

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No.15 of 2019

Decided on: 06th October, 2026

Shakeel Ahmed

...Petitioner

Versus

Himachal Pradesh Wakf Board and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹

For the petitioner:

Ms. Seema K. Guleria, Advocate.

For the respondents:

Mr. R.K. Bawa, Senior Advocate with
Mr. Abhinav Thakur, Advocate.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner feeling aggrieved by the order dated 06.06.2014 passed by the learned District Judge Shimla (Tribunal under the Wakf Act 1995), whereby his application under Section 7 read with Section 83(2) of the Wakf Act, 1955 has been rejected, has preferred the instant revision petition.

2. Respondent No.1-Himachal Pradesh Wakf Board, had filed an eviction petition against the petitioner when despite receipt of notice, he did not vacate the unauthorized one room set situated at Jama Masjid, Middle Bazar, Shimla, which is a Wakf property. The Chief Executive Officer, H.P. Wakf

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Board, Shimla after recording the evidence on behalf of the respondent-Wakf Board, had passed an order on 29.08.2007 while exercising the powers under Section 54(3) of the Wakf Act, 1995 and ordered the petitioner to vacate the one room set situated at Jama Masjid, Middle Bazar, Shimla.

3. The petitioner feeling aggrieved by the said order passed by the Chief Executive Officer, H.P. Wakf Board, Shimla had preferred an application under Section 7 read with Section 83(2) of the Wakf Act, 1955 before the learned District Judge, Shimla, who was exercising the powers of the Tribunal under the Wakf Act, 1995 and on the basis of the pleadings in the application and reply filed thereto, the learned District Judge, Shimla had framed the following issues:

"i) Whether the property in dispute is owned by the State of H.P. and is in constructive possession of the Custodian department? OPP

ii) Whether the applicants are residing in the property in dispute and none had objected to their occupation, as alleged? OPP

iii) Whether the property in dispute is not Wakf property, as alleged? OPP

iv) Whether the order, dated 24.09.2007 passed by the Chief Executive Officer is wrong, illegal and without jurisdiction? OPP

v) Whether the petition is not maintainable ? OPR

vi) Whether the applicants have no cause of action? OPR

vii) Whether the application is bad for non-compliance with the provisions of Section 89 of the Act relating to issuance of prior notice? OPR
viii) Relief."

4. After recording the evidence led by the parties, the learned District Judge, Shimla dismissed the application on 06.06.2014, holding that the order passed by the Chief Executive Officer, H.P. Wakf Board, Shimla is legal and he had exercised the powers to remove the encroachment against the petitioner, who was an unauthorized occupant in accordance with law.

5. The petitioner despite aware of the fact that the order has been passed against him, did not rake up the issue for about 5 years and in the year 2019, instituted a Civil Writ Petition before this Court, which came to be registered as CWP No.100 of 2019, titled, ***Shakeel Ahmad vs. State of H.P. and others*** and the said writ petition was withdrawn on 09.01.2019 with liberty to challenge the order dated 06.06.2014 passed by the learned District Judge-cum-Wakf Tribunal, Shimla.

6. Thereafter the petitioner preferred a review petition as pointed out by the learned counsel representing the petitioner, which was registered as Review Petition No.65 of

2019, titled, ***Shakeel Ahmed vs. State of Himachal Pradesh and others***. The said review petition was disposed of on 13.06.2019, when the Court came to the conclusion that the limitation should not mar the right of the petitioner to challenge the same and it was also observed that the question of limitation shall not come in the way of the petitioner in the revision petition, which he has already preferred.

7. Learned counsel representing the petitioner has vehemently argued that the initial order passed by the Chief Executive Officer, H.P. Wakf Board, Shimla was without serving notice upon the petitioner and since he was not properly served, the order passed by him deserves to be quashed and set aside. She further argued that since the petitioner was in possession of the accommodation for a very long time and belongs to a poor family, his family would come on road, if the petitioner is evicted, which includes his minor ailing son.

8. Learned counsel for the petitioner further submitted that the Chief Executive Officer had failed to appreciate the fact that he had passed an illegal and non-speaking order and thus prayed for quashing the said order,

which had been affirmed by the learned District Judge, while acting as the Wakf Tribunal.

9. On the other hand, Mr. R.K. Bawa, learned senior counsel, duly assisted by Mr. Abhinav Thakur, learned counsel, has supported the order which was passed by the Chief Executive Officer, H.P. Wakf Board, Shimla and affirmed by the learned District Judge while exercising the powers of the Tribunal. He further contended that so far as the service of notice on the petitioner is concerned, he was duly served and the petitioner had not raised that point when an application under Section 7 read with Section 83(2) of the Wakf Act, 1955 was preferred before the learned District Judge, rather the learned District Judge has recorded the findings that the petitioner had made a vital admission that the proceedings were initiated against him, in which he and his brother and sisters were served with notice.

10. Learned senior counsel representing the respondent- Wakf Board also vehemently argued that this Court cannot alter the findings returned by the Chief Executive Officer, H.P. Wakf Board, Shimla, when it has ordered the petitioner to

vacate the accommodation, unauthorizedly occupied by him, more especially when the learned District Judge has considered the said aspect and found that the order passed by the Chief Executive Officer, H.P. Wakf Board, Shimla is legal and the said officer has exercised the jurisdiction vested in him. He further argued that after passing the order of eviction by the Chief Executive Officer, H.P. Wakf Board, Shimla, the respondent-Wakf Board has taken possession of the unauthorized accommodation by filing an execution petition and as such nothing remains to be adjudicated in the present proceedings.

11. I have heard the learned counsel for the parties and also gone through the records carefully.

12. So far as the first argument, which has been raised by the learned counsel representing the petitioner that the petitioner was not served in the proceedings is concerned, once the petitioner had made admission that the proceedings were initiated against him and he was duly served with a notice, which finds mention in the order passed by the learned District Judge, the said argument is without any merit and thus rejected. The second argument, which has been raised by learned

counsel representing the petitioner that the petitioner was in occupation of the accommodation, since a very long time, is concerned, merely being in possession of the premises for long time does not give any right to the petitioner to continue in possession of the accommodation, especially when it has been found by the Chief Executive Officer, H.P. Wakf Board, Shimla that he was in unauthorized occupation.

13. Learned counsel for the petitioner could not buttress her submissions that the petitioner was in occupation of the accommodation on the basis of some documents executed in her favour by the respondent-Wakf Board. Since the petitioner was in unauthorized occupation of the accommodation, no illegality has been committed by the Chief Executive Officer, H.P. Wakf Board, Shimla, while passing the order of eviction order against him on 29.08.2007, which order was affirmed by the learned District Judge when the application filed by the petitioner came to be rejected on 06.06.2014.

14. Learned counsel for the petitioner has vehemently argued that the Tribunal below as well as the Chief Executive Officer have failed to appreciate the facts inasmuch as they

have passed illegal and non-speaking orders. However, the said contention cannot be accepted in view of the fact that the Chief Executive Officer, after recording the evidence, has returned the findings that the accommodation occupied by the petitioner cannot be used for residence or other purposes and the petitioner despite having been served with a notice, did not come forward to agitate the said claim raised by the respondent-Wakf Board and once the evidence led by the respondent-Wakf Board remained unrebutted, no illegality can be said to have been committed by the Chief Executive Officer, H.P. Wakf Board, Shimla, when he passed an order of eviction against the petitioner.

15. The order passed by the Chief Executive Officer, H.P. Wakf Board, Shimla was challenged by the petitioner before the Wakf Tribunal and the learned District Judge had framed the issues on the application filed by him and after recording the evidence has returned the findings, holding that the order passed by the Chief Executive Officer is legal and has been passed in exercise of the jurisdiction vested in him and the said order cannot be said to be illegal.

16. Once the findings, which have been recorded by the Chief Executive Officer, H.P. Wakf Board, Shimla, have been affirmed by the learned District Judge, this Court while exercising the revisional power, cannot alter the said findings, more especially when there is neither any perversity in the order passed by the Chief Executive Officer nor any illegality has been committed while passing the said order, which order has been affirmed by the learned District Judge.

17. Consequently, I do not find any merit in the present revision petition and the same is accordingly dismissed. No order as to costs. Pending application(s), if any, shall also stand disposed of.

06th October, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**