

(2018) 07 UK CK 0072

In the Uttarakhand High Court

Case No : WRIT PETITION (PIL) NO. 88 OF 2018

Abdul Majeed

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Uttar Pradesh Waqf Act, 1960 — Section 6(4)
Waqf Act, 1995 — Section 32, 70, 71, 71(2), 83

Citation : (2018) 07 UK CK 0072

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : B.D. Pande, Vikas Pande, Nishat Intezar

Judgement

SHARAD KUMAR SHARMA, J.

K.M. JOSEPH, C.J. (ORAL)

1. Petitioner, allegedly a public spirited citizen, seeks the following reliefs:

I. Issue a writ, order or direction in the nature of mandamus directing the removal of managing committee of respondent nos. 5 and 6 from

management of the Waqf Property No. 79 situated in Kathgodam, Gaulapar, Tehsil Haldwani, District Nainital.

II. Issue a writ, order or direction in the nature of mandamus appointing a receiver or panel of receivers for the management and administration of the

Waqf No. 79 and its income with such directions to the receiver/receivers as this Hon'ble Court may deem fit and for proper better management

of the Waqf property, its income as well as to manage the annual Urs festival and Eid mela.

III. Issue suitable directions to appoint a panel of experts from Chartered Accountants or from the field of Accountancy to scrutinize the accounts of

the Waqf from the year 2003 till date so as to fix the responsibility of persons for misutilising the funds of the Waqf Property No. 79.

IV. Issue suitable direction to the Central Bureau of Investigation or to any other independent investigating agency to investigate the charges leveled in

the writ petition against the respondents No. 2, 5, 6, 7 & 8.â??

2. Briefly put, the case of the petitioner is as follows:

â??Dargah Sher Ali Babaâ??, now registered as Waqf No. 79 with the Uttarakhand Waqf Board, was declared as a waqf property in the year 1981

and the same was notified as the waqf property in the Gazette Notification in the year 1984 under Section 6(4) of the Uttar Pradesh Waqf Act, 1960.

There are allegations also made against respondent nos. 5 & 6, who are in the management of the waqf. There is allegation made that the net income,

which was declared in the earlier years, is very low. In fact, it is stated that for a period of five years, i.e. from 2003 to 2008, the income has been

shown as Rs. 26,994/-. There is reference made to the income which is declared over the years later on. Further, there is reference to an FIR, which

has been lodged against respondent no. 6. There is allegation made against the criminal history of respondent no. 7, which should have persuaded,

according to the petitioner, him having nothing to do with the management of the Waqf. There is further reference to Application filed in Waqf Suit

No. 2 of 2013 by respondent no. 6 before the Tribunal seeking permission to hold the festival of Urs in the Dargah. Reference is further made to Writ

Petition (MS) No. 974 of 2014. It is also stated that the District Magistrate on the report of the Senior Superintendent of Police, Nainital passed an

order directing respondent no. 6 to be removed from the District. Reference is made further to Writ Petition (MS) No. 728 of 2016. Further there is

reference made to Writ Petition (MS) No. 2981 of 2016, which is alleged to have been withdrawn. There is reference to another writ petition being

Writ Petition (MS) No. 2909 of 2017. It is also pointed out that the National Commission for Minorities, Government of India has forwarded the

complaint filed by one Taskeen Ahmed to the District Magistrate, Nainital to take action. It is alleged that the income of the Waqf has been

misappropriated and financial irregularities are there; persons are looting the waqf property by both hands; misusing the income of the shrine and

defeating the intent of the Act.

3. We heard Mr. B.D. Pande, learned counsel for the petitioner, Mr. Vikas Pandey, learned Standing Counsel for the State of Uttarakhand /

respondent nos. 1, 3 & 4 and Mrs. Nishat Intezar, learned counsel appearing on behalf of respondent no. 2.

4. We have noticed the reliefs. We would think that the approach to this Court in public interest jurisdiction is misconceived. Waqf Act, 1995

(hereinafter referred to as the Act), we think, provides ample remedies. Reference in this connection is made to Section 32 of the Act. In fact, Mrs.

Nishat Intezar, learned counsel for the Waqf Board would herself draw our attention to Section 70 of the Act, which reads as under:

70. Inquiry relating to administration of [waqf].—Any person interested in a [waqf] may make an application to the Board supported by an

affidavit to institute an inquiry relating to the administration of the [waqf] and if the Board is satisfied that there are reasonable grounds for believing

that the affairs of the [waqf] are being mismanaged, it shall take such action thereon as it thinks fit.

5. We may also notice Section 71 of the Act, which reads as follows:

71. Manner of holding inquiry.—(1) The Board may, either on an application received under Section [70] or on its own motion,—

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorize any person in this behalf to hold an inquiry into any matter relating to a [waqf] and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorized by it in this behalf, shall have the same powers as are vested

in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

6 It is clear as day light that the Waqf Board is clothed with ample powers having regard to the provisions of Section 71(2) of the Act. The disputes of

this nature are more appropriately dealt with by the Authorities under the Act.

7. Another contention, which is raised by Mr. B.D. Pande, learned counsel for the petitioner is that at least a Board of Chartered Accountants may be

appointed, if Relief Nos. 1 & 2 cannot be granted. We would think that all these matters form part of the grievances, which can properly be raised

under the Act.

8. Furthermore, we cannot overlook Section 83 of the Act. The Act is a code in

itself. Therefore, we would think that writ petition should not be entertained in public interest jurisdiction. There is, in fact, reference made by the petitioner himself to various litigations and also factions, which are there.

9. We would think that the purport of the public interest jurisdiction is not to cater such cases. The Court cannot be oblivious to the fact that there are several Waqfs functioning in the State. The Court cannot certainly ignore the fact that even if it is conceded that it could stretch its jurisdiction and entertain such petitions, it will only be opening the flood-gates of litigation, where it should be careful to manage its docket, particularly, when remedies are available under the Waqf Act. Having regard to this, we decline jurisdiction, but we make it clear that this will be without prejudice to the rights of the petitioner to seek remedies before the competent Body under the Act or to seek remedy before the appropriate Court.