

Court No. - 39

Case :- WRIT - C No. - 65292 of 2013

:- Kalbey Abbas

Respondent :- State Of U.P. Thru Secy. And 5 Others

Counsel for Petitioner :- M.J. Akhtar,V.M. Zaidi

Counsel for Respondent :- C.S.C.,Punit Kumar Gupta

Hon'ble V.K. Shukla,J.

Hon'ble Suneet Kumar,J.

Kalbey Abbas is before this Court questioning the validity of the order dated 30.09.2013 wherein in exercise of authority vested under Section 65 of the Waqf Act 1995, Administrator has been appointed.

On the matter being taken up today, Sri Punit Kumar Gupta, Advocate has submitted that once statutory authority has been exercised by the Shia Central Waqf Board U.P. Lucknow, respondent no. 2, in such a situation and in this background there is statutory remedy available to approach Waqf Tribunal under Section 83(1) of Waqf Act 1995, or alternatively to the State Government under Sub-Section (2) of Section 65 of the Act, as such present writ petition should not be entertained by this Court on the ground of alternative remedy being available.

Sri V.M. Zaidi, Senior Advocate, assisted by Sri M.J. Akhtar, Advocate has tried to contend before this Court that in the present case order, which has been so passed, is apparently illegal on the face of it and absolutely to the contrary to the term and condition of waqf deed in question.

Sri Punit Kumar Gupta also informed that against this very order in question the Uncle of petitioner has already approached to the Waqf Tribunal by means of Reference No. 340/70/2013 and as he has failed to get any interim order, petitioner has been set up by him.

Once in respect of this very order in question one incumbent connected or connected with petitioner has already approached to the Waqf Tribunal and there is no extra ordinary reason available on record to by pass said remedy, then in such a situation and in this background it would be much more appropriate that petitioner should also be relegated to approach Waqf Tribunal under Section 83 () of Waqf Act, 1995 following the dictum of Apex Court in the case of **Board of Wakf, West Bengal Vs. Anis Fatma Begum & Anr., (Civil Appeal No.5297 of 2004)** decided by the Supreme Court on 23.11.2010 reported in 2010 (12) Scale 323 wherein

considering the question of the remedy available under the Wakf Act, 1995, for deciding the disputes Apex Court held in para 10 to 22 as follows:-

"10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

11. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Wakfs were being filed in the courts in India and they were occupying a lot of time of all the Courts in the country, which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.

*12. **Section 83 (1) of the Wakf Act, 1995** states,*

"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 Wakf or Wakf property under this Act and define the local limits and jurisdiction under this Act of each or such Tribunals."

13. Section 84 of the Act states,

"84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision - Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute".

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3 (r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3 (r), then any dispute, question or other matter relating to it

should be agitated before the Wakf Tribunal.

15. Under Section 83 (5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property.

16. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83 (1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83 (2) refers to the orders passed under the Act, but, in our opinion, Sections 83 (1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Sections 83 (1) and 84 indicates.

17. We may clarify that under the proviso to Section 83 (9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. This provision make it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a Wakf or Wakf property should first approach the Tribunal before approaching the High Court.

18. It is well-settled that when there is a special law providing for a special forum, then recourse cannot be taken to the general law vide Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn. 2004, pp 133-134).

*19. In **Chief Engineer, Hydel Project & Ors vs. Ravinder Nath & Ors. (2008) 2 SCC 350**, this Court held that when the matter fell in the area covered by the Industrial Disputes Act, the Civil Court would have no jurisdiction. In the above decision the Court has referred to*

several earlier decisions on this point.

20. In view of the above, we are of the opinion that since the matter fell under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction in the matter, and not the Civil Court.

21. However, in view of the decision of this Court in **Sardar Khan vs. Syed Najmul Hasan (Seth) & Ors. AIR 2007 SC 1447**, the Wakf Act will not be applicable to suits/appeals/revisions/proceedings commenced prior to 1.1.1996 when the Wakf Act came into force.

22. Learned counsel for the respondent, however, relied on the decision of this Court in **Ramesh Gobindram vs. Sugra Humayun Mirza Wakf (2010) 8 SCALE 698**. In the aforesaid decision it was held that eviction proceedings can only be decided by the Civil Court and not by the Wakf Tribunal."

Said judgement in question has been followed by Division Bench of this Court in the case of **Dost Mohammad Vs. Chairman, U.P. Sunni Central Waqf Board and others (Civil Misc. Writ Petition No. 27566 of 2011) decided on 19.05.2011**, wherein also placing reliance on the judgment of Apex Court quoted above, this Court took the view that order passed on 01.01.1996 by Waqf Board, challenged before this Court are amenable to jurisdiction of the Waqf Tribunal.

Once such is the factual situation that in exercise of its authority vested under Waqf Act, 1995 the Chairman U.P. Sunni Central Waqf Board, respondent no. 2, has proceeded to pass order, and the matter is pertaining to Waqf, then at the first instance petitioner will have to go before Waqf Tribunal constituted under Section 83 of the Waqf Act, 1995, or alternatively petitioner can also approach to State Government under Sub-Section (2) of Section 65 of Waqf Act 1995, in such a situation and in this background present writ petition is not being entertained and same is accordingly being dismissed on the ground of alternative remedy.

(Suneet Kumar, J.) (V.K. Shukla, J.)

Order Date :- 29.11.2013
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