
(2018) 10 UK CK 0070
In the Uttarakhand High Court
Case No : Writ Petition (M/S) No.3237 of 2018

Anwar Jamal Kazmi	Vs	APPELLANT
Uttarakhand Waqf Board & another		RESPONDENT

Date of Decision : 26-10-2018

Acts Referred:

Waqf Act, 1995 — Section 54, 83

Citation : (2018) 10 UK CK 0070

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : T.A. Khan, A.K. Arya, Nishat Intezar

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.

1. The petitioner has received a notice from the Chief Executive Officer of the Uttarakhand Waqf Board whereby he has been asked to vacate the property of the Waqf Board.

2. According to the petitioner, such a notice can only be given under Section 54 of the Waqf Act, 1995 where the petitioner is trespasser or encroacher. Petitioner claims to be tenant on the waqf property.

3. A preliminary objection has been raised by the learned counsel for the Waqf Board that the petitioner has a remedy to approach the Tribunal under

Section 83 of the Waqf Act, 1995. Section 83 of the Waqf Act, 1995 reads as under:-

83. Constitution of Tribunals, etc.-(1) The State Government shall, by notification in the Official Gazette, constitutes as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating

to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

(2) Any mutawalli person interested in a waqf 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 waqf.

(3) Where any application made under sub-section (1) relates to any [waqf] 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 [waqf] 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 [waqf] or any other person interested in the [waqf]

or the [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other

matter relating to such [waqf] or [waqf] 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 interest of justice to deal with the application

afresh.

[(4) Every Tribunal shall consist ofâ?

(a) 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, who

shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

(4-A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(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??

Â 4. The objection of the counsel for the Waqf Board seems to be correct.

5. In view thereof, the writ petition is dismissed on the ground of alternative remedy.