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**(1982) 07 AHC CK 0016**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 9713 of 1979

State of U.P. and Another

APPELLANT

Vs

Aftab Ahmad Khan and Another

RESPONDENT

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**Date of Decision :** 16-07-1982

**Acts Referred:**

Urban Land (Ceiling and Regulation) Act, 1976 — Section 8(1)

**Citation :** (1982) AWC 617

**Hon'ble Judges :** V.K. Khanna, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

V.K. Khanna, J.—The Competent Authority Aligarh under the Urban Land Ceiling Act (hereinafter referred to as "the Act") prepared a draft proposal u/s 8(1) of the Act proposing to declare an area of 1480.40 square meter as surplus land of the Respondent No. 1. The Respondent No. 1 filed objections to the aforesaid draft proposal. Besides other objections, one of the objections was to the effect that 6363 square metre of the area covered with building and appurtenant land was waqf property and Respondent No. 1 was not its owner but was only Mutawalli of the Waqf. It was also urged that the property was being used for charitable and religious purposes. The Prescribed Authority by his judgment dated 21-10-1978 rejected all the objections filed by the Respondent no 1. The Competent Authority after considering all the objections held that 1480.40 square metre of land belonging to Respondent No. 1 be declared surplus under the Act. Feeling aggrieved, the Respondent No. 1 filed an appeal before the District Judge. The aforesaid appeal was allowed and in the aforesaid appeal it was held that as far as 6363 square metre of area covered by building and appurtenant land is concerned, the same was waqf property which was being used for charitable and religious purposes. The appellate authority held that in view of the provisions of the Act, the aforesaid land was liable to be excluded in calculating the vacant land held by Respondent No. 1. In the present writ petition

the Petitioner State Government has challenged the aforesaid decision of the District Judge Aligarh on the ground that the finding recorded by the District Judge suffers from an error of law apparent on the face of the record inasmuch as the Prescribed Authority on the basis of the waqf-deed had recorded a finding that the property under the waqf was not being used for charitable and religious purposes and it was only waqf Alal Aulad. It has been argued that the learned District Judge has not at all referred to the recitals of the waqf-deed and has upset the finding recorded by the Prescribed Authority only on the basis that the statement made by the Respondent No. 1 remained unrebutted and that he was not cross-examined on behalf of the State. The learned Counsel appearing for the Respondent No. 1 has however urged that the finding recorded by the District Judge is a finding of fact and should not be interfered with in this writ petition.

2. From a perusal of the judgment of the Prescribed Authority it is clear that the Prescribed Authority had held on the basis of the perusal of the waqf-deed that in it, it was written that the waqf was Alal Aulad. If this is a fact, by no stretch of imagination the waqf could not be a property being used for charitable and religious purposes. The learned District Judge has not adverted at all to the documentary evidence which was most important for the purposes of deciding this issue. As the finding on the aforesaid question has been recorded by the District Judge without adverting to the most material documentary evidence, the finding cannot be sustained and is liable to be set aside.

3. For the reasons stated above the order of the District Judge Aligarh dated 1-9-1979 is quashed and he is directed to re-hear the appeal. It is being made clear that the appellate authority will decide the appeal afresh after hearing the parties on the points which they may raise before him; also allow the parties to lead evidence in case the appellate authority feels that it is necessary to allow fresh evidence to be led for the proper adjudication of the appeal.

4. For the reasons stated above the present writ petition is allowed and the order of the District Judge is quashed. However in the circumstances of the case, the parties shall bear their own costs.