
(2010) 09 AHC CK 0547
In the Allahabad High Court
Case No : Writ Petition No. 1108 (MS) of 1991

Khursheed

APPELLANT

Vs

Ist Additional District Judge and Others

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Muslim Waqfs Act, 1960 — Section 30, 33(2), 49B, 57A

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 4, 6

Citation : (2010) 09 AHC CK 0547

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard Counsel for the parties.

2. The afore-captioned writ petitions have been filed against the order dated 27.2.1991 passed by the I-Additional District Judge, Raebareli in Misc. Civil appeal No. 60 & 63 of 1990 whereby the appeals of the petitioners preferred against the order of Collector, Raebareli were dismissed.

3. The dispute in the instant writ petition relates to plot No. 929 and 933 of village paragana and Tehsil Dalmau, District Raebareli. It is said that the petitioner are in possession over the plots in dispute alongwith trees standing thereon since long and has perfected his rights by adverse possession.

4. Brief facts of the case as averred in the writ petition are that proceedings u/s 49-B and Section 57-A of the U.P. Muslim Waqfs Act, 1960 were initiated in respect of the aforesaid plots against Basheer Khan son of Wazeer Khan and Smt. Rajwati wife of Karuna Shanker respectively as the land in question was part of "Dargah of Makhdoon Badruddin Badre Alam" on plot No. 1577, which was divided into plots Nos. 604, 610, 615 to 626 in second settlement while in third settlement, the plots were re-numbered as 911, 922, 924 to 935. In 1947,

Muslims of Dalmau constituted an Anjuman Islamia and appointed Hakeem Raghieb Husain (opposite-party No. 4) as its Secretary, who applied for its registration and on 9.9.1965, it was registered as public waqf. Ex-intermediary, Hakeem Majeed, on coming to know about the registration, made an application on 20.5.1966 for cancellation of the said registration, which was allowed on 14.1.1968. This order was assailed in writ petition No. 320 of 1963 before the High Court, which was allowed and the order dated 24.1.1968 canceling the registration was quashed. Special Appeal against the judgment and order dated 22.5.1970 of the High Court was also dismissed. Thus, the factum of registered waqf established become final. U.P. Sunni Central Board of Waqfs issued a requisition to the Collector, Raebareli for delivery of possession illegally occupied by certain persons on which the Collector passed the order. Basheer Khan and Smt. Rajwati preferred objections before the Collector but same were rejected on 16.4.1979. Consequently, the appeals were filed by them and other tenure holders, which were allowed on 2.7.1980. Aggrieved by the appellate order, Hakeem Raghieb Husain-opposite party No. 4 filed writ petitions No. 2086 of 1980 and 1960 of 1981. It has been pointed out that no writ petition was filed against the judgment passed in appeal filed by Basheer and others and as such it has attained finality.

5. It has also been pointed out that Abdul Majeed and 18 others filed a Regular Suit No. 89 of 1958 in the Court of Munsif, Rae bareli seeking a declaration that the land recorded as graveyard was their grove and in the alternative it was their private grave-yard. Though the claim was repelled by the Munsif but in appeal, vide judgment dated 14.9.1961, held the same to be private grave-yard of the plaintiffs.

6. Counsel for the petitioner has argued that the plots in dispute were held to be the private grave-yard of Abdul Majeed and others by a competent court and in any case, if it was a public waqf though not admitted in view of the provisions of Sections 4, 6 and 117 of the U.P. Zamindari Abolition and Land Reforms Act, the plots being not recorded as Sir and Khudkasht of the waqf, the same have vested in the State. Therefore, petitioners have become bhumidhar by virtue of long standing possession over the said land. In the backdrop of the aforesaid facts, it has been argued that the learned District Judge committed an error in not considering the aforesaid vital facts and passed the impugned order, which suffers from serious infirmities.

7. E contra, it has been submitted by contesting private respondent that Waqf No. 53, District Rae-bareli consists of Dargah of great Saint Makhdoom Badruddin Badr-e-Alam. In first Regular settlement, the area of the plot No. 1577 was 49 Bighas, 6 biswas and 18 biswansis, which was held after adjudication to be Waqf property and was accordingly recorded in revenue record. In second settlement, the said plot was divided into several plots, viz, plot Nos. 604, 607 and 615 to 626. In third settlement, the plots were renumbered. It has been pointed out that at the relevant time Hakeem Mohd. Ali

and Abdul Qasim were Mutwallis of Waqf in question and after their death, it continued in their family and Hakeem Abdul Majeed was managing the affairs of the said waqfs. However, in pre-partition period, he alongwith his members of family migrated to District Fatehpur. As there was none to look after, a body in the name and style of "Anjuman Islamia" was constituted, to manage the affairs. The opposite party No. 4 in the capacity of the Secretary moved an application to the Waqf Board for its registration.

8. Counsel for the contesting respondent has submitted that several persons, at the behest of Hakeem Abdul Majeed, illegally occupied different portions of the property in question claiming that this land have been transferred to them by Hakeem Abdul Majeed and his associates. As they were in unauthorized occupation of the land, proceedings for recovery of possession u/s 49-B and 57-A were initiated and after enquiry and due procedure of law, requisition against 28 persons were issued by the Waqf Board to the Collector. The Collector/District Magistrate after considering the objections filed by the concerned persons was not satisfied with their claim and accordingly rejected the objections and directed all of them to deliver the possession. It has been submitted that on 14.6.1979 possession on the spot through Tehsildar Dalmau was delivered. A copy of the report regarding delivery of possession has been annexed as Annexure C-5 to the counter affidavit.

9. There is no dispute between the parties that there is a Dargah of Great saint Syed Makhdoom Badruddin Badrey Alam in village/Qasbar Pargana and Teshil Dal Mau, District Rae-bareli. The said Dargah comprises of an area of 49 Bigha, 6 Biswan and 18 Dhur. The registration of Dargah as waqf has also attained finality after the dismissal of the Special Appeal No. 110 of 1970 vide judgment and order dated 23rd December, 1971. Thus there is no confusion that the Dargah as well as the property in question belongs to a public waqf; the Dargah is a registered body under the Act and the provisions contained in Waqf Act, 1960 shall be applicable to administer the affairs of Dargah as well as its property.

10. From the record it reflects that Hakeem Abdul Majeed had transferred certain portion of waqf property/land to others and also delivered its possession between 1968-1970 claiming himself as Mutawali. Hence, the proceeding in pursuance to the power conferred by Section 49-B and Section 57-A of the U.P. Waqf Act, 1960 were initiated against the unauthorized occupant. After due enquiry under the Act and in accordance to law, the Waqf Board had sent a requisition to the Collector, Raebareli to dispossess the unauthorized occupant.

11. The record reflects that 38 persons were in authorized occupation of land belonging to Dargah. Out of these 38 persons, 14 persons had filed an appeal before the learned District Judge, Raebareli, which was allowed vide judgment and order dated 2nd July, 1980. The aforesaid order was assailed in writ petition No. 2086 of 1980 by Hakim Raghbir Husain-Mutwali, who is opposite party No. 4 in the instant writ petition. This Court vide judgment and dated 15th December, 2005 quashed the judgment and order dated 2nd July, 1980 passed by the

learned District Judge, Raebareli and observed that once, in the earlier set of litigation, which went upto High Court, it has been settled that the property in question is the waqf's property, then no contrary finding can be recorded either by subordinate court or by this Court. So far as transfer of the land by the Mutawalli is concerned, this Court on the strength of various decisions categorically held that the possession of Mutawalli over the waqf property in any event shall be permissive possession. The alienation of waqf property by "Mutawalli" without following due procedure or authority shall be an act without jurisdiction and all such transfer of waqf properties shall be void and orders may be ignored. The waqf Board will have a right to send a requisition to the District Magistrate for repossession of such property in accordance to law. At page 11 of the judgment passed in writ petition No. 2086 of 1980; Hakim Raghbir Husain v. Munir Khan and Ors. decided on 15th December, 2005, the court following the decisions rendered in 1932 PC Jhau Lal" case 1969 ALJ 169, Pir Bux and Anr. v. Sher Mohd and Ors. and 1976 LLJ U.P. Sunni Central Board of Waqf v. Smt. Hasan Jahan Beguma and Anr. held as under:

...the graveyard used for the burial of the dead body of a Muslim shall not be a private property. The title of such land vests in the waqf and not in a private person. There shall be a presumption that the part of the site on which the dead body is buried is dedicated with the consent of the owner of the land to God. Such land shall be considered as waqf property and members of the Muslim community shall be entitled to have access.

12. In the instant case, the appeal has been dismissed by the learned District Judge on account of absence of any documentary evidence to establish that the land is not the Waqf property. Sri Arif Khan, Senior Advocate made serious attempts to demonstrate that the case of the petitioner is distinguishable but I am not inclined to accept it as in my considered opinion the judgment and order dated 15th December, 2005 passed in writ petition No. 2086 of 1980 has attained finality and the findings recorded therein are fully applicable in the instant case as it relate to same waqf. The assertion of the petitioner that the land in dispute is not the Waqf property is wholly untenable in view of foregoing discussions and cannot be reopened for which a feign attempt was made by the petitioner's counsel. Any incorrect entry in the revenue record will not alter the nature of the Waqf. Furthermore, it has already been held and concluded that Hakeem Abdul Majeed was not competent to transfer the relevant portion of land in question to the private respondents or their associates. The land could have been transferred only in accordance to the procedure provided under the Waqf Act.

13. In the backdrop of the aforesaid facts, I am of the view that there is no infirmity or illegality in the impugned order passed by the First Additional District Judge in appeal. The findings arrived at by the Appellate Authority are based on documentary evidence and cogent reasons. The Appellate Court rightly observed that the disputed property is a Waqf property duly registered u/s 30 of the Act in

the Register of Waqfs and the same cannot be challenged at this stage as the dispute was never referred to the Tribunal u/s 33(2) of the Act. The burden was upon the petitioner to establish that the land is not a Waqf property or it has vested in the State. The Court below in its judgment has observed in unequivocal words that the petitioners have failed to prove either by documentary evidence or by any other evidence that the said land is not the part of the Waqf property. Therefore, the petitioners cannot acquire any rights as claimed by him over the property in question and the court below rightly rejected the appeal.

14. In view of the aforesaid discussions, I find no good ground for interference under Article 226 of the Constitution and both the writ petitions are hereby dismissed.