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**(2011) 12 AHC CK 0047**  
**In the Allahabad High Court**  
**Case No : Misc. Bench No. 631 of 2011**

Sayed Habib Ali Khan

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 12-12-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A

Waqf Act, 1995 — Section 3, 83(1), 83(5), 83(9), 84

**Citation :** (2011) 12 AHC CK 0047

**Hon'ble Judges :** S.C. Chaurasia, J;Devi Prasad Singh, J

**Bench :** Division Bench

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## Judgement

1. Heard Shri Akhilesh Kalra, learned counsel for the petitioner and Shri Ratnesh Chandra, learned counsel for the opposite parties and perused the record.

2. A preliminary objection has been raised by Shri Ratnesh Chandra that the petitioner may file objection against the impugned order passed by the Board in view of law settled by the Hon'ble Supreme Court in the case reported in 2010 AIOL 805 Board of Wakf West Bengal vs. Anil Fatma Begum & another. He submits that the property in question is wakf property and the Board has got ample power to decide the dispute between the parties and pass injunction. Further submission is that in case the petitioner has any grievance, he may approach the Tribunal.

3. On the other hand, Shri Akhilesh Kalra submits that the property in question falls within the category of wakf al-al-aulad, hence the Board lacks jurisdiction.

4. However, the judgment relied upon by Shri Ratnesh Chandra decided by Hon'ble Supreme Court, prima facie, reveals that every dispute with regard to wakf property should be adjudicated by the Board or the Tribunal, as the case may be. Relevant portion of the said judgment is reproduced as under:

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters

relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word `Wakf` has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

15. u/s 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2A of the CPC to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property.

16. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83(1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83(2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if an order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Sections 83(1) and 84 indicates.

17. We may clarify that under the proviso to Section 83(9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. This provision makes it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a Wakf or Wakf property should first approach the Tribunal before approaching the High Court.

5. Prima facie, it appears that the order passed by the Board is not final one and option is open for the petitioner to represent his cause before the Tribunal and in case the Tribunal finds that the property in question is not a wakf property, it has got ample power to secure the rights of the petitioner. Thus, the argument advanced by the learned counsel for the respondents that the petitioner has remedy of filing a petition before the Tribunal to ventilate his grievance there, carries weight.

6. In view of above, we dispose of the writ petition with liberty to the petitioner to approach the Tribunal keeping in view the judgment (supra). In case any

application is moved by the petitioner, the same shall be adjudicated by the Tribunal after affording opportunity of hearing to the parties, expeditiously say, within a period of two months from the date of filing of such application along with present order.

7. Subject to above, the writ petition stands disposed of.