
(2002) 09 AHC CK 0082
In the Allahabad High Court
Case No : Civil Revision No. 543 of 2001

Hafiz Abdullah and Another	Vs	APPELLANT
Akbar Ali and Others		RESPONDENT

Date of Decision : 20-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340
Waqf Act, 1995 — Section 67, 83

Citation : (2002) 5 AWC 3829 : (2002) 93 RD 788

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : M.A. Qadeer and M.A. Siddiqui, for the Appellant; S.A. Ansari and Mahboob Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—The order passed by the Waqf Board was challenged in Appeal No. 1 of 2001 before the Civil Judge (Senior Division), Mau u/s 67(6) of the Waqf Act, 1995. An application for temporary injunction 6C was also moved which was originally fixed for disposal on 3.11.2001. However, the application was moved to prepone the hearing of the application. Therefore, it was ordered by the Civil Judge (Senior Division) on 24.10.2001 that the application 6C shall be disposed of on 3.11.2001 and till that date, the operation of the orders dated 14.8.2001 and 7.9.2001 passed by Waqf Board and the Members of the Waqf Board shall remain stayed. This order has been challenged before me in this revision.

2. I have heard Sri M. A. Qadeer, learned Counsel for the revisionists and Sri S. A. Ansari, learned Counsel for the opposite parties.

3. It has been argued by Sri M. A. Qadeer, learned Counsel for the revisionists that the order was passed by the Board under Clause (2) of Section 67 of the Waqf Act and the appeal has been preferred under Clause (4) and, therefore, the learned Civil Judge had no jurisdiction to grant the stay order.

4. As against this, Sri S. A. Ansari, learned Counsel for the opposite parties has argued that his appeal is under Clause (6) of Section 67, and, therefore, Clause (4) does not apply and the stay can be granted.

5. I have considered the arguments. This controversy is to be decided by the trial court and I do not think it proper to express any final opinion on this point. The trial court has only passed an interim order and is still to decide the matter on merits. Any observation made by me will affect the decision of the trial court. The facts of the case are to be considered by the trial court. The trial court, therefore, shall also consider the above arguments of the learned Counsel.

6. It has also been argued by Sri S. A. Ansari, learned Counsel for the opposite parties that the revision under Clause (9) of Section 83 is not maintainable. His argument appears to be correct. The High Court under Clause (9) of Section 83 of Waqf Act may examine the legality or propriety of any determination made by the court below in an appeal. However, only interim order has been passed and no question has been determined. The order is totally interlocutory and the question whether the operation of the order should be stayed or not is still to be decided by the trial court.

7. I, accordingly, find that this revision is not maintainable and is liable to be dismissed.

8. The opposite party No. 1 has also moved an application u/s 340, Cr. P.C. I have considered that application. There does not appear any ground to take action against the present revisionists u/s 340, Cr. P.C. The application u/s 340, Cr. P.C. moved by the opposite party No. 1 is, therefore, rejected.

9. The revision fails and is hereby dismissed. However, the court below is directed to expedite the hearing of the application 6C for temporary injunction.