
(2011) 03 AHC CK 0421

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26958 of 2008

Sahdev Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Waqf Act, 1954 — Section 51, 51(1), 52, 52(1), 52(2)

Citation : (2011) 4 ADJ 597 : (2012) 4 AWC 5287 : (2011) 8 RCR(Civil) 3128 : (2011) 113 RD 387

Hon'ble Judges : D.S.R. Varma, J; Abhinava Upadhya, J

Bench : Division Bench

Judgement

1. Heard Sri Brij Raj Singh, learned Counsel for the Petitioner, learned Standing Counsel for the State-Respondents and Sri L.R. Khan, learned Counsel for the contesting Respondent.

2. The relief sought in this writ petition is a writ, order or direction in the nature of certiorari quashing the order dated 7.2.2007 (contained in Annexure-7) passed by Respondent No. 2 and notice dated 11.1.2008 (Annexure-8) issued by Respondent No. 3 u/s 52 of the Waqf Act, 1955 (for short, the Act), and also a direction to the Respondents not to dispossess the Petitioner from plot No. 939, situate in village Kusmara, tehsil Bhogaon, district Mainpuri.

3. It is the contention of the learned Counsel for the Petitioner that the Waqf Board has issued a notice purported to have been issued under Sub-section (1) of Section 51 of the Act, contending that the property belongs to the waqf and, consequently, the second Respondent (Chairman, U.P. Sunni Central Waqf Board, Lucknow) passed an order under Sub-section (2) of Section 52 of the Act. The net result of these proceedings was to the effect that the Petitioner would be dispossessed from the property in dispute and the property would be declared to be a waqf property.

4. In order to substantiate his contention, learned Counsel for the Petitioner

brings to the notice of this Court that earlier a suit was filed by one Smt. Qadir Baksh, being OS. No. 30 of 73 (hereinafter, the suit), in the Court of Munsif, Mainpuri, for a relief of permanent injunction against the Defendants therein. However, the said suit was dismissed. Learned Counsel for the Petitioner contends that by virtue of the judgment and decree passed in the said suit the property in dispute does not belong to the waqf at all, and, therefore, the possession of the Petitioner has to be protected.

5. It is his further contention that the revenue records also show that certain entries have been made in favour of the Petitioner by mutating his name as owner of the said property. Therefore, learned Counsel submits that the Petitioner has been in possession and enjoyment of the property and the decision in the aforesaid suit, coupled with the entries in the revenue records, only show that he is the owner of the disputed property and the Waqf Board cannot in any manner have any right to take the disputed property.

6. There are other facts that have been brought to the notice of this Court, but we cannot look into all those factual aspects and the related materials and place reliance on the various facts inasmuch as this Court is not a fact finding Court.

A conspicuous aspect that has to be noticed from the record is that the judgment, which is being heavily relied upon by the Petitioner, does not bind the Petitioner nor the Waqf Board as they were not parties in that suit;. Therefore, it is always open for the Petitioner as also the Waqf Board to make claim regarding the disputed property.

7. Needless to state that under Sub-section (4) of Section 52, an appeal is provided for anybody claiming any right over the property contending that the same does not belong to the Waqf Board and, therefore, is not a waqf property; so also, the Waqf Board can make a claim that the disputed property belongs to the Waqf Board and not to any private individual(s). Therefore, for all purposes, any disputes that have been referred to in the statute have to be raised before and dealt with by the Tribunal constituted u/s 83 of the Act. Furthermore, a suit is barred under the Act. Therefore, the only effective remedy under the Act is to approach the Tribunal for redress of any grievance against or on behalf of the Waqf Board relating to the property that is in dispute.

8. Further, since the Waqf Board is not a party to the suit proceedings in the aforesaid suit, that does not bind it and, therefore, it has every right to make such a claim u/s 52 of the Act. Upon such action being contemplated or initiated, it is always open for the contesting parties to approach the Tribunal by way of an appeal under Sub-section (4) of Section 52 of the Act.

9. No amount of information provided to this Court be of any help as this Court cannot go into the factual aspects and also in view of the Tribunal constituted under the Act for the purpose of resolving the disputes regarding any property between the Waqf Board, on the one hand, and the private individuals, on the other.

10. However, the stage of approaching the Tribunal under the Act has not as yet arrived, as from the impugned orders, what could be seen is that the Waqf Board and Respondent Nos. 2 and 3 have only stated that proceeding be initiated under Sub-section (2) of Section 52 of the Act by the District Magistrate, who is the competent authority. At this juncture it has to be noticed that the impugned order and the notice that have been challenged have been stayed by this Court by an interim order. Therefore, as a corollary to it, no orders could be passed by the District Magistrate under Sub-section (2) of Section 52 of the Act, and, so long as the proceedings under Sub-section (2) of Section 52 of the Act are not initiated, the cause of action to file an appeal before the Waqf Board by the Petitioner does not arise. Apparently, it is rather premature.

11. The net result as of today is that it is only the orders of the Waqf Board and the Chairman thereof (Respondent Nos. 2 and 3, respectively) and the consequent order of delivery of possession has yet to be passed by the first Respondent (District Magistrate); and, till such an order is passed by the first Respondent, an opportunity of filing an appeal under Sub-section (4) of Section 52 is not available to the Petitioner nor the Petitioner can be dispossessed from the property in dispute.

12. It is further noticed that an enquiry about its property is contemplated under Sub-section (1) of Section 52 before any order is passed by the Waqf Board, and, thereafter an appropriate order under Sub-section (2) has to be passed by the Waqf Board basing on the findings of such an enquiry.

13. From the perusal for the record placed before us, particularly from the impugned order dated 7.2.2007 (contained in Annexure-7), it appears that a direction was given to expunge the name of the Petitioner from the revenue records; but from the said order we could not perceive that an enquiry was in fact made by the Waqf Board and an opportunity had ever been given to the Petitioner before arriving at such a conclusion and issuing the direction to expunge the name of the Petitioner from the revenue records. This tantamounts violation of principles of natural justice and arbitrary exercise of power by the Waqf Board.

14. Therefore, we are of the considered view that the impugned orders dated 7.2.2007 (contained in Annexure-7) and 11.1.2008 contained in Annexure-8) are to be treated only as a show-cause notices to the Petitioner; as a result whereof, the Petitioner would be entitled to offer an explanation to the above orders in detail alongwith the relevant material available with him and it would be incumbent upon the Waqf Board to consider all the facts and circumstances as put forth by the Petitioner and, thereafter, the Waqf Board may pass a final order on merits, not being influenced by any reasons assigned in the impugned orders aforesaid. It is made clear that Waqf Board shall in this proceeding give an opportunity, besides the Petitioner, to any other interested parties, particularly the contesting Respondent in this petition.

15. Further, it is clarified that if for any reason any adverse order is passed, the parties shall thereafter be entitled to file an appeal as enunciated under Sub-section (4) of Section 52 within the prescribed period as provided under the Act.

16. Subject to the above observations and directions, the writ petition is disposed of. There shall be no orders as to costs.

17. Learned Counsel for the Petitioner shall file a copy of this order before the Waqf Board and the District Magistrate concerned within 4 weeks from the date a copy of this order is available to him, whereafter the Waqf Board shall proceed with the matter in accordance with law.