

(1965) 11 AHC CK 0008
In the Allahabad High Court
Case No : Second Appeal No. 1342 of 1357

Musaraf Ali Beg

APPELLANT

Vs

Jagdish Prasad and Another

RESPONDENT

Date of Decision : 05-11-1965

Acts Referred:

Citation : (1967) 37 AWR 159

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.C.P. Tripathi, J.—This is Plaintiff's appeal.

2. The Plaintiff instituted a suit for possession and for issue of a permanent injunction restraining the Defendants from making any construction or otherwise interfering with the Plaintiff's title and possession over the land in suit on the assertion that the land was appurtenant to Waqf property situate in Mohalla Singi Gali of the city of Agra, that the Plaintiff was the Mutwalli of the Waqf and and that the alleged deed of lease on the basis of which the Defendant was asserting his right to the property was illegal, hence the suit.

3. The Defendants contested the suit inter alia on the assertion that the property in suit pertained to a public Waqf of religious and charitable character governed by the provisions of UP Muslim Waqf Act, 1936, that the Plaintiff was not a validly and legally appointed Mutwalli and had no right to maintain the suit, that the Defendant Jagdish Prasad had been granted a lease of the property by the Central Shia Waqf Board, Lucknow, on payment of a premium of Rs. 1,500/- and monthly rent of Rs. 15/- and that he was a bonafide lessee of the land and had invested a large sum over the constructions and was not liable to ejectment.

4. The trial court held that the Waqf to which the land in suit pertained was a private Waqf to which the provisions of Muslim Waqfs Act, 1936, did not apply, that the Shia Board had no right to grant any lease for a long term to the

Defendant and that the possession of the Defendant on the land was that of a trespasser. He therefore, decreed the suit.

5. On appeal the learned Civil Judge, Agra, held that the Waqf in question was a public Waqf to which the provisions of UP Muslim Waqfs Act, 1936, applied, that the Central Shia Board under the Act had a right to grant lease of the land to the Defendant No. 1, that the aforesaid lease was valid and that the Plaintiff was not a Mutwalli of the Waqf and had no right to bring the suit. He, therefore, reversed the decree of the trial court and dismissed the Plaintiff's suit. This appeal is directed against the decree of the lower appellate court.

6. Learned Counsel for the Appellant contends that as the property of the Waqf was notified for the first time on 23-1-1954, in accordance with the provisions of UP Muslim Waqfs Act the lease given by the Shia Board long before the notification was invalid, that the Waqf was a private character to which the provisions of the Muslim Waqfs Act did not apply and that the lease granted by the Board being for a period of more than three years was wholly invalid under the Mahomedan Law and as such the Plaintiff who was one of the descendants of the original Waqf, even if not held to be a validly appointed Mutwalli had a right to ask for possession of the land against the Defendant. There is no substance in these arguments.

7. Section 2 of the U.P. Muslim Waqfs Act, 1936, provided that it shall" apply to all Waqfs, whether created before or after this Act comes into force, any part of the property of which is situate in the Uttar Pradesh.

Sub-section (2) of Section 2 of the Act, however, says that this Act shall not apply to--

(i) a waqf created by a deed, if any, under the terms, of which not less than 75 per cent of the total income after deduction of land revenue and cesses payable to the State Government of the property covered by the deed of waqf if any, is for the time being payable for the benefit of the waqif or his descendants or any member of his family;

(ii) a waqf created solely for either of the following purposes:

(a) the maintenance and support of any person other than the waqif or his descendants or any member of his family,

(b) the celebration of religious ceremonies connected with the death anniversaries of the waqif or of any member of his family or any of his ancestors,

(c) the maintenance of private imambara?, tombs and graveyards, or

(d) the maintenance and support of the waqif or for payment of his debts, when the waqif is a Hanafi Musalman.

8. Section 2 of the Act came into force immediately after its enactment. Therefore the fact that the notification was published in 1954 will have no effect

on the applicability of the provisions of the Act to the waqf in question provided it; is not of that character which has been excepted in Sub-section (2) of Section 2 of the Act. The terms of the waqf deed do not indicate that it was of a private character and that the properties subjected to the waqf were confined only to the use of the members of the family of the waqif. The properties dedicated are a grove, a bungalow, a mosque and a graveyard along with other buildings and land. One of the injunctions contained in the deed of waqf for the Mutwalli was that he will encourage inhabitation in the grove. All this shows that the waqf was not of a private nature and the intention of the Waqif was that the properties under the Waqf shall be utilised for carrying out the object of the waqf in the interest of Muslim community as a whole. There can be no doubt therefore that the provisions of the Muslim Waqfs Act would apply to this Waqf.

9. At the time when the lease was granted in favour of Defendant No. 1 by the Central Shia Board there was no validly appointed Matwalli inasmuch as the District Judge had no jurisdiction under the Act to appoint the Plaintiff as Mutwalli. The Central Shia Board, therefore in exercise of its power of general superintendence u/s 18 of the Act could do all things reasonable and necessary to ensure that endowments under its superintendence were properly maintained, controlled and administered for the purposes for which they were founded and as there was no Mutwalli at the time it could validly execute the lease Lit question in favour of the Defendant on reasonable terms. The terms of the tease are quite reasonable and the Defendant No. 1 had paid a handsome premium for obtaining the land. I am, therefore, satisfied that the terms of the lease are such which cannot be termed as unconscionable and are in the interest of the property of the Waqf.

10. It is true that the lease has been granted for -a period of 30 years. It is also true that under the Mahomedan Law a Mutwalli has no power to grant lease of waqf property, if it be agricultural, for a term exceeding three year"s and of non-agricultural for a term exceeding one year unless he has been expressly authorised by the deed of Waqf to do so or Unless he has obtained the leave of the court to do so which can be granted even if the founder has expressly prohibited a lease for a longer terms. In this case we find that it was the intention of the Waqif that the grove land which is situate within the municipal limits be turned into a inhabited area. That intention could be fulfilled only if suitable parcels of land were given to the intending lessees on reasonable terms for constructing buildings for residential purposes. That is what the Board had done by granting the lease in question to Defendant No, 1. It is, therefore, clear that the lease for a period of 30 years has been granted by the Board in exercise of its right to management of the Waqf properties and for fulfilling the intention of die Waqif to encourage inhabitation Oh the grove land.

11. The lessee has obtained the lease from a public body constituted under the provisions of the Act on terms which are beneficial to the Waqf. He has put on constructions oh the land and as the lease is valid in law he has a Tight to be in

possession thereon.

12. Accordingly in agreement with the findings of the lower appellate court I hold that this appeal has no force and must be dismissed.

13. The appeal is dismissed with Costs.