

**BEFORE THE HON'BLE LOKAYUKTA OF DELHI
JUSTICE HARISH CHANDRA MISHRA
COMPLAINT NO. C-652/LOK/2011**

IN THE MATTER OF:

SH. M.A. CHAND

.... Complainant

Versus

**SH. MATEEN AHMED, MLA /
CHAIRMAN, DELHI WAQF BORAD Respondent**

For the complainant: Sh. Dharmendra Kumar Mishra,
Sh. Neeraj Deshwal, Ms. Anjana
Mishra Jha, Ms. Aashika
Aggarwal & Sh. Raman Kumar
Jha, Advocates.

For the respondent: Sh. Sanjeev Kumar Dubey,
Sh. Asif Inam, Ms. Pushpam
Arya & Ms. Silky Sharma,
Advocates.

ORDER

CAV on 28.03.2024

Pronounced on 08.05.2024

Heard Ld. Counsel for the complainant and Ld. Counsel for the respondent and perused the record.

2. This matter was initiated upon a complaint filed by the complainant on 11.04.2011. The complaint relates to the alleged mismanagement of the Delhi Waqf Board properties by the respondent Sh. Mateen Ahmad, the then MLA from Seelampur Assembly Constituency, Delhi, who happened to be

a 'Public Functionary', as defined under Section 2(m) of the Delhi Lokayukta and Uplokayukta Act, 1995, (herein after referred to as the 'Lokayukta Act'), and who also happened to be the Chairperson of the Delhi Waqf Board from the year 2004 to 2014. It is alleged that the respondent Sh. Mateen Ahmed, while functioning as Chairman of the Delhi Waqf Board, abused his position by giving away the lands of the Delhi Waqf Board in lease at throw away lease amount, without following the due process of law and abusing and misusing his power in an illegal and arbitrary manner. Thereby, it is alleged that the respondent public functionary may be in possession of pecuniary resources / properties disproportionate to his known sources of income which may be held by him personally and his family members and friends, for which an inquiry by this Forum was necessitated.

3. At the very outset, it may be stated that so far as the allegation of acquiring pecuniary resources / properties disproportionate to his known sources of income is concerned, no direct evidence has been brought on record by the complainant nor any of his witnesses has stated anything about any particular asset or property of the respondent. The only evidence brought, is about the process by which the Waqf properties were said to be settled / leased out by the Delhi Waqf Board during the Chairpersonship of respondent public functionary Sh. Mateen Ahmed.

4. So far as the allegations in this complaint are concerned, they relate to two properties of Delhi Waqf Board, which are as follows:-

A) Khasra No. 709 situated in Punjab Khor village, Delhi, measuring about 62 bighas 15 biswa of land, which is staid to a graveyard land.

B) Land adjoining to Biwi Fatima Dargah, pertaining to part of Khasra Nos. 317, 319, 320, 321 and 327 measuring around 460 sq. yards of land, situated in Kaka Nagar, Delhi, which is also said to be a graveyard land.

5. It is alleged in the complaint that the respondent Sh. Mateen Ahmed, while working as Chairperson of Delhi Waqf Board had given aforesaid properties worth several crores of rupees to his friends at a very nominal amount resulting in loss to the tune of crores of rupees, which could have been effectively used for the Muslim community. It is alleged that the respondent in collusion with property dealers committed fraud of crores of rupees by misusing his position as Chairperson of Delhi Waqf Board in total violation of the Waqf Act, 1995, (herein after referred to as the 'Waqf Act'), and his actions were prejudicial to the Muslim community. Mainly, with these allegations the complaint was filed against the respondent.

6. Upon notice, the respondent Sh. Mateen Ahmed appeared through his advocate and also filed a detailed reply, vehemently denying of all the allegations and stating *inter alia*, that only purpose of the complaint is to malign, defame and cause harm to his reputation, as the respondent was elected MLA from Seelampur, Assembly Constituency four times consecutively and had also discharged his duties in public life being Chairperson of Delhi Waqf Board. Thus, the defense is the complete denial of the allegations and it is explained in the reply that whatever actions were done, they were all the collective actions of the Chairperson and Members of the Delhi Waqf Board, for which the respondent could not be held solely responsible. The respondent has also taken the point of limitation, and has stated that whatever allegations have been levelled against the respondent, they all belong to the period more than five years before the date of filing the complaint, and this complaint is hopelessly barred by limitation as prescribed under Section 8(ii) of the Lokayukta Act.

7. Evidence has been adduced by both the sides during the proceedings in this Forum. The complainant has examined eight witnesses including himself as CW-1. CW-2 is Sh. Jitendra Juneja, (though the evidence on record show that the land situated at village Punjab Khor was settled by the Delhi Waqf Board with one Jitendra Kumar, during the Chairmanship of the respondent). The evidence of this witness is of no use,

because as a matter of fact this witness has stated nothing either in favour of the complainant or against the respondent. This Forum has also taken note of the fact that this witness was not in a fit stage of mind to give any answer, and actually he had been brought on wheel chair due to medical reasons. This Forum was satisfied that this witness was not possessed of definite cognitive mental faculty to give any assistance to the Forum. These facts stand recorded with his detailed medical conditions in the order dated 10.09.2012, on which date the witness was examined. CW-3 is Ms. Rana Praveen Siddiqi, who was a Member of the Delhi Waqf Board and her evidence is very relevant for the purpose of this inquiry. Other witnesses, viz, CW-4 Sh. Sunder Lal, CW-5 Sh. Satender Singh, CW-6 Sh. Mohd. Khalid Hassan, CW-7 Sh. Hardeep Singh and CW-8 Sh. Praveen Shukla are the official witnesses, who have proved some documents which have been marked exhibits.

8. The respondent has examined three witnesses including himself as RW-1. RW-2 Sh. Anant Dwevedi and RW-3 Sh. Akash Rana are the official witnesses who have produced some documents.

9. From the oral as well as documentary evidences proved before this Forum it is apparent that the allegations against the respondent Sh. Mateen Ahmed is confined to the alleged abuse of his position in allotment of the aforesaid two lands. It may

however, be made clear that since the evidence is very lengthy, I shall be discussing the relevant evidence only, for the sake of brevity.

10. I shall first take up the evidence relating to the Punjab Khor land. The first document proved and marked exhibit in this respect is the minutes of 32nd meeting the Delhi Waqf Board, held on 11.03.2006. This meeting had been attended by the respondent Sh. Mateen Ahmed as the Chairperson and other members including the CEO of Delhi Waqf Board. The meeting was also attended by Ms. Rana Praveen Siddiqui as Member of Delhi Waqf Board, who has been examined as CW-3. The minutes of the meeting appears to have been signed by the respondent Sh. Mateen Ahmed as Chairperson on 20.03.2006. Resolution No. 3 of the said meeting reads as under:-

"3. Consideration the matter regarding allotment / development of the Wakf land bearing Kh. No. 709, Village Punjab Khor, Delhi was discussed. Two packed offers from the applicants were received. One more offer from Mr. Suhaib Ilyasi is also likely to be received in the next week.

Resolved that the offers received be kept pending till the next meeting of the Board."

11. The next document proved and marked exhibit is the minutes of 33rd meeting of Delhi Waqf Board held on 20.03.2006 under the Chairmanship of Sh. Mateen Ahmed. This meeting was not attended by Ms. Rana Praveen Siddiqui.

Minutes of the meeting appear to be signed by the respondent Sh. Mateen Ahmed as Chairperson on 20.04.2006 (it may also be read as 26.04.2006). The relevant resolution being Resolution No.4, reads as follows:-

"4. Matter regarding the allotment of the Wakf land / graveyard bearing Kh. No. 709, Village Punjab Khor, Delhi was discussed. The matter was discussed at length.

Resolved that an advertisement in leading newspapers of Delhi be given and the offers be invited for the allotment of the Wakf land in question. These may be presented and opened in the next meeting of the Board."

12. The complainant has also proved and brought on record the minutes of 34th meeting of the Delhi Waqf Board held on 03.04.2006 under the Chairmanship of Sh. Mateen Ahmed and attended by other members, including Ms. Rana Praveen Siddiqui. Minutes of this meeting also appear to be signed by the respondent Sh. Mateen Ahmed as Chairperson on the same day when the respondent had signed the minutes of 33rd meeting of Delhi Waqf Board, i.e., 20.04.2006 (which may also be read as 26.04.2006). The relevant resolution being Resolution No.2 reads as follows:-

"2. The matter with regard to the tender opening in respect of the Wakf land bearing Kh. No. 709, village Punjab Khor (measuring 62 bigha 15 biswa) was discussed. In pursuance of the Board's resolutions No. 4 dated 22.03.2006, the advertisements were published in daily newspapers, "Punjab Kesari", 'Denik Jagran"

(Hindi version), "Qaumi Awaz" and Restriya Sahara" (Urdu version) dated 22.03.2006 inviting offers within 10 days i.e. up to 01.04.06. The tender box was opened in the presence of the Board members. Four sealed packets were found, opened and signed by Chairman, three members present and CEO. Mrs. Rana Parveen Siddiqi, member declined to sign. She also decided to record her opposition to "any allotment on graveyard land anywhere" and desired that this factum be included in the minutes.

Two envelops received after the due date i.e. after 01.04.2006 (not in the Box) were not considered and not opened.

The four tenderers named below were also present, who witnessed the opening of the sealed covers and their particulars were as under:

Sl. No.	Name of tenderer	Offered Donation	Offered rent
1.	Ms/ Meshhen Welfare Society through Salim Ahmad Ansari	Rs. 90 laks	3600/- PA/PM
2.	Smt. Neelam Sehwat	30000 per bigha	11000/- PA (subject to the 99 years lease)
3.	Mr. Onkar Nath Marwaha	70 lakh	10 paise per sq. yds PM
4.	*Mr. Jitender Kumar *(subject to the allotment of plots of land	1.10 crore	25 paise per sq. yds PM

	<i>measuring about 1000 sq.yds to different persons</i>		
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Based on the tender offers, the Board resolved in principal to accept the highest offer i.e. from Mr. Jitender Kumar, who offered the donation of Rs. 1.10 crore and Ps 25 per sq yads as monthly rent for letting out the Wakf land Kh. No. 709 (measuring 62 bigha 15 biswa), village Punjab Khor, Delhi.

This will be subject to the confirmation by the Board in its next meeting, which will also consider detailed terms & conditions of the agreement to be concluded between the Board and the concerned party."

13. The next document proved and exhibited on behalf of the complainant is the minutes of 36th meeting of Delhi Waqf Board held on 21.04.2006 under the Chairmanship of Sh. Mateen Ahmed and also attended by Ms. Rana Praveen Siddiqui. The relevant resolution in this meeting is Resolution No.18 (vi), which reads as under:-

"The matter with regard to allotment of the Waqf land / graveyard bearing Kh. No. 709, village Punjab Khor, Delhi was discussed. It was explained that there is no Muslim populations at village Punjab Khor and it surroundings. The members of the Board have visited the site and found that huge quantity of soil has been dug out for the last many years by the local people thereby causing deep holes on the Waqf Land. It was also explained that the Board has invited open tenders for the

allotment of the Waqf land in question as per earlier decision of the Board vide its resolution No. 4 dated 20.03.2006.

Resolved that the highest offer submitted by Mr. Jitender Kumar s/o Mr. Jai Chand i.e. Rs. 1.10 crores as donation and 25 ps per sq yads as monthly rent be approved as the successful bidder. Mr. Jitendar Kumar has offered to pay Rs. 10 lacs at the initial stage. The portion of donation will be paid by the party gradually from time to time up to 31st December, 2006 based on allotment of 1000 sq. yds size plots to each interested person. Fifty such plots will be carved out within this time frame. Party will be responsible to complete the deal within time, and will not seek refund of the deposited advance even if he is not able to complete the contract. The terms & conditions of the lease / tenancy be approved from the legal section of the Board."

14. The next document is a resolution on a sheet of paper which appears to be initiated on 15.05.2006 under the signature of the respondent Sh. Mateen Ahmed and appears to have been approved through circulation by the other members of Delhi Waqf Board. This speaks about the carving out of different size plots from 250 Sq. Yards to 1200 Sq. Yards onwards at the accepted rates by Mr. Jitender Kumar.

15. Amongst the other documents proved, the complainant has also brought and proved the development agreement between Delhi Waqf Board and Mr. Jitender Kumar executed

on 17.05.2006 and the rent deeds with respect to different allottees, which are also part of Exhibit C-6 (colly).

16. So far as the other Delhi Waqf Board property, i.e., land adjoining to Biwi Fatima Dargah, Kaka Nagar is concerned, there is a letter dated 18.07.2005. This letter is addressed to the Chairman of Delhi Waqf Board by one Sh. Suhaib Illayasi, who had shown interest for development of Waqf land by constructing a building where Board can utilize 50% built up area for income generation. There is another application for change in tenancy / new tenancy, of the said Waqf Board land, which does not bear any date.

17. The other important document in this context is minutes of the 19th meeting of Delhi Waqf Board held on 19.08.2005, under the Chairmanship of the respondent Sh. Mateen Ahmed. This speaks of the offer received from one Aliya Production Pvt. Ltd., for development of Waqf land adjoining to Biwi Fatima Dargah, Kaka Nagar, New Delhi, and it was resolved that the developer shall complete the construction of the entire project within twelve months and shall pay the penal rent to the board if he requires further six months to complete the project, but no further time was to be granted.

18. The next document is the minutes of 25th meeting of the Board held on 09.12.2005, whereby the CEO of the Delhi Waqf Board was authorized to execute MOU and rent agreement with

Sh. Suhaib Illayasi to carry out the development work. The minutes of 29th meeting of the Board held on 27.01.2006 has been brought on record to show that an application dated 17.01.2006 had been received from M/s Aliya Production Pvt. Ltd., regarding the fixation of monthly rent in respect of the said land. In that meeting it was resolved that the applicant be allowed to pay Rs. 5000/- as monthly rent. The rent agreement / MOU between the Delhi Waqf Board and M/s Alia Productions Pvt. Ltd., through Sh. Suhaib Illayasi, its Managing Director, has also been proved and brought on record.

19. The minutes of 41st meeting of the Delhi Waqf Board held on 14.07.2006 has also been brought on record to show that it was resolved that supplementary agreement regarding 50% share of tenant / developer and remaining 50% to the Delhi Waqf Board / Landlord with respect to the said developed waqf property be executed. The supplementary agreement / MOU was also executed on 17.07.2006, which is also brought on record. All these documents are also part of Ex. C-6 (colly).

20. From the documents relating to allotment of Punjab Khor land, learned Counsel for the complainant has tried to impress his point about the alleged illegality committed in allotment of the said land. It is pointed out by learned Counsel for the complainant that the 32nd Meeting of Delhi Waqf Board held on 11.03.2006 shows consideration of matter regarding allotment /

development of the Punjab Khor land. This also shows that two packets of offer from the applicants were received and one more offer was to be received from Sh. Suhaib Illyasi. Ld. Counsel has tried to impress that prior to that there was no discussion about the Punjab Khor land. It is mysterious as to how two packets of offer had already been received and how it was known to the Chairman of Delhi Waqf Board that one more offer was likely to be received. Ld. Counsel has submitted that the decision for giving advertisement in the newspapers inviting offer for waqf land in question was taken in the subsequent meeting, i.e., 33rd meeting held on 20.03.2006. As such there was no occasion for getting any offer in the 32nd meeting.

21. Ld. Counsel has also pointed out that the word 'development' in the minutes of 32nd meeting was conveniently and maliciously done away with in the subsequent meetings and only the word 'allotment' was allowed to remain.

22. Ld. Counsel has further pointed out from the minutes of 34th meeting that Ms. Rana Praveen Siddiqui had objected to the allotment of Punjab Khor land, as the same was graveyard land, as there was a prohibition for settling the graveyard land anywhere, but the graveyard land was still illegally settled under the chairperson of Sh. Mateen Ahmed.

23. It has again been pointed out by the Ld. Counsel for the complainant from the minutes of 34th meeting of the Delhi

Waqf Board that two more envelopes containing the bids had been received, but the same were not opened, though in her evidence CW-3 Ms. Rana Praveen Siddiqui has stated that to her knowledge these two tenders were of higher bids, and that the bidders himself had told her that their bids run in crores.

24. Ld. Counsel for the complainant has further pointed out that in the 36th meeting of the Delhi Waqf Board held on 21.04.2006, though it is said to have been resolved that sub-allotment of 1000 Sq. Yards plots shall be made by Mr. Jitender Kumar, but again by a resolution passed on a piece of paper by circulation, the size of the plots were changed to be from 250 Sq. Yards to 1200 Sq. Yards.

25. Ld. Counsel for the complainant further pointed out that though 32nd meeting of the Board was held on 11.03.2006, the minutes of meeting appears to be signed on 20.03.2006 and minutes of meetings held on 20.03.2006 and 03.04.2006 appear to have been signed on the same date 20th or 26.04.2006, which again is a grave illegality and suggests of ante-dating of the minutes of the meetings. Ld. Counsel vehemently submitted that all these meetings were held on subsequent dates and have been shown to be held on earlier dates.

26. From the other documents brought on record relating to the Punjab Khor land, learned counsel for the complainant tried to explain that the allotments had been made to persons

belonging to the same family having the same address and allotment of one land was also made in favour of father-in-law of the CEO of Delhi Waqf Board. However, when this matter was filed, the person declined to accept the land. Learned counsel for the complainant has further pointed out from the evidence CW-1, the complainant Sh. M.A. Chand, that he has stated in paragraph 23 that the then CEO of Waqf Board had also got a plot allotted in the *benami* name of his father-in-law, as he was also party to the entire conspiracy and also got the benefit / fruit of illegal act of respondent.

27. It may however, be pointed out at this stage that no evidence has been brought on record to show that the person who had declined to take the land was actually the father-in-law of the CEO of Delhi Waqf Board. As such, this allegation has no legs to stand.

28. Ld. Counsel for the complainant has pointed out from the evidence of RW-3 Sri Akash Rana, Patwari in the office of SDM (Khanjawala) Delhi, and his report marked Ext-RW-3/Y, that there was a stay order by SDM Kotwali from making any construction over the Punjab Khore land, which was still continuing, and has submitted that even though there was a stay order pertaining to the land in question, still under the leadership of the respondent Sh. Mateen Ahmed, the Board had

illegally taken the decision for allotment of land to different persons which could not have been taken.

29. From the documents proved relating to the land adjoining to Biwi Fatima Dargah, Kaka Nagar, learned Counsel for the complainant has tried to impress upon to this Forum that the actual applicant was Mr. Suhaib Illayasi, but in the resolution the name of M/s Aliya Productions Pvt. Ltd. has been inserted, even though there was no such offer from Aliya Productions Pvt. Ltd. Though it is claimed that Mr. Suhaib Illayasi was the Managing Director of M/s Aliya Productions Pvt. Ltd., but it is submitted by learned Counsel for the complainant that the offer was not given on behalf of the company and the MOU was not signed with the person by whom the offer was given. It is submitted that the company and MD of the company are distinct and separate legal entities. Ld. Counsel submitted that the settlement of the land with M/s Aliya Productions Pvt. Ltd., was also made at undervalued amount. It is also pointed out that these documents are also created documents, as the minutes of meetings dated 19.08.2005 and 09.12.2005 bear the signatures of the respondent Sh. Mateen Ahmed at different dates.

30. Ld. Counsel for the complainant accordingly, submitted that this is a fit case in which adverse inference can be drawn against the respondent under Section 106 of the Evidence Act, as the complainant has succeeded in establishing the facts from

which a reasonable inference can be drawn regarding the illegal acts of the respondent and existence of assets disproportionate to the known sources of his income. It is submitted that since these facts are within the knowledge of the respondent only, it is for him to offer proper explanation about the same and to prove his innocence. Ld. Counsel for the complainant has submitted that on the basis of the material available on record, a clear case is made out against the respondent 'public functionary' Sh. Mateen Ahmed for a detailed inquiry / investigation after filing proper police case, for which recommendations be made to the Competent Authority.

31. Ld. Counsel for the respondent on the other hand has made two-fold submissions. Firstly, he has submitted that all the allegations taken together do not constitute any violation of the provisions of the Waqf Act and Rules and whatever actions were taken by the Delhi Waqf Board, they were the joint actions of the Chairperson, Members and CEO of the Board for which the Chairman of the Board cannot be solely and vicariously held responsible in the absence of any statutory provision to this effect. It is also submitted by the learned Counsel for the respondent that since the lands were lying vacant and there was apprehension of the encroachment of the said land, the Delhi Waqf Board decided to settle the lands and this action was taken in good faith. As such, no violation within

the ambit of section 2(b) of the Lokayukta Act, can be said to be made out in the facts of this case.

32. The second limb of the submission of the learned Counsel for the respondent is that whatever actions were taken by the respondent Sh. Mateen Ahmed they are of the year 2005-2006. It is submitted that this complaint has been filed after the expiry of five years of alleged actions of the respondent. Ld. Counsel submitted that this being the position, this complaint is hopelessly barred by limitation prescribed under Section 8(ii) of the Lokayukta Act.

33. Ld. Counsel for the respondent further submitted that once the decision was taken by the Delhi Waqf Board prior to the period of five years of the complaint being filed, the Chairman was not supposed to personally enter into day-to-day affairs thereafter. Follow-up actions of the decision were taken by the CEO and officials of the Delhi Waqf Board, for which the Chairman could not be held responsible in absence of any statutory provision to this effect. Ld. Counsel pointed out that no action exclusively done by the respondent 'public functionary' Sh. Mateen Ahmed within the period of five years of filing of complaint, has either been alleged or proved by the complainant, and accordingly, the respondent cannot be held vicariously liable and the complaint is hopelessly barred by limitation.

34. Ld. Counsel for the respondent has placed the evidence of the complainant and has submitted that no evidence for the alleged disproportionate assets of the respondent in the RTI information has been brought on record or proved by the complainant. Ld. Counsel also pointed out that the evidence of the CW-2 Jitender Juneja is worthless and no reliance can be placed on his evidence in view of the order dated 10.09.2012 passed by this Forum. Ld. Counsel further pointed out from the evidence of CW-3 Ms. Rana Praveen Siddiqui, that she has admitted about the meetings of the Board held on the dates on which they are mentioned in the minutes and accordingly, simply because minutes were signed at the later stage, it cannot be said that the meetings were held on subsequent dates and have been ante-dated.

35. Ld. Counsel for the respondent has also drawn the attention of this Forum towards the resolutions of the various meetings in which decisions were taken and has submitted that all the decisions taken were within the ambit of the Waqf Act. Ld. Counsel has drawn the attention of this Forum towards Section 13(3) and Section 32(2)(j) of the Waqf Act to show that the transfer of waqf land, as also, lease of the waqf land are permissible within the Act. He has also submitted that under Section 56(1) of the Waqf Act, the lease of the property cannot be for a period of more than three years and has pointed out that this fact stands admitted by CW-1 Sh. M.A. Chand as also

CW-3 Rana Praveen Siddiqui. Ld. Counsel submitted that in view of the fact that the proposed lease could not exceed the period of three years, the income of more than one crore as donation apart from the monthly rent, cannot be said to be less than bare minimum.

36. Ld. Counsel for the respondent has also drawn the attention of this Forum towards section 17(3) of the Waqf Act which shows that all the decisions of the Waqf Board are to be taken by the majority of vote of the members present and has submitted that in that view of the matter, the sole responsibility of any decision cannot be fastened on the Chairman of the Delhi Waqf Board.

37. Ld. Counsel also submitted that any decision of the Delhi Waqf Board was subject to challenge before the Delhi Waqf Tribunal under section 83 of the Waqf Act, and if the complainant was dissatisfied by any decision of the Delhi Waqf Board, the same could have been challenged before the Delhi Waqf Tribunal.

38. Ld. Counsel for the respondent has placed reliance upon the decision of the Hon'ble Delhi High Court in **Sunita Bhardwaj Vs. Smt. Shiela Dixit & Ors**, reported in (2013) 203 DLT 743 (DB), wherein it is held as follows:-

"20. It is, therefore, clear that the Lokayukta can best be described as a sui generis quasi-judicial authority

and that, although the Lokayukta is more than an investigator or an inquiry officer, at the same time, he is not placed on the pedestal of a judicial authority rendering a binding decision. In other words, the Lokayukta, while investigating the matters before him in the course of conduct of an inquiry into the allegations, discharges a quasi-judicial function, although the nature of the function is investigative."

39. In support of his contention that for the decision of the Delhi Waqf Board the Chairman cannot be vicariously liable, Ld. Counsel has placed reliance upon the decision of the Hon'ble Supreme Court of India in **Sunil Bharti Mittal Vs. Central Bureau of Investigation**, reported in (2015) 4 SCC 609, wherein law has been laid down as follows:-

"44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. -----."

40. Similar view has been taken by the Hon'ble Apex Court in **Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Limited & Ors.**, reported in (2022) 15 SCC 430, wherein it has been held as under:-

"9. ----- Merely because Respondents 2 to 5 and 7 and 8 are the Chairman / Managing Director / Executive Director / Deputy General Manager / Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role."

41. Ld. Counsel has submitted that the complainant has utterly failed in establishing his allegations and he cannot be allowed to take help of section 106 of Evidence Act for holding respondent liable. In support of his contention Ld. Counsel has placed reliance upon the decision of the Hon'ble Apex Court in **Nagendra Sah Vs. State of Bihar**, reported in (2021) 10 SCC 725, wherein it has been held as follows:-

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.”

42. Ld. Counsel for the respondent finally submitted that all the evidence brought on record do not directly or indirectly bring any material against the respondent public functionary Sh. Mateen Ahmed to bring his action under section 2(b) of the Lokayukta Act and as such no action can be taken against the respondent public functionary. Ld. Counsel for the respondent also concluded that no action can be taken against the respondent, as this complaint has been filed beyond the period of limitation prescribed under Section 8(ii) of the Lokayukta Act. Further, respondent cannot be held vicariously liable for any decision jointly taken by the Delhi Waqf Board and

Section 106 of the Evidence Act has no application in the facts of this case.

43. In reply, learned Counsel for the complainant has submitted that the point of limitation has been wrongly raised by the learned counsel for respondent, as offence committed by the respondent is continuing offence. Learned counsel reiterated his contention that the case is made out against the respondent for stringent recommendations by this Forum.

44. Having heard learned counsels for both the sides and upon going through the record, I do not find any substance in the submission of learned counsel for the complainant that it is a mystery as to how in the 32nd meeting of the Delhi Waqf Board held on 11.03.2006 there is mention about two packets of offer from the applicants and one more offer to be received. In fact the minutes of two earlier meetings, i.e., 30th and 31st meetings of the Delhi Waqf Board have not been proved in this matter. In absence of the minutes of these earlier meetings, in my considered view no adverse inference in this connection can be drawn.

45. Similarly, the submission of learned counsel for the complainant regarding ignoring the two envelopes allegedly carrying higher bids, in the 34th meeting of the Delhi Waqf Board, also needs to be rejected as not tenable, as the resolution itself shows that two envelopes were received after 01.04.2006,

i.e., the last date for receiving the bids, and there is no evidence on record to suggest that these envelopes were actually received within time. At this stage the evidence of CW-3 Ms. Rana Praveen Siddiqui on this point is also taken into consideration, which shows that she has stated in her evidence that to her knowledge these two tenders were of higher bids, and in her cross-examination she has stated that the bidders himself told her that their bids run in crores, but to the Court's question, this witness declined to disclose the names of the persons and has also admitted that she had herself not seen the higher bids.

46. As regards the allotment of a plot of land at Punjab Khor, allegedly in favour of the father-in-law of the CEO of Delhi Waqf Board, it has already been pointed out that no evidence has been brought on record to show that the person who had declined to take the land was actually the father-in-law of the CEO of Delhi Waqf Board. Though the complainant CW-1 Sh. M.A. Chand has stated in his evidence that the then CEO of Waqf Board had also got a plot allotted in the *benami* name of his father-in-law, but in his cross-examination this witness had admitted that the exact relationship can be known upon enquiry. He has also admitted that the said lease was later on cancelled after notice had been issued by this Forum.

47. The complainant CW-1 Sh. M.A. Chand has also admitted in cross-examination that he has no knowledge about the assets

of the respondent Sh. Mateen Ahmed and whatever allegations had been made about disproportionate assets the averments were on the basis of an RTI information. However, no such RTI information about any disproportionate assets of the respondent has either been brought on record or proved by the complainant. As such, it is not open to learned counsel for the complainant to suggest that Section 106 of the Evidence Act shall be applicable in the facts of this case, as this fact was not within the knowledge of the complainant. The complainant has stated in his evidence about his own knowledge through RTI information, but has failed to prove the same. The decision of the Hon'ble Apex Court in **Nagendra Sah's** case (*supra*) is fully applicable to the facts of this case, as the complainant has failed in establishing the facts about disproportionate assets known to him through RTI, from which a reasonable inference could be drawn regarding the existence of the same to be within the special knowledge of the respondent. In absence thereof, Section 106 of the Evidence Act is not at all applicable to the facts of this case.

48. The submission of learned counsel for the complainant that the minutes of the meetings of the Delhi Waqf Board were ante-dated, as they had been signed by the respondent on later dates, also is fit to be rejected. The minutes are generally signed later when they are prepared, and there is nothing wrong in it, subject to the proof to the contrary. In the present case, no

evidence to the contrary is proved. At the other hand the complainant's witness CW-3 Ms. Rana Praveen Siddiqui, to the Court's question regarding the correctness of the minutes of the meetings of the Delhi Waqf Board, has admitted the correctness of the minutes of the meetings.

49. I find force in submission of learned counsel for the respondent that whatever actions were taken by the Delhi Waqf Board, they were the joint actions of the Chairperson, Members and CEO of the Board, for which the Chairman of the Board cannot be solely and vicariously held responsible in the absence of any statutory provision to this effect. Complainant's witness CW-3 Ms. Rana Praveen Siddiqui who happened to be a member of the Delhi Waqf Board at the relevant time, in her cross-examination has denied the suggestion that the decision of the leasing out of Punjab Khor land, (which is a graveyard land), was a collective decision of the Board, but when she was confronted with the question that no other member raised any objection apart from her, she has admitted that she was the only member who raised the objection. This applies to the allotment of land adjoining to Biwi Fatima Dargah, situated in Kaka Nagar, Delhi as well, which is also said to be a graveyard land. She has also stated that she had raised the objection that graveyard land could not be leased and this objection was recorded.

50. It may also be pointed out regarding Khasra No.709, 62 Bighas and 16 Biswas land situated at village Punjab Khor, that it has come in evidence that the said land is still lying vacant and there was one graveyard on the land. This has come in the report submitted and proved by the Patwari in the office of the SDM, Kanjhawla, who has also been examined as RW-3 and has proved his report which is marked as RW-3/Y. He has also proved the report submitted by SDM, Kanjhawla, which was marked as Exh. RW-3/X. In this report, there is also a mention about the stay order by the SDM, Kotwali passed in the year 1995 from making any construction over the land, which is still continuing. This clearly shows that no one has been able to take possession over any plot of land situated in Khasra No.709, of village Punjab Khor, in spite of the development agreement between Delhi Waqf Board and Mr. Jitender Kumar executed on 17.05.2006 and the rent deeds with respect to different allottees, proved as Exhibit C-6 (colly).

51. Similar is the situation with respect to the waqf property land adjacent to Biwi Fatima Dargah. CW-3 Ms. Rana Praveen Siddiqui has admitted in her cross-examination that the agreement with respect to land adjacent to Biwi Fatima Dargah was subsequently cancelled and the case was filed before the Delhi Waqf Tribunal to take back the possession of the land, which is still pending.

52. Though I find that transfer and lease of the of the waqf land are permissible within the Waqf Act, the submission of the learned counsel for the respondent that the alleged lease was only for a period of three years, as under Section 56(1) of the Waqf Act, lease of the property cannot be for a period of more than three years, cannot be acceded to. Section 56(1) of the Waqf Act speaks otherwise, and reads as under:-

"56. Restriction on power to grant lease of waqf property.

(1) A lease for any period exceeding thirty years of any immovable property which is waqf property shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

PROVIDED that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government.

PROVIDED FURTHER that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect.

PROVIDED ALSO that before making lease of any waqf property, the Board shall publish the details of

lease and invite bids in at least one leading national and regional newspapers."

53. The aforesaid provision clearly shows that the lease of waqf property may be made up to the period of thirty years and not only three years as submitted by learned counsel for the respondent. Three years' bar is only for agricultural lands and there is no evidence on record to show that the lands in question are the agricultural lands. In fact the report proved by RW-3 Sh. Akash Rana, Patwari, clearly shows that there is a small *Mazar* on the land and rest of lands are vacant. Even the copy of the '*Jamabandi*' of the land produced by him does not show that it was an agricultural land. In that case if the Waqf Board had intended to lease out the properties in question for the period of more than three years (as there is no period of the proposed lease mentioned in the entire evidence produced on record), the submission of learned counsel for the respondent that lease amount was not less than minimum, cannot be accepted. There is no material on record that the approval of the State Government, for any period and purposes for leasing out the waqf property was ever taken in the matter.

54. Though it is submitted that since there was apprehension of encroachment of the lands, the Delhi Waqf Board decided to settle the lands, and even in the minutes of 36th meeting of the Board it finds mentioned that "*It was explained that there is no Muslim populations at village Punjab Khor and it*

surroundings. The members of the Board have visited the site and found that huge quantity of soil has been dug out for the last many years by the local people thereby causing deep holes on the Waqf Land", but the fact remains that this fact is not proved by any evidence. To the contrary, the evidence of RW-3 Sri Akash Rana, Patwari, shows that there is a small Mazar on the land and rest of lands are still vacant. This shows that though both the above properties mentioned are still lying vacant, but the action of the Delhi Waqf Board of leasing out / allotment of the waqf lands was not above board, and it was prejudicial to the interest of the people belonging to Muslim community. In my considered view, such action of the Delhi Waqf Board needs to be properly investigated.

55. The submission of learned counsel for the respondent that whatever actions are alleged against the respondent Sh. Mateen Ahmed in the capacity of Chairman of Delhi Waqf Board was prior to the period of 5 years from the date of filing of this complaint and as such, this complaint is hopelessly barred by limitation prescribed under Section 8(ii) of the Lokayukta Act, is only partly true. This submission is true with respect to the actions relating to the land adjoining to Biwi Fatima Dargah, situated in Kaka Nagar, Delhi, as they relate to the year 2005, and the present complaint was filed on 11.04.20011, after expiry of five years. But so far as the land in Khasra No.709, situated at village Punjab Khor, is concerned, the last two

actions by the Delhi Waqf Board were on 21.04.2006, i.e., the 36th meeting of the Board, and on 15.05.2006, i.e., the resolution through circulation initiated under the signature of the respondent and approved by the other members of Delhi Waqf Board, which speaks about the carving out of different size plots from 250 Sq. Yards to 1200 Sq. Yards onwards, at the accepted rates by Mr. Jitender Kumar. As the present complaint was filed on 11.04.20011, both these actions were within the prescribed period of limitation, and accordingly, the submission of learned counsel for the respondent that the complaint is barred under Section 8(ii) of the Lokayukta Act, is only fit to be rejected, so far the allegations relate to village Punjab Khor land.

56. In spite of the aforementioned conclusions, I am of the considered view that no case is made out for making any recommendation in this matter, in view of the fact that upon inquiry by this Forum the allegations have not been established beyond all reasonable doubts against the respondent Sh. Mateen Ahmed in his personal and individual capacity. All the actions are the collective actions of the Delhi Waqf Board, for which no case is made out to solely make the respondent vicariously liable. The law laid down by the Hon'ble Apex Court in **Sunil Bharti Mittal's** case (*supra*) and **Ravindranatha Bajpe's** case (*supra*), are fully applicable to the facts of this case.

57. Even Section 12 of the Lokayukta Act requires any recommendation to be made in case the allegations are established. In view of the findings given aforesaid in the present matter, I find that the respondent is entitled to the benefits of doubt by this Forum.

58. However, since I have found that the collective action of the Delhi Waqf Board in dealing with the waqf properties was not above board and it was prejudicial to the interest of the people belonging to Muslim community, during the Chairmanship of the respondent and the action of the Chairman and the Members of the Delhi Waqf Board was not in consonance of the Waqf Act, I make it clear that this order shall not operate as a bar, if the Competent Authority, i.e., Hon'ble Lt. Governor, NCT of Delhi, decides to get the affairs of the Delhi Waqf Board during the relevant period, inquired / investigated upon by any appropriate agency and to take appropriate action on the basis of report submitted by such investigating agency.

59. This observation is also necessary because of the fact that the Members and the CEO of the Delhi Waqf Board do not fall within the definition of the term 'Public Functionary', as defined under Section 2(m) of the Lokayukta Act, and as such, they are not within the jurisdiction of the Lokayukta of NCT of Delhi. Accordingly, no recommendation can be made by this

Forum against them to the Competent Authority, and any action against them has to be left to the good conscience of the authority concerned.

60. In view of the above mentioned discussions, particularly due to lack of any cogent material to establish the vicarious liability of the respondent Sh. Mateen Ahmed, he is hereby, given the benefits of doubt.

61. This mater accordingly, stands disposed of, with the observations as above.

62. Let the copies of this order be sent to all concerned, including the Hon'ble Lt. Governor, NCT of Delhi, for any appropriate action, if considered necessary.

63. Let the case record be consigned to the record room. Inform all the concerned.


(JUSTICE HARISH CHANDRA MISHRA)
LOKAYUKTA, NCT of DELHI.

New Delhi,
The 8th May, 2024.