
(2006) 10 AHC CK 0066
In the Allahabad High Court

Smt. Neelam Manglani and Another	Vs	APPELLANT
Civil Judge (J.D.) and Another		RESPONDENT

Date of Decision : 06-10-2006

Acts Referred:

Uttar Pradesh Muslim Waqfs Act, 1960 — Section 80
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30(1)

Citation : (2007) 2 AWC 1601

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri R.B. Yadav, counsel for the petitioners, Sri Awadhesh Kumar Singh, counsel for the respondents and perused the record.

2. This petition has been filed for quashing the order dated 10.5.2005 passed by the Civil Judge (Junior Division), Gorakhpur. It appears from record that the father of the petitioner No. 2 had filed an application u/s 30(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") (paper No. 4-Ga) supported by an affidavit dated 2.12.2004 before the Civil Judge (Junior Division), Gorakhpur-respondent No. 1 for allowing him to make payment of rent which was due since March, 2003 till December, 2004. An extract of khatauni was also filed by the father of the petitioner No. 2 on 8.5.2005 to establish that the property in dispute is not a waqf property but is owned by the State Government.

3. Sri Habib Ahmad, Advocate who is said to be the Secretary of the Hamidia Educational Society Waqf No. 128, Post Office Sadar, district Gorakhpur filed objections supported by affidavit inter alia that the application was not maintainable u/s 30(1) of the Act and is barred by Section 85 of the U.P. Muslim Waqf Act No. 16 of 1960. It was also objected that the authority had no jurisdiction in the matter as the property was waqf property and beyond the

purview of the Act.

4. Civil Judge (Junior Division) Gorakhpur-respondent No. 1 rejected the application of father of the petitioner No. 2 vide impugned order dated 10.5.2005 holding that the disputed property is waqf property, therefore, provisions of the Act are not applicable.

5. Aggrieved, the petitioners have come up in this writ petition.

6. Counsel for the petitioners vehemently contended that the disputed property under their tenancy is not waqf property and the court below has committed an illegality and error apparent on the face of record in not allowing the application for payment of arrears of rent.

7. Counsel for the respondents has drawn the attention of the Court to Annexure-1 to the writ petition, which is copy of the application u/s 30(1) of the Act filed by the petitioners for permission to deposit rent for the building as per particulars furnished therein. Entry No. 7 of the aforesaid application pertains to the name and address of the landlord and the petitioners have disclosed against it that Sri Habib Ahmad Advocate as alleged Secretary of Hamidia Educational Society Waqf No. 128, Post Office Sadar, district Gorakhpur. The Entry No. 7 is as under:

7. The name Habib Ahmad, and address Advocate alleged of the alleged Secretary, Hamidia landlord Educational Society Waqf No. 128/Gorakhpur

8. From the aforesaid description against Clause 7, it is evident that the petitioners have alleged Sri Habib Ahmad, Advocate to be the alleged Secretary of Hamidia Educational Society Waqf, registered at Serial Number 128 in the Waqf Board u/s 30 of the U.P. Muslim Waqf Act No. 16 of 1960.

9. The court below considered the oral and documentary evidence submitted by the parties in detail as under:

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10. The Court after appraisal of evidence led by both the parties, held that:

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11. From the records and the arguments advanced by counsels for the parties, I am of the view that the lower appellate court has rightly held that the Court

cannot grant more relief than prayed for. In the application, the petitioners had prayed for permission to deposit rent from March, 2003 to December, 2004 and no relief has been prayed for permitting them to deposit rent after December, 2004 in the application. The rent for the period March, 2003 to December, 2004 has been deposited by the petitioners in Court on their own responsibility, as such, the application of the plaintiff (paper No. 4-Ga) has become infructuous. The petitioners have admitted the respondents as landlords. The property is waqf property which is apparent from the affidavit of the plaintiff (paper No. 27-Ga) and copy of the deed, as well as paper Nos. 17-Ga, 18-Ga, 19-Ga and 20-Ga and records of waqf property produced by it. The Court also found that there is no evidence, whatsoever, to the effect that the father of the petitioner No. 2 was ever a tenant and that provisions of the Act do not apply to waqf property and are barred by Section 2-B of the Act, hence the application filed by the petitioners u/s 30 of the Act is not maintainable and liable to be rejected.

12. In view of the above facts, as stated above that the petitioners themselves, in their application have stated the property to be a waqf property only alleging that respondent No. 2 is alleged Secretary of the aforesaid waqf, they cannot be permitted to claim that the property, in dispute, is owned by the State Government on the basis of entry in khatauni. There are other plots also mentioned in the Khatauni and as has been found by the court below the registered waqf property cannot be said to be State property as the name of waqf is also on the Khatauni shows a part of the land/building in the name of the registered waqf.

13. For the reasons stated above, I do not find any illegality or perversity in the order impugned calling for interference in the writ jurisdiction.

14. The writ petition is dismissed No order as to costs.