
(2025) 08 AHC CK 0644
In the Allahabad High Court, Lucknow Bench
Case No : Writ- C No. 3000065 of 1997

Afsar Jahan

APPELLANT

Vs

State Of U.P.And Others

RESPONDENT

Date of Decision : 20-08-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 10, 80, 92, Order 12 Rule 6

Citation : (2025) 08 AHC CK 0644

Hon'ble Judges : Shekhar B. Saraf. J;Praveen Kumar Giri, J

Bench : Single Bench

Advocate : Ajay Mishra, Krishna Mishra, Abhishek Kumar Pandey, Bhagwan Das, Mohammad Zunaid Khan, Ranjana

Final Decision : Dismissed

Judgement

Irshad Ali, J

1. Heard Mohd. Arif Khan, learned Senior Advocate assisted by Mohd. Sadab Khan, learned counsel for the petitioner, Shri Syad Aftab Ahmad, learned counsel for the respondent-Shiya Central Board of Waqf, Uttar Pradesh, Lucknow, Shri vinod Kumar Gupta, learned counsel for the intervener, learned Standing Counsel for the respondents-State and Shri A.P. Singh, learned Advocate holding biref of Shri R.D. Shahi, learned Advocate.

2. By means of the present writ petition, the petitioner has prayed for issuance of a writ in the nature of Certiorari quashing judgment and order dated 8.4.1997 as well as the order dated 31.12.1974 of the Prescribed Authority and order dated 23.4.1976 passed in appeal.

3. Factual matrix of the case is that Raja Yasin Ali Khan , Ex Tauluqedar of Devgaon Estate for religion and charitable purpose before 1.5.1959 and dedicated his land in several villages used as Waqf property, but the application for registration of the Waqf was given on 22.11.1959 by Sri Yawar Hussain Khan to the Shiya Central Board of Waqf, U.P., Lucknow. Due to oversight the

certificate for registration under Section 29 of U.P. Muslim Waqfs Act, Shri Yawar Hussain on 16.6.1971, on which report was submitted by the Secretary of the Board on 19.10.1971 and the certificate under Section 29 of the Act was issued on 23.3.1973. The proceedings under the provisions of Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 was taken and even though the land was recorded as Waqf property. Neither Shiya Central Board of Waqf, U.P., Lucknow was made a party in the proceedings in accordance with Section 68 of the U.P. Muslim Waqfs Act, 1960 nor any notice was given to it under Section 66 of the said Act. After the death of Sri Yawar Hussain, petitioner no.1, his widow became the sole Mutwalli of the Waqf property but after she became old and infirm on her request dated 28.5.1993 petitioner no.2, Ikhlas Hussain @ Shawar was appointed Naib Mutwalli.

Notices under Section 10 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 were issued in the name of Sri Yawar Hussain Khan who was only a Sarbarakar or Mutwalli. In response to the notices, Sri Yawar Hussain Khan submitted his replies and pointed out that the Waqf and in accordance with Section 6(f) of the Act is exempt from the provisions of the Act. This contention was accepted by the Prescribed Authority in respect of land in village Poorey Lal Khan and by the judgment and order dated 30.6.1962 the notice was discharged. The Prescribed Authority in his judgment and order annexed as Annexure no.4 had come to the conclusion that the oral waqf had been created by Raja Yasin Ali Khan in 1936 and the income from the land was utilised for Taziadari etc.

In respect of other villages Devgaon Poora alias Sumerpur, Mewapur, Indalpur the Prescribed Authority did not accept the contention that the land was Waqf property created before 1.5.1959 and holding the same to be that of Sri Yawar Hussain he declared 278 Bighas 16 Biswas 15 Biswansi to be surplus area of Sri Yawar Hussain.

Aggrieved by the judgment and order, Sri Yawar Hussain Khan preferred appeal under Section 13 of the Act which was decided by the Civil Judge, Faizabad on 23.4.1976. During the pendency of the appeal, U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 i.e. U.P. Act No.20 of 1976 came into force and para 31(2) which had abated all the pending appeals.

The appeal was thus deemed to have abated and the Prescribed Authority had been given powers to issue fresh notices for determining the surplus area of a tenure holder only within a period of two years from 10.10.1975, but in the present case the Prescribed Authority did not give any notice either to Shiya Central Board of Waqf of Sri Yawar Hussain Khan or to the petitioners.

When the State of U.P. wanted to take possession of the Waqf property Shiya Central Board of Waqf instituted regular suit for declaration and permanent injunction against 1. State of U.P. through Secretary Department of Revenue, U.P. Government as well as State of U.P. through Collector, Faizabad, Prescribed

Authority, Ceiling Bikapur, District Faizabad and Sri Yawar Hussain Khan was also impleaded as defendant no.4 in the same suit. The suit was decreed on 8.5.1990 by Sri R.K. Gupta, Second Additional Civil Judge, Faizabad. It was held that the land was Waqf property belonging to Shiya Central Board of Waqf and that the possession of the same could not be disturbed by the judgment and order dated 31.12.1974. Aggrieved by the judgment and decree the State of U.P. preferred appeal no.60 of 1990 which has been heard and dismissed by Sri V.B. Srivastava, With Additional District Judge, Faizabad on 30.11.1996. On 20.12.1996, opposite party no.2 issued notice to the petitioners asking the petitioners as to why possession be not taken. Another notice was issued to the petitioners by opposite party no.2 on 16.1.1997.

In response to the notice, petitioners preferred written objections on 10.3.1997 raising the plea that there was legal order for declaration of the land as surplus area of the petitioners, and notice if any could have been issued within two years from 10.10.1975 and the same could not be issued after such a long time even under Rule 8 of the Rules under the Act.

The Prescribed Authority opposite party no.2 has mentioned the pleas taken by the petitioner but without giving cogent reasons for rejecting the same has rejected them and by the impugned order filed as Annexure no.1 has ordered that possession be taken of the surplus area declared in the order dated 31.12.1974. The Prescribed Authority ignoring the provisions of U.P. Act No.20 of 1975 has taken notice of the judgment and orders dated 31.12.1974 passed by the Prescribed Authority and the judgment and order dated 23.4.1976 passed by Sri U.C. Dikshit, Civil Judge, Faizabad dismissing the appeal even through the same had abated. He further ignored the judgment and decree passed by the Civil Court declaring that the land belonged to Shiya Central Board of Waqf and that the possession of the same be not disturbed.

4. Learned Senior Advocate submitted that the judgment and order dated 31.12.1974 passed by the Prescribed Authority and the appeal preferred against the said order was deemed to have abated in view of Section 31(2)(3) of the U.P. Act No.20 of 1975 amending the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960.

5. Learned counsel for the petitioner further submitted that no notice having been given either to the petitioners or opposite party no.3- Shiya Central Board of Waqfs which is the tenure holder of the land in question opposite party nos.1 and 2 have no jurisdiction under the law to declare or take possession of any land in an illegal manner.

6. Learned counsel for the petitioner further submitted that the opposite party nos.1 and 2 being defendants in the regular suit instituted by Shiya Central Board of Waqf decreed against them and being appellants in the appeal which had been dismissed with costs have no right to sit in judgment over the same and ignore the decrees passed by the competent Civil Court.

7. Learned counsel for the petitioner further submitted that the land in dispute being Saqf property as accepted by the Prescribed Authority in respect of village Poorey Lalganj, is exempt from the proceedings under Section 6 (f) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

8. Learned counsel for the petitioner further submitted that the notice issued on 20.12.1996 and dated 16.1.1997 are manifestly erroneous illegal and without jurisdiction.

9. Learned counsel for the petitioner lastly submitted that in any view of the matter, the impugned judgment and order dated 8.4.1997 annexed as Annexure No.1 is contrary to law laid down by the Act and the Rules as well as the legal principles laid down by the Hon'ble Supreme Court and High Court and the same is arbitrary only for pleasing the present Government which wants to let out the land to Dalits at all costs.

10. Per contra, learned Standing Counsel submitted that Prescribed Authority after analysing the provisions contained under Sections 6 and 7 of the Act, observed that the provisions of Ceiling Act will have overriding effect over the other general civil laws and moreover findings arrived at by the Ceiling Court cannot be questioned before any Civil Court. Learned Prescribed Authority also observed that entry in the name of the Waqf in the revenue record is benami and the interest of the Khatedar, Mutawalli and the Waqf Board is the same and thereafter rejected the objections filed by the petitioners and opposite party no.3.

11. Learned Standing Counsel further submitted that it is settled view that efficacious alternate remedy the adjudication of writ petition having some exception such as the violation of principles of natural justice i.e. order passed by the Authority without having proper hearing to the concerned party whose legal rights have been infringed, another order obtained by playing forgery or fraud committing material injustice and miscarriage of justice.

12. Learned Standing Counsel further submitted that the Prescribed Authority firmly held that the Civil Court has not given any finding on the point of Waqf being registered prior to 1.5.1959 and rather left the issue for authority on the application and documentary evidence held that Waqf was constituted after 1.5.59 and in this view of the matter the writ petition is liable to be rejected and this Court be pleased to issue the direction to the petitioners to avail the remedy of Appellate jurisdiction.

13. Learned counsel for the intevener has reiterated the same submission as advanced by learned Standing Counsel of having alternative remedy to file appeal under Section 13 of the Act and as such, the writ petition is not maintainable and liable to be dismissed.

14. I have considered the submissions advanced by learned counsel for the parties and gone through the material available on record.

15. Perusal of the material available on record reveals that Raja Yaseen Ali was

the Taluqdar of Deogaon dedicated his properties situated in several villages by creating Waqf in 1936. On 22.11.1959, an application for registration of the Waqf was made by Yawar Husain Khan to Shia Central Waqf Board, wherein on 23.3.1973, a certificate of registration under U.P. Muslim Waqf Act, 1960 was issued under Section 29 of the Act. After death of Yawar Hussain Khan, his widow became Mutawalliya of the Waqf and thereafter she appointed Ikhlas Husain as Naib Mutawalli by making an application to the Board.

Notice under Section 10 of the Act was issued to Yawar Husain Khan, whereupon he filed objections. On 31.6.1962, Prescribed Authority allowed objection and in regard to other village namely Deogaon, Poora @ Sameerpur, Mewapur, Indalpur, held that it was not the Waqf property, thereby declared 278-16-15 bighasis surplus land. Being aggrieved, Yawar Husain Khan filed an appeal before the District Judge which was transferred to Court of Civil Judge, Faizabad and the same was dismissed the appeal vide judgment dated 23.4.1976. Thereafter, a suit bearing Regular Suit No.60 of 1980 titled 'Shia Central Waqf Board v. State of U.P. and others' for declaration and injunction was filed which was decreed by IInd Additional Civil Judge, Faizabad holding that the land in suit was Waqf property and possession could not be disturbed. Being aggrieved, the State of U.P. filed an appeal bearing Civil Appeal No.60 of 1990 before the District Judge, Faizabad which was dismissed vide judgment dated 30.11.1996. On 20.12.1996, a notice was issued by the opposite party no.2 to the petitioner as why possession be not taken. On 16.1.1997, another notice was issued under Section 10(2) of the Act by the Prescribed Authority whereupon objections were filed stating therein that a declaration had already been made about the Waqf and no notice would be issued after expiry of two years.

16. To resolve the controversy involved in the present writ petition, Para 31(2) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 i.e. U.P. Act No.20 of 1976, are quoted hereinbelow:

(2) Where an order determining the surplus land in relation to a tenure holder has been made under the Principal Act before January 17, 1975 and the Prescribed Authority is required to redetermine the surplus land under Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U.P. Act II of 1975) then notwithstanding anything contained in subsection (2) of Section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act No. XVII of 1975) every appeal under Section 13 of the Principal Act or other proceedings in relation to such appeal preferred against the said order and pending immediately before the tenth day of October, 1975 shall be deemed to have abated on the said date.

(3) Where an order determining surplus land in violation to a tenure holder has been made under the Principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the Principal Act) may at any time within a period of two years from the said date redetermine the surplus land in accordance with the Principal Act as amended by this Act whether or not any

appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land."

17. On perusal of the above-extracted, it is crystal clear that where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before 10.10.1975, the prescribed authority may, at any time within a period of two years from the said date, redetermine the surplus land in accordance with the principal Act as amended by Act No. 20 of 1976, at any time within a period of two years from the said date.

18. In the present case, during pendency of appeal before the District Judge, Faizabad, U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 i.e. U.P. Act No.20 of 1976 came into force and as per the above-extracted provisions, the entire proceedings pending including the appeals had to abate and the the Prescribed Authority was empowered to issue a fresh notice for determination of the surplus area of a tenure holder only within a period of 2 years from 10.10.1975, but no notice was ever issued either to Shia Central Waqf Board or to Yawar Husain or to the petitioner and in this view of the matter, notice issued on 20.12.1996 (Annexure-8) and 16.1.1997 (Annexure-9) are illegal and without jurisdiction and order passed by the Prescribed Authority in regard to taking possession over the surplus land is contrary to the provisions of the Act.

19. It is also pertinent of the mention that the State of U.P. filed an appeal (Civil No.60 of 1990) before the District Judge, Faizabad against the order dated 8.5.1990 vide which IInd Additional Civil Judge, Faizabad held that the land in suit was waqf property and the possession could not be disturbed in pursuance to the judgment dated 31.12.1974 passed by the Prescribed Authority, which was dismissed vide judgment dated 30.11.1996. Thereafter, no second appeal was filed against the order dated 30.11.1996 and the said order became final.

20. Considering in totalities of facts and circumstances of this case, order dated 8.4.1997 as annexed as Annexure-1, order dated 31.12.1974 passed by the Prescribed Authority and order dated 23.4.1976 passed in appeal are hereby quashed.

21. In the result, this writ petition succeeds and is allowed.