

CASE NO.:
Appeal (civil) 2490-2491 of 1996

PETITIONER:
U.P. SHIA CENTRAL BOARD OF WAKF & ORS.

Vs.

RESPONDENT:
U.P. SUNNI CENTRAL BOARD OF WAKF & ORS.

DATE OF JUDGMENT: 01/05/2001

BENCH:
S. Rajendra Babu & D.P. Mohapatra

JUDGMENT:

D.P. MOHAPATRA, J.
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These appeals filed by the U.P. Shia Central Board of Wakf through its Secretary (for short the Shia Wakf Board) and some other persons of the sect by special leave are directed against the order passed by the Allahabad High Court on 2nd September, 1994 disposing of two Revision Petitions, C.R.No.284/92 filed by the U.P.Sunni Central Board of Wakf (for short the Sunni Wakf Board) through its Secretary and some other persons of the sect and Civil Revision No.255/92 filed by the Shia Wakf Board) and some other persons of the sect.

The dispute raised in the case relates to the mosque, Ahnaf Bar Taley Pura Chhanga Kiyari Tola, Maunath Bhanjan and its Sehan and the Imam Chowk, registered as a Wakf by the U.P. Shia Central Board of Wakf. Aggrieved by the said registration the Sunni Board through its Secretary made a reference to the Muslim Wakf Tribunal, Azamgarh which was registered as suit No.154/88. The Controller Shia Central Board of Wakf and two others were cited as defendants in the proceeding. The prayer in the plaint was for an award declaring the property in the suit to be a Shia Wakf property and not a Sunni Wakf property and to declare its registration as null and void, and further to restrain defendants from interfering with or disturbing in any manner with possession, administration, management and control over the property by the plaintiffs.

The gist of the case pleaded by the plaintiff is that the mosque and its sehan including the Imam Chowk was constructed by the ancestors of Late Abdul Salam with efforts of his grand father Md. Azal Bilal. The grave of Md. Azal Bilal lies within the compound of the mosque. The mosque including sehan and Imam Chowk have always remained under control and management of the Sunni sect of Muslims. Members of the said sect had always called Azan in the said mosque and the congregation prayer have been led by Sunni Pesh-e-Imam. Sunni Mulims have been attending the congregation in the mosque and the sehan. Members of the

sect have been looking after the maintenance of the mosque and its properties. On the application made by Members of the Sunni sect of Muslims the Wakf Board after inquiry registered the mosque, its sehan and the Imam Chowk as Sunni Wakf in 1980.

When in May 1978 certain works of reconstruction and additions in the mosque were being carried on by the Sunni Muslims of the locality including the plaintiff No.2, some Shia muslims of the same locality including defendant no.3 tried to stop the work by filing suit No.246/78 (Zia Ul Hasan vs. Md.Ayub and ors.) in the Court of Munsif Mohammadabad Gohna, District Azamgarh. The suit was subsequently withdrawn. The plaintiff alleged that the defendants surreptitiously got the mosque and its sehan registered in the office of the Shia Wakf Board behind the back of the plaintiffs. In the proceeding under Section 145 Cr.P.C. initiated in March, 1988 in the Court of the Sub-Divisional Magistrate No.96/11 of 1988 it was disclosed that the mosque and its property have been registered as a Wakf under the Shia Wakf Board. On coming to know about the action of the defendants in the matter the plaintiffs filed the suit within 90 days from the date of knowledge about the order of registration dated 30th October, 1978.

The defendants refuted the claim of the plaintiffs that the mosque and its sehan and the Imam Chowk constituted a Sunni Wakf. They claimed that the mosque and its properties were Shia Wakf and were rightly registered as such by the Shia Wakf Board.

The Tribunal by its judgment dated 20th May, 1992 allowed the claim of the plaintiffs in part. The registration of the mosque in question along with its sehan by the Shia Wakf Board was declared to be null and void and accordingly set aside. In respect of the Imam Chowk and its sehan the registration was held to be valid. The relief of injunction was granted to the plaintiff only in respect of the management, supervision and control of the mosque in question. It was further made clear by the Tribunal that no injunction was granted in respect of the offering of Namaz by the defendants in the mosque. Being aggrieved by the said judgment both the parties filed Revision Petitions before the High Court, as noted earlier.

The High Court in its Judgment dated 2nd September, 1994 dismissed the Civil Revision No.255/92 filed by the Shia Wakf Board and allowed the C.R.No.284/92 filed by the Sunni Wakf Board relating to the Imam Chowk and remanded the matter to the Tribunal for fresh trial in the light of the observations made in the Judgment.

Hence these appeals by the Shia Wakf Board.

The main thrust of the arguments of Shri Sunil Gupta, learned counsel for the appellants were against the maintainability of the reference to the Tribunal. According to Shri Gupta the essence of the dispute raised in the plaint is whether the mosque, its sehan and the Imam Chowk were the properties of the Sunni sect or the Shia sect. Such a dispute, Shri Gupta submits, does not come within the purview of section 29(8) of the Uttar Pradesh Muslim Wakfs Act, 1960 (for short the Act). It is the further submission of Shri Gupta that in the absence of any notification by the Commissioner under section 6(4) of the

Act a reference under section 8(1) is not maintainable. It is also the submission of Shri Gupta that under the proviso to section 8(1) which controls the main provision of the section, the dispute is barred by limitation.

The Act provides for public governance, administration and supervision of certain classes of Wakf in the State of U.P. The Act applies to all Wakfs whether created before or after its commencement and any part of the property comprised in Wakfs situated in the State of U.P. In section 3(3) Commissioner is defined to mean a Commissioner of Wakfs appointed by the State Government under section 4. In Section 3(11) Wakf is defined to mean the permanent dedication or grant of any property for any purpose recognised by the Muslim Law or usage as religious, pious or charitable, and includes wakfs-alal-aulad to the extent to which the property is dedicated or granted for any such purpose as aforesaid and wakf by user; and wakif means the person who makes such dedication or grant.

Wakf property as defined in section 3(12) includes offerings made at a shrine or tomb or imambaras.

Section 6 makes the provision regarding Survey of Wakfs. It provides that the Commissioner of wakfs shall after making such inquiries as he may consider necessary ascertain and determine the number of all wakfs in the area showing the Shia wakfs and Sunni wakfs separately; the nature and object of each wakf; the gross income of the property comprised in each wakf; amount of revenue, cesses, rates, taxes and surcharge payable to the Government etc. In the proviso to sub-section (2) of section 6 it is laid down that where there is a dispute as to whether a particular wakf is a Shia Wakf or Sunni Wakf and there are clear indications in the recitals of the deed of wakf as to the sect to which it pertains, such dispute shall be decided on the basis of such recitals. In sub-section (4) of section 6 a mandate is issued to the Commissioner, the Additional Commissioner to submit his report of enquiry containing the particulars mentioned in sub-section (2) to each of the Board and the State Government, and the State Government shall, as soon as possible notify the same in the official gazette the wakfs relating to particular sect, to which, according to such report, the provisions of this Act apply. Section 8 on which much reliance is placed by the learned counsel for the appellants is quoted hereunder: Section:8

(1) if any dispute arises whether a particular property is wakf property or not or whether a wakf is a Shia wakf or Sunni wakf, the Board concerned or the mutawalli of the wakf or any person interested therein, may, in accordance with the provisions of this Act, refer the dispute for adjudication to the Tribunal:

Provided that no such dispute shall be entertained by a Tribunal after the expiry of one year from the date of the publication of the list of wakfs under sub-section (4) of Section 6.

(2)The Commissioner, Additional Commissioner of Wakfs and Assistant Commissioner of Wakfs shall not be made a party to any proceeding under sub-section (1).

The next provision which is relevant for the purpose of the Act is section 29 which is in Chapter III titled

Registration of Wakfs In Section 29(1) it is declared that every other wakf, whether subject to this Act or not and whether created before or after the commencement of this Act, shall be registered at the office of the Board of the sect to which the wakf belongs.

In sub-section (2) it is provided that application for registration shall be made by the mutawalli within 3 months of his entering into possession of Wakf property, provided that such application may be made by the wakf or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the Wakf belongs.

Sub-sections (3), (4) and (5) deal with the contents of the application for registration and the manner in which the application shall be filed. Sub-sections (7) & (8) which are relevant for the purpose of the case are extracted hereunder:

7. On receipt of an application for registration, the Board may, before the registration of the wakf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and the correctness of any particular therein, and, when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall after affording him a reasonable opportunity of being heard, pass such order as it may deem fit.

(8) Any person aggrieved by an order of the Board under sub-section(7) may, by application within 90 days from the date of that order, refer the dispute to the Tribunal which shall give its decision thereon.

From the conspectus of the statutory provisions noted above, the scheme of the statute is clear that in case of any dispute, whether a particular property is Wakf property or not or whether a Wakf is a Shia Wakf or Sunni Wakf the Board concerned or the mutawalli of the Wakf or any person interested in the Wakf may in accordance with the provisions of the law refer the dispute for adjudication to the Tribunal. Under the proviso to sub-section(1) a restriction is imposed that no such dispute shall be entertained by a Tribunal after the expiry of one year from the date of publication of the list of Wakfs under sub-section(4) of Section 6. On a plain reading of the provision in sub-section(1) it is clear that it is expressed in wide terms taking within its fold different types of disputes relating to a Wakf and its properties. The statute enables different classes of persons interested in the wakf and its properties like the Board concerned, the mutawalli and any person interested in the wakf to raise a dispute. The only restriction sought to be placed on such a reference is in the proviso, wherein it is laid down that after the list of Wakfs is published by the Commissioner under sub-section(4) of section 6 of the Act then the dispute has to be made to the Tribunal within one year from the date of publication and the Tribunal is precluded from entertaining the dispute after the expiry of one year. The section does not make any provision that the publication of a list of Wakfs by the Commissioner under section 6 is a sine qua non for a reference under section 8(1) of the Act. All that is laid down in the proviso to sub-section(1) is that after a list

of Wakfs has been published by the Commissioner then a dispute as contemplated in the proviso has to be raised within one year from the date of the publication of the list of Wakfs and not thereafter. It is pertinent to note here that in the present case no list of Wakfs has been published by the Commissioner under section 6(4). Therefore, the limitation prescribed in the proviso to sub-section(1) of section 8 has no application in the case.

In the present case as noted earlier, both the sects of Muslims in the locality have claimed the mosque its sehan and the Imam Chowk as Wakf belonging to their sect and registration of the properties accordingly. It is not disputed that a dispute of this nature comes within the purview of sub-section(1) of section (8) of the Act. In the circumstances of the case the contentions raised by Shri Gupta against maintainability of the reference made to the Tribunal under section 8(1) of the Act on the ground that such a reference does not lie in the absence of a publication of the list of Wakfs by the Commissioner or that the reference is barred by limitation cannot be accepted. Shri Gupta heavily relied on the decision of the Allahabad High Court in the case of Mukhtar Husain and ors. Vs. Fattu and others (1975 A.W.C. 462) in which a view supporting his contention was taken and submitted that the law laid down in that case has held the field for all these years. In view of the discussions made above we need only say that the view taken by the Allahabad High Court in the aforementioned case is contrary to the statutory provisions and not in accord with the intent and purpose of the legislature as expressed in the sections. It is our considered view that the decision does not lay down the correct position of law.

Coming to sub-section (8) of section 29 the provision in our view vests an independent right in a person aggrieved by an order of the Board under sub-section(7) to make an application to refer the dispute to the Tribunal. Such application is to be made within 90 days from the date of the order by which the applicant feels aggrieved.

In this regard the case of the respondents that they came to know about the registration of the mosque its sehan and the Imam Chowk by the Sunni Wakf Board in course of a proceeding under section 145 Cr.P.C. and within 90 days thereafter they filed a dispute before the Tribunal has been accepted by the Tribunal and confirmed by the High Court. There is little scope to disturb the findings of fact in these appeals. Therefore, the contention of Shri Gupta that the dispute raised before the Tribunal under section 29(8) of the Act was barred by limitation also cannot be accepted. No other contention was raised on behalf of the appellant. In the result the appeals are dismissed but in the circumstances of the case without any order as to costs.