

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

C.R.No.2658 of 2010

Date of decision: 06.10.2015

Gram Panchayat village Uncha Samana ... Petitioner
Vs.

Haryana Wakf Board Ambala Cantt ... Respondent

C.R.No.4701 of 2010

Gram Panchayat village Uncha Samana ... Petitioner
Vs.

Haryana Wakf Board Ambala Cantt ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Ramesh Sindhar, Advocate, for the petitioner.

Mr. B.S.Bedi, Advocate, for the respondent.

AMIT RAWAL J.

This order of mine shall dispose of two civil revision petitions bearing Nos.2658 of 2010 and 4701 of 2010, titled as Gram Panchayat village Uncha Samana vs. Haryana Wakf Board Ambala Cantt, filed against the judgment and decree dated 01.12.2009 passed in civil suit 49 of 2007, whereby, suit for possession with consequential relief of permanent injunction, filed at the behest of Haryana Wakf Board Ambala Cantt, against Gram Panchayat, has

been decreed and judgment and decree dated 01.12.2009, passed in civil suit No.44 of 2007, whereby, the suit for declaration filed at the behest of Gram Panchayat against the Haryana Wakf Board, has been dismissed.

Mr. Ramesh Sindhar, learned counsel appearing on behalf of the petitioner- Gram Panchayat submits that case set up by Gram Panchayat in civil suit No.44 of 2007 was that it is owner in possession of khasra No.92 (1K-4M) popularly known as Pucca Pull, situated at village Uncha Samana, Tehsil and District Karnal, from the inception of revenue record from the year 1955-56 and after the consolidation proceedings. Before consolidation, the proprietors of village Uncha Samana were owners of the suit land. On 21.12.1928, they filed a civil suit regarding the suit property titled as Kartar Singh and others vs. Mohd.Yasin and others for ejectment and recovery of rent in that suit. As per the pleadings of the respective parties, issue No.2 was framed as to whether the property is Wakf or not. The Court gave the findings that the defendants have not been able to give the name of donor and there is no entry in the revenue record that the property is Wakf. This fact was assailed by filing an appeal and the same was also dismissed. Regular Second Appeal was filed before the High Court of Punjab at Lahore and the Court affirmed the findings that the land in dispute is not Wakf.

The appeal was accepted to the extent of canceling the decree for ejectment on the ground that no advance notice was given

to upheld the decree. Thus, there was relationship of landlord and tenant between the parties. Thereafter, on 24.06.1938, Surjit Singh and others filed a civil suit after giving notice to Mohd. Yasin and others, for the ejectment and recovery of rent. The Court, vide judgment and decree dated 23.12.1938, decreed the suit, thus, the proprietors of village Uncha Samana were once again declared owners of the suit land and they were put in actual and physical possession of the same. The Gram Panchayat of village Uncha Samana was recorded as owner in possession of the suit land bearing khasra No.92(1K-4M) (Previous khasra number was 255). Cause of action accrued, when the Haryana Government issued letter dated 27.10.1970 on the basis of which, mutation No.461 dated 6.2.1979 was entered which was attested on 17.12.1983. The aforementioned proceedings were held in the absence of the officials of Gram Panchayat. The ownership of the suit land could not have been divested in the absence of any resolution, but yet the property was reflected in the revenue record as Punjab Wakf Board now Haryana Wakf Board. He further submits that in view of the aforementioned decree, the trial Court has committed illegality and perversity in not granting the declaration and the manner and mode in which the property has been mutated in the name of Punjab Wakf Board now Haryana Wakf Board, is not known to the law, particularly when the matter had already been adjudicated by the Court of law, where there has been a categoric finding that the property is not

Wakf.

In support of his aforesaid contention, he relied upon the judgments of the Hon'ble Supreme Court in **Ramchandra Dagdu Sonavane (dead) by LRs and others vs. Vithu Hira Mahar (dead) by LRs and others (2009) 10 Supreme Court Cases 273** to contend that even parties are different and when issue has been decided, the plea of Wakf board property belong to the Wakf board would be hit by principles of doctrine akin to res -judicata, for the reasons that subject matter in the previous suit and the present suit was the suit property only. He further relied upon the judgment of this Court in **Panchayat Deh vs. Punjagb Wakf Board Ambala and another 1969 PLR 1081 Vol.LXXI**, to contend that once the Wakf board not found in possession of the land within 12 years of suit, suit by Wakf Board for partition, is ex facie barred.

Mr. B.S.Bedi, learned counsel appearing on behalf of the respondents submits that previously all the Wakf properties in the State of Punjab, Haryana and re-added to Himachal Pradesh under the Punjab Re-organization Act vest in the Punjab Wakf Board under the provisions of Wakf Act, 1954. The Central and erstwhile Punjab Government also transferred the right of management of Muslim Trust Properties to the Board vide notification dated 18.3.1960 and 27.12.1961 respectively and it rested in Haryana Wakf Board Ambala Cantt. The land in dispute vests in defendant board and the same is known as *Gair Mumkin* House of Sayyed and as *Peer Illahi Baksh*

and the same has been duly published in Government of India gazette dated 19.12.1970. The land has been dedicated, for the aforementioned purposes by the Muslims of Karnal district. It is rather the Gram Panchayat which has illegally occupied the Public Wakf Land since 1992 and without any jurisdiction authority auctioning the offerings of the said Dargah/Mazar on yearly basis.

In support of his aforementioned contention, he relied upon the judgment of the Hon'ble Supreme Court in **Sayyad Ali vs. Andhra Pradesh Wakf Board, Hyderabad 1999(2) RCR (Civil) 32** to contend that Wakf is permanent dedication of property for purposes recognized by Muslim law as pious, religious or charitable and the property having been found as Wakf would always retain its character as Wakf. Thus, grant of patta in favour of Mokhasadar under the Inams Act does not, in any manner, nullify the earlier dedication made of property and will not change its original character or title. He further relied upon the judgment of the Hon'ble Supreme Court in **Syed Mohd. S. Labbai vs. Mohd. Hanifa AIR 1976 S.C.1569** to contend that plea of res judicata can be given effect to only when the following conditions are proved:-

- i) that the litigating parties must be same;
- ii) subject matter of the suit also must be identical;
- iii) matter must be finally decided between the parties;
- iv) the suit must be decided by a Court of competent jurisdiction.

He further submits that the best method to decide the question of *res judicata* is first to determine the case of the parties as put forward in their respective pleadings of their previous suits and then find out as to what had been decided by the judgments which operate as *res judicata*. He also submits that there is no illegality and perversity in the findings rendered by the Courts below and the revision petitions are liable to be dismissed.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below, and as well as, case law cited at bar.

It is a matter of record that pleadings of the previously instituted suit relied upon by the Gram Panchayat in the defence and as well as in the case in hand have not seen the light of the day, therefore, judgment of **Ramchandra Dagdu Sonavane's case (supra)**, in my view, would not be applicable to the facts and circumstances of the present case, whereas, ratio decidendi culled out in **Sayyad Ali's case (supra)** is squarely applicable to the facts and circumstances of the present case. The Commissioner, Ambala Division, Ambala, was appointed as Survey Commissioner to survey the Wakf properties in Haryana, who surveyed all the Wakf properties in Haryana and submitted his report duly published in Government of India Gazette dated 19.12.1970 and found that suit property as Wakf property. The Gram Panchayat filed an application for correction of *khasra girdawari* qua the suit land in the Court of

Tehsildar exercising the powers of Assistant Collector IInd Grade, Karnal and the same was dismissed on 29.12.2005, Ex.P5. The appeal filed by the defendant was also dismissed by S.D.O (Civil), Karnal, exercising the powers of Collector, Karnal. The Haryana Government issued letter 27.10.1970 on the basis of which mutation No.461 dated 06.02.1979 was entered and the same was attested on 17.12.1983. In column No.13, Tabdeel Malkiat is mentioned vide letter dated 27.10.1970, it is clearly established that ownership with regard to the suit land was transferred in favour of Punjab Wakf Board, therefore, in my view, discussion of the previous litigation, whereby, according to Gram Panchayat, the suit property was not held to be Wakf property, pales into insignificance. Gazette notification Ex.P4, dated 19.12.1970, shows that list of Sunni Wakf's existing in composite Punjab State under Section 5(2) of the Central Government's Wakf Act, 1954 read with Rule 4 of the Punjab Wakf Rules, 1964 and at serial number 161, there is mention of Ghair Mumkin House Sayyad bearing khasra number 92(1-4). In my view, after the issuance of gazette notification Ex.P4 and mutation Ex.D9 (461), Gram Panchayat was left with no right, title or interest in the suit property and as per Section 6(4) of Wakf Act, 1995, it is provided that list of Wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under Sub Section (1), be final and conclusive.

Keeping in view the aforementioned discussion, I am of

the view that property in dispute vests in Haryana Wakf Board and the Gram Panchayat is in illegal possession of the suit property and the Court below has rightly decreed the suit, whereby, Wakf Board has been held to obtain possession of the property in dispute. Moreover, the Panchayat has no right to the land in dispute.

In view of what has been observed above, there is no merit in the contention submitted by Mr. Ramesh Sindhar, learned counsel for the petitioner. I do not find any illegality, much less, perversity in the order under challenge and the same cannot be said to have been passed without jurisdiction.

Accordingly, the revisions petitions are dismissed.

(AMIT RAWAL)
JUDGE

October 06, 2015
savita