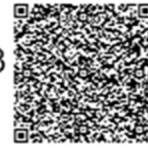


**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

2025:PHHC:024723



(1)

CWP-11742-1993 (O&M)

**PUNJAB WAKF BOARD, AMBALA CANTT. THROUGH
SH. S.Y. QURAISHI, I.A.S., ADMINISTRATOR, THROUGH
THE LEGAL CLERK, PUNJAB WAKF BOARD-CHANDIGARH**

...Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

...Respondents

2025:PHHC:024724



(2)

CWP-11744-1993 (O&M)
Date of decision :20.02.2025

**PUNJAB WAKF BOARD, AMBALA CANTT. THROUGH
SH. S.Y. QURAISHI, I.A.S., ADMINISTRATOR, THROUGH
THE LEGAL CLERK, PUNJAB WAKF BOARD-CHANDIGARH**

...Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Jai Bhagwan, Advocate
for the petitioner(s) in both cases.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

Mr. Sunil Chadha, Sr. Advocate
with Ms. Devyani Sharma, Advocate
and Ms. Kashish Aggarwal, Advocate
for respondent No.7 (in ***CWP-11742-1993***)
for respondent No.6 (in ***CWP-11744-1993***).

HARSH BUNGER, J.

This order shall dispose of **CWP-11742-1993** titled as ***“Punjab Wakf Board, Ambala Cantt. through Sh. S.Y. Quraishi, I.A.S., Administrator, through the Legal Clerk, Punjab Wakf Board-Chandigarh versus The State of Punjab and others*** as well as **CWP No.11744-1993** titled as ***“Punjab Wakf Board, Ambala Cantt. through Sh. S.Y. Quraishi, I.A.S., Administrator, through the Legal Clerk, Punjab Wakf Board, Chandigarh versus The State of Punjab and others***, as both the cases involve common questions of law and facts.

However, for the sake of convenience, the facts are being derived from **CWP-11742-1993** titled as ***“Punjab Wakf Board, Ambala Cantt. through Sh. S.Y. Quraishi, I.A.S., Administrator, through the Legal Clerk, Punjab Wakf Board-Chandigarh versus The State of Punjab and others***.

2. Prayer in the instant writ petition (***CWP-11742-1993***) is for issuance of an appropriate writ, direction or order for quashing the impugned orders dated 21.11.1988 (Annexure P-3) and 27.07.1992 (Annexure P-5).

3. Briefly, the petitioner-Punjab Wakf Board filed a petition before the learned Assistant Custodian General (exercising the powers of Custodian General) under the provisions of the Administration of Evacuee Property Act, 1950 against automatic vesting of land in question, situate at Village Bhadas, Tehsil and District Kapurthala, in favour of the custodian and its further allotment to respondent No.5, herein namely, Sh. Hira Nand.

3.1 The claim of the petitioner-Punjab Wakf Board was that the property in question was “*muafi in takia*”. The pleaded case of the petitioner was that the land in dispute was owned by Muslim migrants, who

had given it on “*muafi*” to Sh. Rulde Shah, Chela Hazoori Shah, Faqir on 29th *Harh Samvat*, 1921 till the existence of “*makan takia*” and in case of good conduct. It was stated that upon death of Sh. Rulde Shah, the *muafi* was extended in favour of Sh. Bhole Shah. It is claimed that the land in question was in trust for public purpose of religious and charitable nature and as such, it fell within the definition of “*Wakf property*”. It was stated that the Punjab Wakf Board was created to manage and control the Wakf properties in the State of Punjab and it was only the custodian General, who could determine as to whether a property is evacuee or held in trust for religious and charitable nature under the Evacuee Property Act, 1950. It was claimed that the land in question was wrongly taken to have vested in the custodian by operation of law and the same was wrongly allotted in favour of Hira Nand (respondent No.5, herein). According to the petitioner, the land in dispute was notified as Wakf property in the Government Gazette. Accordingly, it was prayed that the land in dispute be declared as “*Wakf Property*” and the same be deleted from the list of “*Evacuee Property*”.

3.2 The afore-said claim of the Punjab Wakf Board was opposed on the plea that mere exercise of power by the Board under the Wakf Act, in respect of a particular property did not establish that the property was “*Wakf*” and in the absence of any evidence that the property was “*Wakf*”, there can never be a “*Wakf*.” It was stated that as per the excerpts of Revenue Record, although “*muafi*” was given at one point in time, however, the same was only a “*muafi*” of land revenue, which was to be paid by the “*muafidar*” and the same was to continue till the existence of “*makan takia*” and the “*donee*” had to observe good conduct. It was stated that the donor as well as the donee had both migrated to Pakistan upon

partition of the country and accordingly, even the “*muafi*” vanished. It was further stated that as per the jamabandi for the year 1958-59, the land in question is depicted in the ownership column as “*arazi matruqa (evacuee land)*” and in the columns of cultivation and classification and nature of land, there was no mention of any “*takia*”. It was contended that every “*takia*” is not a “*Wakf Property*” and it can become so by its long user or by endowment. It was further contended that the land in dispute, could not be treated as “*Wakf Property*” and the same was rightly taken as a “*evacuee property*” acquired by Central Government and then allotted to Hira Nand. It was also contended that the Wakf Board, did not challenge the said allotment. It was next stated that there was no conclusivity of the notification under Section 5(2) of the Wakf Act, 1954, accordingly, prayer was made for rejecting the petition submitted by the Punjab Wakf Board.

4. The learned Assistant Custodian General, upon considering the matter came to the conclusion vide its order dated 21.11.1988 (Annexure P-3) that the land in question could be reckoned as Wakf only in case, the *takia* would have remained in use. It was held that since the *takia* had ceased to exist as per the Revenue Record relating to the year 1958-59, the land in question was rightly taken and treated as Evacuee Property. Consequently, the petition filed by the Punjab Wakf Board was dismissed.

5. Feeling aggrieved against the order dated 21.11.1988 (Annexure P-3), the Punjab Wakf Board, preferred a petition (registered as **MR No.60 of 1988-89**) under Section 54 of the Administration of Evacuee Property Act, 1950, which came to be dismissed by the learned Financial Commissioner (Appeals), Punjab vide order dated 27.07.1992 (Annexure P-5). Hence, the present writ petition.

6. Heard.

7. The only question which arises for consideration is as to whether the property in question, has been proved to be a '*Wakf Property*'.

8. In the present cases, petitioner claims that the land in question comprised in *khasra* No.35/24/2(4-18), 25(8-0), 40/4(7-12), 7/1(5-10), 41/1/1(0-8), 50/4/1(3-16) and 5/1(0-13) situate at Village Badhas, Tehsil and District Kapurthala, is Wakf Property as the Punjab Wakf Board, has issued a notification dated 11.09.1971 (Annexure P-1) under Section 5 of the Wakf Act, 1954. It is further claimed that a grant was made in favour of *takia* or *mosque* and therefore, it was not available for allotment to the private respondents. It is also claimed that the institution to which the land in question, stands attached, were granted *muqfi* by the Rulers of the Erstwhile State of Kapurthala and the said entries have been carried out for more than 100 years and the same still continues. It is stated that once the land in question, vests in the public as a public trust then merely on account of the fact that the *muttawali* had migrated to Pakistan on account of partition of the country and the institutions were temporarily managed by the government or the Custodian General, the same shall not take away its character as a Muslim Wakf.

9. It is apposite to state here that the term '*takia*' means a resting place for a *faqir*.

10. In the instant case, the petitioner has placed on record a copy of the notification issued by the Punjab Wakf Board under the Wakf Act, 1954 to claim that the land in question, is a '*takia*' and therefore, the same is a Wakf property; however, it is well settled that exercise of power by the Board under the Muslim Wakf Act, in respect of Muslim Evacuee Properties in trust does not establish and identify the property to be a Wakf

property. In this regard, reference can be made to the judgment rendered by the Hon'ble Supreme Court in the case of ***Punjab Wakf Board, Ambala Cantt. vs Captain Mohar Singh and others, 1975(2) SCC 643.***

11. Further, the learned Financial Commissioner, considered the nature of *muafis* claimed in respect of the land in question and returned the following findings :-

“The ld. Counsel for the petitioner has also raised a question that once the founder dedicated the land to a takia or mosque the land ceases to be owner property and automatically these lands become religious and wakf property. But this fact is not proved on the basis of jamabandi attached with the cases. The muafi was given Bashra nek-chalni. It amply proved that the muafi was not to takia or a mosque but it was a personal muafi. After the migration of the donor and donees at the time of partition the land rightly vested in the Custodian and it has been held so correctly. The ld. counsel for the petitioner has cited AIR 1976 SC-1570 according to which once a founder dedicates the land or a site for mosque, takia or grave-yard it remains so for all times to come. But this fact is not proved from the record and as per report the judgment of the Custodian General. There is no mosque on the land in dispute nor any prayers are being offered. The Tehsildar in his report dated 16.11.1987 has reported that the land in dispute is chahi land in which paddy has been sown and is not a wakf property. Until and unless it is proved the land was ever dedicated to a mosque or a takia, this cannot be held so by mere assertion made on behalf of the Wakf Board. On the other hand the ld. counsel for the respondent has cited 1988-PLJ-P.10 ‘Punjab Wakf Board v/s Natha Singh’ decided by the Punjab and Haryana High Court. In this case the question arose for decision whether the properties declared to be wakf properties in notification published by the Wakf Board under Section 5(2) of the Wakf Act automatically become wakf property or not? This point was examined in detail. This point

was considered by the Hon'ble Rajasthan High Court as reported AIR-1967 Rajasthan P.1, in which the following observation was made :-

“The words ‘any person interested therein’ appearing in Section 6(1) mean no more than a person in a Wakf as defined in Section 2(h). The words ‘if any person interested therein’ appears soon after the words ‘the mutawalli of the wakf’ and, therefore, the word ‘therein’ has been used to avoid repetition of the words ‘in the wakf’ and not to extend the scope of the section to persons who fall outside the scope of words ‘person interested in a wakf’. The purpose of Section 6 is to confine the dispute between the Wakf Board, the mutawalli and a person interested in the wakf. If a person who is a non-Muslim whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denomination and if he is in possession of a certain property, his right, title and interest, cannot be put in jeopardy simply because that property is included in the list published under Section 5(2). The Legislature could not have meant that he should be driven to file a suit in a civil Court for declaration of his title simply because the property in his possession is included in the list. Similarly, the legislature could not have meant to curtail the period of limitation available to him under the Limitation Act and to provide that he must file a suit within a year or the list would be final and conclusive against him. Section 6(4) makes the list final and conclusive only between the Wakf Board, the mutawalli and the person interest in the wakf as defined in Section 2(h) and to no other person.”

The above judgment was affirmed by the Hon'ble Supreme Court in the case titled ‘Board of Muslim Wakf Rajasthan v/s Radha Kishan and others AIR 1979 SC. 289’ where it was held that the list of properties declared to be wakf properties in the notification published under Section 5(2) of

the Act would not bind a stranger who is in possession of the property merely because he happens to be a person affected by the publication of the list of the wakfs. This judgment of the Hon'ble Supreme Court was followed by the Punjab and Haryana High Court in the case cited above. From this it is clear that any property which has been notified as wakf property cannot be held to be so vis-à-vis a stranger who is in possession of the same. So there is no force in the contentions of the counsel for the petitioner that the property which has been notified under the Wakf Act becomes the wakf property. It is clear from the record as well as arguments of the parties that the muafti to the land in dispute was a shakshi muafti depending on the good character of the person performing the religious ceremonies. In view of this, the land involved in all these 9 cases cannot be held to be wakf property. Under Section 46 of the Administration of Evacuee Property Act, 1950, only Custodian is empowered to institute an inquiry and to determine the evacuee character of the property and his jurisdiction to determine is exclusive. The Custodian General has rightly held the land in dispute in all the 9 cases to be an evacuee property. I find no force in the contention raised by the counsel for the petitioner and the petitions are hereby dismissed devoid of any force.”

12. Learned counsel for the petitioner has failed to dislodge the afore-said observations/findings rendered by the learned Financial Commissioner by referring to any material whatsoever. Even from the *missal haqiat* for the year 1958-59 (Annexure P-12), there appears to be no entry as regards *takia* and the only entry is regarding *muafti*.

13. Considering the totality of circumstances, I find no merit in the present writ petitions and the same are, accordingly, dismissed.

14. All pending applications (if any) shall also stand closed.

15. A photocopy of this order be placed on the file of another connected case.

February 20, 2025 gurpreet	(HARSH BUNGER) JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No