

**(2006) 10 AHC CK 0019**  
**In the Allahabad High Court**

S.Q. Ahmad Zaidi, through his Mukhtar-e-Aam, Shri  
Mohammad Husain Zaidi

APPELLANT

Vs

The District Judge, The Collector, The Controller, Shia Central  
Board of Waqfs and Shia Central Board of Waqfs

RESPONDENT

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**Date of Decision :** 19-10-2006

**Acts Referred:**

Uttar Pradesh Muslim Waqfs Act, 1960 — Section 49A, 57A

**Citation :** (2006) 10 AHC CK 0019

**Hon'ble Judges :** S.U. Khan, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.U. Khan, J.—At the time of arguments no one had appeared on behalf of respondents Waqf Board hence only the arguments of learned Counsel for petitioner were heard.

2. Petitioner purchased the agricultural property in dispute through registered sale deed dated 13.5.1971. After 12 years i.e. on 5.7.1983 Shia Central Board of Waqfs UP. - respondent No. 3 issued notice to the petitioner for his eviction from the property in dispute u/s 49-A of U.P. Muslim Waqf Act 1960 (since repealed by Wakf Act 1995). Petitioner filed objections before Waqf board. Thereafter through a detailed order Waqf board directed for issuance of requisition to Collector for taking possession. Collector u/s 49-B read with Section 57-A of U.P. Muslim Waqf Act 1960 in pursuance of the said requisition issued the consequent order of dispossession which was alleged to be served upon the petitioner through his attorney on 28.5.1984. Against the said order petitioner filed Misc. appeal No. 184 of 1984 before District Judge, Meerut u/s 49-B (4) read with Section 57-A of Waqf Act 1960.

3. Before the appellate court it was contended that petitioner was bonafide purchaser, after abolition of zamindari ownership of the waqf ceased to exist and occupants became sirdar/bhoomidhar from whom petitioner purchased the

property. The bar of Section 49 of Uttar Pradesh Consolidation of Holdings Act was also pleaded on the ground that the name of the waqf was never entered in the revenue record and consolidation proceeding had intervened. District Judge, Meerut through judgment and order dated 28.11.1984 allowed the appeal, set aside the order of dispossession passed by the Collector and remanded the matter to the Collector to hear and decide the pleas taken by the petitioner and pass fresh order thereafter.

4. This writ petition is directed against the said order dated 28.11.1984. Against the said order waqf board also filed writ petition being writ petition No. 3098 of 1985 which was dismissed in default on 1.7.2003.

5. Learned Counsel for the petitioner has argued that the points raised by the petitioner before appellate court should have been decided by it. In this regard reference has been made to Smt. Amina Khatoon v. IIIrd A.D.J., Farrukhabad 1987 A.L.J. 1282. The said authority supports the contention of the learned Counsel for the petitioner. Para-5 of the said authority is quoted below:

Further it is apparent from Sub-section (2) of Section 57-A that in substance the appeal that is provided to the aggrieved person is against the action of the Board in sending a requisition to the Collector to obtain and deliver possession of the property and not merely the action of the Collector in executing the requisition. Consequently, all questions legitimately arising in an appeal against the action of the Board including the question whether the occupation of the person proceeded against by the Board is lawful can be investigated in an appeal by the District Judge, Indeed there would be no point in providing for an appeal to the District Judge, which is a court of justice and law if the only intention were to confer a limited power on the appellate court to examine whether a requisition has in-fact been issued by the Board.

6. As far as Collector is concerned he is not required to hear and decide anything. Section 49-B(2) of the U.P. Act is quoted below:

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 30 days from the date of service of the order.

7. By virtue of this provision Collector is not authorized to decide anything.

8. Accordingly, writ petition is allowed. Impugned order is set aside. Matter is remanded to the District Judge to hear the appeal on merit and decide each and every point raised by the petitioner. As no one has appeared on behalf of Waqf board hence before proceedings further the appellate court shall issue notice to the Waqf board.