
(2002) 09 AHC CK 0137

In the Allahabad High Court

Case No : Writ Petition No. 3400 (M.B.) of 2000

Najma Khatoon

APPELLANT

Vs

U.P.Sunni Central Board of Waqf & Ors.

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 83

Citation : (2002) 09 AHC CK 0137

Hon'ble Judges : M.Katju, J and G.K.Gupta, J

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. In our opinion the petitioner has an alternative remedy of approaching the Waqf Tribunal constituted under Section 83 of Waqf Act, 1995. The petition is dismissed on the ground of availability of alternative remedy. However, if the petitioner approaches the Waqf Tribunal within three weeks from today his application will be entertained without raising any objection of limitation and shall be disposed of expeditiously in accordance with law after hearing the parties concerned.

3. Learned counsel for the petitioner submitted that the dispute in this writ petition cannot be adjudicated upon by the Tribunal under the Waqf Act because no order has been passed under the Waqf Act. In our opinion the scope of Section 83 is very wide. Section 83 (1) states that the Tribunal can adjudicate any dispute, question or other matter relating to a Waqf or Waqf property under this Act. The words "any dispute, question or other matter relating to Waqf or Waqf Property" are very wide words and hence in our opinion all matters relating to a Waqf or Waqf property can be adjudicated upon by the Tribunal constituted under Section 83 of the Waqf Act, 1995. We do not agree that the Tribunal will only get jurisdiction when an order is passed under the Waqf Act. The words "under this Act" in Section 83(1) refer to Waqfs or Waqf property covered by

Section 3(r) of the Act and they do not relate only an orders passed under the Act. The Waqf Act, 1995 is a comprehensive enactment dealing with Waqfs, as mentioned in para 5 of its Statement of Objects and Reasons. Para 6(1) of the Statement of Objects and Reasons states that the Waqf Tribunal will consider questions and disputes pertaining to Waqfs.

4. A Waqf is defined in Section 3(r) of the Act as follows:

“(1) “Waqf” means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes

(i) a waqf by user but such waqf shall not cease to be a waqf by reason only if the user having ceased irrespective of the period of such cessor;

(ii) “grant”, including mashrutulkhidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a waqfalalaulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,

and “waqf” means any person making such dedication.”

5. In our opinion a purposive interpretation must be given to Section 83 of the Waqf Act 1995. As Lord Denning has pointed out in his book, "the Discipline of Law" in modern times the literal rule has been replaced by the purposive rule, that is the rule of seeking the intention of the Legislature. This is also the view of our Supreme Court and High Courts vide Directorate of Enforcement v. Deepak Mahajan 1994(3) SCC 440, Hindustan Lever Ltd v. Ashok Vishnu Kate; 1995 (6) JT 625 (631), Udai Shanker Singh v. Branch Manager LIC; 1998 (33) AIR 302, Administrator, Municipal Corporation v. Dattatraya Dahankar (1992) 1 SCC 361, etc.

6. In Administrator, Municipal Corporation v. Dattatraya Dahankar (supra), the Supreme Court observed, “the mechanical approach to construction is altogether out of step with the modern positive approach. The modern positive approach is to have a purposeful construction that is to effectuate the object and purpose of the Act.” Similarly, in Director of Enforcement v. Deepak Mahajan (supra), the Supreme Court observed, “In given circumstances, it is permissible for Courts to have functional approach and look into the legislative intention and sometimes it may be given necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.”

7. It is well settled that now the Courts often adopt purposive interpretation for interpreting statutes, and in our opinion this approach should be adopted in interpreting Section 83 of the Waqf Act, 1995.

8. Hence once there is a waqf as defined in Section 3(r) any matter, dispute or question pertaining to it is cognizable by the Waqf Tribunal.

9. In our opinion all matters relating to waqf or waqf property are now to go before the Tribunal as the Parliament in its wisdom has constituted the Waqf Tribunal as an alternative remedy in this connection and has laid down detailed provisions about it in Chapter VIII of the Act. It is settled law that where alternative remedy is available ordinarily a writ petition should not be entertained.

10. We may also mention that in view of Section 83(5) of the Waqf Act, 1995, a Waqf Tribunal has got all powers of the Civil Court in the C.P.C., and hence in our opinion it has the power of passing interlocutory orders during the pendency of proceedings before the Tribunal.

11. It may also be stated that even when there is allegation of violation of natural justice or of lack of jurisdiction, ordinarily the petitioner should be relegated to the alternative remedy before the Waqf Tribunal. No doubt it has been held in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* AIR 1969 SC 556, and in some other decisions that alternative remedy is no bar to a writ petition where there is violation of natural justice or lack of jurisdiction, but in our opinion these decisions do not lay down any absolute proposition that a writ petition can never be dismissed on the ground of alternative remedy whenever there is allegation of violation of natural justice or lack of jurisdiction. It is settled law that writ jurisdiction is discretionary jurisdiction vide *Addl. Collector of Custom v. Shantilal*, AIR 1966 SC 197, and hence alternative remedy is not an absolute bar to the exercise of jurisdiction vide *Union of India v. T.R. Verma* AIR 1957 SC 882; *Veluswami Thevar v. Raja Nainar*, AIR 1959 SC 422; *Municipal Council v. Kamal Kumar*, AIR 1965 SC 1321; *Awadh Bihari v. State of Bihar*, 1995(6) SCC 31 etc. In our opinion the allegation of violation of natural justice or lack of jurisdiction is only one of the circumstances which the High Court may take into consideration while deciding whether to relegate the petitioner to his alternative remedy or not, but it is not the only circumstance which is to be taken into consideration. Ultimately it is the discretion of the High Court to entertain the writ petition or dismiss it on the ground of alternative remedy before the Tribunal even if there is allegation of violation of natural justice or lack of jurisdiction. Ordinarily all writ petitions should be dismissed if an alternative remedy is available and only in exceptional circumstances should they be entertained. This is particularly necessary now when there are hearing errors in this Court.

12. We further held that in view of the proviso to Section 112(3) of the Waqf Act, 1995 any order passed or any action taken under the U.P. Muslim Waqf Act, 1960 can be challenged before the Waqf Tribunal constituted under Section 83 of the 1995 enactment.

13. The writ petition is dismissed on the ground of alternative remedy. Interim order if any is vacated.