

(1977) 09 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1423 of 1977

Haji Nizamuddin and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-09-1977

Acts Referred:

Uttar Pradesh Muslim Waqfs (Recovery of Waqf Property) Rules, 1972 — Rule 9(2)
Uttar Pradesh Muslim Waqfs Act, 1960 — Section 57A

Citation : AIR 1978 All 271 : (1977) AWC 606

Hon'ble Judges : P.N. Bakshi, J;K.N. Singh, J

Bench : Division Bench

Advocate : S.J. Hegder, for the Appellant; N.A. Kazmi, for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh, J.—This writ petition is directed against the order of the Controller, Sunni Board of Waqfs, Lucknow directing the Collector, Muzaffarnagar to recover possession of the land from the petitioners.

2. There is a waqf known as Waqf Takia Shah Islam in the district of Muzaffarnagar in respect of some landed property. The waqf property is subject to the administration and control of Sunni Central Board of Waqfs, constituted under the Muslim Waqfs Act, 1960. It appears that Babu Imam Bux, who was an erstwhile Mutawalli of the said waqf granted a lease of the property in question in favour of the petitioners. That lease was renewed in the year 1961. It further appears that the Central Board of Waqfs received information that the property of the Waqf Takia Shah Islam had been let out in an unauthorised manner to the petitioners. The Controller of the Waqf Board issued a show cause notice dated 28th March, 1977 calling upon the petitioners to restore back the possession of the property to the waqf u/s 57-A of the Muslim Waqf Act 1960. Aggrieved, the petitioners filed this writ petition challenging the requisition order of the Collector.

3. Section 57-A of the U. P. Muslim Waqfs Act lays down that if the Board is

satisfied after making inquiry in such manner as may be prescribed that any immovable property of a waqf is in unauthorised occupation of any person, it may send requisition to the Collector within whose jurisdiction the property may be situate to obtain and deliver possession of the property to it. The procedure for holding the enquiry is prescribed under the Rules known as U. P. Muslim Waqfs (Recovery of Waqf Property) Rules 1972. These rules lay down detailed procedure for holding the inquiry. Rule 8 provides that if any complaint is received by the Board regarding the unauthorised occupation of waqf property the Board may depute an officer to make a local inspection and submit his report giving the details of the property affected and the duration of the unauthorised occupation and the particulars of the person or persons who may be occupying the property in unauthorised manner. Rule 9 lays down that on receipt of report the Board shall cause a notice to be issued to the person in unauthorised occupation calling upon him to restore back the possession to the Board or to show cause against it within a period of 15 days from the receipt of the notice.

Sub-rule (2) of Rule 9 further lays down that if the person to whom notice is issued fails to comply with the notice or to show cause or if cause is shown, on giving an opportunity to the person concerned of being heard, the Board may if satisfied as to there being unauthorised occupation over waqf property pass orders for sending a requisition to the Collector within whose jurisdiction the property is situate to obtain and restore possession of the property to it. Before the Board takes final decision in the matter it must afford an opportunity of hearing to the person concerned. It is significant to note that the requirement of giving personal hearing as provided by Rule 9 (2) is in addition to the opportunity of showing cause. The Board is, thus, required to hold inquiry in accordance with the rules and give opportunity to the person concerned against whom requisition may be issued to the Collector, if no show cause notice is issued or if no personal hearing is given as required by the Rules, issue of requisition order would be in contravention of the Act and the Rules.

4. In the instant case the petitioners had shown cause to the notice issued by the Board and they had expressly made a request for the opportunity of personal hearing. The Controller of the Board vide his order dated 21st April 1977 rejected the petitioner's prayer for personal hearing on the ground that the request for the personal hearing was made as a measure of delaying tactics. It is well settled principle that when the statutory rules require an authority to give personal hearing to a person against whom action is to be taken the authority concerned must comply with the statutory requirement of the law and it is not open to it to bye-pass the statutory procedure merely on the ground of delay. In our opinion, the Controller acted in contravention of statutory provisions in issuing requisition order to the Collector for the petitioners' eviction. The procedure followed by the Controller was in contravention of the provisions of the Act and the Rules framed thereunder as such the requisition order is rendered illegal and liable to be quashed.

5. In the result, we allow the petition and quash the order of the Controller dated 21st April, 1977 as well as the order of requisition dated 23rd April, 1977. The Board may proceed with the matter afresh in accordance with law after giving personal hearing to the petitioners. The parties shall bear their own costs.