(1981) 12 AHC CK 0034

In the Allahabad High Court

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

State of U.P. and Others — APPELLANT

Vs

Aftab Ahmad Khan and Others — RESPONDENT

Date of Decision : 23-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 19, 19(1), 19(2), 8, 8(3)

Citation : (1982) AWC 152

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : V.D. Singh, S.C, for the Appellant;

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings u/s 8 of the Urban Land (Ceiling and Regulation) Act regarding the excess vacant land held by Aftab Ahmad Khan. A large number of objections were preferred by the contesting opposite party u/s 8(3) of the said Act. The Competent Authority through its judgment dated 21--10-78 negatived the contention raised on behalf of the contesting opposite party and confirmed the draft statement and declared excess vacant land to the extent of 480-40 sq. meters. Against the judgment of the Competent Authority the contesting opposite party had preferred an appeal which was allowed by the appellate authority through its judgment dated 1-9-79. Against the judgment of the appellate authority the Petitioners have approached this Court under Article 226 of the Constitution.

2. The only point raised on behalf of the Petitioners before me that the appellate authority has misconstrued the provisions of section 19(1)(iv) of the Urban Land (Ceiling and Regulation) Act and has arrived at a patently erroneous conclusion without any evidence on record on the essential ingredients of the aforesaid section.

3. Section 19(1)(iv) of the above mentioned Act reads as below:

Subject to the provisions of Sub-section (2) nothing in this Chapter shall apply to any vacant land held by any public charitable or religious trust (including waqf) and required and used for any public charitable or religious purposes:

Provided that the exemption under this clause shall apply only so long as such land continues to be required and used for such purposes by such trust;

4. The Competent Authority did not accept the claim of the contesting opposite party regarding the waqf property as is evident from the discussions contained in paragraph 4 of the judgment of the Competent Authority. The Competent Authority has also referred to section 19(2) of the above Act which reads as below:

The provisions of Sub-section (1) shall not be construed as granting any exemption in favour of any person, other than an authority institution or organisation specified in Sub-section (1), who possesses any vacant land which is owned by such authority, institution or organisation or who owns any vacant land which is in the possession of such authority, institution or organisation.

5. The Appellate Authority while dealing with the claim of the contesting opposite party regarding waqf properly has observed as below:

As regards 6363 sq. meters of area coveted with building and appurtenant land it is waqf property according to the statement of Appellant. Sri Aftab Ahmad Khan testified that he is Mulwalli of the waqf. This property was being used for charitable and religious purposes. He is not owner of this property. It is significant to note that this statement of Appellant stands unrebutted and uncross-examined on behalf of the State and finds material support from the document dated 1-2-75 which is certified copy of a registered instrument appointing Appellant as Mulwalli of the waqf. This document was executed by Smt. Shaukat Musharraf Jahan Begum who was entitled to do so, under the waqf deed dated 22-8-41 executed by her late husband Mohd. Musharraf Ali Khan. It does not appeal to common sense that this document was executed on 1-2-75 to create evidence in favour of the Appellant for being us d in October, 1978. According to Section 19 of Act XXXIII of 1976 this entire area is liable to exemption as the property is being used for public, charitable and religious trust. The finding of learned Competent Authority that the property is not being used as waqf property or for any public, charitable and religious trust is unsustainable when it is not based on any evidence on record, there was absolutely 110 occasion on the part of learned Competent Authority 10 have disbelieved the sworn testimony of Appellant under the circumstances mentioned above.

6. Later on the appellate authority also observed in the last: but one paragraph above the order as below:

...So learned Competent Authority was not justified in amalgamating both these properties held by Appellant in different capacities.

7. The learned Counsel for the Petitioners has invited my attention to Annexure

''3'' attached with the writ petition which is statement of Sri Aftab Ahmad Khan opposite party No. 1 in the present writ petition. It has been stressed before me that according to Section 19(1)(iv) of the above Act it was:necessary for the contesting opposite party to have led evidence to prove that the income of the disputed property was used for public charitable or religious purposes, but no such evidence has been led in the case. According to proviso of section 19(1)(iv) of the above Act exemption could be had only so long as the land continues to be required and used for such purposes by such trust.

8. The Competent Authority had indicated in paragraph 4 of its judgment that the disputed land was not used for any religious or charitable purpose. The appellate court has recorded a contrary finding and the basis of the finding is the testimony of the Appellant, but the perusal of Annexure ''3'' attached with the writ petition does not indicate that Sri Aftab Ahmad Khan had deposed regarding the use of the disputed property for religious or charitable purpose.

9. To my mind the appellate authority has misread and misappreciated the Annexure ''3'' attached with the writ petition and it has wrongly observed that according to the sworn testimony of the Appellant it was established that the disputed land was used for religious and charitable purposes.

10. It is also noteworthy that the Competent Authority did not exempt the properly subject matter of waqf on the ground that the contesting opposite party was not entitled to the same under the provisions of Section 19(2) of the above Act. The appellate authority has failed to address itself to this aspect of the matter, hence its judgment suffers from patent error of law and deserve to be quashed. The judgment of the appellate authority being judgment of reversal it was necessary on the part of the appellate authority to have examined the provisions of section 19(2) of the above Act which was referred to by the Competent Authority while negativing the claim of the contesting opposite party regarding the property, subject matter of the waqf.

11. Since the case is going back to the appellate authority for re-examination of the claim of the contesting opposite party, it. would be necessary to ask the appellate authority to examine the question whether the property, subject matter of the waqf, was really held by the contesting opposite party Aftab Ahmad Khan within the meaning of the provisions of section 8 of the above Act or the aforesaid property was held by any public charitable or religious waqf as contemplated by the provisions of section 19 of the Act. In the present case the appellate authority has observed that the property, subject matter of waqf, was held by the contesting opposite party Aftab Ahmad Khan in different capacities, but in the statement (Annexure ''3'' attached with the writ petition) he has denied that he was owner of that properly rather he claimed right only as a Mutwalli. In this view of the matter it is necessary for the appellate court to record a categorical finding as to who held the property and whether the aforesaid property can be treated as the property of the contesting opposite party while determining his excess vacant land.

12. In view of the above discussion the present writ petition succeeds and is alloved, and the appellate authority is directed 10 re--cxamine the claim of the contesting opposite party in the light of the observations made above. Parties are directed to bear their own costs.

