(2012) 05 AHC CK 0322

In the Allahabad High Court

Case No : C.M.W.P. No. 26229 of 1992

Shahzad Ahmad Khan and others — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:
Mussalman Wakf Validating Act, 1913 — Section 2(1)

Citation : (2012) 5 AWC 4994

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Manish Goel, Fahad Iqbal, Puneet Kumar and Mahtab Alam, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Manish Goel, learned counsel for petitioner and learned standing counsel for State-respondents. It is not in dispute that Gate Nos. 442 and 456 were property relating to Wakf. It was a Wakf-alal-aulad and established/commenced on 7.4.1920.

2. Earlier appellate authority by order dated 24.8.1987 set aside Prescribed Authority''s order with clear instructions that the proportion of beneficiaries of Wakf has to be ascertained by Prescribed Authority and thereafter it shall decide the matter. The relevant observations read as under:

3. Pursuant thereto, Prescribed Authority passed order on 29.4.1988 again rejecting the objection with regard to shares in waqf property. The matter was taken in appeal by petitioner and the same was allowed on 28.2.1990 setting aside Prescribed Authority''s order dated 29.4.1988 and the matter was remanded with direction to comply the earlier appellate order. Again the Prescribed Authority passed the order dated 6.8.1991 observing that after shares of Waqf property stood distributed to the beneficiaries, and, more so after consolidation proceedings, Wakf, even if it was for quite sometime, came to an

end. The property stood transferred to the beneficiaries as their individual property, hence question of determination of share relating to Wakf property would not arise and need not be examined.

4. The said order was confirmed in appeal by order dated 16.7.1992 rejecting petitioner''s appeal.

5. The very basic premise of Prescribed Authority that the Wakf, after distribution of shares to the beneficiaries came to an end itself is patently illegal inasmuch it is well-settled that once a wakf, it is always a wakf. The property under wakf may reduce vis-a-vis the individuals managing the property but once a wakf is created, the nature of property will not change and it will continue to remain as Wakf.

6. A Special Bench of this Court in Sunni Central Board of Waqfs v. Sri Gopal Singh Visharad and others, 2010 ADJ 1 (SFB) (LB), in the judgment delivered by myself observed as under:

The creation of waqf was held valid and lawful by the Prophet Mohammad. It is said that this rule was laid down by Prophet himself and handed down in succession by Ibn Abu Nafe and Ibn Omar. Omar got piece of land in Khaiber whereupon he came to the Prophet and sought his counsel to make the most pious use of it. The Prophet said "if you like you may make a waqf of it, as it is, and bestow it in beneficiation". Omar thereupon bestowed it in charity on his relatives, the poor and slaves and in the path of God, and travellers in a way that the land itself might not be sold, nor conveyed by gift, nor inherited. It is said that waqf continued in existence for several century until the land became waste. (Para 1087)

(Emphasis added)

7. It is not in dispute that waqf in question in the case in hand is a waqf-alal-aulad and admittedly commenced on 7.4.1920. Accepting the claims of Muslims in India, Mussalman Waqf Validating Act, 1913 (hereinafter referred to as the "Act, 1913") was enacted to validate the waqf created for the benefit of the members of family, i.e., waqf-alal-aulad. This Act came into force on 7.3.1913. The preamble of Act, 1913 shows that it was enacted to declare the rights of Muslims to make settlements of property by way of waqf in favour of their family, children and descendents. The term "waqf was defined in Section 2(1) as under:

2...

(1) "Waqf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose, recognized by the Mussalman law as religious, pious or charitable.

(Emphasis added)

8. Taking into account the above definition of "Waqf" the Special Bench in Sunni Central Board of Waqfs (supra) in para 1102 of judgment observed as under:

...a waqf, therefore, is an unconditional and permanent dedication of property with implied detention in the ownership of God in such a manner that the property of the owner may be extinguished and its profit may revert to or be applied for the benefit of mankind except for purposes prohibited by Islam.

(Emphasis added)

9. The Special Bench further in Sunni Central Board of Waqfs (supra) in paras 1103-1104 of judgment noticed the distinction of Waqf from Sadaqah, Hiba and trust, as identified in Islamic Law-Personal by B.R. Verma first published in 1940 (6th Edition published in 1986) (reprinted in 1991 by M.H. Beg and S.K. Verma) (pages 630-631) as under:

10. In view of above, it is clear that once a waqf is created, its nature will not change until the property is waste. Since the very basic foundation on which the impugned order has been passed is incorrect and contrary to law, it is evident that authorities below have not considered the matter in the light of appellate authority''s remand order dated 24.8.1987 (Annexure-1 to writ petition).

11. In the result, writ petition is allowed. Orders dated 6.8.1991 and 16.7.1992 (Annexures-4 and 5 to writ petition) are set aside. The matter is remanded to Prescribed Authority to reconsider in the light of appellate order dated 24.8.1987 and observations made above and pass a fresh order after giving due opportunity to all concerned parties expeditiously but not later than three months from the date of production of certified copy of this order. Petitioner shall also be entitled to cost which I quantify to Rs. 5,000 (Rs. five thousand).

