

ALLAHABAD HIGH COURT

Waheed Hasan

Vs

Abdul Rahman

(Rachhpal Singh, J.)

04.12.1934

ORDER

Rachhpal Singh, J.

1. This is a revision application arising out of an application made by the applicants in the Court of the learned District Judge, asking that action under Section 10 of Act 42 of 1923, be taken against the defendants.

2. Waheed Hasan filed an application in the Court of the learned District Judge praying that action under Section 10, Musalman Wakf Act of 1923, be taken against the defendants. After filing the application, Waheed Hasan did not enter appearance and the other applicants got their names substituted in his place. The allegations were that the defendants were holding as mutawallis certain wakf properties and that they had not furnished accounts. The learned District Judge, in whose Court the application was made, sent it on for disposal to the learned Additional District Judge. When the case was taken up by him it was found that the defendants denied that the properties in question were wakf properties. The learned Additional District Judge was of opinion that because the existence of the wakf had been denied he was precluded from proceeding with the matter any further. He was of opinion that he had under the Act no power to make an inquiry as to whether or not the properties in question were wakf properties. He therefore dismissed the application. Against that order the present revision application has been preferred.

3. After bearing the learned Counsel appearing on both sides, I am of opinion that the order passed by the learned Judge of the Court below is correct and should be affirmed. There is nothing in the Musalman Wakf Act of 1923, to show that any power has been conferred on the District Court to go into the question as to whether or no the properties, about which applications are made, are wakf properties. This was the view taken by a learned Judge of the Patna High Court in a case *Ali Mohammad v. Collector of* where it was held that there is no provision in the Act authorizing the Court as defined in that Act to determine as to whether any property which is denied to be a wakf property is wakf within the meaning of the Act. The learned Counsel

appearing for the applicants has relied, on a Bench decision of this Court *Nasrullah Khan v. Wajid Ali*² and has contended that certain observations made in that ruling by the learned Judges who decided it support his contention. I find myself unable to agree with this contention. As pointed out by the learned Counsel appearing for the respondents, in that case the defendant had actually filed accounts in the Court of the District Judge relating to the property in question in that case, thereby admitting that the property was wakf property and he was the mutawalli of the same. The facts of the case before me are altogether different, and so it cannot be said that the ruling *Nasrullah Khan v. Wajid Ali* 1930 All. 81(Supra), is applicable. Here the existence of the wakf is denied and, as I have already remarked, the Act does not confer jurisdiction on the District Court to determine the question as to the existence of wakf or otherwise. To me it appears that the Act is applicable only to those cases in which the existence of the wakf is not denied. As soon as a party denies the existence of wakf, the Court referred to in the. Musalman Wakf Act would have no jurisdiction to proceed with the case any further. The only, order that can, be passed is that the applicants should get the matter settled by instituting a regular suit.

4. In these circumstances I am of opinion that the order passed by the learned District Judge was correct, and therefore dismiss the application with costs.

Cases Referred.

11927 Pat. 189

21930 All. 81