

**Court No. - 17**

**Case :-** CIVIL REVISION No. - 35 of 2022

**Revisionist :-** C.E.O. U.P. Sunni Central Waqf Board Lucknow

**Opposite Party :-** Mohammad Nihal And Ors.

**Counsel for Revisionist :-** Syed Aftab Ahmad

**Counsel for Opposite Party :-** Adil Hussain, Farhan Habib, Syed Qamar Hasan Rizvi

**Hon'ble Alok Mathur, J.**

1. Heard Sri Syed Aftab Ahmad, learned counsel for the revisionist and Sri Pankaj Srivastava for respondent No.1.
2. By means of this revision the revisionist has assailed the order dated 28.3.2022 passed by U.P. waqf Tribunal, Lucknow in case No.28 of 2020 (Chief Executive Officer Vs. Mohd. Nihal and others) whereby the Tribunal held that the proceedings initiated on the behest of Chief Executive Officer of U.P. Sunni Central Waqf Board under Section 45 are akin to suit proceedings and accordingly direction has been given for payment of court fee by the revisionist which has been deficient to the valuation of Rs.6,72,000/-.
3. A complaint was moved by Chief Executive Officer in respect of Waqf Masjid Bande Ali Khan, Lucknow stating therein that the waqf is duly registered in the office of U.P. Sunni Central Waqf Board, Lucknow and the property situated at Nawal Kishore Road, Hazratganj, Lucknow of which respondent No.s 1 and 2 who were tenants in shop No.6 situated on the ground floor of the said property at the monthly rate of Rs.15/- and he has deposited the payment of rent but he has not paid arrears of rent of Rs.2805/- for the period from 1.8.2000 to 29.2.2016. It was stated that the notice had also been given to opposite party No.s 1 and 2 but despite the notice the opposite party has failed to pay the rent including arrears of rent and also to vacate the shop in question and accordingly it is in aforesaid facts that prayer was made to remove the encroachment in respect to the premises in question and proceedings accordingly for eviction of the encroachers from the premises in question and deliver the vacant possession of the premises to the applicant.
4. The Chief Executive Officer directed an inquiry to be conducted with regard to the allegations made by the petitioner and on the submission of report of the inquiry issued a notice to

respondent No.s 1 and 2 directing them to deliver the possession of the property within 15 days to the committee of management appointed by the waqf but the opposite party put in appearance and objected to the claim made by the revisionist. On the basis of the rival submission made before the Chief Executive Officer he moved an application to the waqf Tribunal at Lucknow seeking direction under Section 54(4) of the Waqf Act, 1995 against opposite party No.s 1 and 2 directing them to deliver the possession of the waqf property (shop No.6) to the committee of management.

5. The Tribunal accordingly registered a case and issued notice to the opposite parties who put in appearance before the Tribunal and moved applications stating that the application preferred by Chief Executive officer under Section 54 of the Act of 1995 was akin to suit proceedings and as per Rule 3 of the UP. Waqf Tribunal Rules, 2017 and court fee is liable to be paid on such an application. The Tribunal considered the application preferred by the respondents and allowed the same by means of the impugned order dated 28.3.2022 and returned a finding that the application of the Chief Executive Officer is akin to suit for eviction on which as per Section 7 (5) court fee is liable to be paid as per the Court Fee Act,1870.

6. Learned counsel for the petitioner while assailing the said order has submitted that in the present case application was moved by the Waqf - respondent No.3 i.e. committee of management, Waqf Masjid Bandey Ali Khan, Nawal Kishor Road, Hazratganj, Lucknow before the Chief Executive Officer under Section 54 of the Act of 1995. According to Section 54 the matter was inquired into and recommendation of the Chief Executive Officer were moved before the Tribunal in the form of application seeking direction for issuance of order of eviction as provided for in under Section 3(4). He submits that the said proceedings have been initiated on an application under Section 54 of the Waqf Act and in sub Section 3 it has been provided that the Chief Executive Officer on his satisfaction that there has been encroachment on the waqf property may move application to the Tribunal for grant of order for eviction. He submits that in case the intentions of the legislature was to treat such an application as suit then the legislature would have described the said proceedings as suit proceedings under Section 54 rather than merely an application. He further submits that a bare perusal of Section 6 and 7 of the Act of 1995 would make it abundantly clear that the proceedings under Section 54 are different from the suit proceedings as provided for in the aforesaid Sections. He submits that the disputes which can engage Tribunal in suit have been clearly specified under Section 6 which according to him are issues; (a) as to whether a

particular property specified as property in the list of Waqf is waqf property or not or (b) whether a waqf specified in such list is Shia or Sunni, the Board or mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal of such matter shall be final. He submits that persons who can institute a suit have been clearly specified under Section 6. It is, thus, clear that in a suit under Section 6 or 7 court fee is liable to be paid under Rule 3 of the Uttar Pradesh Waqf Rules, 2017.

7. Heard learned counsel for the parties and perused the record.

8. This Court notices that specific provision has been made with regard to removal of encroachment from the waqf property. It has been provided that whenever Executive Officer considers whether on receipt of a complaint or on his own motion that there has been encroachment on a land building or other property which is waqf property and it has been registered as such, under the relevant, Act, he shall cause to be issued a notice specifying the property and calling upon him to show cause on the date to be specified therein, requiring him to remove the encroachment before the the dates. After considering the response of the alleged encroacher and after conducting inquiry and in case he is satisfied that the property in question is waqf property and also that there has been encroachment of the said property he may make an application to the Tribunal for grant of an order of eviction for removing the said encroachment. The Tribunal on receipt of such an application from the Executive Officer may make an order of eviction directing that the waqf property shall be vacated by all the persons who may be in occupation therefore and after passing such an order the property of the complainant is required to be vacated from such person who are alleged to have enroached upon the waqf property.

9. From the above, it is clear that express procedure has been prescribed under Section 54 which is distinct from the procedure prescribed for suit proceedings initiated under Sections 6 and 7 of the Act of 1995. Legislation clearly provided that action under Section 54 can be initiated on mere application to the Chief Executive Officer who in turn on his being satisfied with regard to removal of encroachment further moves the application to the Tribunal for immediate purpose i.e. to seek an order of eviction. The application moved by the Chief Executive Officer contains all the details including inquiry conducted by him and after hearing the encroachers.

10. It is also relevant to note that the Chief Executive Officer is not an aggrieved person but is moving an application only as

per the statutory provisions and consequently he cannot be directed to pay court fee on such application and further it could not have been the intentions of the legislature to treat the application under Section 54 to the Tribunal as suit proceedings on which court fees would be liable to be paid.

11. It is in aforesaid circumstances that this Court is of the considered opinion that the procedure prescribed for the suit is different from the procedure prescribed under Section 54 for removal of the encroachers and that there is clear distinction with regard to the procedure prescribed under Sections 6 and 7 of the Act of 1995 with regard to suit for the court fee is liable to be paid under Section and is clearly distinct from the suit initiated as per Section 54 of the Act of 1995.

12. In light of the above, it cannot be said that the proceedings under Section 54 are suit proceedings for which the petitioner is liable to pay court fee, as such, the order dated 28.3.2022 passed by the U.P. Waqf Tribunal, Lucknow in Case No.28 of 2020 is not sustainable and is accordingly set aside.

13. The Tribunal is directed to proceed and conclude the proceedings expeditiously, in accordance with law.

14. The revision thus stands **allowed**.

**(Alok Mathur, J.)**

**Order Date :- 11.12.2023**

RKM.