

ALLAHABAD HIGH COURT

Nasrullah Khan

Vs

Wajid Ali

(Banerji and Niamatullah, JJ.)

24.07.1929

JUDGMENT

Niamatullah, JJ.

1. This is a civil revision from an order dated 19th April 1928, passed by the District Judge of Moradabad. After the passing of Act 42 of 1928, the appellant mutwali filed accounts of certain waqf property in his possession. In this way he fulfilled the requirement of Section 2 of the Act; but on 14 July 1925, he filed a fresh application praying that he be exempted from the filing of the accounts. This application was rejected on 4th September 1925: Subsequently an application was filed Under Section 3, Charitable or Religious Trust Act (Act 14 of 1920) and on 19th June 1926, another District Judge rejected the application. It is unnecessary to say in this case whether the rejection of the subsequent application under the Act of 1920 had the effect of superseding the previous order under the Act of 1923. After this the mutwali omitted to file the statement of accounts as required by Section 5. The present application was filed against him with a view to compel him to file the account. The mutwali objected that the waqf was not one to which Act 42 of 1923 applied. The learned District Judge has ordered the mutwali to "file the account required by the applicants." The learned Judge has not taken proceedings under Section 10 of the Act. Under that section he has undoubtedly the power to punish a mutwali if without any reasonable cause, the burden of proving which shall lie upon him, he fails to furnish statement of particulars, documents, or statements of accounts. But that is purely a penal proceeding in the course of which the learned Judge may enquire as to whether the waqf is one to which the Act is applicable, But till that stage arrives we find it difficult to hold that the Judge can hold any such enquiry and compel a mutwali, who is not admitting the applicability of the Act, to file accounts. Barring Section 10 which appears wide enough to cover an enquiry, none of the preceding sections imply an investigation where the waqf itself is disputed or where the applicability of the Act to the waqf is questioned. Under Section 4 further particulars or documents can be ordered to be filed when particulars have been previously filed under Section 3. Under Sub-clause (2) Section 4 the Court can order further particulars or documents to be filed in order to enquire into the origin, nature or the objects of the waqf or the condition or management of the waqf property.

Past accounts can be required in order to ascertain the nature or objects of the waqf, but they would be filed merely as particulars and not as a statement of account.

2. Section 5 does not by itself contemplate the intervention of other persons for compelling the mutwali to file his accounts except possibly as a mere reminder to the Judge that the accounts have not been filed, with a view to induce the Judge to take proceedings under Section 10.

3. In an enquiry under Section 10 the learned Judge has jurisdiction to find that the Act applies to the waqf and even if he does not on account of good reason impose a fine on the mutwali on that occasion for failure to file accounts such a course may justify punishment if the failure again occurs in a sub-sequent year. But as the sections of the Act stand, unfortunately there appears to be no authority in the District Judge to pass an order that the mutwali should file a statement of accounts. The only procedure provided is to punish him for not filing it.

4. The proceedings before the District Judge were undoubtedly of a civil nature and we have jurisdiction to entertain the revision and cancel the order for filing the account which was without jurisdiction. This would not prejudice any further proceedings that the District Judge may deem fit to take under the Act. We express no opinion as to whether the waqf is one to which the Act applies.

5. We accordingly allow this revision and setting aside the order of the District Judge dated 19th April 1928, dismiss the application with costs in both Courts.

