

PATNA HIGH COURT

Nanhe Shah

Vs

Abdul Hasan

(Agarwala, J.)

08.11.1937

ORDER

Agarwala, J.

1. The opposite party applied to the District Judge of Patna alleging that he was the rautwalli of an ancient mam-bara in Mama Dujra and praying that the wakf estate might be "registered." The application purported to be under Clause 1 of Section 3, Mussalman Wakf Act, 1923, which requires mutwallis to file the particulars set out in that Sub-section. The applicant stated that the wakf had been created in the beginning of the last century and that the mutwalli was appointed by the Muhammadans of the locality at a meeting especially convened for that purpose. He alleged that the last mutwalli was one Amir Shah, who died in 1934, and that he himself had been appointed at a meeting especially convened by the Muhammadans of the locality. The present petitioner, who is the son of Amir Shah, filed a petition stating that he was the present mutwalli of the wakf estate and not the opposite party. He claimed that the muiwalliship was hereditary and he prayed that the application of the opposite party should be rejected and that he himself should be permitted to file a petition for registration of the imambara as a wakf with the information required by Section 3 of the Act.

2. The Court below appears to have treated the matter as a contest between two rival claimants to the mutwalliship and, after framing issues appropriate to the determination of this question, decided that the opposite party is the properly elected mutwalli of the estate. The Court thereupon ordered that the disputed imambara should be registered as a public wakf of which the opposite party was the mutwalli. A perusal of the Act makes it quite clear that the Court had no jurisdiction to decide the question which it has done. The preamble to the Act states that the Act is one to make provision for the better management of wakf property and for ensuring the keeping and publication, of proper accounts in respect of such properties. This object is to be achieved in the following manner: Within the time prescribed in Section 3 of the Act, the mutwalli of every wakf is required to furnish to the Court within the local limits of whose

jurisdiction the property of the wakf of which he is the mutwalli is situated, a statement containing a description of the wakf property, the gross annual income from such property. The amount of Government revenue and cess, an estimate of the expenses incurred in the realization of the income of the property, and other particulars of a like nature. Section 4 requires the Court to exhibit in the courthouse notice of the information which has been furnished, and makes provision for interested persons to petition the Court in writing for the issue of an order requiring the mutwalli to furnish particulars. In the event of such an application being made, the Court is empowered to make such enquiry as it thinks fit, and to order further particulars to be supplied. By Section 10 it is provided that any person who fails to comply with the requirements of Section 3 or fails to furnish further particulars when called upon to do so under Section 4, shall be punished with a fine.

3. It will be noticed, therefore, that the only questions which the Court is called upon to decide by the provisions of this Act are: (1) whether further particulars shall be called for under Section 4; (2) the adequacy of such particulars, and (3) whether the mutwalli has made himself liable to be fined. The Act appears to be designed merely to secure a record of the extent and income of wakf properties. Such a record has two obvious advantages: In the first place, if the particulars required are recorded, it enables the Court to protect wakf properties, and, in the second place, if the required particulars are not recorded, the omission creates an obstacle in the way of a dishonest judgment-debtor who, in the course of execution proceedings might claim that the property sought to be attached is not his personal property but dedicated property. There is nothing in the Act, either in its preamble or in its provisions, to indicate that it was the intention of the Legislature that the Court designated to receive the particulars referred to above was to enter into an elaborate inquiry as to the existence of the wakf or the right to the mutwalliship

4. It was contended by the learned Advocate for the opposite party that when in fact the Court has before it applications, by two persons, each claiming to be the mutwalli, it must have been intended by the Legislature that the Court should decide which of the claimants was the legal Mutwalli or that the object of the Act would otherwise be frustrated. If that was the intention of the Legislature, it has failed to give expression to it. Nor do I think that the apprehensions of the learned Advocate are well founded. If two different persons claim to furnish particulars in respect of the same wakf estate, I see no reason why they should not both be permitted to furnish them. The only check contained in the Act on unauthorized persons claiming to be mutwallis appears to be contained in Section 5 of the Act. That section requires the mutwalli to furnish a true account of income and expenditure to the Court, annually, and Section 10 empowers the Court to impose a fine on a mutwalli who fails to furnish the account or who does not furnish a correct account. A person, therefore, who is not a mutwalli, but who has furnished a statement of particulars as required by Section 3, lays himself open to the possibility of the imposition of the penalty under

Section 10 if he does not furnish true annual accounts as required by Section 5. This should act as a preventive against applications under Section 3 being made by persons who are not actually mutwallis, as it is obvious that such persons will not be in a position to furnish correct accounts of the income and expenditure of the wakf properties. The order of the Court below is, therefore, set aside and the case is remanded to be dealt with on the lines indicated above.