

Court No. - 92

Case :- APPLICATION U/S 482 No. - 12719 of 2015

Applicant :- Zufar Ahmad Farooqui

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Bakhteyar Yusuf, Brijesh Sahai, Pankaj Kumar Shukla, Punit Kumar Gupta

Counsel for Opposite Party :- Govt. Advocate, Azhar Hussain, Mahboob Ahmad Siddiqui, Mohammad Hisham Qadeer, Mohd. Waris, Ram Jatan Yadav

with

Case :- APPLICATION U/S 482 No. - 25354 of 2015

Applicant :- Shabbir Ahmad And 2 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- R.C. Chaturvedi

Counsel for Opposite Party :- Govt. Advocate, Mahboob Ahmad Siddiqui, Mohammad Hisham Qadeer, Mohd. Waris, Ram Jatan Yadav

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Vishnu Gupta, learned Senior Advocate assisted by Sri Punit Kumar Gupta, learned counsel for the applicant, Sri Mahboob Ahmad Siddiqui, learned counsel for the opposite party no.2 and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of entire proceedings of Complaint Case No.40238 of 2014 (Molana Ateequr Rehman Vs. The Chairman (Gazetted Officer) U.P. Sunni Central Waqf Board Lucknow and others) as well as summoning order dated 26.03.2015 whereby the applicant has been summoned for trial under Section 500 I.P.C., Police Station Hari Parwat, District Agra, pending in the Court of Chief Judicial Magistrate, Agra.

3. Learned Senior counsel for the applicant submits that the applicant herein was the Chairman, U.P. Sunni Central Waqf Board, at the relevant time, and on an application moved under Section 63 of the Waqf Act, 1995, he has passed an order dated 18.12.2013 being the Presiding Officer/Chairman of the said

Board, as per Section 63 of the Waqf Act to appoint the Mutawalli of any disputed Waqf. The allegation against the applicant is that he in collusion with one Iqbal, who is posted as Waqf Inspector has obtained a report against the opposite party no.2 and has in collusion with him, has passed an order dated 18.12.2013. Learned Senior counsel for the applicant further submits that the order dated 18.12.2013 passed by the applicant herein in capacity of the Chairman U.P. Sunni Central Waqf Board in accordance with the provisions of Waqf Act, 1995, which is a quasi judicial order which can be challenged by opposite party no.2 before the appropriate tribunal in terms of Section 83 (2) of the Waqf Act, 1995. He further submits that in terms of the provisions of Sections 100 and 101 of the Waqf Act, 1995 any act done by the officers of the Chief Executive Officer or Survey Commissioner or any other person duly appointed in the Waqf Act, which is done in good faith then no case or other legal proceedings shall lie against them. In terms of Section 101 Waqf Act the applicant is a public servant within the meaning of Section 21 of the Indian Penal Code, therefore, no proceedings can lie against him for any order passed in the official capacity by the applicant herein. Therefore, he has prayed for quashing of the entire proceedings against the applicant herein.

4. Learned counsel for opposite party no.2 do not dispute the fact that the order dated 18.12.2013 was passed by the applicant herein in his official capacity in terms of the provisions of the Waqf Act, 1995 and admits that no proceedings as has been alleged by the opposite party no.2 can lie against the applicant herein. In view of the provisions of Sections 100 and 101 of the Waqf Act, 1995, he has no objection if the proceedings of the said complaint case is quashed *qua* the applicant herein.

5. In view of the categorical submissions made by the learned counsel for opposite party no.2 that the proceedings cannot lie in view of the provisions of Sections 100 and 101 of the Waqf Act, 1995, for any act done by the applicant herein in his official capacity, therefore, he did not oppose the quashing of the criminal proceedings of Complaint Case No.40238 of 2014 against the applicant herein.

6. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the complaint case as has been filed by applicant no.2, the allegation against the applicant herein is that being the Chairman U.P. Sunni Central Waqf Board, Lucknow, he has obtained the report from the Waqf Inspector of U.P. Sunni Central Waqf Board and in collusion

with him he has passed the order dated 18.12.2013 appointing the Mutawalli in terms of Section 63 of the Waqf Act, 1995. The paragraphs of Waqf Act, 1995, which are relevant for the disposal of the instant application, reads as follows:

"63. Power to appoint mutawallis in certain cases.—When there is a vacancy in the office of the mutawalli of a [waqf] and there is no one to be appointed under the terms of the deed of the [waqf], or where the right of any person to act as mutawalli is disputed, the board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

83. Constitution of Tribunals, etc.—[(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.]

(2) Any mutawalli person interested in a [waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the [waqf].

(3) Where any application made under sub-section (1) relates to any [waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the [waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the [waqf] or any other person interested in the [waqf] or the [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such [waqf] or [waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

[(4) Every Tribunal shall consist of— (a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions, or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;
and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

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

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

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

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

100. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

101. Survey Commissioner, members and officers of the Board, deemed to be public servants.—(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(2) Every mutawalli of a [waqf], every member of managing committee, whether constituted by the Board or under any deed of [waqf], every Executive Officer and every person holding any office in a [waqf] shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860)."

7. According to Section 63 of the Waqf Act, 1995, the Board has power to appoint the Mutawalli, in case, there is dispute with regard to the mutawallis. Any order passed under Section 63 of the Waqf Act is the subject matter of challenge before the Tribunal appointed under Section 83 of the Waqf Act in terms of Section 83, sub-clause (2). Section 100 of the Waqf Act mandates that no suit or any legal proceeding can be maintained against the Board or the Chief Executive Officer of the Board or the Survey Commissioner or any other person duly appointed under the Waqf Act in respect of anything done by such person in good faith intended to be done under this Act. The Survey Commissioner, members and officers of Board are deemed to be public servant within the meaning of Section 21 of the Indian Penal Code in terms of Section 101 (1). According to sub-clause 2 of Section 101, any mutawalli and every member of the Managing Committee of a Waqf whether constituted by the Board or any deed of Waqf and every executive officer or/and every person holding any officer in a Waqf shall also be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

8. From the aforesaid provisions, it appears that the order dated 18.12.2013 passed by the applicant in the lead petition, in his official capacity in discharge of his duties in terms of the U.P. Sunni Central Waqf Board and the order passed by the applicant is a quasi judicial order, for which legal remedy is available to the opposite party no.2. In terms of Section 101 of the Waqf Act, 1995, any act done by such a public servant in discharge of his official duties, no legal proceeding can be initiated against him.

9. The applicants in Application U/S 482 No.25354 of 2015 are the persons, who were appointed as the Chairman, Vice Chairman, Secretary of the Management Committee of the Waqf by the Board by an order passed under Section 63. Therefore, in view of sub-clause (2) of Section 102, those applicants are also the public servants and in view of Sections 100, no suit or legal action can be instituted against them. Further, there is no allegation against the applicants, who were appointed as the Chairman, Vice Chairman, Secretary of the Management Committee of the Waqf, have done any act against the applicants. The defamation, which is being claimed by the opposite party no.2 is primarily alleged against one Iqbal Ahmad, who was the Inspector of the Board, who has prepared a report after due inspection in official capacity and is protected in view of Section 100 of the Waqf Act. Therefore, no proceeding can lie against the said Iqbal Ahmad, Inspector of the Sunni Central Waqf Board, Lucknow or an act done by him in

furtherance of the proceedings under Section 63 of the Act.

10. The applicants in the connected Application U/S 482 No.25354 of 2015 are the persons who were appointed as the President, Vice President, Secretary of the said management committee vide order dated 18.12.2013 in terms of Section 101 of Waqf Act, they are also the public servants, therefore, in the considered opinion of this Court the entire proceedings of the instant complaint case is hit by the provisions of Sections 100 and 101 of the Waqf Act, 1995. Therefore, the entire proceedings of Complaint Case No.40238 of 2014 (Molana Ateequr Rehman Vs. The Chairman (Gazetted Officer) U.P. Sunni Central Waqf Board Lucknow and others) as well as summoning order dated 26.03.2015 whereby the applicants have been summoned for trial under Section 500 I.P.C., Police Station Hari Parwat, District Agra, are hereby quashed against all the accused persons.

11. Both the applications are **allowed**.

Order Date :- 1.12.2023

Atul