

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1444 of 2013

Date of Decision : 20.01.2015

Piao Gaonwali Habeeb Patti Badulla Maszid Committee (Regd.),
Village Gaunchhi, Tehsil Ballabgarh, District Faridabad through its
President Ibrahim son of Abdul Sattar.

....Petitioner

Versus

Punjab Wakf Board through its Estate Manager and others

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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. Vikas Kumar, Advocate
for the petitioner.

Mr. G.S. Bhatia, Advocate
for respondent no. 1.

Mr. R.K. Sharma, Advocate
for respondent no. 6.

Mr. Munish Raj, Advocate
for Mr. Puneesh Gagneja, Advocate
for respondents no. 11 to 13.

R.P. Nagrath, J.

Petitioner-committee claims itself to be the owner of the
disputed land measuring 22 *kanals* 13 *marlas* in village Gaunchhi,
Tehsil Ballabgarh, District Faridabad. The petitioner is a society
registered under the Societies Registration Act, 1860, as amended
from time to time. Certificate of registration is Ex. P-1 dated

08.08.2006. Petitioner-committee filed civil suit on 22.05.2007 through Ibrahim son of Abdul Sattar, claiming himself to be the president of the committee. Respondent No. 1- Waqf Board filed an application under Order VIII rule 11 of the Code of Civil Procedure (CPC) for rejection of the plaint. Learned Civil Judge held that the dispute relates to Waqf which can be determined by the Waqf Tribunal comprising of Additional District Judge (I), as per notification of Government of Haryana dated 25.9.2001. The learned Waqf Tribunal has dismissed the suit of the petitioner against which the instant revision has been preferred mainly on the ground that the civil court does not have the jurisdiction to entertain and try the suit.

2. It was stated that the plaintiff, namely; Piao Gaonwali Habeeb Patti Badulla Maszid Committee is the exclusive owner in possession of the property in question. The land is being cultivated by the committee for the past 50 years. It was further stated that this land had never been given by the committee to the Waqf Board or to respondent-defendants no. 3 to 14 as *Gair Marusi Awal* and *Dwam*. Entries in the name of respondent-defendants in the revenue record have been wrongly made in connivance with the revenue officials. It was stated that the petitioner-committee came to know of the wrong entries on 13.04.2007 on obtaining copy of *jamabandi* for the year 2002-2003 and therefore, filed a suit for declaration and consequential relief of injunction.

3. The suit was contested only by respondent no. 1-Waqf Board. Respondents no. 6 and 11 (i) to (iii) admitted the claim of the petitioner-committee in the written statement filed by them and also

stated that they have never remained in possession of the suit land nor cultivated the same. Rest of the defendants were *ex parte*.

4. The suit was contested only by Punjab Waqf Board-respondent no. 1 claiming itself to be the owner and having management of the suit land. The suit was also stated to be barred by the principle of *res judicata*. It was alleged that in fact Abdul Sattar father of Ibrahim through whom the suit has been filed wanted to grab this land.

5. Learned trial Court framed the following issues from pleadings of the parties:-

- (i) Whether suit land detailed in para no. 2 of the plaint is owned and possessed by *Piao Gaonwali* through the plaintiff committee as alleged? OPP
- (ii) Whether entries in the revenue record in the name of defendants as *pattedar/Gair Marusi* and *Gair Marusi Doyal* regarding land in dispute are null and void and not binding on the rights of plaintiff, as alleged? OPP.
- (iii) Whether plaintiff is entitled to the injunction as prayed for? OPP
- (iv) Whether plaintiff has not come to the court with clean hands and concealed material facts as mentioned in preliminary objection no. 1, if so, what is the effect? OPD
- (v) Whether suit is barred by principle of *res judicata*?
OPD

(vi) Whether plaintiff has no *locus standi* to file the suit?

OPD

(vii) Whether suit is barred by limitation? OPD

(viii) Relief.

6. I have heard learned counsel for the petitioner, counsel for respondent no. 1-Wakf Board, perused the judgment passed by the Tribunal and the records.

7. It is quite apparent that a few of the influential residents of the village have formed a group to grab the property of the Waqf Board one way or the other.

8. Ex. D-2 is copy of the judgment in civil suit titled “Abdul Sattar and another vs. Sartaj and others” impleading Waqf Board as defendant no. 15. That is a judgment in Civil Suit no. no. 174 instituted on 05.03.1984 decided on 31.07.1987. The suit was in respect of the same land and almost on the similar allegations. It was the story pleaded in that suit that Sh. Chuttan father of Abdul Sattar was owner of the land in question known as *Piao Gaonwali*. It was alleged that *Gram Panchayat* of the village leased out the land to one Pritam on 06.03.1965 but the lease deed was revoked by the Deputy Commissioner and the property restored in favour of the plaintiffs of the said suit. It was further stated that defendant no. 15-Waqf Board leased out the land in question to defendants no. 1 to 14 without any legal right or claim.

9. It was held by the learned Civil Judge in that suit that the plaintiffs of the said suit failed to establish themselves to be the

owners in possession of the land and the Waqf Board has got every right to lease out the land to any person. Aforesaid plaintiffs unsuccessfully challenged the judgment of the trial Court by filing Appeal no. 82/13 dated 06.05.1988 decided on 29.03.1989 by the learned Additional District Judge, Faridabad. Copy of the judgment of the Appellate Court is Ex. D-3. It was observed by the Appellate Court as under:-

“In my opinion, the above evidence led by the plaintiffs would not be sufficient to hold that the plaintiffs were either the owners or in possession of the suit property. In fact the plaintiffs had categorically admitted during evidence that they were not in possession of the suit property and that in fact the private defendants were in possession thereof, since 1970-72. No document of title has been produced by the plaintiffs to prove that they were the owners over the suit property. Similarly, no document has been produced on the record to show that they were in possession of the suit property. The mere oral testimony of PW-1 Abdul Sattar and PW-2 Ballan Khan that the plaintiffs were owners in possession of the suit property, in my opinion, cannot be accepted, in the absence of any further proof. The photostat copy mark 'A' produced by the plaintiff-Abdul Sattar as PW-1, is neither here nor there and cannot be made the

basis for holding that the plaintiffs were owners in possession over the suit property. On the other hand, the defendants examined DW-1 Mohomod Usman, one of the defendants and DW-2 Abdul Samat-Estate officer, Punjab Wakf Board, in support of their case. Besides that, copy of the jamabandi, Ex. D-1 and copy of the Khasra girdawari, Ed. D-2 and Ex. D-3 are available on the record. Jamabandi, Ex. D-1, for the year 1982-83 clearly shows that the Punjab Wakf Board through Sartaj Ahmad etc. as pattedars, was in possession of the suit property and the ownership of the Punjab Wakf Board is also entered in the ownership column, in respect of the suit property. Similar entries are there in the khasra girdawari, Ex. D-2 for the year 1978-79 to 1982-83 and khasra girdawari, Ex. D-3 for the year 1983-84 to 1985. The evidence led by the plaintiffs, is not sufficient to rebut the presumption of correctness in respect of the entries in the jamabandi, which are supported by the khasra girdawari entries.”

10. Even though, the learned Tribunal held that the petitioner-Committee was not party to the said case and, therefore, the said judgment would not be binding on the petitioner, yet it is absolutely clear that registration of committee is not shown to have any concern with the suit land. The fundamental defect in the suit

is that the plaintiff-petitioner has not been shown to have any legal entity. The certificate of Registration Ex. P-1 shows that the committee is called *Habib Patti Badullah Masjid Committee* but the same has not been registered as *Piao Gaonwali Committee* under whose nomenclature the suit was filed. On this ground alone the suit was liable to be dismissed.

11. The petitioner proved on record Ex. P-3, the constitution of the plaintiff-committee. The preamble of the constitution is to expand and develop the Mosque and to impart education to the children in *Madarsas* according to the Islamic values etc. There is absolutely no indication of any agricultural land in possession of the committee in the said Constitution.

12. The oldest revenue record in proof of ownership of the land is the mutation Ex. P-4/Ex. P-4/A sanctioned on 06.01.1928. Entry of this mutation shows that Ghasita son of Dildar gifted the land to *Piao Gaonwali*. The words *Piao Gaonwali* literally means the site meant for serving drinking water in the village. This is dedication of land for the pious purpose by a Muslim and, therefore, would be a Waqf property. It is absolutely clear that a few residents of village Gaunchhi have formed a group and styled themselves as *Piao Gaonwali* which is a non-entity. There is nothing to suggest how the ownership of suit land was acquired by the petitioner. It can be safely inferred that a self styled Committee got itself registered in the year 2006 and under that garb has tried to lay claim over the landed property entered in the name of *Piao*

Gaonwali. Mutation Ex. P-4/Ex.P-4/A would show that the land dedicated by the owner to *Piao Gaonwali* was managed/looked after by Khairati son of Ghasita. The above entry was thus carried on in the jamabandi Ex. P-5/P-5/A for the 1929-30. The subsequent *jamabandies* showing the ownership of *Piao Gaonwali* tendered on record are to the same effect.

13. Ibrahim appeared as PW-1 and tendered his affidavit, Ex. PW-1/A. There is absolutely no indication in the statement of Ibrahim how the land was acquired by the petitioner-Committee except a vague statement that the land in question was owned by *Piao Gaonwali*. It is admitted by Ibrahim in cross-examination that his father Abdul Sattar filed a suit regarding the suit land but volunteered that the suit was wrongly filed.

14. The respondent-Board relied upon notification, Ex. D-6, published on 21.11.1970 in the Gazette of India. That notification was issued in exercise of power conferred by sub-section (2) of Section 5 of Wakf Act, 1954, whereunder Punjab Wakf Board published lists of wakfs, existing in the composite Punjab State, containing particulars as have been prescribed under Rule 4 of the Punjab Wakf Rules, 1964. The land in dispute in the instant case measuring 22 *kanals* 13 *marlas* of village Gaunchhi is mentioned at serial no. 1721 in the said list shown in unauthorized possession of *gram panchayat* which obviously has lost any interest in the suit land after publication of list of the wakfs.

15. The *jamabandies* immediately prior to publication of the

aforesaid notification are, Ex. P-8 for the year 1962-63 and Ex. P-9 for the year 1972-73. In these *jamabandies* the suit land is shown to be owned and possessed by *Piao Gaonwali* as *Araji Mustarka Haqdar Shamlat*. The nature of entries in the *jamabandies* make it absolutely clear that this land was dedicated for serving drinking water as '*Piao*' as commonly known in this part of the State but this is shown as common property like *Haqdar Shamlat* in which either the *Gram Panchayat* could only have a right or now the Waqf Board as the Muslim proprietor dedicated the property which has been verified in the survey conducted by the competent authority under the Waqf Act and notified vide notification, Ex. D-6.

16. In the subsequent *jamabandies* Ex. P-10 for the year 1977-78 onwards the entry has now been made in the name of Waqf Board with the previous description of the land as *Piao Gaonwali*.

17. In such a situation, the period of limitation for filing of such a suit before the Waqf Tribunal is only one year from the publication of notification. Sub-section (1) of Section 6 of the Wakf Act, 1995, reads as under:-

"If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the

question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.”

The same time period was prescribed under the Wakf Act, 1954 by virtue of proviso to Section 6 of the Act.

18. The petitioner cannot by any stretch of argument come out of the bar of one year created by the statute, especially on the ground that they had no knowledge of the survey being conducted for notification of the waqf properties. The instant suit was filed before the trial Court in the month of May, 2007. It is pertinent to mention that earlier Civil Suit No. 174 dated 05.03.1984 with regard to same property was filed by Abdul Sattar and Abdul Gaffar sons of Chuttan. As already observed that the plaintiffs in the said suit were unsuccessful even upto the Appellate Court. Ibrahim PW-1 who purports to file the present suits, as president of the registered committee admitted that his father had filed the suit earlier regarding this very property but claimed that the said suit was wrongly filed. So it is quite apparent that the instant suit has been filed after 23 years from the date of institution of the previous suit in respect of the same property.

19. In view of the discussion made above, there is absolutely no merit in instant revision and thus, dismissed. The instant is a unique example of some of the residents of the village

having made successive attempts to usurp/grab the land of Waqf Board, which was dedicated for pious purposes. I would direct that a copy of judgment be sent to Estate Officer of the Waqf Board with a direction to personally monitor and supervise the management and administration of the land in question.

January 20, 2015
jk

(R.P. NAGRATH)
JUDGE