

Court No. - 21

Case :- CIVIL REVISION No. - 12 of 2023

Revisionist :- Syed Mohammad Manzar

Opposite Party :- U.P. Waqf Tribunal Jawahar Bhawan Iird Floor
Lucknow And Others

Counsel for Revisionist :- Sabir Ali, Mohd. Mansoor

Counsel for Opposite Party :- Syed Aftab Ahmad, Mohammad Ehtesham
Khan, S A A Rizvi

Hon'ble Manish Mathur, J.

1. Heard Mr. Mohd. Mansoor, learned counsel for revisionist, Mr. A. A. Rizvi, learned counsel for opposite parties no.1,2, 3 and 4 and Mr. Mohd. M.E. Khan, learned counsel for opposite party no.5.

2. Civil revision has been filed against order dated 12.12.2022 passed in Waqf Case No.113 of 2020 whereby application for grant of temporary injunction has been rejected.

3. Learned counsel for revisionist submits that although prayer has been made for quashing of order dated 31.07.2019 and 26.02.2020 passed by the U.P. Shia Central Board of Waqf, Lucknow but since the aforesaid orders are already under challenge before Waqf Tribunal, he is not pressing his relief with regard to the aforesaid orders and the revision as such would remain confined to raising challenge to order dated 12.12.2022.

4. At the very out set, learned counsel for opposite parties have raised preliminary objection regarding maintainability of revision under section 83 (9) of the Waqf Act, 1995 to submit that the order impugned being interlocutory in nature, no appeal or revision is maintainable there against.

5. For the purposes of determination of maintainability of revision, the provisions of Section 83 (9) of the Waqf Act 1995 are required to be considered and are as follows:-

"Section 83(9) in The Waqf Act, 1995:-

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm,

reverse or modify such determination or pass such other order as it may think fit."

6. With regard to aforesaid, learned counsel for parties have placed reliance on various judgments rendered by Coordinate Benches of this Court which at first glance appear to be contradictory.

7. In the case of ***U.P. Sunni Central Board of Waqf versus Shakil Ahmad & Ors.*** reported in ***2004 (2) AWC 1768 (LB)***, it has been held that a revision under section 83 (9) of the Act of 1995 would be maintainable only in case a dispute, question or other matter has been determined by the Tribunal. In the said case, revision was held not to be maintainable but subsequently in the case of ***Mauli Moinuddin and Ors. versus Maqbool Hasan and Ors*** reported in ***2008 SCC Online All 193*** and ***Shahen Shah & Ors versus Civil Judge (S.D.) Sant Kabir Nagar and Ors.*** reported in ***2012 SCC Online All 2281*** revision against grant or rejection of temporary injunction have been held to be maintainable.

8. It is a relevant fact that while considering the aspect of maintainability of revision in the judgments of ***Mauli Moinuddin and Ors. versus Maqbool Hasan and Ors*** and ***Shahen Shah & Ors versus Civil Judge (S.D.) Sant Kabir Nagar and Ors.***, the earlier judgment rendered by this Court in the case of ***Shakil Ahmad*** (supra) has not been considered.

9. It is also noticed that in another judgment rendered in the case of ***Hafiz Abdullah & Anr. versus Akbar Ali & Ors.*** reported in ***2002 (5) AWC 3829*** also, revision was held not to be maintainable against an interlocutory order.

10. Upon consideration of the aforesaid judgments on the point, it transpires that in the case of ***Hafiz Abdullah & Ors*** (supra) revision had been filed against an order allowing interim injunction pending decision on the application for temporary injunction, which according to learned judge was only interlocutory in nature and therefore revision was held not to be maintainable.

11. In the case of ***Shakil Ahmad*** (supra) learned judge has adverted to the fact that order impugned in the revision pertained to grant of temporary injunction which was extended from time to time. Thereafter provisions of Section 83(9) of the Waqf Act have been quoted alongwith proviso but subsequently it has been held as follows:-

"7. For the maintainability of the revision under Section 83(9), there must be an impugned order, by which any dispute, question or other matter has

been determined by the Tribunal. I find that by the impugned order, the dispute between the Mutawalli and the Waqf Board has not been determined."

12. In the entire body of judgment, it appears that emphasis has been laid only on the primary provision under Section 83(9) of the Waqf Act, 1995 without adverting to the proviso contained therein and therefore it has been held that for maintainability of a revision there must be an impugned order whereby any disputed question or other matter has been determined.

13. It is thus quite evident that the order passed in Shakil Ahmad (supra) despite noticing the proviso, adverts only to the primary clause of Section 83 (9) of the Act.

14. The aforesaid aspect however has been considered in detail in judgments rendered by Coordinate Benches of this Court in the case of ***Mauli Moinuddin and Ors. versus Maqbool Hasan and ors.*** reported in ***2008 SCC Online All 193*** in the following manner:

"6. The other point is that revision against interim order is not maintainable. In this regard, an authority of this Court reported in 1991 AWC 620U.P. Sunni Central Board of Waqf v. Abdul Rashid and Ors. has been cited. However, in the said case, revision was directed against an order through which an earlier order had been recalled by the tribunal. Similarly, in the other authority reported in 2002 AWC 1430 Hafeez Abdulla v Akbar Ali also temporary injunction had not finally been decided by the tribunal. Last sentence of Para-6 of the said authority is quoted below:

The order is totally interlocutory and the question whether the operation of the order should be stayed or not is still to be decided by the trial court.

7. Under Section 83(9) of the Waqf Act, 1995, revision is directed against determination by the tribunal of any dispute, question or other matter. In my opinion, final disposal of temporary injunction application is such determination, which is amenable to revisional jurisdiction of the High Court under the aforesaid section."

15. In the case of ***Shahen Shah and others versus Civil Judge (S.D.) Sant Kabir Nagar & Ors.*** coordinate bench of this Court has considered the provision of Revision under section 76 of the Act of 1960 as compared to the ambit of Section 83 of the Act of 1995 and has thereafter concluded that the scope of Section 83(9) of the Act of 1995 is much wider than the provision of Revision under the Act of 1960.

16. Learned counsel for opposite parties has also adverted to judgment and order dated 13.06.2022 passed in Civil Revision No.23 of 2022 holding that the order granting interim relief is purely interlocutory order which does not suffer from any

jurisdictional or legal error so as to warrant interference in exercise of revisional power under section 83 (9) of the Waqf Act 1995.

17. It appears that the aforesaid judgment does not take into account any of the judgments rendered by Coordinate benches passed prior thereto. Even otherwise the judgment does not appear to be a proposition that an interlocutory order granting interim relief would not be amenable to revisional jurisdiction of this Court but on the contrary has declined revisional interference on the ground that the order is not only purely interlocutory in nature but also does not suffer from any jurisdictional or legal error. The corollary of the aforesaid judgment may be that an interlocutory order which suffers from jurisdictional or legal error may be reviseable under section 83(9) of the Act of 1995.

18. It is thus quite evident that the earlier judgments in the cases of **Hafiz Abdullah & Ors** (supra) and **Shakil Ahmad** (supra) cannot be said to be a proposition that revision under section 83 (9) of the Waqf Act, 1995 would not be maintainable against an order allowing or rejecting an application for temporary injunction.

19. The aspect of maintainability of revision against grant or rejection of temporary injunction would be quite evident from a perusal of proviso to Section 83(9) which on first principles clearly indicates jurisdiction of a High Court to examine records relating to any dispute, question or other matter which has been determined by the Tribunal. The provision itself clearly indicates power of High Court akin to revisional jurisdiction with regard to not only any dispute but question or other matter as well which has been determined by the Tribunal. The aspect of not only a dispute but a question or other matter having been determined by the Tribunal is a relevant provision required to be understood in that perspective.

20. The question as to when the grant or rejection of an application for temporary injunction can be said to amount to a 'judgment' has been dealt with by Hon'ble the Supreme Court in the case of **Shah Babulal Khimji vs. Jayaben Kania** reported in **AIR 1981 SC 1786** in the following manner:-

"113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a

judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of Section 2 cannot be physically imported into the definition of the word "judgment" as used in clause 15 of the letters patent because the letters patent has advisedly not used the terms "order" or "decree" anywhere. The intention, therefore, of the givers of the letters patent was that the word "judgment" should receive a much wider and more liberal interpretation than the word "judgment" used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the letters patent. It seems to us that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:-

*1. **A final Judgment:** A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves, nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.*

*2. **A preliminary judgment:** this kind of a judgment may take two forms (a) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the trial Judge is concerned and, therefore, appealable to the larger Bench, (b) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g. bar of jurisdiction, resjudicata, a manifest defect in the suit, absence of notice under Section 80 and the like, and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.*

*3. **Intermediary or interlocutory judgment:** Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable*

right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote.

115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge0 deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment."

21. The aforesaid judgment is a leading proposition of law on the point that even interlocutory orders possessing characteristics and trappings of finality or affecting valuable rights of a party or deciding important aspects of a trial in main or in an ancillary proceedings, would be 'judgment'.

22. Upon applicability of aforesaid judgment, it is evident that an application granting or rejecting temporary injunction would amount to final determination of a question referred to the Tribunal for its adjudication and since such an order would have the effect of adversely affecting one party to the dispute with regard to a valuable right with such effect being direct and immediate rather than indirect or remote, would possess the characteristics and trappings of finality so far as that question is considered. In that sense, even an application granting or rejecting temporary injunction clearly has the trappings of finality and would therefore amount to a dispute or question or other matter having been determined by the Tribunal.

23. It is also relevant to indicate that while first part of Section 83(9) of the Act pertains to non-maintainability of appeal against any decision or order whether interim or otherwise by the Tribunal but it is the proviso which indicates powers of High Court akin to revisional jurisdiction.

24. It is settled law that a proviso though required to be seen and read along with the main portion of an enactment carves out an exception to the main provision and that the ordinary and proper function of a proviso coming after a general enactment is to limit the applicability of general enactment. The concept of proviso therefore clearly is separate and distinct from the main enactment, though required to be read in the same terms, but carves out an exception to the main enactment.

25. Hon'ble the Supreme Court in the case of **Union of India & Ors versus Priyankan Sharan & Anr.** reported in **AIR 2009 SC (Supp) 972** has held as follows with regard to a proviso :

"12. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasurer of Survey* [1880 (5) QBD 170, (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha* (AIR 1961 SC 1596) and *Calcutta Tramways Co. Ltd. v. Corporation of Calcutta* (AIR 1965 SC 1728)); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in *West Derby Union v. Metropolitan Life Assurance Co.* (1897 AC 647)(HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See *A. N. Sehgal and Ors. v. Raje Ram Sheoram & Ors.* (AIR 1991 SC 1406), *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors.* (AIR 1991 SC 1538) and *Kerala State Housing Board and Ors v. Ramapriya Hotels (P) Ltd. and Ors.* (1994 (5) SCC 672)."

26. Considering the aspects and importance of a proviso to an enactment, it is thus evident that the judgments rendered earlier in the cases of **Hafiz Abdullah & Ors** (supra) and **Shakil Ahmad** (supra) having not considered the aspect of proviso in section 83(9) of the Act, cannot be said to be a binding precedent on that aspect.

27. In view of discussion made hereinabove, since it is evident that an application granting or rejecting temporary injunction would have the trappings of finality with regard to question determined by Tribunal, it is held that a revision under section 83 (9) of the Act would therefore be maintainable before this Court.

28. With regard to merits of the case, learned counsel for revisionist submits that initially the property pertaining to Gata No.491 having an area of one bigha eight biswa related to creation of Waqf by the name of Waqf Qarbala Abdullapur Akbarpur. It is submitted that the aforesaid Waqf was registered with Shia Waqf Board as Waqf No.2018. Attention has been drawn to the fact that father of opposite party no.5, Syed Ameer Hasan was one of the Waqif of the deed. It is submitted that inadvertently revenue records did not reflect the correct name of Waqf which was recorded in the individual name of Mutwali and therefore a report dated 26.01.1988 was submitted for

correction of the name of Waqf in the revenue records particularly indicating that vide earlier order dated 31.12.1987, the aforesaid Waqf has been wrongly entered in the revenue records as Waqf Qarbala Kabristan Shia Sadaat. It is submitted that the aforesaid report was reiterated by the subsequent report dated 30.03.2018 by the Lekhpal concerned but the actual corrections as recommended in the reports were not made and vide subsequent order dated 13.05.2022 passed by Sub Divisional Magistrate in Case No.03816 of 2018, the incorrect name of Waqf was expunged but instead of indicating the correct name, only the name of Mutwali i.e. Syed Ameer Hasan was indicated.

29. It is submitted that in the meantime, one Naseem Bano was appointed Mutwali of the Waqf, which was challenged by opposite party no.4 before the Tribunal and arising out of the said proceedings, Civil Revision No.37 of 2019 was filed before this Court in which vide order dated 08.05.2019, it was directed that no third party right including tenancy rights would be created by either of the parties. It is submitted that in the meantime vide order dated 31.07.2019, the Waqf Board modified the nature of the Waqf from Waqf ALAL- Khair to Waqf ALAL-Aulad, a fact brought to the notice of this Court, which in its order dated 07.11.2019 noticed the same and recorded the submission of learned counsel for Waqf Board that the order dated 31.07.2019 had been passed without knowledge of interim directions issued by this Court and therefore his submission that the said order would be revisited was also recorded.

30. It is submitted that in pursuance to the submissions advanced before this Court, the order dated 31.07.2019 was thereafter cancelled vide order dated 14.11.2019. In pursuance thereof, the aforesaid revision was also disposed of.

31. It is submitted that upon disposal of aforesaid civil revision, the Waqf Board vide its resolution dated 26.02.2020 again revived the earlier order dated 31.07.2019, which was challenged by the revisionist before the Waqf Board which although initially granted interim order but subsequently by means of impugned order dated 12.12.2022 has rejected application for interim injunction with time being granted for filing of written statement.

32. Learned counsel for revisionist as such submits that once it was admitted that the Waqf has been registered with the Waqf Board in a particular name, the same could not have been changed by the Board without indicating cogent reason for the same. It is submitted that reliance placed in the impugned order

on the sale-deed dated 16.04.1968 allegedly in favour of father of opposite party no.5 was in itself misplaced since the father of opposite party no.5 as Waqif was well aware of the nature of Waqf being created by the Waqf deed and never set up a case of his individual rights by means of the aforesaid sale-deed, which was produced and relied upon by answering opposite party only in the year 2018.

33. Learned counsel appearing on behalf of answering opposite party no.5 has refuted submissions advanced by learned counsel for revisionist with the submission that the Waqf deed itself indicates its nature to be that of ALAL-Aulad since a narration in the Waqf deed clearly stipulates that the beneficiaries of the Waqf would be successors of initial beneficiaries and therefore the wrong name indicated in the Waqf deed is only an omission and the intention of the deed has to be seen from the aforesaid narration in the Waqf deed. It is in that context that he submits that the deed was required to be treated as ALAL-Aulad particularly in view of the sale-deed dated 16.04.1968 in favour of father of opposite party no.5.

34. It is also submitted that the impugned order has rightly recorded the fact that the aforesaid sale-deed is a registered document, which has not been challenged by any person till date and as such a presumption regarding its genuineness has been correctly drawn in terms of the Evidence Act.

35. Upon consideration of submissions advanced by learned counsel for parties and perusal of material available on record, it is an admitted fact that Waqf was created with regard to Gata No.491 having an area of one bigha, eight biswa. It is also admitted that the Waqf deed clearly indicates the name of Waqf as Waqf Qarbala Abdullapur Akbarpur. Neither of the parties are denying the execution of aforesaid Waqf deed. It is also an admitted fact that the said deed is recorded with the Board as Waqf No.2018. The report of revenue authorities also indicates the fact that the name of Waqf was wrongly recorded inadvertently in the revenue records and therefore recommendation was made for their correction. However no concrete order has been passed on the aforesaid recommendations and by means of subsequent order dated 13.05.2022 passed in Case No.3816 of 2018, while expunging the name of Waqf as Waqf Qarbala Kabristan Shia Sadaat, the name of Mutwali was recorded.

36. Upon perusal of impugned order, it does not evidence as to the material which was before the Waqf Board from which it could deduce at this stage that the Waqf deed inadvertently omitted it to be indicated as Waqf ALAL-Aulad. The aforesaid

contradiction in Waqf deed is required to be proved before the Tribunal by leading of evidence and at this stage the prima facie finding recorded by the Tribunal does not appear to be supported by any evidence.

37. It also appears that Tribunal has given considerable weight to the fact that a sale-deed was executed in favour of father of opposite party no.5 on 16.04.1968 which was a registered deed and has not been challenged by any one. The said aspect also, would require corroboration and substantiation by evidence. The Tribunal as such was required to take into consideration the prima facie contradiction in the Waqf deed and the aforesaid sale-deed and at this stage, it appears to have wrongly placed heavy reliance on the aforesaid fact pertaining to the sale-deed without advertng to the fact that there did not appear to be any material on record, at the stage of grant of interim injunction by which it would be deemed that the Waqifs of the Waqf deed deliberately or by omission recorded a wrong name and purpose of Waqf.

38. In view aforesaid facts and circumstances, the order impugned dated 12.12.2022 passed by Waqf Tribunal, Lucknow in Waqf Case No.113 of 2020, being apparently against the material on record, is set aside. The aspect of validity of Waqf deed, the sale-deed and revenue entries would definitely be subject to evidence being led during course of proceeding.

39. It is observed that the narration of events and facts as indicated in the body of this order would be subject to evidence being led before the Tribunal.

40. The revision as such succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 2.5.2023

Subodh/-