

(1985) 09 AHC CK 0054

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1276 of 1977

Shia Central Board of Waqfs

APPELLANT

Vs

The District Judge and Another

RESPONDENT

Date of Decision : 04-09-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Muslim Waqfs Act, 1960 — Section 33, 49B(1), 49B(2), 49B(3), 49B(4)

Citation : (1985) AWC 948

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant; A.K. Yog, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India. The facts giving rise to the present petition are as follows:

2. There existed a registered waqf, namely, Waqf Husaini Sirai, Rampur. The property in dispute is a strip of land being part of a larger piece of land, which has been recorded in the register of waqf as the property of Waqf Husaini Sarai, Rampur. The Petitioner Shin Central Board of Waqf, U.P. Lucknow, issued a notice, which was received by the Respondent No. 2, Irshad Ali, on 21-11-1974 asking him to vacate the land, which was the property of the waqf. The Collector by an order dated 9-12-1974 asked Irshad AH to vacate the land as it was waqf property. After this notice was received from the Collector, Irshad Ali filed a Suit No. 40 of 1975 in the court of Munsif, Rampur, for a permanent injunction against the waqf Board alleging that the Board has no jurisdiction to deal with the property as it was the waqf property.

3. Before the Munsif, the Petitioner Board took an objection that the suit was not maintainable. A preliminary issue was framed in regard to the maintainability of the suit. The trial court did not agree with the Petitioner Board. Thereafter the

Board filed an Appeal No. 30 of 1976 in the court of District Judge. In the court of District Judge, "it was finally adjudicated upon that the civil court has no jurisdiction. Irshad Ali filed two proceedings against the order of the Collector, one was an appeal and the other was a reference to the fribunal under the provisions of U.P. Muslim Waqfs Act, 1960. Along with the appeal and the reference, Irshad Ali also filed an application for condonation of the delay. The District Judge by an order dated 20-1-1977 condoned the delay in moving the appeal as well as the reference and registered both the appeal and the reference. It is this order dated 20-1-1977, which has been challenged in the present petition. The Learned Counsel for the Petitioner has contended firstly that the District Judge wrongly condoned the delay in filing the appeal and the reference. The second submission of the Learned Counsel is that in any case no reference lies against the notice issued by the Collector and the reference is wholly without jurisdiction and the proceedings in the reference be quashed as two simultaneous proceedings against the same order are liable to create confusion and harassment to the Petitioner.

4. In my opinion so far as the first contention is concerned, it has no substance. The District Judge after considering the facts on the record came to the conclusion that sufficient cause has been made out for condonation of delay in filing appeal and the reference. This is clearly a finding of fact and as such, no interference is called for under Article 226 of the Constitution of India in this regard.

5. In regard to the second contention raised by the Learned Counsel, in my opinion this contention is welt founded. Admittedly the property in dispute is a part of larger property, which has been entered as property of the waqf in the register of waqfs. Section 57-A of the Act clearly provides that if the Board Is satisfied after making an inquiry that any person is in unauthorised occupation of any immovable property entered as property of waqf it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver the possession or the property to it.

6. Sub-clause (2) of Section 57-A further provides that provisions of Sub-sections 2, 3, 4, 5, 6 and 7 of Section 49-B shall mutatis mutandis apply in relation to a requisition under Sub-section (1) as they apply in relation to a requisition under Sub-section (1) of that section. In view of this provision, the provisions of Section 49-B Sub-clause (2) to Sub-clause (7) would clearly apply. After the receipt of a requisition of a Board, the Collector has to pass an order directing the person in possession to deliver the property to the Board. Sub-section (4) of Section 49-B of the Act is as follows:

Any person aggrieved by an order of the Collector under Sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the court of the District Judge within whose jurisdiction the property is situate.

7. In view of this provision, after the Collector issued a notice to Irshad Ali that he is in unauthorised possession of the property, he had a right to file an appeal before the District Judge.

8. In *Magan Nath Misra v. Syed Shakir Ali Abidi* 1985 ALJ 842 I had an occasion to interpret various sections of U.P. Muslim Waqfs Act, 1960. On an analysis to various provisions I had clearly recorded my opinion that in a case where a dispute is in regard to unauthorised occupation of a property of a waqf entered in the register of waqfs then the aggrieved person had a right of appeal.

9. Section 33 has also been considered by me in the case of *Magan Nath Misra* (Supra) and it has been held by me that Section 33 only applies to a case where the property has not been entered in a register of waqfs. The principal laid down in this case fully applies to the present case.

10. Since the property has been entered in the register of waqf the only remedy Irshad Ali has to file an appeal u/s 49-B Sub-clause (4) of the Act. He has no right to file a reference to a tribunal u/s 33 of the Act. In the circumstances, no reference lies to the tribunal and the entire proceedings in reference are wholly without jurisdiction.

11. The petition is accordingly allowed. The order of the District Judge dated 20-1-1977 is modified to the extent that the appeal shall be considered as having been filed within time, but the proceedings in reference filed by Irshad Ali shall be quashed. The appeal so filed by Irshad Ali shall be decided in accordance with law as expeditiously as possible since; the matter is pending for a sufficiently long time. The parties are directed to bear their own costs.