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(2006) 10 AHC CK 0179

Allahabad High Court

Case No: None

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

Date of Decision: Oct. 17, 2006

Acts Referred:

- Uttar Pradesh Muslim Waqfs Act, 1960 - 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 Wqaf 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 maintgained 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.