

CR No.105 of 2015 (O&M)

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

**CR No.105 of 2015 (O&M)
Date of decision:08.01.2015**

Punjab Wakf Board

...Petitioner

Versus

Mohd. Rashid and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mrs. Neelofer Abida Parveen, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

This petition is filed by defendant no.1 against the order dated 11.07.2014 by which application for temporary injunction filed by the plaintiffs has been allowed.

Shorn of unnecessary details, the plaintiffs filed the suit for declaration that order dated 13.12.2012 passed by the Chief Executive Officer, Punjab Wakf Board, on the basis of notification dated 01.05.1971 in respect of the suit property is illegal as the property in dispute is not a wakf property and that the Chief Executive Officer, Punjab Wakf Board has no jurisdiction or competence to pass the said order as it could have been passed by the Wakf Tribunal under the law. It was also urged that the plaintiffs are in peaceful possession since long and the order dated 13.08.2013 passed by the SDM, Malerkotla directing the Tehsildar,

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Malerkotla to deliver the possession as per order dated 13.12.2012 to defendants no.1 and 2 is illegal.

Along with the suit, the plaintiffs filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction in which the impugned order has been passed.

Counsel for the petitioner has argued that as per Section 54 of the Wakf Act, the Chief Executive Officer has a right to remove the encroachment from the wakf property, therefore, there was no occasion for the learned Tribunal to grant injunction to unauthorized settlers over the wakf property.

After hearing learned counsel for the petitioner and examining the record, I am of the considered opinion that there is no merit in her arguments. The observations made by the learned Tribunal in this regard in para 5 of its judgment are correct and are reproduced as under:-

“5. In the present case, it is not the case of any party that applicants are lessee, licensee or mortgagees under Mutawalli of the Wakf rather applicants are alleging that the suit property is not wakf property. They are alleging their possession over the suit property from the times of their forefathers. Applicants have produced on record copy of jamabandi for the year 1984-85 where possession is shown to be of Karamat Ali, Arsath Ali and others. Similar position continued in the jamabandi for the year 1989-90 where the mutation has been

sanctioned in the name of Punjab Wakf Board and even in jamabandi for the year 1994-95 the suit land is shown to be in possession of Karamat Ali etc. In jamabandi for the year 2004-2005 also the possession is shown to be of Karamat Ali etc. and in the order passed by CEO on 13.12.2012, the CEO has not held that Wakf Board ever came into possession over the suit property, rather has held that since Punjab Wakf Board is owner of the property, respondents have no authority to occupy the same and on the basis of that order SDM, Malerkotla vide order dated 13.08.2013 had directed Tehsildar, Malerkotla to deliver the possession of wakf property. The plaintiffs have approached the Court challenging the orders of CEO and SDM, Malerkotla being illegal, null and void as per statutory remedy provided to applicants. In case applicants are dispossessed in execution of the order passed by CEO and the SDM their suit will be rendered infructuous. As such there is a prima facie case in favour of the applicants. Balance of convenience is also in their favour and applicants will suffer an irreparable loss in case they are dispossessed from the suit property during the pendency of the present suit. As such the stay application of the applicants is allowed and the operation of the impugned orders dated 13.12.2012

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passed by CEO, Punjab Wakf Board and 13.08.2013

passed by SDM, Malerkotla is stayed during the
pendency of the present suit.”

Resultantly, the present revision petition is hereby dismissed
being denuded of any merit.

January 08, 2015
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(**Rakesh Kumar Jain**)
Judge