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Hengy estab's App

Wakf Tribunal of Uttarakhand Kumaon Region Haldwani

Wakf Suit No. of 2019

Plaintiff Firoz Ahmad (Male) age about 42 years,
Son of Late Noor Ahmad, R/O House
No. 313, Ward No. 17, Mohalla
Qanoongoyan, Tehsil Kashipur,
District Udham Singh Nager.

Verses

Defendant 1. Uttarakhand Wakf Board,
Through its Chief Executive Officer,
Alpsankhyak Kalyan Bhawan,
Adhoiwala, Dehradun.
2. Afroj Ahmad (Male) S/O Late
Noor Ahmad, R/O Mohalla-
Qanoongoyan, Tehsil Kashipur,
District Udham Singh Nager.

Suit for declaration Under Section 83(2) of Wakf Act 1995

read with Rule 64(2) Of Uttarakhand Wakf Rules 2017

Sir,

The humble petition of the above named plaintiff most respectfully showeth as under:-

1. That the father of the plaintiff and Defendant no. 2 was the owner and in possession of a property bearing House no. 238/39 situated at Mohalla Kanoongoyan, within the area of Nager Nigam Kashipur (previously Municipality of Kashipur). This house was previously recorded in the name of predecessor in interest of the plaintiff and Defendant No. 2, subsequent thereto it came in the name of plaintiff and defendant no. 2.
2. That the di-puted property mentioned in para no. 1 of the plaint was separately recorded in the name of the plaintiff and defendant no. 2, in the record of municipality Kashipur.

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3. That when the plaintiff and defendant no. 2 along with their mother sought some information from Nager Nigam Kashipur with regard to all record of the disputed property it was told by the information officer of Nager Nigam that the entire record pertaining to the aforesaid property was missing and was not available.
4. That Nager Nigam Kashipur had lost the record of aforesaid disputed property and an FIR was also lodged by the Nager Nigam on 17.03.2017.
5. That the property in question never remained as the wakf property and it was in possession of the predecessor of the plaintiff and his brother defendant no. 2 even since before Independence of India. In fact it was a property of the King and the predecessor in interest of the plaintiff that is Sh. Shabbir was the Maurusi kastkar of the Zamidar of the property in question.
6. That the property in question was also recorded in the name of the predecessors of the plaintiff and defendant no. 2 in municipal records.
7. That the property in question was recorded as abadi land in revenue record.
8. That on the aforesaid property there is a house which was constructed by the predecessor of the petitioner and his brother, Late Sh. Shabbir son of Mohd. Umer and that house is still in existence. It never remained as wakf property and it was not a part of Wakf property.
9. That some wakf mafias were having the greedy eyes upon the aforesaid property and they said that the property in question is a wakf property and they deemed father of the plaintiff as the tenant of the wakf property and the management committee of the wakf filed a suit bearing no. 182/1995 in the court of Civil Judge Junior Division Kashipur District Nainital purporting the same as a wakf property and admitted the predecessor of the petitioner Lat Sh. Nazir Ahmad was the tenant. The relevant para no. 3 and 4 of the plaint of the suit no 182/1995 are being reproduced as under:-

3. यह कि अ ब स द स्थल पर पुख्ता मस्जिद बनी है तथा क ख ग घ में शब्द जी कब्रिस्तान है तथा यहाँ पर दो जारतें बनी हैं तथा शब्द जी से दक्षिण में इमामवाड़े की भूमि है जिसमें शब्द एच 1 पर बादी का एक किरायेदार लड्डन अकेला कच्चा मकानियत में रहता है तथा अक्षर एच 2 पर बादी का एक अन्य

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किराज

- किरायेदार नजीर अहमद रहता है तथा मुकाम एन 3 पर प्रतिवादी संख्या 1
बतौर किरायेदार पिछले 20-22 वर्षों से चला आ रहा है।
4. यह कि प्रतिवादी नं० 1 एवं प्रतिवादी नं० 2 आपस में समे भाई हैं और
हमसाज हैं।

10. That in the plaint of the aforesaid suit no. 182/1995, a relief was sought for injunction against the predecessor of the plaintiff and it was said that the predecessor of the plaintiff may be restrained from raising any construction on the house in question. A written statement was filed by the predecessor of the plaintiff,
11. That the aforesaid suit was dismissed due to non prosecution of the wakf committee.
12. That the aforesaid wakf committee had filed the aforesaid suit deeming the property in question as a wakf property bearing wakf no. 49 and deeming the predecessor of the plaintiff as a tenant.
13. That one Mr. Brijesh Qadir purported himself to be the Mutwalli of the wakf no. 49 and he made false complaints to the Nager Nigam Kashipur for removal of the name of the plaintiff from municipal records. Thereupon the Nager Nigam Kashipur passed an illegal order for the removal of the name of the plaintiff from the tax register of the house in question. Thereupon the plaintiff preferred a municipal appeal before the court the court of Judge Small Causes/ Civil Judge Junior Division Kashipur bearing Municipal Appeal no. 1 of 2017 which is still pending.
14. That in fact the property in question is not owned by the wakf Board and if the same has been recorded as a wakf property, the same is totally wrong and incorrect.
15. That even in the year 1996 a show cause notice was issued to the sons of Sh. Shabbir Ahmad and it was admitted that there was a possession of the predecessor of the plaintiff over the property in question. Thereupon the predecessor of the plaintiff had submitted reply to the then Additional Wakf Commissioner/ Addl. District Magistrate and thereupon no proceedings were initiated against the plaintiff and his brother.
16. That now after an interval of 20 years, the wakf board in connivance with one Mr. Brijesh Qadir issued a show cause notice to the plaintiff that the property in question is a wakf property and it has also been mentioned that the plaintiff is the encroachers of the house. Thereupon the plaintiff filed their reply.

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17. That the defendant Wakf Board did not record any evidence of any witness nor the Wakf Board proved through the documents that the property in dispute is a wakf property. No oral evidence was recorded by the Chief Executive Officer. The Chief Executive Officer was expected to decide the matter as a court but the Chief Executive Officer treated himself as a prosecutor. When no evidence was produced from the side of management committee of the wakf to prove that the property in question was a wakf property, it was incumbent upon the Chief Executive Officer to dismiss the claim of the managing committee of the wakf but the chief Executive Officer of the Wakf Board did not consider the material aspect of the case that the burden of proof was upon the Wakf Board as well as upon the managing committee to prove that the property in question was the Wakf property.
18. That the Chief Executive Officer of the Wakf Board passed an illegal order for the eviction of the plaintiff from the property in question.
19. That thereupon the defendant filed an application before the Hon'ble Wakf Tribunal under section 54(3) of the wakf Act for the execution of the order dated 11.12.2018 which was passed by the Wakf Board.
20. That as there is a limited scope under section 54(3) of the Wakf Act as such the Hon'ble Tribunal has passed an order in a very casual manner for eviction of the plaintiff to vacate the premises within a period of 45 days.
21. That the Mutwalli filed a civil suit bearing no. 182/1995 on behalf of Wakf Board about the property in question which was already been dismissed vide order dated 26.08.1997 neither it was restored nor any appeal was preferred. It is settled law that the suit of injunction impliedly is a suit of declaration meaning thereby the suit which was filed by then Mutawali of the wakf Board has been dismissed and consequently the right of the Wakf Board had also come to an end. Not only this through the notice dated 26.09.1996 when the Addl. Wakf Commissioner has expected the predecessors of the plaintiff to vacate the premises, no action was taken and no suit was filed upto a period of 20 years.

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22. That the defendant no. 2 is the brother of the plaintiff and is a formal party in the suit as such no relief is claimed against defendant no. 2.
23. That since the predecessors of the plaintiff and the plaintiff and defendant no. 2 are in peaceful possession of the property in question for a period of more than 75 years and their generations are living in their premises, and when they were not evicted even prior to the enforcement of the wakf act 1995 therefore, even otherwise their rights of adverse possession have become mature on the property in question though the plaintiff never admit any right of the wakf board over the property in question. The limitation to evict the plaintiff or their predecessors had already expired even before the enforcement of the wakf act.
24. That the cause of action to file the aforesaid suit arises to the plaintiff when the defendant tried to evict the plaintiff and defendant no.2 from the property in question without any right illegally and on 11.12.2018 when the defendant passed order against plaintiff and on 17.08.2019 when an order was passed to execute the order of the wakf board and continue to arise till today within the territorial and pecuniary jurisdiction of the Hon'ble Tribunal and the Hon'ble Tribunal has full jurisdiction to hear and decide the suit.
25. That the property in question is valued Rs. 10,000/- for the purpose of court fees and a fixed amount of court fees of Rs. 200/- is being paid which is sufficient.

Prayer

1. To pass a decree and judgement declaring order dated 11.12.2018 passed by the defendant no. 1 against the Plaintiff, is illegal, null and void.
2. Any other relief which this Hon'ble Tribunal may deem fit and proper, may kindly be awarded in favour of the plaintiff and against defendant.
3. Award the cost of the petition in favour of the plaintiff and against the defendant.

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Plaintiff abovenamed

I, the plaintiff above named do hereby verify that the content of para no. 1 to 23 are true to the best of my knowledge and para no. 24 and 25 are true on the bases of legal advise.

Varified at Haldwani on 20.11.2019

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Plaintiff abovenamed