
(1996) 05 AHC CK 0138
In the Allahabad High Court
Case No : Civil Revision No. 69 of 1985

Mahboob Ali Khan alias Shahid Ali Khan	APPELLANT
Vs	
Sardar Ali Shah	RESPONDENT

Date of Decision : 03-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Provincial Small Cause Courts Act, 1887 — Section 25, 29, 29(4), 29(7), 29(8)

Citation : (1996) 05 AHC CK 0138

Hon'ble Judges : R.K. Mahajan, J

Bench : Single Bench

Advocate : M.A Qadeer, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Mahajan, J.—This is a revision u/s 25 of Provincial Small Causes Court Act, 1807 filed against the order dated 11.12.1984 passed by the Additional Civil Judge, Moradabad rejecting the application No. 101-Ga-filed by the Defendant-applicant in Original Suit No. 171 of 1980 and deciding issue Nos. 3, 4 and 5 against the Defendant-applicant.

2. The Plaintiff filed a suit in the court of Civil Judge, Moradabad which was transferred before the Additional Civil Judge, Moradabad for declaration that the property in dispute is not waqf property. Objection was raised by the revisionist-Defendant that the matter is not cognizable by Civil Court as the entire machinery for determination of such aspect has been provided under U.P. Muslim Waqf Act, 1960 (hereinafter referred to as the Act).

3. The learned Counsel for the revisionist has argued that the lower court gave a wrong finding on issue Nos. 3, 4 and 5 regarding the jurisdiction and also that Section 33 of the Act does not deal regarding the validity of waqf name and as such suit is maintainable.

4. I have heard Shri M. A. Qadeer, counsel for the revisionist and he has cited so

many provisions of the Act. Section 8 of the Act is quoted with advantage:

8. (1) If any dispute arises whether a particular property is waqf property or not or whether a waqf is a Shia waqf or Sunni waqf, the Board concerned or the mutawalli of the waqf or any person interested therein may, in accordance with the provisions of this Act, refer the dispute for adjudication to the Tribunal:

Provided that no such dispute shall be entertained by a Tribunal after the expiry of one year from the date of the publication of the list of waqfs under Sub-section (4) of Section 6.

(2) The Commissioner, Additional Commissioner of Waqfs and Assistant Commissioner of Waqfs shall not be made a party to any proceeding under Sub-section (1).

5. He has also invited the attention of the Court to Section 29 (7) and (8) of the Act. Section 29 (7) and (8) are quoted with advantage:

29. (7) On receipt of an application for registration, the Board may, before the registration of the waqf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and the correctness of any particular therein, and, when the application is made by any person other than the person administering the waqf property, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf" property and shall after affording him a reasonable opportunity of being heard, pass such orders as it may deem fit.

(8) Any person aggrieved by an order of the Board under Sub-section (7) may, by application within 90 days from the date of that order, refer the dispute to the Tribunal which shall give its decision thereon.

6. Section 29 of the Act relates to registration and it is the duty of the mutawalli to apply to the State Board for registration of the waqf of which he is the mutawalli whether such waqf was created before or after the commencement of the Muslim Waqf Act, 1960. Application for registration shall be made by the mutawalli within three months of his entering into possession of the waqf property. Obviously, it means that no body can become a mutawalli unless procedure u/s 29 of the Act is followed.

7. It is also relevant to quote Sub-section (4) of Section 29 of the Act:

29. (4) Every such application shall be accompanied by a copy of the Waqf Deed or, if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the waqf.

The Legislature has provided so many in-built safeguards for registration of the waqf and mutawalli.

8. Section 33 of the Act gives power to Board to decide whether the property is a

waqf property or not. Section 33 of the Act is quoted with advantage:

33. Decision if a property is waqf property.--(1) The Board may collect or cause to be collected information regarding any property which it has reason to believe to be a waqf property and if any question arises whether a particular property is waqf property or not, it may, after making such inquiry as it may deem fit, decide the question.

(2) Any person aggrieved by the decision of the Board under Sub-section (1) may by application within 90 days from the date of such decision refer the dispute to the Tribunal which shall give its decision thereon.

9. Section 70 of the Act relates to constitution of Tribunals. Section 70 of the Act is quoted with advantage:

70. Constitution of Tribunals.--(1) The State Government may, by notification in the Official Gazette, constitute as many Tribunals as may be necessary for the purposes of this Act. Each Tribunal shall have jurisdiction over such areas in the State as may be specified.

(2) A Tribunal shall consist of one person only, who shall be a Judicial Officer of the State Government, not below the rank of a Civil Judge, and who may be appointed as such either by name or by official designation.

10. Section 71 of the Act relates to reference of disputes to the Tribunal. Section 71 of the Act is quoted with advantage:

71. References of disputes, etc. to Tribunals.--Any dispute, question or matter, which may under this Act be referred to a Tribunal, shall be referred to a Tribunal having jurisdiction over the area in which the property to which such dispute, question or matter relates is situate or if such property is situate in areas under the jurisdiction of more than one Tribunal, then to any of them, and the Tribunal of competent jurisdiction shall adjudicate upon such dispute, question or matter in accordance with the provisions of this Act:

Provided that no proceedings under this Act in respect of any waqf shall be stayed or suspended merely by reason of the pendency of any such dispute, question or matter before a Tribunal.

11. Section 75 of the Act relates to bar to suits in matters to be decided by Tribunals, Section 75 of the Act is quoted with advantage:

75. Bar to suits in matters to be decided by Tribunals.--No person shall institute any suit or other proceeding in any Civil Court with respect to any dispute or question or matter which is required or permitted under this Act to be referred to a Tribunal for adjudication.

12. The award of Tribunal is not appealable. But the High Court may, in its discretion, at any time suo moto or on the application of the Board or any person aggrieved, call for and examine the record of any case for the purpose of

satisfying itself as to the correctness, legality or propriety of the judgment and pass appropriate orders.

13. The complete code of remedy available has been provided under the Act. There is provision for reference of dispute before the Tribunal. The trial court has overlooked the certificate of registration issued by the Sunni Central Board of Waqf to the mutawalli. The trial court, in my view, has committed a legal error by holding that Civil Court has Jurisdiction to adjudge the genuineness of the waqfnama. It is a basic principle u/s 9 of CPC that if suit is expressly or impliedly barred under statute, the civil court has no jurisdiction to try it. There are catena of authorities right from the Apex Court to this effect and Section 9 of CPC lays down that the courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

14. Section 75 of the Act specially bars the trial of suit regarding waqf property and the findings of the lower court are set aside on the point of jurisdiction and other issues.

15. In view of the aforesaid discussion, I fully agree with the submissions made by the learned Counsel for the revisionist and the revision is accordingly allowed and the lower court order is set aside.