

(2003) 09 AHC CK 0103
In the Allahabad High Court
Case No : Civil Revision No. 187 of 2003

U.P. Sunni Central Board of Waqf

APPELLANT

Vs

Shakil Ahmad and Another

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Waqf Act, 1995 — Section 83(5), 83(9)

Citation : (2004) 2 AWC 1768

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : Syed Husain, for the Appellant; Hari Om Singh, for the Respondent

Judgement

N.K. Mehrotra, J.—This is a civil revision u/s 83(9) of the Waqf Act, 1995 against the order dated 18.7.2002 passed by the Civil Judge (Senior Division), Lakhimpur Kheri in Civil Appeal No. 1 of 2002.

2. Heard the learned counsel for the revisionist and the learned counsel for the opposite parties.

3. The opposite party No. 1 was the Mutawalli of the Waqf Mst. Azeeman Hajjan No. 11, Lakhimpur Kheri. Several complaints were received against the opposite party No. 1 Muttawalli after making necessary inquiry as provided under the aforesaid Act. The Waqf Board passed order of removal of opposite party No. 1 Mutawalli u/s 27 of the Waqf Act on 15.6.2002. The opposite party No. 1 filed a Civil Appeal No. 1/2002 u/s 64(4) of the Waqf Act, 1995 before the Waqf Tribunal, i.e., the Civil Judge (Senior Division), Lakhimpur Kheri against the order dated 15.6.2002. The Waqf Tribunal stayed the operation of the order dated 15.6.2002 passed by the revisionist vide impugned order dated 18.7.2002 and the temporary injunction granted by the Waqf Tribunal is being extended from time to time. The instant Revision has been filed against this order of the Tribunal, by which the Tribunal after exercising his power under Order XXXIX, Rules 1 and 2, C.P.C. has issued a temporary injunction during the pendency of

the appeal.

4. The main contention of the learned counsel for the revisionist is that the Waqf Tribunal has no jurisdiction to issue ad interim injunction after exercising the power under Order XXXIX, Rules 1 and 2, C.P.C. He has argued that no suit as provided u/s 54(4) of the Waqf Act is pending before the Civil Judge. It is an appeal u/s 64(4) of the Waqf Act and in accordance with the provision u/s 83(5) of Waqf Tribunal (Civil Judge) had no jurisdiction to pass impugned order by exercising all the powers given under CPC for deciding the suit.

5. The learned counsel for the opposite party has argued on the strength of the various provisions under the Waqf Act and the cases decided earlier by this Court that the Waqf Tribunal had all the powers of the civil court given under C.P.C.

6. I may refer here the relevant provisions of the Waqf Act, 1995. Section 83(9) is relevant which is as follows :

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

Provided that the High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine 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."

7. For the maintainability of the revision u/s 83(9), there must be an impugned order, by which any dispute, question or other matter has been determined by the Tribunal. I find that by the impugned order, the dispute between the Mutawalli and the Waqf Board has not been determined.

8. The contention of the learned counsel for the revisionist is that since the Mutawalli opposite party No. 1 had filed an appeal before the Waqf Tribunal u/s 64, Waqf Tribunal had no jurisdiction to issue ad interim injunction because all the powers under the C.P.C. have not been given to the Tribunal. I find no force in this contention. I may quote Section 83(5) of the Waqf Act which is as follows :

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

9. The aforesaid provision makes it clear that the Tribunal possesses all the powers of a civil court under the CPC while trying a suit. It is not disputed that at the time of deciding the suit the civil court has the power to issue ad interim injunction under Order XXXIX, Rules 1 and 2, C.P.C. Therefore, the Tribunal can exercise all the power of a civil court given under the Code of Civil Procedure. In *Nazma Khatoon v. U. P. Sunni Central Board of Waqf* 2003 (1) LCD 266 a Division Bench of this Court held that in terms of Section 83(5) of the Waqf Act, 1955,

the Waqf Tribunal has all powers of civil court in the C.P.C.

10. The learned counsel for the revisionist has pointed out that the removal order is pending for implementation since 1996 and it cannot be made because of the order of this Court in earlier writ petition. Mutawalli opposite party No. 1 is continuing even after the charges have been proved. After keeping in view these facts narrated in the Memo of the Revision, I find that this is a case in which the direction should be issued to the Waqf Tribunal to dispose of pending appeal expeditiously.

11. In view of the above, the revision is dismissed with direction to the Waqf Tribunal Civil Judge (Senior Division), Lakhimpur Kheri to hear and dispose of the pending Appeal No. 2002, Shakeel Ahmad v. Sunni Central Board of Waqf, expeditiously, say within a period of two months from the date of copy of this order is received.