
(2012) 09 UK CK 0067
In the Uttarakhand High Court
Case No : Civil Revision No. 75 of 2012

Haji Rao Sharafat Ali

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Waqf Act, 1995 — Section 20, 20(1)(b), 83

Citation : (2012) 3 UC 1752

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Rajendra Dobhal, Mr. Lok Pal Singh and Mr. T.S. Phartiyal, for the Appellant; U.K. Uniyal, Learned Advocate General assisted by Mr. K.P. Upadhyay, C.S.C., Learned Counsel, for the Respondent

Judgement

Brahma Singh Verma, J.

Stay Application No. 9895 of 2012

1. This revision is directed against the order dated 5-9-2012 passed by the District Judge, Haridwar, in O.S. No. 5 of 2012, Haji Rao Sharafat Ali Vs. State of Uttarakhand and others, whereby the application for grant of temporary injunction has been rejected by the Tribunal/District Judge, Haridwar. The learned Advocate General appearing on behalf of the respondents has raised a preliminary objection that the revision itself is not maintainable since no final determination has been made by the Tribunal and only the temporary injunction application has been rejected.

2. I have perused the provisions of Section 83 of the Wakf Act, 1995 (for short the Act), the relevant extract thereof reads as under:-

83. Constitution of Tribunals, etc.-

(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) xxx xxx

(3) xxx xxx

(4) xxx xxx

(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, 1905 (5 of 1908), while trying a suit, or executing a decree or order.

(6) xxx xxx

(7) xxx xxx

(8) xxx xxx

(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 conform, review or modify such determination or pass such other orders as it may think fit.

3. Since there is specific provision in the Act under sub-section (9) of Section 83 of the Act that no appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal, therefore, in view of the Proviso appended to sub-section (9) of Section 83 of the Act, the order passed by the Tribunal are revisable. So far as the correctness, legality or propriety of determination is concerned, this Court is of the view that the matter can be examined in revision, therefore, the present revision is maintainable in respect of the order passed by the Tribunal on the temporary injunction application.

4. Briefly stated the facts giving rise to the present revision are that the revisionist herein was removed by the State Government by the order dated 25-4-2012 from the office of the chairperson of the Wakf Board. The said order was assailed by the revisionist before the Wakf Tribunal/District Judge, Haridwar in O.S. No. 5 of 2012 Haji Rao Sharafat Ali Vs. State of Uttarakhand and others. An application under Order 39, Rules 1 and 2 C.P.C. was moved for stay of the operation of the order under challenge before the Tribunal, whereby the revisionist was removed from the office of Chairperson of Wakf Board.

5. Learned Senior Advocate Mr. Rajendra Dobhal, assisted by Mr. Lok Pal Singh, Advocate, appearing on behalf of the revisionist has contended that the learned Tribunal/District Judge has committed a manifest error of law in passing the

impugned order and that the State Government had directed the Collector to make an inquiry in the matter. The inquiry was not made by the Collector himself but was entrusted to the Joint Magistrate, Roorkee, who in turn, formed a committee comprising Additional Tehsildar Roorkee and Treasury Officer, Roorkee headed by the Joint Magistrate himself. The said committee gave the report and on the basis of that report, the Collector Haridwar submitted the enquiry report to the State Government. The learned Senior Advocate appearing for the revisionist therefore, submitted that the procedure of enquiry in the matter was not followed in accordance with law and it was vitiated and that the Collector was not having jurisdiction to delegate the power to conduct inquiry to the Joint Magistrate Roorkee for making inquiry in the matter on his behalf.

6. Undisputedly, after receipt of the enquiry report, the State Government in turn issued a show cause notice mentioning therein the specific charges leveled against the revisionist. Reply was also given by the revisionist.

7. After considering the reply of the revisionist vis-?-vis the charges, the State Government took a decision to remove the revisionist from the office of Chairperson of the Wakf Board of Piran Kaliyar Dargah, on the ground that the revisionist in the capacity of the Chairperson of the Wakf Board had committed financial irregularity deliberately and he has acted against the interest of the Wakf Board, therefore, under the provisions of sub-clause (b) of sub-section (1) of Section 20 of the Act, the State Government by its Notification dated 25th April, 2012 published in the Extraordinary Gazette removed the revisionist from the office of Chairperson of the Wakf in question with immediate effect.

8. Undisputedly, if the Chairperson of the Wakf Board or any member thereof is found to have refused to act or is incapable of acting or has acted in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interest of the wakfs, such Chairperson or the Member may be removed by the State Government under the provisions of Section 20(1)(b) of the Act.

9. Learned Senior Advocate Mr. Rajendra Dobhal appearing for the revisionist has further contended that it is not the duties of the Chairperson alone but it is the duty of the Board to take decision in the matters pertaining to Wakf and it is a joint liability of the Wakf Board, therefore, the order dated 5-9-2012 is not sustainable in the eye of law.

10. The learned Tribunal/District Judge has mentioned in the impugned order that out of 12 members, 8 members of the Wakf Board have resolved that in respect of the irregularities committed by the chairperson Haji Rao Sharafat Ali, the resolution be sent to the State Government for taking action.

11. The learned District Judge did not find favour with the revisionist and also came to the conclusion that there is no prima facie case in favour of the revisionist and the balance of convenience did not tilt in his favour. It was also held that the revisionist is not going to suffer irreparable loss. Consequently by

order dated 5-9-2012, the application for grant of temporary injunction u/s 151 C.P.C. has been rejected, which gave rise to the present revision.

12. I have heard learned counsel for the parties and perused the material placed before this Court.

13. Since it is an order of removal and prayer was made to stay operation of the said order. It is well settled that no such interim relief can be granted in favour of the applicants, which amounts to granting of final relief to them. In the case at hand, the learned Tribunal has rightly rejected the application of the applicant-revisionist. I do not find any merit in the present revision, which deserves to be dismissed outright. The revision is dismissed. The order under revision is upheld. However, the Tribunal/District Judge, Haridwar is directed to decide the Suit No. 5 of 2012, Haji Rao Sharafat Ali Vs. State of Uttarakhand and others, expeditiously on merits, in accordance with law, preferably within a period of eight weeks from the date of production of a certified copy of this order, without being influenced by the order passed by the Tribunal on Temporary Injunction application. It is also directed that the case be heard on day-to-day basis as far as possible after giving opportunity of hearing to both the parties. Both the parties to the suit shall also co-operate in the speedy disposal of the case.