
(2018) 08 UK CK 0010

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 550 of 2017 & Writ Petition (M/S) No. 559 of 2016

Ahata Imam Sahab Rahmatullah

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Uttar Pradesh Muslim Waqf Act, 1960 — Section 6, 7, 57A, 57A(1), 83

Citation : (2018) 08 UK CK 0010

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Tapan Singh, Yogesh Pandey, Siddhartha Singh, Nishat Intezar, Siddhartha Sah, Ahrar Beig

Final Decision : Disposed Of

Judgement

SUDHANSHU DHULIA, J. (ORAL)

1. The petitioner before this Court claims certain management rights over the Dargah of Ahata Imam Sahab Rahmatullah, Roorkee, District

Haridwar and has primarily challenged the interference of Uttarakhand Waqf Board over the property.

2. According to the Waqf Board, the property in question is a waqf property and the petitioner has no right to manage the said property.

3. The petitioner, however, says that as long as back in the year 1979, as per the own admission of the petitioner, the property was declared as

Sunni waqf property by the U.P. Sunni Central Board of Waqf and the predecessor of the petitioner was asked to vacate the property of the

waqf by the Collector, Saharanpur vide notice dated 01.12.1981. The predecessor of the petitioner challenged the eviction notice before the Additional

District Judge, Saharanpur by filing Misc. Civil Appeal No.292 of 1981, which was dismissed by the Additional District Judge, vide order dated

07.08.1989. This order was challenged by the predecessor of the petitioner before the High Court of Judicature at Allahabad in the year 1989, which

remained pending before the High Court and was finally disposed of in the year 2008 on 22.04.2008 by the following orders:

â?? Heard learned counsel for the petitioner, learned Standing Counsel for the respondent no.4. However, none appears for respondent no. 2 and 3,

even though the case was taken up in the revised list.

This petition is directed against an order dated 7.8.1980 rejecting an appeal under Section 57-A of the U.P. Muslim Waqf Act, 1960 (hereinafter

referred to as the Act).

The U.P. Sunni Central Board of Waqf, respondent no. 2, sent a requisition dated 3.11.1981 under Section 57-A (1) to the Collector, Saharanpur for

delivery of possession of the disputed property which was registered as a waqf property of Imam Sahib Rahmatullah Alaih situated at khasra no. 179.

In pursuance thereof, the Collector issued notice dated 1.12.1981 asking the petitioner to vacate the premises. Feeling aggrieved he preferred an

appeal before the District Judge, Saharanpur which came to be dismissed by the impugned order.

Learned counsel for the petitioner has urged that the appellate court had erred in law in holding that it was barred from examining the question as to

whether the occupation of the petitioner was lawful.

It is apparent from the ground of appeal that it was urged on his behalf that the premises was not a waqf property and no notice was served to him

before registering it as such. It also urged that he was in occupation of the property in his own right. However, the court below held that the petitioner

did not even challenge the registration of the property as waqf. A copy of the grounds of appeal has been filed where specific issue about the right of

the petitioner has been raised and so also it being registered as waqf has been challenged. A learned â?¡â?¡â?¡â?¡..Smt. Amma Khatoon vs. IIIrd

Additional District Judge, Farrukhabad (1987 A.L.J. 1282) had held that the appellate court was not barred from examining the question about the

legality of the occupation of the person found in possession of the property. Therefore, it is apparent that the court below failed to exercise its

jurisdiction vested in it by law.

Accordingly, this petition succeeds and is allowed and the impugned order dated 7.8.1989 is hereby quashed and the matter is remanded to it for

decision afresh, taking into consideration the observations made hereinabove. On the facts of this case, no order as to costs.â??

4. However, instead of taking the matter before the learned Additional District Judge, as determined by the High Court, the petitioner has agitated the

matter in form of present writ petition on a plea that against the said order, the respondent Waqf Board has filed a review petition before the High

Court of Judicature at Allahabad. However, this plea of the petitioner cannot be accepted as the review petition filed by the respondent Waqf Board

could not have restricted the petitioner to move before the Additional District Judge, as directed by the High Court.

5. This Court has been apprised that the property was declared as waqf property way back in the year 1979 and if it is disputed as waqf property, the

petitioner has a statutory remedy in form of Waqf Tribunal which has been constituted under Section 83 of the Waqf Act. Section 83 of the Waqf Act

reads as under:

â??83. Constitution of Tribunals, etc.â??

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any

dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make

an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal

for the determination of any dispute, question or other matter relating to the wakf.

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or

more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of

the wakf actually and voluntarily resides, carries on business or personally works

for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter: Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District,

Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil

Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal: Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other

matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination

and may confirm, reverse or modify such determination or pass such other order as it may think fit.â??

6. Moreover, the petitioner has a statutory remedy under Section 6 of the Waqf Act to approach the Waqf Tribunal, which is all encompassing

provision where the dispute as raised by the petitioner can be raised. Section 6 of the Waqf Act reads as under:

â??6. Disputes regarding wakfs.â??

(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf

specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a

Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final: Provided that no such suit shall be

entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs. Explanation.â??"For the purposes of this

section and section 7, the expression â??any person interested thereinâ??, shall, in relation to any property specified as wakf property in the list of

wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in

such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course

of the relevant inquiry under section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the

pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie

against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in

relation to any question referred to in sub-section (1).â??

7. In view of the above, as of now since Waqf Tribunal has been constituted under Section 83 of the Act, the proper remedy would be to approach the Tribunal, but since order dated 22.04.2008 still remains, it will be in the fitness of things that the petitioner must approach the concerned Additional

District Judge, who shall pass appropriate order for relegating the matter to the Tribunal.

8. Writ petition stands disposed of.

9. Interim order dated 15.03.2017 stands vacated.