

## RAJASTHAN HIGH COURT

Mohammad Islam

Vs.

Union of India

Civil Writ Petn.No. 989 of 2002 and Civil Revn.Petn. No, 389 of 2001  
(K.S. Rathore, J.)

25.10.2004

### ORDER

**K.S. Rathore, J.**

1. Writ petition No. 989/2002 is filed by Mohd. Islam and Revision Petition No. 389/2001 is filed by the Union of India. As the Hon'ble Chief Justice in the administrative side has ordered to decide this revision petition along with the aforesaid writ petition, therefore, the writ petition as well as the revision petition are being heard together finally and are being decided by this common order.
2. The writ petition has been preferred by one Mohd. Islam against the order dated 27-12-2001 passed by the Estate Officer (Western Railway) Jaipur whereby the Estate Officer has observed that the Rajasthan Board of Muslim Wakf has violated the agreement executed between the Wakf and the Railway and on account of breach of terms of the agreement the Secretary of the Intazamia Committee, Masjid Railway Phatak has raised certain construction, which is said to be beyond the area of wakf property. The Estate Officer of the railway while exercising power vested under Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 has observed that since the Intazamia Committee has encroached upon the railway land i.e. beyond the wakf property and ordered to remove encroachment forthwith. Since this is an interim order which has been challenged by the petitioner, therefore, the respondents have raised the objections with regard to the maintainability of the writ petition.
3. Learned counsel for the petitioner submits that the Estate Officer, so far as the Waqf property is concerned, is not having any authority or jurisdiction to hear such matters. It is not disputed that the Intazamia Committee executed a lease deed on 9-9-80 but it

was submitted that such lease deed, which has been executed between the Intazamia Committee and the Railway is without jurisdiction and the Secretary had no *locus standi* to execute the alleged lease deed and be declared null and void. To this effect Rajasthan Board of Muslim has already filed a suit before the Wakf Tribunal same is pending.

4. Learned counsel for the petitioner further submits that since 1945 this place, which was earlier 'Chabutara' was used for muslim prayer as the Town Survey, which was conducted in the year 1945 the site in question is shown as a 'Chabutara' for Muslim prayers. It is also not disputed that the Intazamia Committee has raised the construction surrounding the mosque including the shops.

5. Learned counsel appearing on behalf of the petitioner as well as on behalf of the respondent Muslim Wakf Board submitted that whatever the dispute with regard to the wakf property is a subject-matter of the Wakf Tribunal. It is also to be decided by the Wakf Tribunal only whether they have encroached upon the land beyond the wakf property or not. Thus in view of this fact the revision petition filed by the Union of India is not maintainable.

6. Learned counsel for both the parties has referred certain clauses of the Wakf Act, 1995. More particularly they referred clause 6, which deals with the disputes regarding wakf property, which is reproduced hereunder:

"(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia Wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final :

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation.- For the purposes of this section and Section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf

during the course of the relevant inquiry under Section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made there under.

(4) The list of wakf shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section (1).

7. By reading this section learned counsel for the Union of India submitted that present writ petition has been filed by the petitioner, who is not interested party. The Wakf Board has not filed this present petition and he is also not having any locus to file the same. In support of his submissions he placed reliance on the judgments reported in AIR 1979 Supreme Court 289 para 44, AIR 1997 Madhya Pradesh 8 para 34, AIR 1992 Supreme Court 1083 paras 10 and 11, AIR 1967 Rajasthan 1 and 1980 WLN (UC) 344 : (AIR 1981 Rajasthan 98).

8. By referring the aforesaid judgments Mr. Garg demonstrated before this Court that the petition has been filed by one Mohd. Islam, who is said to be the Secretary of Intazamia Committee, Masjid Railway Phatak. He further submits that earlier in the writ petition the State as well as the Rajasthan Board of Muslim Wakf has not been impleaded as party respondents and the State as well as the Board are only impleaded as a party only after the observation made by this Court. Thus this petition is not maintainable. He further submits that the petitioner has got alternative efficacious remedy to challenge the impugned order by way of filing an appeal and since present petition is filed against the interim order, it is not maintainable.

9. The same controversy has been raised in the revision petition also. The revision petition has been filed by the Union of India and it is submitted that the Wakf Tribunal has dismissed the application filed on behalf of the Union of India under Order 7, Rule 11, CPC. The respondent has filed the suit against the Union of India without serving

the notice under Section 80 of CPC and it is also alleged that the Wakf Tribunal has not rightly appreciated this fact that the matter is still pending before the Estate Officer of Railway.

10. Learned counsel for the respondent Board Mr. Z. A. Naqvi submits that this revision petition is not maintainable not only pursuant to the amended provisions of CPC but also in view of this fact that as per Sections 6, 51 and 83 of the Wakf Act it is the jurisdiction of the Wakf Tribunal to decide the controversy also whether the Intazamia Committee has raised any construction beyond the limits of the wakf property as specified under the notification or not. Since this controversy is still pending, therefore, this revision petition is not maintainable.

11. Heard rival submissions of the learned counsel for the respective parties, carefully gone through the relevant provisions of the Wakf Act as well as the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the judgments referred by Mr. Garg.

12. So far as the maintainability of the writ petition is concerned, without expressing opinion on the merit I am of the considered opinion that it is no doubt that since 1945 there was a Chabutara to perform Muslim prayer and at the relevant point of time it is also not disputed by the parties that they have raised the construction nearby the Chabutara and also constructed the shops.

13. So far as the jurisdiction of the Estate Officer is concerned, in my considered opinion he has jurisdiction over the land, which belongs to the railway. I am not impressed with the submissions raised on behalf of the petitioner Advocate Mr. S. M. Ali that the property, which has been used by the Intazamia Committee can be included in the wakf property. The petitioner should restrain themselves upto the limit of wakf property. In any case if any construction has been raised beyond the limits of wakf property, it is within the jurisdiction of the Estate Officer.

14. Now the question remains to decide the boundaries of the wakf property. The suit is still pending before the Wakf Tribunal and the Wakf Tribunal is having jurisdiction to decide this question regarding the property as per the notification and as per the documents. While deciding this question it is expected from the Wakf Tribunal to consider this aspect that the railway has pointed out this fact that the construction should be at least 100 ft. away from the existing railway line which is essentially necessary for safety purposes.

15. The Union of India is at liberty to represent his case before the Wakf Tribunal regarding area specified for prayer in Mosque by placing all relevant documents and record.

16. It is also expected from the Wakf Tribunal to decide this aspect first whether the Intazamia Committee has raised any construction beyond the limit of the Wakf Property or not and till the decision of the Wakf Tribunal regarding demarcation of the Wakf Property the Estate Officer shall keep the proceeding pending.

17. It is further expected from the Wakf Tribunal to decide this question expeditiously but in any case not beyond the period of three months from the date of passing of this order.

18. Immediately after the decision of the Wakf Tribunal if it is determined that railway property and land has been encroached, the Estate Officer is at liberty to get it evicted as the Estate Officer is having jurisdiction over the railway property and has got jurisdiction to get evicted unauthorized occupants from the railway property land while exercising power under the Act, 1971.

19. With the aforesaid observations, the writ petition as well as the revision petition stand disposed of.

Ordered accordingly.