



2025:0004-1 K03:29:585

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 1001254 of 2008

Waqf Bibi Ilahi Khanam Maniarpur Bazar Through
Its Mutwalli

.....Petitioner(s)

Versus

Commissioner Faizabad And 4 Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: Raza Zaheer, G.D. Saran, S.M. Jafar, Sabhajeet Rai, Satish Kumar Srivastava
Counsel for Respondent(s)	: C.S.C., A.A.Rizvi, R.N.Gupta

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Satish Kumar Srivastava, learned counsel for the petitioner as well as learned Standing counsel for the respondents.
2. At the outset, learned counsel for the petitioner submits that he does not wish to press C. M. Application No.5240 of 2020 for impleadment in as much as the petition has been filed by Mutwalli of Waqf Bibi Ilahi Khanam, Maniarpur Bazar, Aliganj, Pargaan Meeranpur, Tehsil Sadar, District Sultanpur through its Mutwalli. Merely because of change of Mutwalli the cause title would not be changed and any person who has been elected as Mutwalli has right to contest the suit on behalf of respective waqf Board.
3. It has been submitted that the depute in the present case is with respect to gata No.s 505, 503, 583, 584, 585 Ka, 585 Kha, 580, 581, 578, 553 Kha, 552, 551, 554, 550, 608, 637, 604, 594, 593 and 751 situated at Village Maniarpur, Parana Miranpur, Tehsil and District Sultanpr. It has been submitted that with regard to the said land suit was filed by the petitioner i.e. Babu Mohd. Taqi Khan and the said suit was allowed by means of order dated 22.1.1959 and has further stated that the State Government had filed an appeal before the High Court which was also dismissed on 13.2.1980. It is in aforesaid circumstances that an application for correction of the revenue record was filed by the petitioner before Sub Divisional Officer

which was allowed by means of order dated 15.1.1996 and the name of the petitioner was directed to be incorporated in the revenue records. It is further stated that subsequently an application for recall was filed by the Village Pradhan and the order was 15.1.1996 was set aside by means of order dated 2.1.1998.

4. Against the order dated 2.1.1998 the State Government had filed a revision before Commissioner, Faizabad and by means of order dated 19.6.2001 the revision was allowed and the orders passed by Sub Divisional Officer was set aside and the matter was remitted for being decided afresh after hearing the parties. The Sub Divisional Officer by means of order dated 19.1.2004 rejected the application for correction of the records holding that the proceedings under Section 38/39 of U. P. C. H. Act are summary in nature and in case any person wants to establish his rights then remedy lies in regular suit proceedings and the category and class of land cannot be changed in exercise of the powers under Section 38/39 and, therefore, rejected the application.
5. Thereafter, the petitioner had filed a revision before the Commissioner, Faizabad. The revisional authority rejected the revision after holding that the disputed land is recorded as *abadi* under category 6 and the consolidation proceedings are also underway in the said village while the petitioner has not submitted any objection before the consolidation authorities and accordingly at the said stage no orders can be passed in exercise of the powers under Section 33/39 of L.R. Act. He has further recorded that even as per the decree produced by the petitioner it could not be established that there was any direction to change the entry of the land which according to the revenue records was vested in Gaon Sabha. He has further taken into account the fact that the said land is shown as *abadi* and at gata No.503 Krishi Utpadan Mandi Samiti and veterinary hospital are constructed on the disputed land which is being used as a public service and accordingly dismissed the revision preferred by the petitioner. The petitioner has submitted that certain revenue records indicates that the said land be vested as a

waqf but in pursuance to which the land is shown as *abadi*.

6. The question to be decided by this Court is as to whether in exercise of the powers under Section 33/39 of Land Revenue Act nature of the land or title of the land can be decided. This Section grants jurisdiction to the revenue authorities only to make necessary correction in the revenue records and to establish fresh rights can be made only in regular proceedings and not by way of correction of records as has recently been held by the Apex Court in the case of **Writ Petition (Civil) No.276 of 2025 In Re: The Waqf Amendment Act, 2025 (1) reported in (2025) SCC Online SC 1978** decided on 15.9.2025, the relevant portion of which is quoted as under:-

"161. Sub-section (3) of Section 3-C provides that in case the designated officer determines the property to be a government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government. Sub-section (4) thereof provides that the State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate corrections in the records.

162. Though we have prima facie upheld the provisions of Sections 3-C(1) and 3-C(2) of the Amended Waqf Act, we find that the question with regard to determination of title of a property being entrusted to a revenue officer would not be in tune with the principle of separation of powers enshrined in our Constitution. The question of determination of the title of a property will have to, in our considered opinion, be resolved by a judicial or quasi-judicial authority.

165. It is further to be seen from sub-section (9) of Section 83 of the Amended Waqf Act that any person, aggrieved by the order of the Tribunal, may appeal to the High Court within a period of 90 days from the date of receipt of the order of the Tribunal. It is, therefore, clear that the issue with regard to determination of the title of the property, as a government property or not, can be finally decided by the Tribunal and any person aggrieved by the order of the Tribunal may file an appeal to the jurisdictional High Court.

166. We are, therefore, of the considered view that the provision in sub-section (3) of Section 3-C of the Amended Waqf Act which provides that after the designated officer, on an inquiry in terms of sub-section (2) of Section 3-C of the Amended Waqf Act, determines

the property to be government property, necessary corrections in revenue records be made and a report be submitted in that regard to the State Government and the provision in sub-section (4) of Section 3-C of the Amended Waqf Act mandating the State Government, on receipt of the report of the designated officer, to direct the Board to make appropriate correction in the records is prima facie arbitrary.

167. As already discussed hereinabove, the revenue officer cannot be entrusted with the work of determination of the title of a property keeping in view the principle of separation of powers.

168. We are, therefore, of the considered view that the provision which permits the necessary corrections to be made in the revenue records after conclusion of the inquiry and the provision enabling the State Government to direct the Board to make appropriate corrections in the revenue records on receipt of the report are prima facie arbitrary and liable to be stayed. However, to balance the equities and to protect the valuable government properties, it is also imperative that pending such a determination by the Tribunal, the Mutawallis of such of the waqfs do not create any third-party rights in respect of such properties for which the proceedings in accordance with Section 3-C of the Amended Waqf Act are initiated, until the final adjudication by the Tribunal is made."

7. Accordingly, even if the petitioner wants his name to be entered into the revenue records he will have to initiate regular proceedings and not by moving for correction of records and accordingly we do not find any infirmity in the orders passed by the revenue authorities dated 19.1.2004 and 16.8.2007.
8. Accordingly, there is no merit in the contentions of the petitioner. The petition is devoid of merits and is accordingly **dismissed**.
9. However, liberty is granted to the petitioner to initiated appropriate proceedings to establish his rights before the competent authority.

(Alok Mathur,J.)

December 16, 2025

RKM.