
(2006) 07 AHC CK 0073
In the Allahabad High Court

U.P. Sunni Central Waqf Board

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Waqf Act, 1995 — Section 112

Citation : (2007) 1 AWC 440 : (2006) 2 RD 434

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of present writ petition, the petitioner has challenged the order dated 29.4.2003, passed by the Vth Additional District Judge, Shahjahanpur in Misc. Case No. 5 of 2002, Sunni Central Waqf Board v. Harsh Dev Gupta rejecting the application u/s 151 of C.P.C. filed by Sunni Central Waqf Board for recalling the order dated 16.5.2000, passed by the Additional District Judge, Shahjahanpur in Civil Misc. Appeal No. 61 of 1992, Harsh Dev Gupta v. Sunni Central Waqf Board, Lucknow.

2. The brief facts of the case giving rise to the present petition are that the respondent No. 3 filed a Civil Misc. Appeal No. 61 of 1992 against the order/notice dated 23.6.1992, issued by the Controller, U. P. Sunni Central Waqf Board, Lucknow, directing the Collector, Shahjahanpur to evict the respondent No. 3 from the land in dispute and in pursuance thereof, notice issued by the Collector. The appeal was filed on the ground that the land in dispute Nos. 1625A to 1268A measuring 3 acre 36 dismal, which is situated within the Municipal area of Shahjahanpur was not the property of Sunni Central Waqf Board, Lucknow. It is stated that Smt. Munni and her husband Wasi were the sirdar and after the death of Wasi, their heirs on the deposit of ten times became bhumidhari. Thereafter, they have sold the land in dispute vide sale deed which was

registered and in this way, they have become the owner of the land in dispute. It was submitted that merely because the said property was mentioned in torn page of a register of Sunni Central Waqf Board, it cannot be said to be the property of Sunni Central Waqf Board, Lucknow. It was submitted that the Controller, Sunni Central Waqf Board, Lucknow, has illegally initiated an ex parte proceeding against them for their eviction from the property in dispute while they were not the owners of such property.

3. The Additional District Judge, Shahjahanpur vide order dated 16.5.2000, allowed the Appeal No. 61 of 1992. It appears that the appeal had been decided without hearing the petitioner on the ground that on the date fixed, counsel for the petitioner could not appear. It appears that before the Additional District Judge, Shahjahanpur two Appeals Nos. 60 of 1992, Shyam Prakash and Anr. v. U.P. Sunni Central Waqf Board, Lucknow and 61 of 1992, Harsh Dev Gupta v, U. P. Sunni Central Waqf Board, Lucknow were filed. In the present petition, we are only concerned with Appeal No. 61 of 1992, Harsh Dev Gupta v. U. P. Sunni Central Waqf Board, Lucknow.

4. The Additional District Judge, Shahjahanpur held that the revenue record was produced, in which, khatauni 1378-/fasli to 1380-/fasli, Wasi son of Maikoo name was mentioned as sirdar. In 1370 fasli 1625A and 1628A, his name was shown as sirdar. No record has been produced to show that the land in dispute belong to Sunni Central Waqf Board. It has been held that after the death of Wasi, his son Itwari, Ram Bharosay and Om Prakash have deposited ten times and obtained right of bhumfdhart. It is also observed that in respect of the said property, Sri Ali Husain and another filed a suit for eviction of Smt. Munni and Wasi. The said suit was decreed, but in Appeal No. 71 of 1968, the Additional Commissioner, allowed the appeal vide order dated 17.8.1970 and Smt. Munni and Wasi were found in possession of the land in dispute. It has been held that the order of the Additional Commissioner dated 17.8.1970 had become final, in which, land in dispute was found in possession of Smt. Munni and Wasi and it has not been accepted that the land in dispute was the property of Waqf. It has been further held that U. P. Muslim Waqf Act, 1960 was not applicable to the non-Muslim. It has been held that since in the order/notice dated 23.6.1992, issued by the Controller, order of the Additional Commissioner has not been considered, hence, the order dated 23.6.1992 is illegal and is liable to be set aside.

5. The petitioner thereafter, moved a Misc. Application No. 5 of 2002 u/s 151 of C.P.C. alongwith an application u/s 5 of Limitation Act for recalling the judgment passed in Misc. Civil Appeal No. 61 of 1992, Harsh Dev Gupta v. U. P. Sunni Central Waqf Board, Lucknow, mainly on the ground that u/s 49B (5) of the U. P. Muslim Waqf Act, 1960, against the notice issued u/s 49B (2), by the Collector an appeal could be filed before the District Judge having jurisdiction within thirty days, but Harsh Dev Gupta had filed an appeal against the order of the Waqf Board and by misrepresentation, got the appeal No. 61 of 1992 decided. The District Judge, Shahjahanpur had only jurisdiction to decide the said appeal,

thus, the order passed as a result of misrepresentation and fraud, should be recalled. Secondly that by Section 112(3) of the Waqf Act, 1995, if there was any law of similar nature in existence in a State, the same shall be deemed to be repealed and it amounts that the U. P. Muslim Waqf Act was not enforceable and hence, the appeal filed against the order u/s 49B of U. P. Muslim Waqf Act, 1960 was not maintainable and thus, the order dated 26.5.2000 was without jurisdiction.

6. The Vth Additional District Judge, Shahjahanpur held that the Appeal No. 61 of 1992, Harsh Dev Gupta v. U.P. Sunni Central Waqf Board, Lucknow, was filed against the requisition notice sent by Collector issued in pursuance of the order dated 23.6.1992 issued by U. P. Muslim Waqf Board, Lucknow. In appeal, requisition notice issued by the Collector was challenged which was issued in pursuance of notice/order of U. P. Sunni Central Waqf Board, received by Sri Harsh Dev Gupta on 15.12.1992. The appeal was filed on 22.12.1992 u/s 57A read with Section 49B (4) of the Act. Under Sections 49B (4) and 57A, an appeal lies before the District Judge against the requisition order/notice issued by the Collector. It has been held that from perusal of memo of appeal filed against the notice issued by the Collector u/s 49B (5), it is wrong to say that the appeal was filed against the requisition issued by the Collector but had been filed against the order of U. P. Sunni Central Waqf Board. u/s 49B, the District Judge either himself could hear the appeal or transfer to any other Court of Additional District Judge. Thus, the allegation that the Court had no jurisdiction to decide the appeal, is not correct. It has been further held that the appeal was decided on merit and Sri Harsh Dev Gupta being non-Muslim, the provisions of Muslim Waqf Act was not applicable and hence, the order dated 16.5.2000, passed in Appeal No. 61 of 1992 was neither an order, without jurisdiction nor had been obtained by fraud or misrepresentation and there is no illegality in the order. It has been further held that u/s 112(3) of the Waqf Act, 1995, it did not make any effect of the operation of previous law and hence, the appeal filed in 1992, cannot be said to be without jurisdiction. The Court has further held that the order was passed without hearing the Waqf Board, cannot be considered on an application u/s 151 of C.P.C., inasmuch as, the appeal had been decided on merit.

7. Heard Sri M. A. Qadeer, learned Counsel for the petitioner and Sri Narendra Mohan, learned Counsel for the respondent No. 3.

8. Learned Counsel for the petitioner submitted that u/s 49B (4) read with Section 57A of the Act, appeal was maintainable only against the notice/requisition issued by the Collector and no appeal was maintainable against the order of the Controller, U. P. Sunni Central Waqf Board, Lucknow, while the Additional District Judge, Shahjahanpur vide its order dated 16.5.2000 set aside the order of the Controller, U. P. Sunni Central Waqf Board, Lucknow and also set aside the requisition notice issued by the Collector. He submitted that after the commencement of the Waqf Act, 1995, in view of Section 112, of 1995 of U. P. Sunni Waqf Act, 1960, which is corresponding to the Waqf Act, 1995, has been

repealed and u/s 52 (4) which is corresponding to Section 49B (4), appeal lies to the Tribunal within the jurisdiction where the property is situated and u/s 54 (4) against the order of Chief Executive Officer, suit can be instituted in a Tribunal, therefore, appeal decided by the Additional District Judge after the commencement of Waqf Act, 1995 was without jurisdiction and was liable to be quashed. Sri Narendra Mohan, learned Counsel for the respondent No. 3 submitted that the appeal was filed against the requisition notice issued by the Collector which was issued in pursuance of the order passed by the Controller, therefore, both the requisition notice as well as the orders were challenged which have been set aside. Thus, it is wrong to say that the appeal was not maintainable. He further submitted that the Controller of Board had passed the order on 23.6.1992 and requisition notice was also issued in 1992, inasmuch as, the appeal was filed in 1992 prior to commencement of Waqf Act, 1995, thus, the Additional District Judge had a Jurisdiction to decide the appeal filed in the year 1992. He submitted that the order in appeal had not been obtained by any fraud or misrepresentation and it has been rightly held so. He further submitted that the respondent No. 3 is the owner of the property by virtue of sale deed and being non-Muslim, Waqf Act is not applicable upon him, thus, the order passed by the Controller and the requisition/notice was patently without jurisdiction. In support of his contention, he relied upon the decision of this Court in the case of Chedda Singh and Ors. v. Additional Civil Judge, Moradabad and Ors. 1996 AWC 189. He submitted that merely because property in dispute was mentioned in the register of Board is not sufficient to establish right and title of Board. He submitted that no evidence had been adduced to prove that the property in dispute belonged to the Board. He submitted that the Additional Commissioner in its order dated 17.8.1970 in Appeal No. 71 of 1968 filed by Smt. Munni and Wasi against Ali Hussain and others, held that the property is in possession of Smt. Munni and Wasi. In that case, suit was filed by one Ali Husain on the ground that the property was the waqf property and Smt. Munni and Wasi may be dispossessed. The said suit was decreed, but subsequently, order in suit was set aside in Appeal No. 71 of 1968 which had become final. Thus, on the facts and circumstances of the case, this Court may not interfere under Article 226 of the Constitution of India.

9. Having heard learned Counsel for the parties and perused the impugned orders and record. There is no dispute that the respondent No. 3 by virtue of sale deed became the owner of the property in dispute. The respondent No. 3 being non-Muslim, the provisions of U. P. Muslim Waqf Act, 1960 was not applicable as held by this Court in the case of Chedda Singh and Ors. v. Additional Civil Judge, Moradabad and Ors.

10. On consideration of decisions of Apex Court, this Court held as follows:

I hold that the provisions of the Waqfs Act was not applicable to the petitioners, who are admittedly Hindus, who were claiming right, title and interest in the suit properties and accordingly, Section 57A of the Act was illegally invoked,

proceedings were illegally commenced and the orders passed therein on all are without jurisdiction and void and not binding upon the petitioners.

11. The Rajasthan High Court, after considering different provisions of the Waqfs Act, 1954, the judgment of which was under challenge in appeal before the Supreme Court in the case of Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, , relied upon by Mr. Verma had observed as follows:

The very object of the Waqfs Act is to be provide for better administration and supervision of Waqfs and the Board had been given powers of superintendence over all waqfs which vest in the board. This provision seems to have been made in order to avoid prolongation of triangular disputes between the Waqfs Board, the mutwalli and a person interested in the waqf who would be a person of the same community. It could never have been the intention of the Legislature to cast a cloud on the right, title or interest of persons who are not Muslims. That is, if a person who is non-Muslim whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denominations and if he is in possession of a certain property, his right, title and interest cannot be put in jeopardy simply because that property is included in the list published under Sub-section (2) of Section 5.

12. In Afzal Husain Vs. Ist Addl. District Judge and Others, relied upon by the petitioners, this Court noticed the aforementioned judgment of the Supreme Court and observed as follows:

In the Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, , their Lordships of the Supreme Court were dealing with the effect of registration under the Waqfs Act of 1954 which had been extended to the State of Rajasthan. Under that Act also, the procedure for identification and registration of waqfs was very much similar to the procedure prescribed under the U. P. Muslim Waqfs Act of 1960. In this case, title was claimed by a Hindu to a property which had been identified and registered as wakf property. Their Lordships held that the said identification and registration was not binding on a non-Muslim but so far as Muslims were concerned the said identification and registration was final and binding. In the present case, the petitioner is also a Muslim and that too a Shia Muslim and he is, therefore, debarred from challenging the title of the waqf to the property in dispute in view of the registration u/s 29 and entry of the property in the register of waqfs maintained u/s 30 of the Act.

13. In the present case, the court below has categorically held that the order had not been obtained by fraud or misrepresentation. It has further held that the appeal was maintainable, thus, it was not without jurisdiction. I do not find any error in the view taken by the court below. Merely because, the property is mentioned in the register maintained by the Registrar of Board, is not sufficient for claim of ownership and possession. Apart from the entry in the register, some other documents was to be adduced to ratify the claim. In the present case, no documents have been adduced by the Board to prove the ownership as held by

the court below which had not been disputed.

14. The argument of learned Counsel for the petitioner that since U. P. Sunni Waqf Act, 1960, has been repealed and under the new Act u/s 52 (4) appeal was provided before the Tribunal and u/s 54 (4) of the Act against the order of the Chief Executive Officer, suit could be filed and thus, appeal decided by the Additional District Judge after the commencement of Waqf Act, 1995, was without jurisdiction, has no force.

15. In the instant cases, there was a simultaneous repeal and the re-enactment of the Act and Waqf Act, 1995, clearly saves the earlier provisions in toto. Section 112 of the Waqf Act, 1995 reads as follows:

112. Repeal and savings.- (1) The Waqf Act, 1954 (29 of 1954) and the Waqf Amendment Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, Immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act, that corresponding law shall stand repealed:

Provided that such appeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

16. A similar situation arose before the Hon'ble Apex Court in the case of Gammon India Ltd. Vs. Spl. Chief Secretary and Others,

17. In that case, Andhra Pradesh General Sales Tax Act, 1957, was repealed by Andhra Pradesh Value Added Tax Act, 2005. However. Section 80 of the Andhra Pradesh Value Added Tax Act, 2005, clearly saves the earlier provisions. Saving clause was identical to Section 112 of Waqf Act, 1995. Apex Court held as follows:

In the instant case, there is a simultaneous repeal and the re-enactment and the A. P. V.A.T. Act clearly saves the earlier provisions in toto. Consequently, rights and liabilities accrued or incurred under the A. P. G.S.T, Act shall continue even after it is repealed.

On critical analysis and " scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the

provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the re-enacted enactment and the mere absence of the saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of there-enacted enactment has to be inferred and gathered whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.

On the touchstone of the principles of law culled out from the judgments of various courts applied to the facts of these cases lead to a definite conclusion that the Assistant Commissioner (Commercial Taxes), Warangal Division was fully Justified in initiating and completing the proceedings under the A. P. G.S.T. Act even after it Is repealed.

18. Having regard to the entire facts and circumstances and reasons stated above, I decline to invoke extraordinary jurisdiction under Article 226 of the Constitution of India.

19. In the result, writ petition fails, and is, accordingly, dismissed.