

(2016) 12 AHC CK 0011

In the Allahabad High Court

Case No : Constitution of India, 1950 - Article 226

Mohd Imran Khan

APPELLANT

Vs

U.P. Sunni Central Board of Waqfs

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Misc. Bench No. 28612 of 2016

Citation : (2017) 122 ALR 344

Hon'ble Judges : Amreshwar Pratap Sahi and Devendra Kumar Upadhyaya, JJ.

Bench : Division Bench

Advocate : Yadukul Shiromani Srivast, Advocate, for the Petitioner; Q.H. Rizvi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Amreshwar Pratap Sahi and Devendra Kumar Upadhyaya, JJ.—Heard learned Counsel for the petitioner and Sri Q.H. Rizvi representing the U.P. Sunni Central Board of Waqfs. The petitioner, alleging himself to be duly appointed Mutawalli of Waqf Ismalia No.209 - Ex II Meerut (Ghaziabad), has filed this petition seeking a direction to be issued by this Court to the Collector, Solan, Himachal Pradesh to ensure removal of encroachment and illegal occupation over the property situate in Mauza Lower Bazar, Solan, Tehsil & District Solan, Himachal Pradesh, which according to the petitioner is comprised in the waqf property of the waqf in question.

2. In support of his submissions, learned Counsel for the petitioner has drawn attention of the Court to three letters written by the Chairman of U.P. Sunni Central Board of Waqfs, which have been annexed as Annexure Nos.4, 5 and 6 to the writ petition. Vide Annexure Nos.4 and 6, the Chairman of the U.P. Sunni Central Waqf Board has made a request to the Deputy Commissioner, Solan, Himachal Pradesh to remove the encroachment and evict the illegal occupants from the waqf property situate in district Solan, Himachal Pradesh. Vide Annexure No.5, which is the letter dated 18.2.2015, the Chairman of U.P. Sunni

Central Waqf Board has made a request to the Deputy Commissioner, Solan, Himachal Pradesh pointing out certain discrepancies in the Mutation Orders in relation to the waqf property, which have been passed in favour of the petitioner only in respect of half of the property. The Chairman through the said letter has also expressed its concern that the earlier orders passed by the Waqf Board have not been given effect to.

3. So far as the issue relating to removal of encroachment over the property situate in District Solan, Himachal Pradesh is concerned, we may only observe that the petitioner has only relied on the letters written by the Chairman, U.P. Sunni Central Waqf Board to the Deputy Commissioner, Solan, Himachal Pradesh and has not produced any order/proceedings which may have been passed or drawn under Section 54 of the Waqf Act, 1995. It is undisputed that Section 54 of the Waqf Act unambiguously provides that in case the Chief Executive Officer of the Waqf Board considers that there has been an encroachment on any land, building, space or other property, which is a waqf property either on receiving a complaint or on his own motion, then in that eventuality, he shall issue a notice to the encroacher calling upon him to remove the encroachment. Sub-Section (3) of Section 54 further prescribes that if, after considering the objections from the alleged encroacher, the Chief Executive Officer is satisfied that the property in question is "waqf property" and there has been an encroachment thereon, he will make an application to the Tribunal for grant of order of eviction for removal of such an encroachment and deliver possession of land, building, space or any other such property encroached upon. Sub-Section (4) of Section 54 prescribes that the Tribunal after receiving such an application from the Chief Executive Officer of the Waqf shall make an order of eviction directing that the waqf property shall be vacated by the illegal occupants. The proviso appended to Sub-Section (4) of Section 54 requires the Tribunal to give an opportunity of being heard to the person against whom the application for eviction is moved by the Chief Executive officer.

4. In the instant case, no such order which could be said to have been passed under the provisions of Section 54 of the Waqf Act, 1995 has been brought on record. Learned Counsel representing the petitioner has, however, stated that as per the amended Section 28 of the Waqf Act, 1995 (as substituted w.e.f. 1.11.2003), the District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate of a district in the State will be responsible for implementation of the decision of the Board, which may be conveyed through the Chief Executive Officer and the Board wherever considers necessary, may seek directions from the Tribunal for implementation of the decisions. No doubt, if any order by the Board or Tribunal is passed, the District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate of the district where the property is situated, may be within or without State of U.P., has been statutorily made responsible for implementation of such orders, however, for seeking such a direction to the District Magistrate/Collector, Solan, Himachal Pradesh, the petitioner needs to establish that some order of eviction or removal of

unauthorized occupation has been passed in terms of provisions contained in Section 54 of the 1995 Act.

5. We are afraid in absence of any order having been passed in terms of the provisions contained in Section 54, we cannot issue any such directions regarding removal of encroachment and eviction of unauthorized occupants from the property of the waqf situate in Solan, Himachal Pradesh to the Collector.

6. In respect of grievance of the petitioner, that his name has been mutated only over half of the entire property in Solan, Himachal Pradesh, we may state that the mutation order, maybe in respect of half of the property situate in district Solan, has not been passed or carried in compliance of any order passed by the Board. If the petitioner, after the death of his father, became Mutawalli, based on such appointment of the petitioner as Mutawalli he can seek mutation of his name over the property situate at Solan, Himachal Pradesh in terms of local laws prevalent in the State of Himachal Pradesh and if the petitioner is aggrieved that his name has not been mutated over half of the property in Solan, Himachal Pradesh, he may avail of the remedy which may be available to him under local laws of the Himachal Pradesh. It will also be permissible under law to invoke any other remedy which may be available before the forums within the territories of the State of Himachal Pradesh.

7. The writ petition is thus disposed of in the aforesaid terms.