

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

Civil Revision No.1086 of 2014
Date of decision : September 14, 2015

Haryana Waqf Board

....Petitioner

Versus

Murti Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Ghulam Nabi Malik, Advocate
for the petitioner.

Mr.Arun Singal, Advocate
for the respondents.

K. KANNAN, J. (Oral)

The civil revision is by the Waqf Board which filed a petition before the Tribunal for ejectment of the property held by the respondent in Khasra No.6817 claiming that the defendants have encroached upon the property and had put up construction over the same without any authority. The petition was resisted on the ground that the defendants have prescribed title by adverse possession and the petition was time barred and that it was Shamlat Deh vested with the

Panchayat and is not Waqf to which the provision of the Act will be applicable. The basic objection was the property as Waqf had not been established. The Tribunal accepted the defence and dismissed the petition. Hence, the revision.

On the claim that the dedication has not been established, the petitioner would make reference to the fact that the property had been notified in the Government of India Gazette on 06.05.1978 reiterating the notification earlier made on 17.04.1971 that the property in Khasra No.6817 of an area of 25 Bighas 17 Biswas had been set apart as grave yard. In response, in support of the judgment of the Tribunal, there was no instrument of dedication and further reference is made to two judgments of this Court in **Mahant Hari Gir Chela Baba Nihal Gir Chela Bankandhi Gir Vs. Punjab Wakf Board, 2009(3) RCR (Civil) 265 and Punjab Wakf Board Vs. Nagar Panchayat Shahkot 2011 (2) RCR (Civil), 243.** A mere reference to the property as having been dedicated as Waqf will not prove the property as Waqf. The property which is shown as Waqf, requires a permanent dedication to be made for a purpose which is pious and recognized by Muslim Law as such.

There are ample authorities to the fact that the property dedicated for a grave yard shall be treated as Waqf property. Chapter II of the Waqf Act, 1954 contained provisions relating to inspection and survey of properties and contained the detailed procedure and how a

report shall be made as regards the nature of use before a publication was effected. Chapter II of the Waqf Act, 1954 is reproduced as under :-

“4.Preliminary survey of wakfs. (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many additional or assistant Survey Commissioners of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.

2.	XX	XX	XX
3.	XX	XX	XX
4.	XX	XX	XX

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government, may, by notification in the Official Gazettee, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey

directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).”

This provision allows for any dispute arising as to whether the property was indeed dedicated or not could be entertained by a person and publication will be made and record prepared therefor entering manner of dedication. If it is therefore contended by any person that there is property notified above is not really dedicated for such a purpose, it ought to be proved that the notification was not made in accordance with law and that the entry regarding the character of property as 'Waqf' was not valid. This is also in view of statutory presumption as available under Section 78 of the Evidence Act that requires that the Court shall presume the genuineness of a document reporting to be with official gazette. If the dedications were stated to be for the use as graveyard, the proof in the very nature of things, ought to be possible only through revenue entry, for, no dead speaks from grave. There had been an attempt in cross-examination of the Estate Officer that he had not known any dead as having been buried. In my view, the dedication will not be lost only for reason there is no dead buried in that place. Even a dedication as a graveyard will not lose his

character as waqf for the principle that is involved here is that once it is Waqf it is always Waqf.

I cannot therefore slight the effect of notification which was issued that it is 'Wakf' and which continues to be reflected as such in the revenue records. A mere fact that the defendant has put the property for different use, it ought not to be a justification for annulling the effect of notification and give premium to an user which is inconsistent with the purpose for which the property is set apart as above through the notification. An inquiry that precedes a notification cannot be reopened again before Tribunal after four decades.

The argument that the property which is Shamlat Deh and therefore cannot be Waqf will constitute a violation to the definition of itself. Section 3 (4) of the 1995 of Waqf Act as well as clause 3 makes reference to the dedication property as for pious purpose. While the 1954 Act did not make specific reference to Shamlat Deh. The Punjab Waqf Act, 1995 specifically includes even a property which has entered Shamlat Deh and Jumla Malkan and entered in the revenue record as such to be clarified as property above. I will not, therefore, make any point out of the property has been referred to in the village as Shamlat Deh to detract from the character of property as Waqf.

The contention of the defendants that the bar limitation will operate is without merit for the Waqf extension of Limitation Act has been passed prior to partition and subsequently therefrom continuously

from time to time till the Waqf Act 1995 has been passed providing for exclusion from the law of limitation Act. There is no attempt anywhere before Tribunal that the defendant has prescribed title by such possession for the defendant for more than seven decades for constituting his own defence to bar Waqf from claiming the recovery.

The order passed by Tribunal is erroneous and it is set aside. The revision petition is allowed.

(K.KANNAN)
JUDGE

14.09.2015
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