
(2013) 03 DEL CK 0239

In the Delhi High Court

Case No : Writ Petition (C) 1834 of 2013

Muslim Welfare Organisation

APPELLANT

Vs

Delhi WAKF Board and Another

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Waqf Act, 1995 — Section 32(1), 54, 55

Citation : (2013) 03 DEL CK 0239

Hon'ble Judges : D. Murugesan, C.J.;V.K. Jain, J

Bench : Division Bench

Advocate : Satya Pal, for the Appellant; Anjum Javed, for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

1. The grievance of the petitioner is that Wakf land measuring 2.5 acre situated at Basti Khawaja Meerdard Shakoor Ki Dandhi, Minto Road, New Delhi has been encroached by various persons and despite representations made by it, no action is being taken by the respondents for removal of the aforesaid encroachment from the Wakf land. The petitioner has placed on record a copy of the information supplied to it by Wakf Board under RTI Act. The information shows that there are more than 500 families residing at the above referred Wakf property. Out of those, 249 families are paying damage to Delhi Wakf Board whereas 16 persons are paying rent to it. 350 families are started to be in unauthorized occupation of the said land.

2. Section 32(1) of the Wakf Act, 1995, inter alia, provides that it shall be the duty of the Wakf Board to ensure that the wakfs under its superintendence are properly maintained controlled and administered. For this purposes, various powers have been conferred upon the Board under the said Section. Section 54 of the said Act provides that whenever the Chief Executive Officer considers, on receipt of any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf

property and, which has been registered as such under the Act, he shall serve a notice upon the encroacher, specifying the particulars of such encroachment and calling upon him to show cause as to why an order requiring him to remove the encroachment be not made. After considering the objections, if any, received by him and conduct such an inquiry as may be prescribed in this regard, the Chief Executive Officer, if satisfied that the property in question is a wakf property and that there has been an encroachment on it, may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

3. Section 55 of the said Act provides that where the person, ordered under sub-section (3) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within such time specified in the order or fails to vacate the land, building, space or other property to which the order relates, within the time stipulated in the said order, the Chief Executive Officer of the Board may apply to the Sub-divisional Magistrate within the local limits of whose jurisdiction the aforesaid Wakf property is situated, for evicting the encroacher. If such a step is taken by the Chief Executive Officer, the concerned Sub-Divisional Magistrate is required to make an order directing the encroachers to remove the encroachment or as the case may be vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli. If there is default in compliance of the order of SDM, he can himself remove the encroachment or evict the encroachers from the land, building, space or other property, as the case may be. For this purpose, he is entitled to take such police assistance as may be necessary. Since there are large number of encroachments on Wakf land, as disclosed in the information provided to the petitioner under RTI Act, we dispose of this petition with the following directions:

a. The respondent no. 1 shall take steps in accordance with law, particularly the provisions of the Wakf Act, in respect of all encroachments on Wakf land, within a period of three months from the receipt of copy of this order.

b. We further direct that if respondent no. 2, Sub-divisional Magistrate (Paharganj) is approached by the Chief Executive Officer of Delhi Wakf Board u/s 55 of the Wakf Act, he shall forthwith take action on such application of the Delhi Wakf Board in accordance with the provisions contained in Section 55 of the Wakf Act.

If so required, respondent no. 1 shall also be entitled to police aid in terms of Section 55 of Wakf Act.

We make it clear that while implementing this order, the respondents shall follow due process of law including giving an opportunity of hearing to the alleged encroachers.