court to enable it to exercise inherent jurisdiction/power like of the Civil Court as contemplated by Section 9 of CPC. Section 9 of the CPC reads thus :*

**Section-9. Courts to try all civil suits unless barred .-**

*“The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”*

10. *Section 9 of CPC provides that any suit of civil nature can be entertained by the Civil Court unless expressly or impliedly barred. Converse thereto jurisdiction of the Civil Court is barred in respect of waqf and Waqf property in*

*view of Section 83 of the Waqf Act and the same is allowed to the jurisdiction of the Tribunal. Thus, the Tribunal though is deemed Civil Court, cannot be said to have inherent jurisdiction more particularly in respect of matters not specifically entrusted to it by the Act.*

**17)** It can be gathered from the said authority that, the Tribunal can exercise powers which are conferred under the Waqf Act, 1995 by specific provisions but it has no inherent jurisdiction more particularly in respect of matters not specifically entrusted to it by the Act. In view of this legal position and when the order under Section 65 (2) of the Act passed by the State Government is made final then it cannot be said that, the Tribunal has jurisdiction under Section 83 (2) of the Act to entertain and consider the application challenging the order passed under Section 65 (2) of the Act. Therefore, we hold that, the Tribunal has no jurisdiction to entertain and consider the present application under Section 83 (2) of the Act. Hence, we answer point No.1 in negative.

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**18)** In view of our finding to point No.1 in negative, the impugned order does not call for interference. Hence, we answer point No.2 in negative.

**19)** We have decided the present application holding that, the Tribunal has jurisdiction to entertain and consider the present application under Section 83 (2) of the Act challenging the order passed by the State Government through its concerned Minister under Section 65 (2) of the Act. So, we have not considered the merits of the impugned order and resolutions passed by the Board. In light of discussion made above, we pass the following order.

**ORDER**

1) Waqf Application No. 32/2017 stands dismissed for want of jurisdiction and accordingly disposed of.

Date: 07.12.2023

Place: Aurangabad.

Sd/-

( **M. T. Asim** )

District Judge/Chairman  
Maharashtra State Waqf Tribunal  
Aurangabad.

( **Member** )  
Vacant

Sd/-

(**Mohd. Mohiuddin Moied**)

Having knowledge of Muslim law  
& Jurisprudence/Member,  
M.S.W.T. Aurangabad.