

Court No. - 1

Case :- WRIT - C No. - 10565 of 2023

Petitioner :- Mohammad Muzammil

Respondent :- State Of U.P. Thru. Secy. Ministry Minority Welfare And Waqf Lko. And Others

Counsel for Petitioner :- Abhishek Dwivedi

Counsel for Respondent :- C.S.C., Syed Aftab Ahmad, Syed Mehfuzur Rehman

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

1. Heard learned counsel for the petitioner, Shri Syed Aftab Ahmad, learned counsel for respondent No.6-Shia Central Board of Waqf and learned Standing Counsel for State-respondent Nos.1, 2, 4, 5.

2. By means of the instant writ petition, the petitioner-**Mohammad Muzammil** prays for the following reliefs:-

"I. Issue of a writ order or directions in nature of certiorari for quashing the letter dated 28.11.2023 issued for ensuring the possession of the land of the petitioner to the Mutawalli of the Waqf as contained in annexure no.1 to this writ petition.

II. Issue a writ order or directions in the nature of mandamus commanding the opposite parties no.2 to 7 not to forcibly evict the petitioner and its transferee from the land Gata no.60 and 61 situate at Mohalla Balakganj Jal Nigam Road Lucknow in the garb of the alleged Waqf property known Waqf Huasaini Begum Aalaulad lying on Khasra no.57 and 58 entered in the Settlement of 1862 as the said Waqf property is a separate property."

3. A preliminary objection has been raised on behalf of learned counsel for the respondent No.6 to the effect that the petitioner, as against the order impugned herein this writ petition, has an alternative remedy of appeal by virtue of Section 52 sub section 4 of Waqf Act, 1995. The period of limitation prescribed for appeal is 30 days.

4. Learned counsel for the petitioner has stated that the eviction order as contained in Annexure No.1 to the writ petition has fixed the date for his dispossession on 02.12.2023 although the order was passed on 28.11.2023. According to him, the impugned order does not refer to any other order passed by the competent authority pursuant to which the dispossession of the petitioner has been resorted. It is also submitted that the execution of an order even if passed on 28.11.2023 cannot be permitted to be implemented within the period of limitation i.e. 30 days. It is also submitted that the rights of the petitioner have already been adjudicated upon with respect to Plot Nos.60 and 61 situate at Mohalla Balakganj, police station Thakurganj, Lucknow in a judgment rendered by the Court of Additional District Judge, Court No.2, Lucknow in RCA No.158 of 2011 decided on 29.01.2013.

5. Be that as it may, the petitioner is at liberty to assail the order under challenge in an appeal under Section 52(4) of the Waqf Act, 1995 and in case any such appeal is filed by the petitioner within the period of limitation which itself shall be decided by the appellate authority not later than a period of four months.

6. Till the decision on the appeal, execution proceedings of the impugned order shall remain in abeyance.

7. The writ petition is, accordingly, **disposed of**.

(Om Prakash Shukla, J.) (Attai Rahman Masoodi, J.)

Order Date :- 5.12.2023
Shubhankar