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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(103)

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Date of Decision:-20.11.2024

Kartar Singh and others

.....Appellants

Versus

Punjab Wakf Board

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Mayank Vashishth, Advocate and
Ms. Prerna Malhotra, Advocate for the appellants.

Mr. Manoj K. Sharma, Advocate for the respondent.

ALOK JAIN, J. (Oral)

The present appeal arises out of the litigation initiated by the respondent-Punjab Wakf Board, whereby, they filed a suit for possession in respect of land measuring 23 kanals 4 marlas bearing Khewat No. 191, Khatoni No. 400 comprising Khasra Nos. 198, 197, 196 as mentioned in the *jamabandi* for the year 1983-84 situated in the area of village Fatehabad, Tehsil Tarn Taran, District Amritsar.

2. The plaintiff claimed the suit land to be the Gair Mumkin Kabristan and claimed itself to be the owner on the strength of the Gazette Notification, however, the appellants-defendants in their defence took the stand that the suit was barred by limitation and the Board is not a registered Corporate body. It was also submitted that the said suit land was purchased by the appellants (herein) on 02.04.1969 and they were in possession of the said property since then and hence, they are the *bona fide* purchasers of the



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suit land for valuable consideration, without therebeing any defect in the title of the vendor.

3. Both the parties led extensive evidence and in order to prove first issue as to whether Sh. K. Sheikh, is competent to file civil suit, in this regard, PW-1 Sadik Hussain, Estate Officer on the basis of Ex. P-1 i.e. the Gazette Notification dated 15.03.1988 issued by the Administrator of the plaintiff-Board testified that the said person was authorized as Secretary to exercise all the powers as mentioned in the said notification to institute and defend the suit(s) on behalf of the plaintiff Board. Further the onus to prove that the property in dispute was Gair Mumkin Kabristan was on the plaintiff for which the plaintiff examined two witnesses i.e. Sh. Sadik Hussain Estate Officer as PW1 and Sh. Amir Hassan as PW2, who testified that the land in dispute was Kabristan and same was owned by the plaintiff-Board. The plaintiff also tendered in its evidence, the copy of *jamabandi* for the year 1983-84 as Ex. P-3, *jamabandi* for the year 1973-74 as Ex. P-4 and further that of the year 1968-69 as Ex. P-5 and copy of the *jamabandi* for the year 1962-63 as Ex. P-7. In addition to the above, a copy of the Khasra girdawari of the suit land was also marked as Ex. P-7. However, on the other hand, the present appellants- defendants adduced cogent evidence to demonstrate that the land in dispute was an agricultural land and was being cultivated since the year 1965-66 and the land in dispute was never used for the burial or as Muslim graveyard. Further, the evidence was also adduced by the defendants/present appellants, including the certified copy of the sale deed dated 02.04.1969, whereby, the present appellants (original defendants) proved the execution of the same in favour of the appellants-defendants on

the basis of which they claimed themselves to be the *bonafide* purchasers for



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a valuable consideration in possession of the suit property. The present appellants-defendants also tendered into evidence the copy of *Jamabandi* for the year 1968-69, 1973-74, 1978-79 and the Khasra girdwari and also the *jamabandi* of the year 1958-59 and 1983-84 which showed the ownership of the said land with the Maharaja Jagjit Singh of Kapurthala. The learned trial Court after appreciating the entire evidence held the following observations which read as under:

“As a result of my discussion above, I hold that the land in dispute is neither gair mumkin kabirstan nor the same is owned by the plaintiff Board. On the other hand, I hold defendant Kartar Singh etc. validly purchased the suit land from Sunder Singh for valuable consideration vide sale deed dated 2.4.1969, a certified copy of which is Ex. D1 and they are owners in possession of the land in dispute by virtue of the sale deed. It is further proved that the defendants did verify the title of their vendor from the revenue record before purchasing the same and as such, they are held to be the bonafide purchasers of the land in dispute for valuable consideration and they have purchased this land without notice of any defect in the title of their vendor and its effect is that the entries contained in the copy of the jamabandi for the year 1983-84 Ex. D16 showing the Punjab Wakf Board as its owner are wrong and are liable to be set aside. Instead in the said revenue documents, the defendants being the vendees of the said suit land are liable to be recorded as owner of the land in dispute. It is further held that as the plaintiff has failed to prove that it is owner of the land in dispute, as such, it is held that the plaintiff Board is not entitled to the possession of the land in dispute. As such, I decide issue nos. 2,5,6, and 7 accordingly in favour of the defendants and against the plaintiff.”



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4. Feeling aggrieved by the dismissal of the suit, Wakf Board preferred an appeal which came to be allowed on 29.05.1992 in which the first Appellate Court discussed with regard to the various *jamabandies* and returned a finding that the objection raised by the present appellants that the change of ownership in favour of the plaintiff-Wakf Board in the revenue record and the alleged relevant mutation which were stated to be void as the same being brought at the back of the parties who were owner in possession at the time, as untenable due to the fact that the very change of ownership brought about in the *jamabandi* after the year 1947 was *per se* unauthorized and hence void. The first Appellate Court resisted itself to consider the lengthy arguments and the alternative plea of the adverse possession made by the present appellants and reversed the findings of the trial Court and decreed the suit.

5. Thereafter, the present appellants preferred the present second appeal and this Hon'ble Court vide order dated 26.08.1992 while issuing notice of motion granted *status quo* in favour of the appellants. Further while admitting the present appeal vide order dated 24.12.1992, the dispossession was stayed subject to the condition that the appellant shall furnish security for the *mesne* profits within six weeks before the trial Court. The security shall be accepted by the trial Court after notice to the respondent.

6. Learned counsel for the appellants at the very outset has relied upon the judgment passed by the Co-ordinate Bench of this Court in the case of ***“Bhagwanti (Deceased) Through LRs Vs. Punjab Wakf Board and others”***, 2024 SCC Online P&H 9621, wherein, the matter has been

remanded back to the first Appellate Court with a direction to decide the



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matter afresh, after considering all the aspects of the matter including the judgment passed by the Hon'ble Apex Court explaining as to how the Wakf property is required to be proved. The Apex Court in the judgment passed in the case of ***"Salem Muslim Burial Ground Protection Committee Vs. State of Tamil Nadu and others," 2023 AIR SC 2769***, has laid down the parameters and it would be imperative to reproduce the following relevant paragraphs:

"24. Only two arguments were advanced by Mrs. June before us. The first is that once a wakf is always a wakf and, therefore, mere non burial of the dead bodies on the "suit land" over the last 60 years or so would not alter its nature so as to confer any right upon the claimants respondents much less that of ryotwari patta in exercise of power under Section 19A of the Abolition Act; secondly, the claims of claimants respondents in the suit land having been dismissed by the ASO, Settlement Officer, Director of Survey and Settlement, Board of Revenue and by the High Court in writ jurisdiction, the Division Bench of the High Court in exercise of its appellate power could have either dismissed or allowed the writ appeals but could not have directed for consideration of the claims under Section 19A of the Abolition Act that too while dismissing the writ appeals.

25. Under the Muslim law, a wakf can be created in several ways but primarily by permanent dedication of any movable and immovable property by a person professing Islam for any purpose recognized by Muslim law as pious, religious or charitable purpose and in the absence of such dedication, it can be presumed to have come into existence by long use.

26. Ordinarily, a wakf is brought into existence by any express dedication of movable or immovable property for



religious or charitable purpose as recognized by Muslim Law. Once such a dedication is made, the property sought to be dedicated gets divested from the wakif, i.e., the person creating or dedicating it and vests in the Almighty Allah. The wakf so created acquires a permanent nature and cannot be revoked or rescinded subsequently. The property of the wakf is unalienable and cannot be sold or transferred for private purpose.

27. *The dedication resulting in the creation of a wakf may at times in the absence of any express dedication may also be reasonably inferred from the facts and circumstances of the case such as long usage of the property as a wakf property provided it has been put to use for religious or public charitable purposes. In this regard, reference may be had to the Constitution Bench decision of this Court in “**M. Siddiq (D) thr. L.Rs. Vs. Mahant Suresh Das and Ors.**”, (2020) 1 SCC 1.*

28. *In the case at hand, there is no iota of evidence from the very inception as to any express dedication of the suit land for any pious, religious or charitable purpose by anyone professing Islam. Therefore, on the admitted facts, the wakf by dedication of the suit land is ruled out.*

29. *The only issue, therefore, is whether the suit land would constitute a wakf by user as it was used as a burial ground which practice has been stopped at least for the last over 60 years since the year 1900 or 1867. There is even no concrete evidence on record to prove that the suit land prior to the year 1900 or 1867 was actually being used as a burial ground (kabristan). Therefore, the alleged use of the suitland as burial ground prior to 1900 or 1867 is not sufficient to establish a wakf by user in the absence of evidence to show that it was so used. Thus, it cannot constitute a wakf by user also. The alleged*



recording of the suit land as a kabristan or as a burial ground is a misnomer or a misconstruction inasmuch as the suit land, if at all, came to be recorded as a rudrabhoomi which denotes 5 (2020) 1 SCC 1 Hindu cremation ground and not a burial ground or a kabristan. It was only Zamin Survey No.5105 or O.T.S. No.2253 (new T.S. No.1) with two tombs existing which alone was recorded as a burial ground. The said land is specifically demarcated and separated from the suit land. The said burial land had already been handed over to the Wakf Board and its recording as such would not impact upon the nature of the suit land so as to constitute it to be a burial ground or a kabristan. Therefore, the suit land was not proved to be a wakf land by long usage also. There is no evidence to prove creation of a wakf of the suit land either by dedication or by usage.

30. *The another limb of the argument is that the suit land has been declared to be a wakf property vide notification dated 29.04.1959. In this regard, it has to be noted that such a declaration has to be in consonance with the provisions of the Wakf Act, 1954 or the Waqf Act, 1995. Both the aforesaid Acts lay down the procedure for issuing notification declaring any property as a wakf.*

31. *The Wakf Act, 1954, which actually is relevant for our purpose, provides that, first, a preliminary survey of wakfs has to be conducted and the Survey Commission shall, after such inquiry as may be deemed necessary, submit its report to the State Government about certain factors enumerated therein whereupon the State Government by a notification in the official Gazette direct for a second survey to be conducted. Once the above procedure of survey is completed and the disputes arising thereto have been settled, on receipt of the report, the*



State Government shall forward it to the Wakf Board. The Wakf Board on examining the same shall publish the list of wakfs in existence with full particulars in the official Gazette as contemplated under Section 5 of the Act. Similar provisions exist under the Wakf Act, 1995.

32. *A plain reading of the provisions of the above two Acts would reveal that the notification under Section 5 of both the Acts declaring the list of the wakfs shall only be published after completion of the process as laid down under Section 4 of the above Acts, which provides for two surveys, settlement of disputes arising thereto and the submission of the report to the State Government and to the Board. Therefore, conducting of the surveys before declaring a property a wakf property is a sine qua non. In the case at hand, there is no material or evidence on record that before issuing notification under Section 5 of the Wakf Act, 1954, any procedure or the survey was conducted as contemplated by Section 4 of the Act. In the absence of such a material, the mere issuance of the notification under Section 5 of the Act would not constitute a valid wakf in respect of the suit land. Therefore, the notification dated 29.04.1959 is not a conclusive proof of the fact that the suit land is a wakf property. It is for this reason probably that the appellant Committee had never pressed the said notification into service up till 1999.*

33. *In “Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by Lrs. Etc.”, AIR 2002 SC 402, it was observed that the Wakf Board should follow the procedure as required under Section 4, 5 and 6 or Section 27 of the Wakf Act before notifying the wakfs under Section 5 of the Act.*

34. *In “Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal,(2017) 13 SCC 174, it was observed as under:*



“16. Thus, it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the Official Gazette by the State under the 1995 Act (it was by the Board under the 1954 Act). As mentioned supra, the list would be AIR 2002 SC 402 7 (2017) 13 SCC 174 prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a wakf property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to the Government for notifying the same in the Gazette....”

*35. It may be noted that Wakf Board is a statutory authority under the Wakf Act. Therefore, the official Gazette is bound to carry any notification at the instance of the Wakf Board but nonetheless, the State Government is not bound by such a publication of the notification published in the official Gazette merely for the reason that it has been so published. In **“State of Andhra Pradesh Vs. A.P. State Wakf Board and Ors.”**, 2022 SCC Online SC 159, this Court consisting of one of us (V. Ramasubramanian, J. as a Member) held that the publication of a notification in the official Gazette has a presumption of knowledge to the general public just like an advertisement published in the newspaper but such a notification published at the instance of the Wakf Board in the 2022 SCC OnLine SC 159 State Gazette is not*



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binding upon the State Government. It means that the notification, if any, published in the official Gazette at the behest of the Wakf Act giving the lists of the wakfs is not a conclusive proof that a particular property is a wakf property especially, when no procedure as prescribed under Section 4 of the Wakf Act has been followed in issuing the same.

36. *In view of the aforesaid facts and circumstances, we do not find any substance in the argument that the suit land is or was a wakf property and as such would continue to be a wakf always. In the absence of any evidence of valid creation of a wakf in respect of the suit property, it cannot be recognized as a wakf so as to allow it to be continued as a wakf property irrespective of its use or disuse as a burial ground.”*

7. In light of the facts and circumstances of the case along with the settled principle of law and keeping in view the judgment passed by the Hon’ble Apex Court (supra), the present appeal is allowed and the judgment and order dated 29.05.1992 passed by the first Appellate Court is hereby set aside and the matter is remanded back to the first Appellate Court to decide it afresh after considering all the aspects of the matter including the judgment passed by the Hon’ble Supreme Court, explaining as to how the Wakf property is required to be proved. The parties are directed to appear through their counsels before the first Appellate Court on 15.01.2025 at 10:00 A.M.

8. The counsel for the respondent-Wakf Board at this stage has prayed that liberty be granted to the parties to give any additional evidence to substantiate their claims in accordance with the present prevailing circumstances, as the evidence led earlier was as per the requirement at that point of time and now for considering the matter afresh in terms of the order



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passed by the Hon’ble Apex Court and for the reason stated above, opportunity be granted to the parties.

9. In addition to the above, the liberty is also granted to the parties to move an appropriate application in accordance with law, in case, any additional evidence is required to be relevant for the proper adjudication of the case.

(ALOK JAIN)
JUDGE

20.11.2024
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Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No