

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1901 of 2014 (O&M)
Date of decision: 06.07.2015

Gurudwara Singh Sabha and others

... Petitioners

versus

Punjab Waqf Board

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arun Jain, Senior Advocate with
Ms. Bindu Goel, Advocate for the petitioner.

Mr. S.D. Sharma, Advocate for respondent No.1

K.Kannan, J.

The petition is at the instance of the Gurudwara contending that the Waqf Tribunal has issued the order of recovery of possession in favour of the Waqf Board accepting its plea that the petitioner has trespassed into Waqf property just prior to petitioner. Admittedly, the suit property is a notified Waqf in Central Government Gazette but it cannot secure the benefit for the Waqf Board since the notification itself refers to the possession of the Gurudwara as an unauthorised occupation in the year 1970. Consequently the plea that the Gurudwara was constructed and possession of the Waqf property was assumed in the year 2009 cannot be correct. It is the further contention of the learned senior counsel that the claim itself is barred by limitation and the Supreme Court has held that if no period of limitation is prescribed, Article 137 will apply and it is to be filed within 3 years. Learned senior counsel would mount an additional string to the bow, as it were, to contend that Guru Granth Sahib is a juristic person and the suit should have been instituted against such a person and not against the Gurudwara itself.

I would notice that all the contentions are untenable and cannot be seen as legally tenable. In an action for ejectment based on title which the Waqf Board would declare as obtaining through a notification made in the

Central Government Gazette in the manner contemplated under the Waqf Act, ejectment ought to be ordered unless the defendant makes out a case to deny the title lawfully or proves the title in himself to the property.

The relief of the Waqf Board could not be denied by merely shifting the date of alleged encroachment as pleaded by the Waqf Board to be not correct. In my view, It would make no difference for, the contest has to be decided on a consideration of whether the defendant who resists the action has any right to disentitle the Waqf Board from reclaiming the property lawfully vested in it and notified as such under the Waqf Act. I will, therefore, reject the first line of argument since that the register of the Waqf Board itself would show the encroachment to have existed in the year 1970, the suit for recovery was not competent at a belated stage.

It will be wrong to assume that the residuary Article under the Limitation Act would apply to this case. The enactment of Public Wakfs (Extension of Limitation) Act, 1959 takes care of limitation in this case in favour of the Waqf Board. The Limitation Act of 1963 that spells out a period of 12 years for recovery of possession on the basis of title as contained in Article 64 of the Limitation Act stands excluded by the above Act of 1959, as is adapted by the State of Punjab and by virtue of notifications issued under it. The 1959 Act is a central enactment. Section 3 is reproduced as under:

“3.Extension of period of limitation in certain cases for suits to recover possession of immovable property forming part of public Wakfs. Where a person entitled to institute a suit of the description referred to in Article 142 of Article 144 of the First Schedule to the Indian Limitation Act, 1908, (9 of 1908) for possession of any immovable property forming part of a public wakf or any interest therein has been dispossessed, or has discontinued the possession, at any time after the 14th day of August, 1947, and before the 7th day of May, 1954, or, as the case may be, the possession of the defendant in such a suit has become adverse to such person at any time during the said period, then, notwithstanding anything contained in the said Act, the period of limitation in respect of such a suit shall extend upto

the 31st day of December, 1970.”

The State of Punjab has passed state amendments from time to time. The extension of time was available through subsequent Punjab Amendment Act 41 of 1973 that extended time till 31st December, 1974. this was again extended by Punjab Amendment Act 24 of 1976 up to 31st December, 1976. The Amendment Act 15 of 1981 further extended the period upto 31st December, 1985. The object and reason for the amendment are spelt out as:-

“STATEMENT OF OBJECTS AND REASONS

Following the partition of the country in August, 1947, a number of Wakf properties passed into unauthorised hands and the persons incharge of these properties could not institute civil proceedings for the recovery of possession because of the partition of the country. Under the present law, the title of the true owners would be extinguished if the properties remain in adverse possession for twelve years or more. But, despite extension of Limitation for institution of such suits upto 31st December, 1976 by the Government, there is still a large number of properties regarding which suits could not be instituted. In order to enable the Punjab Wakf Board to institute suits, the Limitation is proposed to be extended up to 31st December, 1985.”

The Waqf Act 1995 completely exempted the applicability of Limitation Act by virtue of Section 107. The Section reads thus:

“Act 36 of 1963 not to apply for recovery of wakf properties. Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property.”

The said provision is prospective (see T. Kaliamurthi and anr. Vs. Five Gori Thaikal Wakf and others, 2008 (9) SCC 306) and unless the defendant had already obtained title by adverse possession or acquired title in any other way, the suit for recovery of possession after the Act cannot be defeated by any law of limitation. Therefore, there could be no fetter to the law of limitation for the Waqf Board to reclaim the property that is in the

hand of the respondent.

The case has been filed against the Gurudwara Singh Sabha through its President and office bearers and other persons in the Village. While Gurudwara Singh Sabha itself could be a juristic person and institution stands on it, it is nonetheless a party in the eyes of law against which a lawful decree could be passed. Indeed there can not be a contention before me that in the absence of the Guru Granth Saheb as a party, the case must fail for non-joinder of necessary party. The Waqf Board is entitled to a decree against the person who obstructs the right to possession and the suit instituted against the President of the Gurudwara and other persons of the Village who are interested in the protecting ought to secure the benefit of such decree as it is capable of being executed. The impugned order is maintained and the civil revision petition is dismissed.

Before parting, I must observe that two religious institutions ought not be confronted in a head to head fight. It is only appropriate that the Gurudwara through its chief representatives engage in a meaningful dialogue and secure a workable solution. It ought to be at the initiative of the parties themselves and I will find no scope for intervention.

Time for eviction is three months from the date of the passing of this order.

06.07.2015

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(K.KANNAN)
JUDGE