

**(2002) 02 AHC CK 0057**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 35928 of 1996

Abdul Hameed Khan

APPELLANT

Vs

Liyaqat Mian and Others

RESPONDENT

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**Date of Decision:** Feb. 8, 2002

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Limitation Act, 1963 - Section 5
- Uttar Pradesh Muslim Waqfs Act, 1960 - Section 30

**Citation:** (2002) 2 AWC 993

**Hon'ble Judges:** Anjani Kumar, J

**Bench:** Single Bench

**Advocate:** Ateeq Ahmad Khan, M.A. Qadeer and Anurag Jauheri, for the Appellant; S.U. Khan and Mahboob Alam, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Anjani Kumar, J.

By means of present writ petition under Article 226 of the Constitution of India, petitioner Abdul Hameed Khan seeks the following reliefs :

- Issue writ, order or direction in the nature of certiorari quashing the order dated 17.10.1996, Annexure-1 to the writ petition.
- Issue writ, order or direction in the nature of mandamus commanding the respondent Nos. 3 and 4 not to give effect and not to implement in any manner whatsoever the impugned order dated 17.10.1996, Annexure-1 to the writ-petition.
- Issue such other and further orders and directions, which this Hon"ble Court may deem fit and proper under the facts and circumstances of the case.
- To award the costs of this writ petition."

2. The matrix of the case as set out in the writ petition are that petitioner Abdul Hameed Khan filed an application before the U. P. Sunni Central Board of Waqf, Lucknow, respondent No. 3 that apart from plot Nos. 759, 760 and 761, which were declared to be as ancestral property of the petitioner by the waqf, the plot Nos. 755, 756, 758 and 1202 are the private property of the petitioner coming down from his ancestral, therefore these plot Nos. 755, 756, 758 and 1202 may be deleted from the property register of the waqf, which has wrongly been entered in the name of the waqf. It is submitted by the petitioner that vide order dated 20.8.1988 passed by respondent No. 4, the petitioner has been informed that his application dated 6.12.1987 with regard to the deletion of plot Nos. 755, 756, 758 and 1202 from the records of the Waqf Board has been rejected vide order dated 23.7.1988 without affording any opportunity of hearing to the petitioner. Being aggrieved by the aforesaid order, the petitioner filed a writ petition before this Court being Writ Petition No. 22256 of 1988 and this Court, while dismissing the said writ petition, directed vide order dated 4.11.1988 that the petitioner has an alternative remedy to approach the Waqf Tribunal. Petitioner thereafter approached the Tribunal pursuant to the direction of this Court and filed a reference petition, which has been numbered as Reference Petition No. 44 of 1988 and the Tribunal vide its order dated 1.11.1989 accepting the reference declared that plot Nos. 755, 756, 758 and 1202 are not the waqf property and the Waqf Board was directed to delete these plots from its property register. The Controller, U. P. Sunni Central Board of Waqf, Lucknow, after going through the order dated 1.11.1989 directed vide order dated 30.3.1994 to delete the aforesaid plots from the register of the waqf in compliance to the order dated 1.11.1989 passed by the Waqf Tribunal. In compliance of the aforesaid order dated 30.3.1994, the necessary correction has been effected in the register of the waqf maintained by respondent No. 4 u/s 30 of the U. P. Muslim Waqf Act, 1960. In respect of Waqf No. 196. Thereafter Saadat Hussain Khan son of Liyaqat Hussain Khan filed an application before the Waqf Tribunal, Rampur, which has been registered as Misc. Case No. 89 of 1993, praying therein that the declaration made by the Tribunal is ex parte and the Waqf Board as well as the applicant have suffered, therefore this ex parte order may be set aside and the matter be heard on merits after hearing the applicant. This application was ultimately rejected in default by the Waqf Tribunal vide its order dated 10.12.1993. A similar application was filed by respondent No. 4 through Zameer Ahmad Khan, which was registered as Misc. Case No. 8 of 1994, for setting aside the ex parte order, which has wrongly been termed as ex parte decree. This application was also rejected by the Tribunal as barred by time. Thereafter an application under Order IX, Rule 13 along with an application u/s 5 of the Limitation Act was filed by respondent Nos. 1 and 2 on 21.12.1995, which was registered as Misc. Case No. 162 of 1995, a copy of which has been annexed as Annexure-18 to the writ petition. The petitioner filed objection, counter-affidavit and supplementary-affidavit in reply to the allegations made in the aforesaid application. The respondent No. 4 vide its order dated 17.10.1996 allowed the application dated 21.12.1995. It is this order, which

has been challenged by means of this writ petition.

3. I have heard Sri Ateeq Ahmad Khan and Sri M. A. Qadeer, learned counsel appearing on behalf of the petitioner and Sri S. U. Khan, learned counsel for the respondents. Sri M. A. Qadeer contended firstly, that the matter has already been adjudicated upon and given effect to and since the applications filed by the Waqf Board and the mutwalli have already been rejected, this application deserves to be rejected, whereas the authority taking wholly erroneous view in the matter without applying its mind has allowed the same. Sri S. U. Khan, learned counsel appearing for the contesting respondents argued that this is the application which has, for the first time, been decided on merits whereas the contention of the petitioner's counsel that the matter has not been adjudicated upon on merits and if Liyaqat Mian and Saadat Hussain Khan were aggrieved, they could have filed reference. Sri Qadeer further contended that after lapse of about 5-6 years, the applicants Liyaqat Mian and Saadat Hussain Khan should not be permitted to be heard on the matter. In reply thereto Sri Khan submitted that from the entire facts as set out above, it is clear that at no point of time, either the Waqf Tribunal, or the Waqf Board has heard any objection and in fact the mutwalli and the then Secretary of the Waqf Board deliberately did not contest the matter on the application of the petitioner.

4. Be that as it may, without entering into the merits with regard to the rival contesting parties, I am of the opinion that the Waqf Tribunal/ Civil Judge (Sr. Division), Rampur, should have applied his mind as to whether the applications filed by Liyaqat Mian and Saadat Hussain Khan are maintainable in law or not and as to whether the matter after being adjudicated upon, as suggested by Sri Qadeer, can still be open to be interfered. In view of the rival contention that the matter has not been adjudicated upon after hearing learned counsel for the parties, in my opinion, also the Waqf Tribunal while deciding the reference should have issued notices apart from the notices to the mutwalli and the Board, public in the locality to the effect that if any person wants then they can raise objection before the Tribunal to the effect as to why the aforesaid plots be not removed from the property register of the waqf as prayed by these two applicants. In my opinion, the controversy should not be adjudicated upon on merits, unless a notice as stated above has been issued.

5. In this view of the matter, the order dated 17.10.1996 does not warrant any interference and the respondent No; 4 is hereby directed to adjudicate upon the application filed by Liyaqat Mian and Saadat Hussain Khan in accordance with law as expeditiously as possible, preferably within a period of three months from the date of presentation of certified copy of this order before him after inviting objection from public.

6. In view of what has been stated above, this writ petition deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. It is made clear that the Waqf Tribunal will not be guided by any observation made in this judgment

or in the order impugned in the present writ petition, except the operative portion. There will, however, be no order as to costs.