
(2009) 02 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No. 16208 of 2006

Wakf Masjid Dhuman Khan, Jabalpur

APPELLANT

Vs

The C.E.O. and Another

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Madhya Pradesh Waqf Act, 1995 — Section 54, 54(4)

Citation : (2009) ILR (MP) 3273 : (2009) 3 MPJR 293

Hon'ble Judges : Sushma Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.

The writ petition has been filed by the Wakf Masjid Dhuman Khan, Jabalpur aggrieved by order (P-1) dated 31.08.2006 passed by CEO, M.P. Wakf Board, Bhopal in case No. 25/2004.

Petitioner has filed an application u/s 54 of Wakf Act, 1995 for removal of encroachment raised by respondent No. 2 Mohd. Umar Khan Koti. As per the case set up by the Wakf, land belonging to the Wakf comprising plot No. 701/1 had been encroached upon by Mohd. Umar Khan and construction of Garrage was made beside residential rooms.

In the reply filed on behalf of respondent No. 2 before the CEO, Wakf Board, Bhopal it was submitted that plot No. 701/1 was not occupied by him. To submit that he was residing or in occupation of Plot No. 701/1 was absolutely false. He was residing in House situated over plot No. 700/1 of which new Number was 450.

The CEO, Wakf Board vide order dated 07.09.2005 has ordered considering the disputes raised between the parties whether house which was constructed was situated over plot No. 700/01 or 701/01, could be decided after recording

evidence. The ordersheets till the passing of the impugned order, have been placed on record, which indicate that no evidence had been recorded by the CEO and the application has been rejected vide impugned order (P-1) dated 31.08.2006. The CEO has found that the non applicant had shown him to be tenant of plot No. 701/1 w.e.f. 1948, he had also filed the rent receipts with respect to house on plot No. 701/1@ Rs.200/- per month. The CEO has given a finding that it has not been established by the Wakf that Mohd. Umar Khan had encroached upon the land belonging to it, it has been held that he is a tenant. Dissatisfied with the order, the writ petition has been preferred.

Shri Imtiyaz Hussain, learned counsel appearing for petitioner Wakf has submitted that once the case was fixed for evidence it was incumbent upon the CEO to record the evidence. The CEO has found that house was situated over plot No. 701/1 whereas case of respondent No. 2 before the CEO was that house was situated over plot No. 700/1. No notice was served for the dated 25.08.2006, consequently rejection of the application by the CEO could not be said to be proper.

Shri A.K. Jain and Shri S.A. Khan, learned counsel appearing for respondent have supported the order. They have submitted that petitioner has efficacious remedy of filing a suit, as provided in section 54(4) of M.P. Wakf Act, 1995 before Wakf Tribunal with respect to right, title or interest they are claiming. Notice was served for the date which was fixed by the CEO. Consequently no case for interference in writ jurisdiction is made out.

First we take up the question whether in view of the remedy provided u/s 54(4) of M.P. Wakf Act, 1995 of filing suit before the Wakf Tribunal, writ petition can be entertained, Wakf has the remedy of filing the suit but in the instant case in our opinion as the basic procedure of deciding of such dispute has not been followed by the CEO and finding has been recorded by the CEO contrary to the case set up by the respondent No. 2. The finding has been recorded by the CEO that evidence has been adduced by respondent No. 2 Mohd. Umar Khan that he is in occupation over the plot No. 701/1 and had paid the rent @ Rs.200/- per month. The CEO has held that respondent No. 2 was in occupation of structure over plot No. 701/1, it was not even the case set up by respondent No. 2. The finding is perverse and is contrary to averments made in para-8 of the reply, he has made following averments:

That in the application the address of the non-applicant showing his residence at 701/1 is absolutely false. The correct address is House No. 700/ 1 (Old Number) and New No. 450 which is the property of Mohd. Shareef and Mohd. Hameed Khan Koty.

No doubt about it plea has also been taken that in other Civil Suit it has been held that plot No. 701/1 does not belong to Wakf but that question has not been considered by the CEO, Wakf Board, Bhopal, which was required to be considered. Considering the dispute whether the structure raised by respondent

No. 2 was situated over plot No. 701/01 or 700/1 could not have been decided without recording evidence and order sheets indicate that evidence has not been recorded by the CEO, Wakf Board Bhopal. Even if notice was served and petitioner was not present, it was incumbent upon the CEO to record the evidence of respondent No. 2 which was also done and outrightly the order dated 31.08.2006 was passed. The CEO himself had ordered on 07.09.2005 that such a dispute require adducing the evidence by the parties. In view of the aforesaid we have no hesitation in setting aside the impugned order and direct the CEO to decide the case afresh after recording the evidence of the parties which may be adduced before him inter alia considering the effect of Civil Suit in which plot No. 701/1 the Wakf has not been held to be owner of the property as submitted by respondent No. 2.

Resultantly, the writ petition is allowed to the aforesaid extent. The impugned order passed by the CEO is set aside. Parties are directed to appear before the CEO as prayed on 20.04.2009. No costs.