

WPMS No.461 of 2016

Hon'ble U. C. Dhyani, J.

Mr. Ajay Singh Bisht, Advocate present for the petitioners.

Mr. P. C. Bisht, Standing Counsel present for the State of Uttarakhand/respondent nos.1 & 4.

Mr. D. Barthwal, Advocate present for the Uttarakhand Wakf Board/respondent no.2 & 3.

By means of present writ petition, the petitioner seeks following reliefs, among others:

(a) Issue a writ, order or direction in the nature of certiorari quashing the proceeding of the Waqf Board in respect of Waqf No.13A so far as it relates to House No.197, 198, 242, 243 at Bara Bazar, Mallital, Nainital.

(b) Issue a writ, order or direction in the nature of certiorari quashing the notice dated 15.01.2016 issued by the respondent no.4.

(c) Issue a writ, order or direction in the nature of mandamus commanding the respondent not to proceed in respect of House No.197, 198, 242, 243 at Bara Bazar, Mallital, Nainital.

Whereas the petitioners have challenged the order dated 15.01.2016 passed by respondent no.4 (Annexure-5 to the writ petition), which is a notice under Section 52 of the Waqf Act, 1995, it is the submission of learned counsel for the respondent-Waqf Board that an efficacious alternative remedy is available to the petitioners under Section 7 of the Waqf Act, 1995, sub-section (1) of which reads as below:

“7. Power of Tribunal to determine disputes regarding wakfs. – (1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf

property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:
..... ”

Learned counsel for the petitioners also agreed to the aforesaid proposition of law, but submits that sometime be given to the petitioners to seek appropriate remedy before the Tribunal concerned and, in the meantime, the effect and operation of the impugned notice be stayed.

Learned counsel fro the respondent-Waqf Board is not adverse to such prayer of learned counsel for the petitioners.

The writ petition is disposed of on the ground of alternative remedy. The petitioners are granted liberty to raise their grievances before the appropriate Tribunal. It is provided that for a period of four weeks from today, the effect and operation of the impugned notice shall remain stayed in the interest of justice and in order to enable the petitioners to take recourse to their grievances before the appropriate Tribunal.

(U. C. Dhyani, J.)

Dated 29.02.2016

Rawat