
(2016) 10 UK CK 0009

In the Uttarakhand High Court

Case No : Impleadment Appl. No. 10443 of 2016 and Misc. Appl. No. 10444 of 2016 in Writ Petition No. 2726 of 2016 (M/S)

Nadeem Miyan Khan

APPELLANT

Vs

Uttarakhand Waqf Board

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Citation : (2017) 172 AIC 450 : (2016) 119 ALR 865

Hon'ble Judges : V.K. Bist, J.

Bench : Single Bench

Advocate : Dharmendra Barthwal, Advocate, for the Respondent No. 1; Pankaj Miglani, Advocate, for the Petitioner; Ganesh Kandpal, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

V.K. Bist, J. - Impleadment application is allowed.

2. Let necessary impleadment be incorporated during the course of the day by way of filing amended memo of parties.

3. Present petition has been filed by the petitioner seeking following reliefs:-

"1. To summon the complete record pertaining to the case.

2. To issue the writ, order or direction in the nature of certiorari quashing the impugned notification dated 27.09.2016 (Annexure 13 to the present writ petition) qua the name of respondent no. 2 as Mutwali of Waqf property no. 79 mentioned at serial no. 35 and,

3. To issue the writ, order or direction in the nature of mandamus directing respondent no.1 to include the name of the petitioner as Mutwali of Waqf Property no. 79 and permit him to caste his vote in the forthcoming election programmed to be conducted by respondent no. 1 and/or"

4. The facts relevant to the controversy of the present petition are that on 12.05.2016 Election Officer/Additional Secretary, Minority Welfare Department, Government of Uttarakhand issued a notification (published in New Delhi Edition of Times of India) in which tentative voter list of Mutwalies of 13 Waqf properties whose collection of offerings was above 1.00 lakh was published. By this notification objections were invited within 15 days. Thereafter on 27.09.2016 subsequent notification is issued by respondent no.1 wherein it stated that after the publication of notification dated 12.05.2016 and after considering the written complaints as well as after giving opportunity of personal hearing, the final voter list of the Mutwalies of the Waqf properties having collection over ` 1.00 lakh is being published. By the said notification election of one member of Waqf Board has been declared in the following manner:

(i) 03.10.2016-filing of nomination paper and security

(ii) 04.10.2016-withdrawl of nomination

(iii) 05.10.2016- Election

5. The learned counsel for the petitioner is putting challenge to the notification by raising following submissions:

It is the contention of learned counsel for the petitioner that respondent no. 1 has acted in arbitrary and whimsical manner by issuing the impugned notification without caring to look into its own record. It is the contention of learned counsel for the petitioner that the notification dated 12.05.2016 which has been mentioned at clause no. 1 was published in New Delhi Edition dated 18.05.2016 of Times of India wherein Mutwalies of only 13 waqf properties were mentioned and it was the date during which the order dated 17.03.2016 issued by Sub-Divisional Magistrate directing the property of Waqf to be handed over to respondent no. 2 was continuing to be stayed by this Court in WPMS No.728 of 2016, which was finally quashed vide its order dated 10.06.2016, hence at any rate the Mutwali of Waqf Property No. 79 was and is still the petitioner being its Secretary, thus the impugned notification declaring the name of respondent no. 2 as Mutwali of Waqf property no. 79 in the final voter list is not only wrong but baseless and also contemptuous. He contended that name of Mutwali of Waqf No. 79 was not mentioned in the said tentative voter list dated 12.05.2016 and hence no objection was ever invited nor any personal hearing was offered by respondent no. 1 and without any basis or foundation, respondent no. 1 has issued notification dated 27.09.2016 as such the same deserves to be quashed on the that score alone. He contended that the impugned notification/order has apparently been passed by respondent no.1 in connivance with respondent no. 2 and same deserves to be quashed. He contended that since the civil consequences flows out of the impugned notification/order and the petitioner being aggrieved by the same has never been afforded any opportunity of hearing by respondent no. 1. He also contended that the prestigious rights of the petitioner being an Elected Mutwali of Waqf property no. 79 have been hampered

by not including his name and in place of Mutwali of Waqf Property No. 79, the name of respondent no. 2 has wrongly been included, therefore, same is violative of Article 14 & 21 of the Constitution of India.

6. I have considered the submission of the learned counsel for the petitioner. The petitioner has challenged the notification dated 27.09.2016 by which final list of Mutwalies has been published, election has been declared and election schedule has been published. Nomination papers have already been filed by the candidates on 03.10.2016. In such circumstances, petition filed by the petitioner for cancellation of election schedule cannot be entertained. Same is dismissed. However, it will be open to the petitioner to seek appropriate remedy before the appropriate forum after election is over.

7. Let a certified copy of this order be supplied to the counsel for the parties within 24 hours.