

(2017) 04 AHC CK 0206
In the Allahabad High Court
Case No : 578 of 2012

Shahen Shah and others

APPELLANT

Vs

Civil Judge (S.D.), Sant Kabir Nagar and others

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Waqf Act, 1995](#), [Section 6](#), [Section 7](#), [Section 85](#), [Section 112\(3\)](#), [Section 83\(9\)](#) -
Uttar Pradesh Muslim Waqfs Act, 1960, — Section 33(2), Section 32, Section 31,
Section 33(1), Section 55(2), Section 63(5) -
[Uttar Pradesh Consolidation of Holdings Act, 1953](#), [Section 9A](#)

Citation : (2017) 04 AHC CK 0206

Hon'ble Judges : Sudhir Agarwal

Bench : Single Bench

Advocate : S.P. Shukla, M.H. Qadeer, M.Y. Khan

Judgement

1. Heard Sri S.P. Shukla, Advocate, for revisionist and Sri M.A. Qadeer, learned Senior Advocate, assisted by Sri M.Y. Khan, Advocate, for respondents.
2. This Revision under Section 83(9) of Waqf Act, 1995 (hereinafter referred to as "Central Act, 1995") has been filed assailing the judgment and order dated 13.08.2012 passed by Syed Sahanawaj Hasan, Civil Judge (Senior Division), Sant Kabir Nagar, answering Issues- 4 and 8 in negative holding that Reference in question is not barred by Section 33 (2) and 55 (2) of UP Muslim Waqf Act, 1960 (hereinafter referred to as "UP Act, 1960").
3. Dispute relates to plots no. 48, 79, 82, 108, 153, 160, 183, 187, 209, 212, situate in village Shahasraon Mafi, Tehsil Khalilabad, District Basti.
4. Revisionists claimed that aforesaid land is Bhumidhari of their ancestors and inherited by them in that very capacity. It has never been a Waqf property. In a survey conducted on 30.11.1937, District Waqf Commissioner found that village

Shahasraon Mafi in Tehsil Khalilabad was released as "Revenue Free Tenure", in perpetuity, infavour of ancestors of present owners and Maufi does not come within definition of "Waqf" as contained in Act XIII of 1986.

5. When village was under consolidation operation, objections were filed under Section 9-A of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "Act, 1953") by one Abdul Quadir Noori and 18 others, claiming that disputed property is Waqf property. Said objection was rejected by Consolidation Officer, Khalilabad, Basti (hereinafter referred to as "CO") vide order dated 25.04.1964, holding that property in dispute was not Waqf; land in question actually was donated by Nawab Shujaudaulah to Anwar Shah, a Faqir as "Rent Free Grant". In fact, entire Shahasraon Mafi was so given as Rent Free Grant to Anwar Shah. At no point of time it was held as "Waqf property" and none was ever appointed as "Mutawalli" in village on record. After enactment of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act, No. 1 of 1951) (hereinafter referred to as "Act, 1950"), entire land vested in State and resettled with cultivators in possession. CO also recorded a finding that even members of Managing Committee of Central Sunni Waqf Board, namely, Babullah Khan and Abdul Majid admitted cultivatory possession of Yusuf Shah, who has become tenant of disputed land under Act, 1950. Consequently, it also observed as under:

"Therefore, the land has become the personal property of Yusuf Shah despite whatever it would have been pre-abolition"

6. Abdul Quadir and others also instituted Original Suit No. 16 of 1962 in the Court of Civil Judge, Basti. It filed an application under Section 63(5) of UP Act, 1960, alleging that U.P. Sunni Central Waqf Board by order dated 09.08.1962, removed Yusuf Shah from Mutwalliship of Waqf Nawab Shujaudaulah No. 8, Basti of village Shahasraon Mafi and appointed plaintiffs-applicants and respondent-3 therein as Committee of Waqf Property, but despite demand Yusuf Shah is not delivering possession of waqf property, hence an award for delivery of possession of waqf property and charge of waqf property by Yusuf Shah to the applicants be passed under Section 63(5). Yusuf Shah contested the matter stating that he is Bhumidhar and owner of property and he said property is not "waqf".

7. Court formulated following issues:

"No.1. Whether the applicants are entitled in get possession over the properties on behalf of Waqf Board.

No.2. To what relief if any are the applicants entitled."

8. Issue-1 was answered against Abdul Quadir and others and in favour of Yusuf Shah and a finding was recorded that applicants-plaintiffs failed to prove that disputed property was "waqf" and, on the contrary, Yusuf Shah proved that he was Bhumidhar of suit land and owner in possession thereof. Issue-2, therefore, was also answered against plaintiffs-appellant and suit was dismissed vide order

dated 03.08.1967.

9. There was a further litigation in Original Suit No. 21 of 1962 filed by Yusuf Shah against Sunni Central Board of Waqf and Abdul Quadir and others, but the same stood abated vide order dated 03.08.1967, due to consolidation operations commenced in village during pendency thereof.

10. Revisionist moved an application under Section 31/32 of the UP Act, 1960 before U.P. Sunni Central Board of Waqf for making amendment of the entries in register of waqf relating to Waqf No.8, Basti, claiming that they are Bhumidhar of Plots No. 48, 79, 82, 108, 153, 154, 160, 183, 185, 187, 209, 212, situate in village Shahasraon Mafi, Tehsil Khalilabad, District Basti, and, therefore, Register of Waqf be amended accordingly. It was stated that Nawab Shujauddaulah issued three Firmans in 1181, 1183 and 1212 Hijari, donating entire village Shahasraon Mafi to Sri Anwar Shah as "Rent Free Grant" for the expenses of Dargaha Badiuddin Shah, which was situated in that village and for certain other purposes. Entire village was registered in the office of Waqf Board as Waqf under the Act XIII of 1936 and given Registration No.8, Basti and its Matawalli was Yusuf Shah. Subsequently he was removed and on 09.08.1962 a four members Committee with Abdul Quadir Noori as its President was constituted.

11. Again on 06.02.1992 Jumman Shah Khan, Advocate was appointed as Mutawalli of the Waqf. It is on his application District Magistrate/Collector, Basti was requested to enter the entire village in Revenue record as "Waqf" under the tauliat of Jumman Shah Khan. Revenue authorities made correction accordingly. Subsequently on the application filed by Revisionist, said order was recalled. Revisionist claimed that disputed plots are not part of "waqf" and hence should be excluded. Waqf Board considered the order dated 30.11.1937 of District Waqf Commissioner that village was released as Revenue Free Tenure in perpetuity; its income was not shown to be appropriated towards any other charitable purpose and it was not a Maufi within the definition of "Waqf", under Act, 1936. However, this order was disagreed by the District Waqf Commissioner and he treated the property as waqf and on the basis thereof in the Gazette dated 26.02.1944 it was registered as waqf. Thereafter, it also considered orders of CO dated 25.04.1964 and Civil Judge, Basti dated 03.08.1967. The Waqf Board took the view that since CO's order became final, Board has no authority not to follow the same. In these circumstances, it held as under:-

"In 1944 the entire village might have been waqf property, but after 1952 there has been a material change. The cultivators have acquired Bhumidhari rights and the land in their occupation is no longer waqf property" (emphasis added)

12. It observed that Waqf Register be modified in respect to the disputed property and Circle Inspector be directed to make spot enquiry to find out whether there is any other property in village concerned which is not a waqf property. Circle Inspector thereafter submitted reports on 12.07.1993 and 26.08.1993. The matter was considered by Waqf Board in the light of aforesaid

report. An attempt was made by Jumman Khan to re-agitate the issues regarding 13 plots, disputed in this revision. In this regard, Waqf Board held as under:

"Shri Jamman Khan has again argued vehemently that the 13 plots mentioned by Shri Shahanshah and others are waqfs property and that they should be continued to be entered in the Register of Waqfs accordingly. In support of his arguments he has relied on 1984 A.L.J. 1432. I do not think it is necessary to discuss the various points which he has raised in his arguments. I have already held in my order dated 9.6.1993 that the property in question is not waqf property. It is no longer available to reopen the matter and on this issue the Board has become functus officio."

13. Responded-3 filed an application dated 12.04.1994 as Reference under Section 33(1) and 55(2) of UP Act, 1960 before Civil Judge Basti, which was constituted as Tribunal under Section 70 of UP Act, 1960. An objection was raised that Reference having been filed after 90 days, it is barred by Section 33(2) and 55(2) of UP Act, 1960. Preliminary issues no. 4 and 8 were framed on this objection. However, said objection has been answered against revisionist by impugned judgment, hence this revision.

14. Besides others, this revision has been contested by respondents on the ground that UP Act, 1960 having been repealed by Central Act, 1995 with effect from 01.01.1996, therefore, revision is not maintainable.

15. First, we propose to discuss this question, whether repeal of UP Act, 1960 by Central, Act 1995 would render this revision not maintainable.

16. We find that this issue has been considered by this Court in U.P. Sunni Central Board of Waqf Vs. A.D.J. Court No. 3, Muzaffar Nagar and others 2015 (7) ADJ 460 and Board has referred Supreme Court's judgment in Sardar Khan and others Vs. Syed Najmul Hasan (Seth) and others 2007 (10) SCC 727 and another judgment of this Court in Managing Committee Waqf No. 93 through Secretary v. U.P. Sunni Central Board of Waqf and others (Civil Misc. Writ Petition No. 14321 of 2005) decided on 24.07.2014. Para 10 and 12, wherein aforesaid judgments have been referred to, are reproduced as under:

10. In Sardar Khan and others Vs. Syed Najmul Hasan (Seth) and others (2007) 10 SCC 727, this question had arisen and answered by Apex Court. Civil Suit No. 271 of 1976 (re-numbered as 29 of 1995) was filed by plaintiff in the Court of 6th Additional District and Sessions Judge, Jaipur which was dismissed on 23.01.1996. Plaintiff preferred an appeal in the High Court taking plea that by virtue of Section 85 of Central Act, 1995, Civil Court ceased to have any jurisdiction in the matter and the matter ought to have been transferred to Tribunal. It is said that the judgment given by Additional District and Sessions Judge, Jaipur was without jurisdiction. The plea found favour of a Single Judge of Rajasthan High Court, who relying upon an earlier decision of Rajasthan High Court in Syed Inamul Haq Shah Vs. State of Rajasthan AIR 2001 Raj. 19 allowed appeal and set aside the judgment of Trial Court. The Apex Court overruled the

decision of Rajasthan High Court in Syed Inamul Haq Shah Vs. State of Rajasthan (supra) and after considering Section 85 read with Sections 6 and 7 of Central Act, 1995 said in para 12, 13 and 14 as under:

"12. In exercise of power under Section 83 of the Act, the Wakf Tribunal was constituted on 23.2.1997. By virtue of sub-section (5) of Section 7, it clearly transpires that the Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of Section 6, before the commencement of this Act, i.e., if any suit has been instituted in any Civil Court prior to coming into force of The Wakf Act, 1995, then the Tribunal will have no jurisdiction to decide such matter and it will be continued and concluded as if Act has not come into force.

13. Now coming to the facts of the present case, it is an admitted fact that suit was filed on 19.12.1976 before Addl. District Judge, Jaipur and arguments were heard and judgment was received on 16.12.1995 and the judgment was delivered on 23.12.1996 against which the appeal was filed before the High Court on 1.3.1996. Therefore, from these facts it is clear that the suit was pending since 19.12.1976, i.e., prior to the commencement of the Act, i.e., 1.1.1996. Therefore, by virtue of sub-section (5) of Section 7, the Tribunal will have no jurisdiction to decide the suit or the appeal arising from that suit. In the present case, the appeal which was filed by the respondents (herein) arises out of the Judgment and decree passed by the Addl. District Judge, Jaipur on 23.1.1996 in a suit filed on 19.12.1976. Therefore, the appeal which was filed before the High Court against the judgment and decree passed on 23.1.1996 by the Addl. District Judge, Jaipur, will not be governed by this Act. By sub-section (5) of Section 7, a special provision has been made that on pending suit or proceeding or appeal or review or revision, the Act will not be applicable. In the case of Syed Inamul Hag Shah (supra), the learned Single Judge only considered the effect of Section 85 but did not examine the effect of sub-section (5) of Section 7 and, on the basis of section 85, it was held that all the proceedings which were pending before the Civil Court, the Civil Court will have no jurisdiction. With great respect, perhaps the attention of the learned Single Judge was not drawn to sub-section (5) of Section 7 which specifically provides an exception that this will not be applicable to the pending suits, appeals and revisions. It has purpose behind it that when Act was made prospective, how can it operate retrospectively, therefore, all pending matters were taken out from purview of this Act.

14. On a conjoint reading of sub-section (5) of Section 7 and Section 85, the result would be that the Act will not be applicable to the pending suits or proceedings or appeals or revisions which have commenced prior to 1.1.1996, i.e., coming into force of the Wakf Act, 1995. Therefore, the view taken by the learned Single Judge was not correct in the case of Syed Inamul Hag Shah (supra). Hence, in view of the above discussion, we are of the view that the

learned Single Judge has gone wrong in relying on the decision rendered by the Single Judge in the case of Syed Inamul Hag Shah (supra). Consequently, the impugned order passed by the learned Single Judge is set aside and the matter is remitted back to the High Court for deciding the appeal in accordance with law, expeditiously."

11. A similar question has also been considered by this Court (Myself) in Managing Committee Waqf No. 93 through Secretary Vs. U.P. Sunni Central Board of Waqf and others (Civil Misc. Writ Petition No. 14321 of 2005) decided on 24.07.2014 and in para 14, 15 and 16, this Court said as under:

"14. In Mohannakumaran Nair Vs. Vijayakumaran Nair (2007) 14 SCC 426, it has been held that the jurisdiction is required to be determined with reference to the date on which the suit is filed and not with reference to a future date.

15. The dispute relating to wakf is governed by Section 6 and 7 of Central Act, 1995 and in respect to pending proceedings, an otherwise view taken by High Court has been revered by Apex Court in Sardar Khan and others Vs. Syed Najmul Hasan (Seth) and others AIR 2007 SC 1447.

16. In the case in hand, the proceedings commenced in 1995 when Central Act, 1995 was not in operation. The appeal is continuance of original proceedings as held in Delip Vs. Mohd. Azizul Haq and another (2000) 3 SCC 607 wherein the Court said that appeal is continuance of hearing of suit. Therefore, in view of Section 85 read with 83 (1) of Section 7 (5), I am clearly of the opinion that appeal preferred by respondent no. 3 before District Judge under Section 49-B (4) of U.P. Act, 1960 was not illegal or invalid due to pretext of repealed statute vide proviso to Section 112 (3) of Central Act, 1995."

17. In view thereof, the objection raised by learned counsel for respondents is hereby rejected.

18. Now the question, "whether Reference was barred by limitation or not" is to be considered. As per Court below, period of limitation would commence from the order dated 31.03.1994 and not 09.06.1993. Court below has not considered order dated 09.06.1993 as a final order.

19. In my view, order dated 09.06.1993 cannot be said to be a final order for the reason that application was filed for amendment of entries in the Register of waqf. No such order was passed by Waqf Board. On 09.06.1993, Board passed order observing that disputed land is not a waqf property. However, it kept the matter pending and directed Circle Inspector to make spot inquiry and submit report. Thereafter matter was taken and decided on 31.03.1994 in which earlier finding was sought to be challenged, but Waqf Board found that there was no occasion to reopen the findings which have already been made. Ultimate order for making correction in the Waqf Register was passed on 31.03.1994, as is evident from para-6 of the said order, which reads as under:-

"6. In view of these discussions I order the deletion of the existing entries

relating to waqf no.8, Basti and order that the mosque and the Idgah reported by the Circle Inspector be registered as being waqf property. The boundaries and the dimensions of the mosque and the Idgah as given by the Circle Inspector be also recorded in the Register of waqfs. As regards the Karbala. The parties may give its plot number and boundary. Only then the question of its being recorded as waqf bill be considered."

20. In view thereof, I am clearly of the view that for the purpose of Sections 33(2) and 55(2) of UP Act, 1960, limitation would commence from 31.03.1994 and not from earlier order. In view thereof, order passed by Court below cannot be faulted as there is no jurisdictional error, or material irregularity or any otherwise illegality so as to justify interference in this revision.

21. The Revision lacks merits. Dismissed.

22. Certify this order to the Lower Court immediately.