

## **Waqf Madarsa and Yateem Khana No. 959 through Mohd. Ikhtisas Uddin Ajmali and Mohd. Ikhtisas Uddin Vs Controller, U.P. Sunni Central Board of Waqf, U.P. Sunni Central Board of Waqfs and State of U.P.**

**Court:** Allahabad High Court

**Date of Decision:** Oct. 17, 2006

**Acts Referred:** Uttar Pradesh Muslim Waqfs Act, 1960 â€" Section 57A

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Final Decision:** Allowed

### **Judgement**

S.U. Khan, J.

The two properties in dispute in this writ petition bearing municipal numbers 185/174 and 151/155, are claimed by the petitioner Waqf to belong to it. According to the petitioner the said properties were registered as Waqf properties by U.P. Sunni Central Board of

Waqfs under U.P. Muslim Waqf Act, 1960 in the year 1986. True copy of the relevant extract of the Register maintained u/s 30 of the U.P. Act

has been annexed as Annexure "7" to the writ petition. According to the said Annexure petitioner Waqf is registered with the Waqf Board and the

number of registration is 919. According to the Annexure "7" the two properties in dispute belong to petitioner Waqf, which are situate in Mohalla

Nakhas (Property No. 185/174) and Mohalla Mahmood Khan Sarai (Property No. 151/155). According to the said Annexure the said

properties have been shown to belong to the petitioner Waqf on the basis of entries in municipal records. Thereafter petitioner intimated the Waqf

Board that Kallu and Anil Kumar Rastogi were the unauthorized occupants of parts of the properties in dispute, hence eviction proceedings must

be initiated against them (Kallu and Anil Kumar Rastogi have not been impleaded in this writ petition). The aforesaid two persons were issued

notice by the Waqf Board. Anil Kumar filed objections before the Waqf Board to the effect that properties in dispute did not belong to petitioner

Waqf bearing No. 959 and it, in fact, belonged to another Waqf of the same city which was registered as Waqf No. 21 E List and Mustafa Ali

was the Mutwalli of the said Waqf. It was also stated that he was paying rent to Mustafa Ali.

2. Thereafter proceedings u/s 57-A of UP. Muslim Waqf Act, 1960 were initiated and completed by the Waqf Board. Waqf Board through its

Controller by order dated 4.5.1990 held that the properties in dispute belonged to Waqf No. 21-Extension List and not to the petitioner Waqf.

The said order has been challenged through this writ petition.

3. At the time of arguments no one appeared on behalf of the Waqf Board, hence only the arguments of the learned Counsel for the petitioner

were heard.

4. Annexure 18 to the writ petition is extract of Register maintained by the Waqf Board u/s 30 of UP. Act containing the details of properties of

Waqf No. 21-Extension list. At serial No. 1 and 2 in the said Annexure agricultural land is mentioned At serial No. 3 & 4 houses are mentioned

which are situate in Mohalla Mian Sarai. Boundaries of the said houses have also been given. In the impugned order the Controller held that the

properties in dispute were already registered as properties belonging to Waqf No. 21-Extension list, hence it could not be registered as properties

of the petitioner Waqf. Controller further held that Anil Kumar Rastogi was paying rent to Mutwalli of Waqf No. 21-Extension list and was not

unauthorized occupant. In the said order it has also been mentioned that none of the parties appeared hence matter was decided exparte.

5. The Controller has not compared the details of the Waqf properties mentioned against the two Waqfs in his order. Without any material or

discussion of the material it has been held that same property has been re-registered. For recording such finding it was necessary to indicate as to

how the property in dispute is included in Waqf No. 21-E List. Apparently the description of the properties of the two Waqfs as indicated by

extract of Register maintained u/s 30 are not identical but quite different. Even Mohalla (localities) where the properties are situate are are different.

6. The impugned order is illegal as properties have not been identified and connected. Without clear cut finding that the same property had already

been registered, entries of properties relating to Waqf No. 959 (petitioner) could not be deleted from the register maintained u/s 30 of the U.P.

Act.

7. Accordingly, writ petition is allowed. Impugned order is set aside. However as Kallu and Anil Kumar Rastogi have not been made parties,

hence it is directed that no further action shall be taken against them on the notice earlier issued u/s 57-A of the U.P. Act. Waqf Board is at liberty

to initiate fresh proceedings for deletion of the properties in dispute from petitioner Waqf bearing No. 959. If such proceedings are initiated due

notice shall be given to the petitioner. Petitioner is also at liberty to initiate fresh proceedings for eviction against Kallu and Anil Kumar Rastogi. It is

needless to add that fresh proceedings shall be taken under the Waqf Act, 1995 which has repealed U.P. Muslim Waqf Act, 1960.

8. Writ petition is accordingly allowed.