



HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 19528/2023

1. LRs of Peer Seyyad Julfikar Ali Jilani S/o Peer Seyyad Anwar Ali Jilani, Sajjadanashin And Mutawwali, Dargarh Hajrat Bade Peer Saheb, Nagaur.
2. Seyyad Sadakat Ali Jilani S/o Sh. Seyyad Mukhtar Ali Jilani, aged about 50 Years, Sajjadanashin And Mutawwali, Dargah Hajrat Bade Peer Saheb, Nagaur.

----Petitioners

Versus

Rajasthan Board of Muslim Waqf, through its Chairman, Jyoti Nagar, Lal Kothi, C-Scheme, Jaipur.

----Respondent

For Petitioner(s)	:	Mr. Bhavit Sharma Mr. Hukam Singh
For Respondent(s)	:	Mr. Himanshu Chowdhary Mr. Naresh Singh

HON'BLE DR. JUSTICE NUPUR BHATI

Order

Reportable

Reserved on 18/02/2025

Pronounced on 27/02/2025

1. The instant petition under Article 227 of Constitution of India has been filed challenging the order dated 05.12.2023 (Annex.1) passed by the learned Sr. Civil Judge and Addl. Chief Judicial Magistrate, Nagaur ('learned trial court') in Civil Suit No.884/2014 with the following prayer:

"It is, therefore, most respectfully prayed that record of the case be called for and by an appropriate writ, order or direction:-



i. the impugned order dated 05.12.2023, passed by the learned Senior Civil Judge and Additional Chief Judicial Magistrate, Nagaur in Civil Suit No.884/2014 (03/95) titled as "Peer Seyyad Julfikar Ali Jilani Vs. Rajasthan Board of Muslim Waqf" may kindly be quashed and set aside and the application filed by the respondent defendant may be dismissed;

ii. any other appropriate writ, order or direction which this Hon'ble Court may deemed just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioners.

iii. Writ petition filed by the petitioners may kindly be allowed with costs."

2. Briefly stated the facts of the case are that in the year 1995, the petitioners filed a suit (Annex.1) for declaration and permanent injunction before the learned trial court with the prayer that the respondent-defendant be restrained from removing the petitioners from the post of Sajjadanashin and the Dargah Bade Peer Sahab, Nagaur be declared as a private Dargah.

2.1. The respondent-defendant filed written statement (Annex.3) on 17.03.1997 through Mr. Ata-Ur-Rahman, the then Assistant Secretary of the Rajasthan Board of Muslim Waqf, Jaipur ('the Waqf Board'). The learned trial court framed the issues on 01.08.2013. Subsequently, the evidence of petitioners was concluded and matter was kept for defendant's evidence. The respondent-defendant filed affidavit dated 05.10.2019 (Annex.4) of one Mr. Sabir Hussain under Order XVIII Rule 4 of Code of Civil Procedure, 1908 ('CPC'). In the meanwhile the respondent-defendant filed an application dated 23.10.2021 (Annex.5) under Order VIII read with Section 151 of the CPC through Mr. Ahmad



Khan (Chief Executive of the Waqf Board) for bringing on record certain documents, which was allowed vide order dated 21.02.2022 (Annex.6), whereby the document sought to be brought on record by the respondent-defendant was allowed to be taken on record. Subsequently, Mr. Sabir Hussain filed an application dated 15.09.2023 (Annex.7 colly) under Section 151 of the CPC praying therein that he may be permitted to file additional affidavit to amend the earlier affidavit (Annex.4) submitted by him under Order XVIII Rule 4 of the CPC and also to exhibit the documents which were taken on record vide order dated 21.02.2022 (Annex.6) since he has been authorized by the respondent-defendant (the waqf board) for the same vide power of attorney dated 01.09.2023 (Annex.7 colly.). The learned trial court vide order dated 05.12.2023 (Annex.1) allowed the application (Annex.7 colly.) and permitted Sabir Hussain to file additional affidavit for the purpose of amending the earlier affidavit (Annex.4) and also permitted him to exhibit the documents that were taken on record vide order dated 21.02.2022 (Annex.6). Aggrieved by the same the instant writ petition has been filed by the petitioners.

3. Learned counsel for the petitioners has submitted, while relying on Section 22 of the Wakf Act, 1954, that the Chief Executive Officer does not have power to delegate as the same vests with the Waqf Board. He also submitted that the Chief Executive Officer could not have delegated the power to exhibit documents on behalf of the Waqf Board (respondent-defendant herein) to Mr. Sabir Hussain coupled with the fact that Mr. Sabir Hussain is neither a member of the Waqf Board nor an officer nor



a servant. He also submitted that the whole purpose of the suit as well as creation of Waqf Board will get frustrated if such powers are delegated to a private party who might have interest in the suit otherwise.

4. Learned counsel for the petitioners has also submitted that the learned trial court has erred in permitting Mr. Sabir Hussain to amend affidavit given in support of evidence under Order XVIII Rule 4 of the CPC, more so when written statement/pleadings have not been amended. He also submitted that an affidavit submitted under Order XVIII Rule 4 of the CPC is virtually examination-in-chief hence, once the same has been recorded, no amendment can be made in it later.

5. Learned counsel for the petitioners also submitted that vide order dated 21.02.2022 (Annex.6) only the permission to get the documents on record was given however, there was no permission to get these documents exhibited. Thus, the impugned order is based on the wrong facts.

6. Learned counsel for the petitioners, while drawing attention of this court to the caveat filed by the Waqf Board in the present case in which name of the Chief Executive officer of the Waqf Board appears, has submitted that on one hand the caveat before this court has been filed by the Waqf Board and on the other hand the respondent-defendant has delegated the power to exhibit documents to Mr. Sabir Hussain who is neither member of the Waqf Board nor an officer nor a servant.

7. Learned counsel for the respondent-defendant submitted that he is ready to argue the matter finally without filing reply. He submitted that the learned trial court has allowed the amendment



in the affidavit (Annex.4) only to the extent of exhibiting the documents which were already taken on record vide order dated 21.02.2022 (Annex.6).

8. Learned counsel for the respondent-defendant also submitted that a resolution was passed by the Waqf Board for delegating the power to exhibit documents to Mr. Sabir Hussain. He prayed that he may be granted permission to place a true copy of this resolution on record as the same is necessary to decide the question of delegation.

9. In rebuttal the learned counsel for the petitioners vehemently objected to this request while submitting that the respondent-defendant has taken adjournment time and again and it cannot be permitted to place a new document on record before this court which was never placed before the learned trial court. He also submitted that the respondent-defendant has not even filed reply to the instant writ petition hence, they cannot be permitted to file such additional documents without there being any pleadings in this regard.

10. Heard the counsel for the parties and perused the material available on record.

11. This court at the outset finds that the request made by the learned counsel for the respondent-defendant to place on record true copy of the resolution passed by the Waqf Board cannot be allowed as the same was never placed before the learned trial court. Moreover, the power of superintendence conferred by Article 227 of the Constitution of India is supervisory and not appellate, thus, the question of considering a document which was not a part of material available on record before the learned trial court,





does not arise. Thus, the request made by the counsel in this regard is rejected.

12. At this juncture this court finds it appropriate to refer to relevant provisions of law pertaining to the present controversy. Although the learned counsel for the petitioners has cited provisions of the Wakf Act, 1954 but this court finds that vide notification dated 27.12.1995 the date of commencement of the Waqf Act, 1995 (hereinafter as the Act of 1995) was notified as 01.01.1996, and as per Section 2 of the Act of 1995 it has been made applicable to all the auqaf whether created before or after the commencement of the Act of 1995, thus, the provisions of the same are being referred to by this court. It is evident from the perusal of preamble of the Act of 1995 that it has been enacted for the better administration of Auqaf and for matters connected therewith or incidental thereto.

13. Section 27 of the Act of 1995 provides for delegation of powers by the Waqf Board. The same reads as under:

"27. Delegation of powers by the Board.—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110."

Thus, the bare perusal of Section 27 of the Act of 1995 makes it evident that the Board may delegate such of its power and duties except the powers and functions as provided under clauses (c), (d), (g) and (j) of sub-section (2) of Section 32 of the Act of 1995



to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee. The use of word 'Board' in the opening part of this Section suggests that only the Board can delegate the powers under Section 27 of the Act of 1995 and such powers cannot be delegated to any other person except as mentioned therein. And Section 3 (c) of the Act of 1995 defines the word 'Board' as a Board of Waqf as established either under Section 13 (1) or Section 13 (2) of the Act of 1995 and includes a common Waqf Board established under Section 106 of the Act of 1995. Section 3 (c) of the Act of 1995 is reproduced as under:

"(c) "Board" means a Board of Waqf established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common Waqf Board established under section 106;"

14. Sub-sections (1) and (2) of Section 13 of the Act of 1995 provides for establishment of Waqf Board. The same is reproduced as under:

"13. Incorporation.—(1) *With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Auqaf under such name as may be specified in the notification:*

Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013).

(2) Notwithstanding anything contained in sub-section (1), if the Shia auqaf in any State constitute in number more than fifteen per cent. of all the auqaf in the State or if the income of the properties of the Shia auqaf in the State constitutes more than fifteen per cent. of the total income





of properties of all the auqaf in the State, the State Government may, by notification in the Official Gazette, establish a Board of Auqaf each for Sunni auqaf and for Shia auqaf under such names as may be specified in the notification.

(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall belong to the Shia Muslim and in the case of Sunni waqf, the Members shall belong to the Sunni Muslim.

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued."

15. Section 14 of the Act of 1995 provides for the Composition of the Waqf Board and the same is reproduced as under:

"14. Composition of Board.—(1) The Board for a State and the National Capital Territory of Delhi shall consist of—

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(i) Muslim Members of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(ii) Muslim Members of the State Legislature;

(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and

(iv) mutawallis of the auqaf having an annual income of rupees one lakh and above.

Explanation I.—For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Explanation II.—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause





(b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;

(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;

(1A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1) the ex-Muslim





Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (3).

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia auqaf and Sunni auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(8) Whenever the Board is constituted or reconstituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

Thus, sub-section (1) of Section 14 of the Act of 1995 provides that the Board shall consist of a Chairperson, atleast one and not more than two members elected by the State Government from the electoral colleges as provided under sub-clauses (i) to (iv) of clause (b), persons nominated by the State Government under clauses (c), (d) and (e) of sub-section (1) of the Act of 1995. Further, sub-section (9) of Section 14 of the Act of 1995 provides that members of the Waqf Board shall be appointed by the State Government by notification in the Official Gazette.

16. This court also takes into consideration Section 18 of the Act of 1995 which provides for Committees of the Waqf Board as under Section 27 of the Act of 1995 the Waqf Board is empowered





to delegate its powers to an area committee as well. The same is reproduced as under:

"18. Committees of the Board.—(1) *The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of auqaf.*

(2) *The Constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:*

Provided that it shall not be necessary for the members of such committees to be members of the Board."

Thus, the Waqf Board may establish committee (s) for supervision of auqaf and it is not necessary for the members of such committee to be members of the Waqf Board.

17. As in the present case the Chief Executive Officer has delegated the power to Mr. Sabir Hussain to exhibit documents on behalf of the Waqf Board (respondent-defendant) thus, it is pertinent to refer to the relevant provisions of the Act of 1995 regarding the appointment, power and duties of Chief Executive Officer. Section 3 (d) of the Act defines 'Chief Executive Officer' as Chief Executive Officer appointed under sub-section (1) of Section 23 of the Act of 1995. Section 23 of the Act of 1995 provides for the appointment of Chief Executive Officer, his term and other conditions of service. The same is reproduced as under:

"23. Appointment of Chief Executive Officer and his term of office and other conditions of service.—

(1) *There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.*

(2) *The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.*





(3) The Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board."

Thus, Section 23 provides for appointment of Chief Executive Officer of the Waqf Board who shall be ex officio secretary of the Waqf Board and shall be under the administrative control of the Waqf Board.

18. Section 25 of the Act of 1995 provides for the duties and powers of Chief Executive Officer. The same is reproduced as under:

"25. Duties and powers of Chief Executive Officer.—

(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include—

(a) investigating the nature and extent of auqaf and waqf properties and calling whenever necessary, an inventory of waqf properties and calling, from time to time, for accounts, returns and information from mutawallis;

(b) inspecting or causing inspection of waqf properties and accounts, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of auqaf.

(2) In exercising the powers of giving directions under sub-section (1) in respect of any waqf, the Board shall act in conformity with the directions by the waqf in the deed of the waqf, the purpose of waqf and such usage and customs of the waqf as are sanctioned by the school of Muslim law to which the waqf belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act."

Thus, Section 25 provides for the duties and powers of the Chief Executive Officer which are subject to the provisions of the Act of 1995 and rules made thereunder as well the directions of the Waqf Board. Further, it is important to note here that under sub-section (3) of Section 25 the Chief Executive Officer, save as otherwise



provided under the Act of 1995, may also exercise powers and perform duties which are or may be assigned to him or delegated to him under the Act of 1995, but does not provide that the Chief Executive Officer may further delegate the power to any person for defending suit and proceedings relating to auqaf.

19. Section 32 of the Act of 1995 provides for the powers and functions of the Waqf Board which reads as under:

"32. Powers and functions of the Board.—(1) *Subject to any rules that may be made under this Act, the general superintendence of all [auqaf] in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the [auqaf] under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such [auqaf] were created or intended:*

Provided that in exercising its powers under this Act in respect of any [waqf], the Board shall act in conformity with the directions of the [waqif], the purposes of the [waqf] and any usage or custom of the [waqf] sanctioned by the school of Muslim law to which the [waqf] belongs.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, "waqf" includes a [waqf] in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) *Without prejudice to the generality of the foregoing power, the functions of the Board shall be—*

- (a) *to maintain a record containing information relating to the origin, income, object and beneficiaries of every [waqf];*
- (b) *to ensure that the income and other property of [auqaf] are applied to the objects and for the purposes for which such [auqaf] were intended or created;*
- (c) *to give directions for the administration of 3 [auqaf];*
- (d) *to settle schemes of management for a [waqf]:*

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) *to direct—*

- (i) *the utilisation of the surplus income of a [waqf] consistent with the objects of [waqf];*





(ii) in what manner the income of a [waqf], the objects of which are not evident from any written instrument, shall be utilised;

(iii) in any case where any object of [waqf] has ceased to exist or has become incapable of achievement, that so much of the income of the [waqf] as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected, an opportunity of being heard.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised—

(i) in the case of a Sunni [waqf], by the Sunni members of the Board only; and

(ii) in the case of a Shia [waqf], by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for auditing of account of [auqaf];

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any [waqf];

(i) to institute and defend suits and proceedings relating to [auqaf];

(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.]

(k) to administer the [Waqf] Fund;





(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the [waqf] property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, [waqf] properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of 1 [waqf] and [waqf] property, and to cause, whenever necessary, a survey of such 1 [waqf] property;

[(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;]

(o) generally do all such acts as may be necessary for the control, maintenance and administration of [auqaf].

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the [waqf] or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any [waqf] land, which is a [waqf] property, [has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like], market, housing flats and the like, it may serve upon the mutawalli of the concerned [waqf] a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from [waqf] funds or from the finances which may be raised on the security of the properties of the [waqf] concerned, and control and manage the properties till such time as all expenses incurred by

the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property:





Provided that the Board shall compensate annually the mutawalli of the concerned [waqf] to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned waqf.

Thus, as per Section 32 (1) of the Act of 1995 the general superintendence of all auqaf in a State vests with the Waqf Board established for the State and it is the duty of the Waqf Board to exercise its powers under the Act of 1995 so as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such auqaf were created or intended. Section 32 (2) (i) of the Act of 1995 provides for the functions of the Waqf Board to institute and defend suits and proceedings relating to auqaf.

20. The conjoint reading of Section 23 and Section 25 of the Act of 1995 makes it evident that the Chief Executive Officer shall be under the administrative control of the Waqf Board and shall have duties and respective powers as assigned to him or delegated to him under the Act of 1995. Further, the conjoint reading of the Section 27 and Section 32 (2) (i) of the Act of 1995 makes it evident that only the Waqf Board may delegate its power by general or special order in writing to institute and defend suits and proceedings relating to auqaf only to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee. What emerges from the above provisions is that only the Waqf Board can delegate its



power to institute and defend suits and proceedings relating to auqaf as enshrined under Section 32 (2)(i) of the Act of 1995 and that too to the authority/member mentioned under Section 27 of the Act of 1995 and the Chief Executive Officer is not bestowed with any such power of further delegating the power to a person, who does not fall in the category of members/authority, as laid down under Section 27 of the Act of 1995.

21. This court finds that in the present case, vide power of attorney dated 01.09.2023 (Annex.7 Colly.) Mr. Sabir Hussain has been authorized to exhibit some documents on behalf of the Waqf Board which were earlier permitted to be taken on record vide order dated 21.02.2022 (Annex.6) which amounts to defending the suit on behalf of the Waqf Board. However, the counsel for the respondent-defendant has been unable to demonstrate before this court that Mr. Sabir Hussain falls into the category as mentioned under Section 27 of the Act of 1995 viz. Chairperson/ member/ the Chief Executive Officer/ officer/ servant of the Board or member of any area committee to whom power may be delegated. It is also important to note that the power of attorney dated 01.09.2023 (Annex.7 Colly.) bears the signature of Chief Executive Officer, Rajasthan Waqf Board who is not empowered under Section 27 of the Act of 1995 to delegate the powers further. Thus, this court finds that the power of attorney dated 01.09.2023 (Annex.7 colly) vide which Mr. Sabir Hussain was authorized to exhibit documents on behalf of the respondent-defendant (the Waqf Board) is itself *non-est* in the eyes of law for the reason that firstly, as per Section 27 of the Act of 1995 only the Waqf Board can delegate its powers enshrined under Section



32 of the Act of 1995; Secondly, the Chief Executive Officer. could not have delegated such power, even in case where he was delegated the power enshrined under Section 32 (1) (i) of the Act, further to Mr. Sabir Hussain who is neither the Chairperson nor member nor the Chief Executive Officer nor officer nor servant of the Board nor member of any area committee. This Court also finds that the learned trial court, while allowing the application (Annex.7 colly.) vide impugned order dated 05.12.2023 (Annex.1) has also erred in observing that vide order dated 21.02.2022 (Annex.6) the respondent-defendant was allowed to place on record some documents as well as to exhibit them as it is clear from the bare perusal of the order dated 21.02.2022 (Annex.6) that the respondent-defendant was only allowed to place the documents on record. The relevant part of order dated 21.02.2022 (Anenx.6) as well as impugned order dated 05.12.2023 (Annex.1) is reproduced as under respectively:

21.02.2022 (Annex.6):

“बहस प्रार्थनापत्र सुनी गई। पत्रावली व प्रार्थनापत्र के साथ प्रस्तुत दस्तावेजात का अवलोकन किया गया।

प्रकरण के जिन दस्तावेजात को प्रतिवादी द्वारा रिकॉर्ड पर लेकर प्रदर्शित करवाने की अनुमति चाही गई है सभी दस्तावेजात सक्षम न्यायालयों द्वारा जारी प्रमाणित प्रतिलिपियां हैं जो प्रकरण से सुसंगत प्रतीत होती हैं जिनको प्रकरण में रिकॉर्ड पर लेने से प्रकरण का न्यायपूर्ण निस्तारण करने में सहायता प्राप्त होगी।

परन्तु उक्त सभी दस्तावेजात प्रतिवादी द्वारा जवाबदावे के साथ प्रस्तुत नहीं करते हुए अब प्रस्तुत किये हैं जो निसंदेह देरी से प्रस्तुत किये हैं। अतः न्यायहित में प्रतिवादी की ओर से प्रस्तुत प्रार्थनापत्र अंतर्गत आदेश 8 व धारा 151 सीपीसी एतद् द्वारा 1000/- रुपये कोस्ट पर स्वीकार किया जाकर प्रार्थनापत्र के साथ प्रस्तुत दस्तावेजात को रिकॉर्ड पर लिये जाने की अनुमति प्रदान की जाती है। कोस्ट अदायगी प्रकरण में भाग लेने की पूर्ववर्ती शर्त रहेगी। प्रतिवादी ताल्लुका विधिक सेवा समिति में उक्त कोस्ट जमा करवाकर रसीद प्रस्तुत करे। पत्रावली वास्ते साक्ष्य प्रतिवादी दिनांक 09.03.2022 को पेश हो।”

05.12.2023 (Annex.1):

“उभयपक्ष के तर्कों पर मनन किया। संबंधित विधि का ध्यानपूर्वक अवलोकन किया। अवलोकन से प्रकट होता है कि प्रतिवादी द्वारा उक्त प्रार्थना-पत्र के माध्यम से पूर्व में उनके द्वारा प्रस्तुत दस्तावेज जो हाजा न्यायालय द्वारा आदेश दिनांक 21.02.22 के जरिये अभिलेख पर लिये गये थे, को गवाह साबिर हुसैन से प्रदर्शित करवाना चाहा है। इस संबंध में प्रतिवादी के अधिवक्ता ने वक्फ बोर्ड की ओर से गवाह साबिर हुसैन से



प्रदर्शित करवाने का मूल अधिकार पत्र दि. 01.09.2023 भी इस प्रार्थना-पत्र के संलग्न कर पेश किया है। इस संबंध में उनका मुख्य रूपसे यह तर्क है कि उक्त अधिकार पत्र से पूर्व साबिर हुसैन की ओर से आदेश 18 नियम 4 सीपीसी के अधीन गवाह का मुख्य परीक्षण का शपथ पत्र पेश किया जा चुका था परंतु वक्फ बोर्ड द्वारा प्रस्तुत दस्तावेज जो न्यायालय द्वारा अपने आदेश से अभिलेख पर लिये गये हैं, को प्रदर्शित करवाने के लिए गवाह के शपथ पत्र में संशोधन की आवश्यकता है जिसके कारण दूसरा शपथ पत्र पेश करने की अनुमति दी जावे जबकि वादी की ओर से प्रार्थना पत्र पर गंभीर विरोध जताते हुए यह तर्क लिया गया है कि न्यायालय का आदेश केवल दस्तावेज को रिकॉर्ड पर लेने का था तथा वक्फ बोर्ड साबिर हुसैन को दस्तावेज प्रदर्शित करवाने का अधिकार नहीं दे सकता केवल न्यायालय ही दे सकता है तथा शपथ पत्र संशोधित करने का कानून में कोई प्रावधान नहीं है। उक्त तर्कों के दृष्टिगत इस न्यायालय द्वारा पारित आदेश दिनांक 21.02.22 का अवलोकन किया जावे तो प्रकट होता है कि न्यायालय के द्वारा उक्त आदेश में प्रस्तुत दस्तावेज जो सक्षम न्यायालय की प्रमाणित प्रतिलिपियां एवं पब्लिक डोक्युमेंट होना मानते हुए सुसंगत मानते हुए रिकॉर्ड पर लेते हुए प्रदर्शित करवाने की अनुमति दी गई है। जहां तक केवल गवाह साबिर हुसैन द्वारा आदेश दिनांक 21.02.22 के जरिये अभिलेख पर लिये गये दस्तावेज को प्रदर्शित करने का प्रश्न है तो गवाह साबिर हुसैन को अनुमति दी जाना न्यायसंगत है जबकि न्यायालय द्वारा पूर्व में अभिलेख पर दस्तावेजात को सुसंगत मानते हुए प्रदर्शित करवाने की अनुमति दी जा चुकी है। इस संबंध में प्रतिवादी के अधिवक्ता गवाह का केवल इस अनुमति की हद तक संशोधित शपथ पत्र पेश करें। पूर्व में पेश साबिर हुसैन का शपथ पत्र पार्ट डी. का भाग बनाया जावे। अतः उपरोक्त अनुसार प्रार्थना-पत्र निर्णीत किया जाता है।

इस स्तर पर पत्रावली के अवलोकन से यह भी प्रकट होता है कि पत्रावली हाजा न्यायालय की 20 वर्ष पुरानी पत्रावली है जो पुराने प्रकरणों की सूची सं.2 में है। ऐसे में माननीय राज. उच्च न्यायालय द्वारा 20 वर्ष से अधिक पुरानी पत्रावली को हर हफ्ते पेशी नियत करने के आदेश प्राप्त हुए हैं। उक्त निर्देशों की पालना में प्रतिवादी के अधिवक्ता को निर्देशित किया जाता है कि वह आगामी पेशी से तीन दिन पूर्व वादी के अधिवक्ता को संशोधित शपथ पत्र की नकल उपलब्ध करवाये तथा आगामी तारीख पेशी पर प्रतिवादी समस्त गवाह पेश करें तथा वादी के अधिवक्ता जिरह हेतु तैयार रहें।

पत्रावली वास्ते साक्ष्य प्रतिवादी दिनांक 13.12.23 को पेश हो।”

22. Therefore, the learned trial court has erred in permitting Mr. Sabir Hussain to exhibit the documents on behalf of the respondent-defendant as the power of attorney by which he was authorized to exhibit documents on behalf of the Waqf Board was itself *non-est* in the eyes of law being issued by the Chief Executive Officer who cannot delegate powers of the Waqf Board as under Section 27 of the Act of 1995 delegation of power vests exclusively with the Waqf Board. And thus, the power of the board under Section 32 (1)(i) of the Act of 1995, if it was delegated to the Chief Executive Officer could not have been further delegated to Mr. Sabir Hussain, who is neither the Chairperson nor member, nor the Chief Executive Officer /officer / servant of the Board and member of any area committee.





23. Thus, in view of the above, the instant petition deserves to be allowed. Accordingly, the instant petition is allowed and the impugned order dated 05.12.2023 (Annex.1) is quashed and set aside.

24. Application (s), if any pending, shall also stand disposed of.

(DR. NUPUR BHATI),J

20D-/amit/-

