
(2017) 04 AHC CK 0182
In the Allahabad High Court
Case No : 2084 of 2017

Smt. Shakeela Khatoon

APPELLANT

Vs

Jangle Wali Masjid Waqf No. 277 And Another

RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

Waqf Act, 1995 — Section 6(5), 7, 36, 51, 52, 56, 83, 83(1), 85
Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2017) 04 AHC CK 0182

Hon'ble Judges : Siddhartha Varma

Bench : Single Bench

Advocate : Hari Bans Singh, Manish Tandon

Final Decision : Allowed

Judgement

1. When House No. 132/473 situated at Babu Purawa Kanpur, District Kanpur Nagar, was sold on 13.2.2007 to the petitioner by the respondent no. 2 then the respondent no. 1, Jangle Wali Masjid, filed a suit being Original Suit No. 3227 of 2009 for a declaration declaring that the sale deed dated 13.2.2007 was void. The petitioner filed an application under Order VII Rule 11 of the Code of Civil Procedure which was allowed by the Additional Civil Judge (S.D.), Court No. 2, Kanpur Nagar. However, the misc. appeal no. 17 of 2016 filed by the plaintiffrespondent no. 1 was allowed on 2.2.2017, against which order, the petitioner has filed the instant writ petition.

2. The sole question for consideration before this Court is as to whether the suit as was filed by the plaintiff was maintainable in the civil court.

3. For a proper appreciation of the controversy at hand, Sections, 51, 52, 83 and 85 would be relevant and so they are being reproduced here as under:- 51. Alienation of 1[waqf] property without sanction of Board to be void.-[(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is

effected with the prior sanction of the Board: Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013).

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that-

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.]

52. Recovery of [waqf] property transferred in contravention of section 51.-(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a [waqf] entered as such in the register of [waqf] maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51 [or section 56], it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served-

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served, is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under subsection (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

83. Constitution of Tribunals, etc.-[(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.]

(2) Any mutawalli person interested in a [waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the [waqf].

(3) Where any application made under sub-section (1) relates to any [waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the 2[waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the [waqf] or any other person interested in the [waqf] or the [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such [waqf] or [waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

[(4) Every Tribunal shall consist of-

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.]

[(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass

such other order as it may think fit.

85. Bar of jurisdiction of civil courts.- No suit or other legal proceeding shall lie in any [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any [waqf], [waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.

5. The admitted case of the plaintiff was that the property was one which had vested in a Waqf and so alienating it without the sanction of the Board would render the sale deed void. When such was the case then in the event of an illegal sale deed being executed the Board could have taken recourse to the procedure as was prescribed under Section 52 of the Waqf Act, 1995. Section 52 is the remedy which is available to the Board. A bare reading of Section 85 of the Act, makes it clear that no suit lay in a civil court.

6. Thus, when a whole machinery has been provided for getting a sale deed declared void in the Act itself and when the jurisdiction of the civil court is barred, no occasion arose for the appellate court to have found that the suit was maintainable. In 2010 SC AIR 2897 (Ramesh Gobindram(dead) through Lrs. Vs. Sugra Humayun Mirza Waqf wherein certain sections of the Waqf Act, 1995, came up for consideration it was held that the Tribunal, as was constituted under Section 83 of the Waqf Act, 1995, was not competent to adjudicate upon disputes regarding eviction of appellants who were occupying different accommodations which admittedly were waqf properties. In that case after dealing with all the provisions of the Act in paragraph 21 it was concluded that the exclusion of civil court was only for such matters which were required to be determined under the Act. Paragraph 21 is being reproduced here as under: 21. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a waqf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil

Court would stand excluded.

7. Sections 51 and 52 provide a whole machinery to nullify a particular sale deed. Under such circumstances, there cannot be even an iota of doubt that the Act provides for a detailed machinery for getting a sale deed declared void.

8. In view of what has been stated above, it can safely be said that the finding arrived at by the Additional District Judge, Kanpur Nagar, is erroneous in law. The civil court had no jurisdiction to entertain the suit. The writ petition is allowed, the order dated 2.2.2017 is set aside.