
(1988) 09 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14947 of 1981

Munna Jafari

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 12-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Muslim Waqfs Act, 1960 — Section 30, 57A, 57A(1)

Citation : (1989) 1 AWC 152

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; N.A. Kazmi, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India.

2. The Petitioner carries on the business of shoes. Respondent No. 3 is the Mutwalli of the mosque, which is a waqf property. The Petitioner and Respondent No. 3 entered into an agreement on 30th April, 1981. It has been attached as Annexure "I" to this petition. In pursuance of this agreement, the Petitioner entered into possession of the kothri in dispute and started his business therefrom.

3. On 8th May, 1981, Respondent No. 3 made an application to the City Magistrate, Allahabad, stating therein that the Petitioner was in unauthorised occupation of the kothri and, as such, he may be evicted from the said kothri. On that very day, the City Magistrate passed the following order:

Let the shop be locked. Sri. Munna be evicted as he has entered without any authority".

4. It is this order which has been impugned in the present petition.

5. Learned Counsel for the Petitioner states that there was no proceedings

pending before the City Magistrate under the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, but the order has been passed by the City Magistrate, Allahabad, merely on the basis of the application moved by the Respondent No. 3 and, as such, it is stated that the order is without jurisdiction.

6. In reply on behalf of the Respondent No. 3, it has been urged that, actually, the City Magistrate is exercising the power conferred on him u/s 57-A of the U.P. Muslim Waqfs Act, 1960, and, consequently, the order is a valid order in the eye of law.

7. Section 57-A(1) of the U.P. Muslim Waqfs Act, 1960 reads as under:

57-A(1) If the Board is satisfied after making an inquiry in such manner as may be prescribed that any person is in unauthorised occupation of any immovable property entered as property of a waqf in the Register of Waqfs maintained u/s 30, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

8. It is clear from Section 57-A that it is only when the Board after due inquiry finds that the person is an unauthorised occupant of any Immovable property entered as property of a waqf in the Register of Waqfs that it is authorised to send a requisition to the Collector to obtain possession from the unauthorised occupant. In the instant case, there is no order of the Board neither any requisition has been filed to show that the Collector was asked to obtain possession from the unauthorised occupant. The City Magistrate has acted merely on the application of the Respondent No. 3, who is said to be a Mutwalli of the mosque. The City Magistrate could not have acted merely on the application of the Respondent No. 3 u/s 57-A of the Act. It can act only when a requisition is sent by the Board after the Board has made due inquiry, as required under the Act. In the circumstances, the impugned order dated 8th May, 1981, is wholly without jurisdiction.

9. In the result, the petition succeeds and is allowed. The order dated 8th May, 1981, is quashed. Parties are directed to bear their own costs.