Court No. - 19

Case :- WRIT - C No. - 1005293 of 2006

Petitioner :- Ram Prasad
Respondent :- Special Judge E.C.Act Faizabad And Others
Counsel for Petitioner :- Pushpila Bisht
Counsel for Respondent :- C.S.C.,Haider Abbas,Ishtiaq Ahmad,M.M.Salam,Mohd.Yasin,Rakesh.Kumar.Srivastava,S.A.A.Rizvi,S.M.Munis Jafari

Hon'ble Subhash Vidyarthi J.

(C. M. Application No.149438 of 2019)

1. Heard Ms. Pushpila Bisht, the learned counsel for petitioner, Sri Umesh Srivastava, learned Standing Counsel for the opposite party no.5-Collector, Faizabad and Sri S.A.A. Rizvi, learned counsel for the opposite party nos.2 & 3.

2. Sri Haji Hasan Mehadi @ Nanhey had filed an application for impleadment through Sri Haider Abbas, Advocate. Name of Sri Haider Abbas has been shown in the cause list but neither he is present to assist the Court nor has he sent any request for adjournment of the case.

3. In the affidavit filed in support of the application for impleadement, it has been stated that the applicant was Managing Mutawalli of Waqf Masjid and Rauza Hazrat Qasim, (opposite party no.4) and being Mutawalli, he is a necessary party to the writ petition.

4. The Waqf Masjid and Rauza Hazrat Qasim is already impleaded as opposite party no.4 in the writ petition and therefore, the Mutawalli of Waqf Masjid and Rauza Hazrat Qasim is not a necessary party.

5. Accordingly, the impleadment application is **rejected.**

Order on Memo of Writ Petition

1. By means of the instant writ petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the validity of an order dated 26.03.1996 passed by the Controller, Shia Central Waqf Board, U.P. Lucknow under Section 57-A of U. P. Muslim Waqf Act, 1960 directing issuance of a requisition for taking possession of a property bearing no.277, which is bounded in the East by a Road, in the West by land of waqf, in the North by a shop of waqf and in the South also by another shop of the waqf, for taking possession of the aforesaid property from the petitioner and to hand it over to the Mutwalli of Waqf Maszid Rauza Hazrat Kasim (the opposite party no. 4). The petitioner has also challenged the validity of a requisition dated 21.06.1996 issued by the Collector, Faizabad in furtherance of the aforesaid order dated 26.03.1996 passed by the Controller.

2. The petitioner has also challenged the validity of a judgment and order dated 12.10.2006 passed by the Special Judge, E.C. Act, Faizabad in Misc. Civil Appeal No.7 of 1996, whereby the petitioner's appeal filed against the aforesaid orders 26.03.1996 passed by the Controller and the requisition dated 21.06.1996 issued by the Collector Faizabad, was dismissed.

3. Briefly stated facts of the case are that the petitioner claims to be the owner of a part of waqf property bearing plot no.277 and he claims that Sri Sageer Husain had constructed a shop over the land in the year 1955 under an Ijazatnama granted by the erstwhile Taluqdar of Lorepur Estate on 13.09.1944. Subsequently another Ijazatnama was issued by the Chairman**,** Nagar Palika Parishad of Jalalpur on 27.09.1955. Sri Sageer Husain had constructed some shops over plot no.277 in furtherance of the Ijazatnama. The shops were recorded in the name of the petitioner and his predecessors in the records of town area Jalalpur which has subsequently become Nagar Palika Parishad, Jalalpur.

4. The Controller, Shia Central Waqf Board U.P., Lucknow had initiated an enquiry under section 58 of U. P. Muslim Waqf Act, 1960 and a report was submitted in furtherance of the enquiry on 22.05.1992. On 27.02.1995, a notice under Section 58 of the U.P. Muslim Waqf Act, 1960 was issued against the petitioner and other persons. The petitioner filed his reply to the notice claiming that plot no.277 had been leased out to Sri Sageer Husain in the year 1944 and the shops had been constructed thereon in the year 1955 and the same are not waqf property. Opposite party no.4 claims that plot no.277 is the property of Waqf Maszid Rauza Hazrat Kasim.

5. On 26.03.1996, the Shia Central Waqf Board, U.P. passed an order under Section 57-A of the U.P. Muslim Waqf Act, 1960 holding that the property in question is the property of Waqf Maszid Rauza Hazrat Qasim and ordering ejectment of the petitioner from waqf property and its requisition under section 57-A of the Act of 1960. In furtherance of the aforesaid order dated 26.03.1996 passed by the Controller of Shia Central Waqf Board, U.P., the Collector Lucknow issued a requisition dated 21.06.1996 for delivery of possession of the property to the Waqf under Rule 5 of U.P. Muslim Waqf Rules. The petitioner filed Misc. Civil Appeal No.9 of 1996 against the aforesaid order which has been dismissed by means of the judgment and order dated 12.10.2006 passed the Special Judge, E.C. Act, Faizabad holding that the petitioner ought to have filed a reference to the Tribunal constituted under U.P. Muslim Waqf Act, 1960 and the petitioner should agitate the question of title before the Tribunal. The appeal filed by the petitioner regarding his title could not be decided by the District Judge as only the Tribunal has power to decide the title of the parties. Accordingly, the appeal was dismissed as not maintainable.

6. Assailing the validity of the aforesaid three orders, Ms. Pushpila Bisht, the learned counsel for the petitioner has submitted that the Waqf Act, 1995 was enacted by the Parliament with effect from

01.01.1996. Section 112 of the Waqf Act, 1995 provides as follows: -

> *"112. Repeal and savings- (1) The Waqf Act 1956 (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 repeal 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."*

7. A bare perusal of Section 112(3) of the Act of 1995 makes it clear that U.P. Muslim Waqf Act 1960 stood repealed immediately upon enactment of the Waqf Act, 1995 i.e. with effect from 01.01.1996 and after 01.01.1996, no action could be taken or proceedings could be continued under U.P. Muslim Waqf Act, 1996.

8. Ms. Pushpila Bisht, learned counsel for the petitioner has relied upon a judgment rendered by a Division Bench of this Court in the case of **Sahibzada Moinuddin Siddiqui v. U.P. Sunni Central Board of Waqfs**, 2017 SCC OnLine All 3659, wherein it was held that: -

> ***"19.*** *Accordingly, savings provision contained in section 112 of 1995 Act saves only previous operation of 1960 Act and provides that the things done or action taken under 1960 Act will be deemed to have been taken in exercise of the powers conferred under 1995 Act,* ***however, any action taken or anything done under the old 1960 Act will be***

> ***valid and will be deemed to have been taken under the new Act 1995 only and only if such thing was done or such action was taken before the Waqf Act, 1995 came into force i.e., before 1.1.1996."***

(Emphasis in original)

9. Sri S.A.A. Rizvi, learned counsel representing the opposite parties no.2 and 3 has submitted that the petitioner has an alternative remedy of challenging the aforesaid orders of the Controller and Collector before the Tribunal under section 83(2) of the Waqf Act, 1995. However, hecould not dispute the legal position and the affect of section 112(3) of the Waqf Act, 1995.

10. The learned counsel for the petitioner submitted that in the case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others,** reported in **(1998) 8 SCC 1**, Hon'ble Supreme Court has held that: -

> ***"15.*** *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

11. As in the present case, after enactment of the Waqf Act 1995, the Controller had no jurisdiction under Section 57-A of the U. P. Muslim Waqf Act, 1960, the order passed by the Controller and the consequential proceedings are wholly without jurisdiction and in such circumstances, the availability of an alternative remedy

will not be a bar against exercise of jurisdiction under Article 226 of Constitution of India. Further, when the writ petition was filed way back on 06.11.2006 and the pleadings have been exchanged and the petition is pending for the last about 18 years, it would not proper to relegate the petitioner to any other alternative remedy at this belated stage.

12. Moreover, Section 83(2) of the Waqf Act, 1995 provides remedy to a person aggrieved by *"an order made under this Act or Rules made thereunder"*. The impugned orders have been passed after repeal of U.P. Muslim Waqf Act, 1960 in exercise of powers conferred by the repealed Act and not under powers conferred by the Waqf Act, 1995. Therefore, the petitioner cannot avail the remedy under Section 83(2) of the Waqf Act, 1995.

13. Accordingly, keeping in view the entire facts and circumstances of the case, it would not be proper to relegate the petitioner to the matter being decided on merits.

14. The proviso appended to Section 112(3) merely saves anything done or any action taken in exercise of any power conferred by U.P. Muslim Waqf Act, 1960 till the aforesaid enactment was in existence i.e. prior to 01.01.1996. The order dated 26.03.1996 was passed by the Controller under Section 57-A of U.P. Muslim Waqf Act, 1960, whereas of U.P Muslim Waqf Act, 1960 stood repealed with effect from 01.01.1996. Therefore, the order dated 26.03.1996 passed by the Controller and the consequential requisition dated 21.06.1996, are without any authority of law.

15. Accordingly, the writ petition is **allowed.** The impugned order dated 26.03.1996 passed by the Controller, Shia Central Waqf Board, U.P. Lucknow under Section 57-A of U. P. Muslim Waqf Act, the requisition dated 21.06.1996 issued by the Collector, Faizabad in furtherance of the aforesaid order dated 26.03.1996 passed by the Controller and the order dated 12.10.2006 passed by the Special

Judge, E.C. Act, Faizabad in Misc. Civil Appeal No.7 of 1996, are hereby **quashed**.

16. The proceedings that were initiated by the opposite party no.4 against the petitioner prior to repeal of U.P. Muslim Waqf Act and enactment of Waqf Act, 1995 shall stand transferred to the competent authority under the Waqf Act, 1995 i.e. Waqf Board which shall proceed in accordance with law from the stage that had been achieved prior to 01.01.2006 i.e. date of enforcement of Waqf Act, 1995.

(Subhash Vidyarthi, J.)

Order Date : 17.05.2024
akhilesh/-

Digitally signed by :-
AKHILESHWAR KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench