

(2001) 03 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6875 of 2001

U.P.Shia Central Wakfs Board,Lucknow and Ors.

APPELLANT

Vs

Prescribed Authority,Moradabad & Ors.

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1)(g), 21(1)(a)
Waqf Act, 1995 — Section 90

Citation : (2001) 03 AHC CK 0084

Hon'ble Judges : O.P.Garg, J

Final Decision : Allowed

Judgement

O. P. Garg, J.—The dispute relates to a portion of Kothi Meharban Ali situate in Mohalla Mughalpura Lakariwalan, Moradabad, which is admittedly in occupation of Smt. Hadi Begum respondent No. 3. Smt. Zafar Jahan Begum claiming herself to be the landlady filed an application for release of the tenanted accommodation against the respondent No. 3 under Section 21 (1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. XIII of 1972) (hereinafter referred to as "the Act") which has been registered as P. A. Case No. 6 of 1992, pending before the Prescribed Authority respondent No. 1. During the pendency of the release petition, earlier Hidayat Ali Khan, presently Petitioner No. 3 filed an application for his impleadment as Mutwalli of Waqf Vilayati Begum. This application was rejected by order dated 4th September, 1998. Subsequently, another application was moved by Hidayat Ali Khan, Petitioner No. 3 with the prayer that Shia Central Waqfs Board be impleaded as a party to the release petition. The application has been rejected by impugned order dated 22/12/2001 by the respondent No. 1 on the ground that earlier similar application has been rejected on 4/9/1998 and consequently the second application for the same prayer, which has been disallowed, cannot be maintained. It is in these circumstances that the U.P. Shia Central Waqfs Board and two others have approached this

Court under Article 226 of the Constitution of India to quash the orders dated 49 1998 and 2212001, copies of which are Annexures 8 and 1 respectively to the writ petition. It is also prayed that the respondent No. 1 be commanded notto proceed with P.A. CaseNo. 6 of 1972 Smt. Zafar Jahan Begum v. Hadi Begum. A supplementary affidavit has been filed.

2. Heard Sri V.M. Zaidi, learned counsel for the petitioners and Sri M.A. Qadeer appearing on behalf of the respondent No. 2 land lady.

3. Sri Zaidi, learned counsel for the petitioners urged that since the disputed property belongs to the registered Waqf Vilayati Begum No. 2383, the respondent No. 2 cannot maintain an application for release under Section 21 of the Act and, in any case, the said proceedings cannot go on without impleading the Waqf Vilayati Begum and its Mutwalli Hidayat Ali Knan as well as U.P. Shia Central Waqf Board. Sri Qadeer repelled the said submission on the ground that in proceedings under Section 21 of the Act, the relationship of landlord and tenant in between respondent Nos. 2 and 3 is to be determined and if the Waqf Vilayati Begum has any right in the disputed property, it can get it established by means of an independent proceeding. It was also urged that Srnt. Vilayati Begum who had created in Waqf had only 1/8th unspecified share in the Kothi Meharban Ali and a suit for partition of her share by metes and bound is pending. In support of his contention, Sri Qadeer placed reliance on a decision of this Court in Civil Misc. Writ No. 1086 of 2001 U.P. Sunni Central Board of Waqfs v. XIIth Additional District Judge, Kanpur Nagar and 2 others, decided on 161 2001. I have perused the decision, aforesaid and find that the said decision is clearly distinguishable on facts. In that case, it was contended on behalf of the U.P. Sunni Central Board of Waqfs that the property in question was the property of the Waqf and consequently, it could not have been sold in favour of the person who was claiming herself to be the landlady and consequently, the whole exercise in release proceeding of the alleged tenanted accommodation was futile. In that case, release petition had already been decided and the U.P. Sunni Central Board of Waqfs came to intervene in appeal. There were other circumstances which persuaded this Court to dismiss the writ petition as it was found that the second writ petition was abuse of the process of Court.

4. In the instant case, it is not disputed that a portion of Kothi Meharban Ali came to be inherited by Smt. Vilayati Begum from her ancestors. She created a Waqf in the year 1942 on the basis of which a registered Waqf Vilayati Begum No. 2383 has come into existence. The disputed accommodation which is in occupation oTSmt Hadi Begum respondent No. 3 is said to be the Waqf property. The case is at the initial stage. If the Waqf Vilayati Begum through its Mutwalli is in a position to indicate that the property in occupation of Smt. Hadi Begum respondent No. 3 is in fact the Waqf property and Smt. Zafar Jahan Begum respondent No. 2 has nothing to do with it, the release petition under Section 21 of the Act at the instance of the respondent No. 2 would turn out to be fruitless. Even otherwise, Section 90 of the Waqf Act, 1995 requires that in every suit of

proceeding relating to title or pos, session of Waqf property, the Court shall issue a notice to the Board at the cost of the party instituting such suit or proceeding. This provision obviously has come into being with a view to thwart invasion of or over the Waqf property by persons having no right, title or interest in the said property.

5. In the celebrated decision of the Lucknow Bench of this Court in *Sunni Central Board of Waqfs, U.P. through Secretary and another v. Rabia Basri and another*, 1966 AL.J. 791, it was observed that when the dispute relates to the property which is claimed to be wkqf property, the Court should allow the Waqf Board to appear and plead as a party to the suit. This provision has been made with a view to safeguard the interest of the \\\fcqfe. It was further observed that if after hearing the Board, the Court comes to the conclusion that the plaintiffs are absolute owners of the properly, it can grant them a decree without any difficulty. In rejecting the prayer of the Board that the Waqf Board was necessary party. Court ignores the mandatory provisions of law and, therefore, its order cannot be maintained.

6. In a dispute under Section 145(5) of the Code of Criminal Procedure, concerning Waqf Board the Mysore High Court had taken the view that the Waqf Board is a party interested in the Waqf and is entitled to be impleaded in proceedings (*Secretary, Mysore Board of Waqf, Bangalore v. Mahboob Ali and others*, A.I.R. 1962, Mysore 128).

7. The proceedings under Section 21 of the Act are at the threshold. The Waqf has a right to assert that the property in respect of which an application for release has been moved by a private party claiming herself to be landlady is in fact the properly of the Waqf, The right of the respondent No. 2 are not likely to be prejudiced, in any manner, if the petitioners are impleaded as opposite parties in the release petition. The impleadment is all the more necessary in view of the amendment incorporated in Section 2(1)(g) of U.P. Act No. 5 of 1995 in the parent Act, Le. Act No. XIII of 1972. If the property in dispute is, in fact, a Waqf property in that event it will stand exempted from the p urview of the Act and the provisions of Section 21 of the Act would not be applicable and consequently, the entire exercise under the said provision would beotiose.

8. In the conspectus of the above facts, I feel that it would be just and proper for the determination of the queslion of mainlainabilily of the proceedings under Section 21 of the Act and for its effective disposal that the petitioners are arrayed as opposite parties in the release petition (PA. Case No. 6 of 1992) pending before the respondent No. 1).

9. For the reasons aforesaid, the writ petition succeeds and is accordingly allowed with the direction that the petitioners shall be impleaded as opposite parties in P.A. Case No. 6 of 1992. The respondent No. 1 shall afford reasonable opportunity to the newly added opposite parties to canvass their points of view.