

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

CWP No.4090 of 2011

Date of Decision:-04.05.2015

Somnath & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Mansur Ali, Advocate for the Petitioners.

Mr. N.D.S. Mann, Addl. AG Punjab.

Mr. G.N. Malik, Advocate for respondent nos.2 & 3.

Mr. Arvinder Singh, Advocate for respondent nos.4 to 7.

JASWANT SINGH, J.(ORAL)

Challenge in the present petition is to the order dated 03.12.2010 (P-6) passed by respondent no.2, vide which he has allegedly passed an order to reserve area measuring 2 Kanals 0 Marlas of Khasra No.26//26 for the purpose of graveyard.

The argument raised by learned Counsel for the petitioners is that the respondent no.2 who is the Chief Executive Officer, Punjab Wakf Board is not competent to declare any land as a graveyard or otherwise because as per Section 32 there is no mention under the powers and functions of the Board, to either declare an area to be a graveyard. It has been further argued by learned Counsel for the petitioners that the

petitioners have been on lease with the respondent Wakf Board for the past so many years, where a graveyard of the Peer by the name of “*Mardana Sher Nan Gaza Peer*” exists and, therefore, without cancelling the lease, the respondent cannot declare the said land as a graveyard.

On the other hand, the respondents have argued that the order passed Annexure P-6 is a valid order and no interference is warranted from this Court.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and the same deserves to be dismissed.

A perusal of the lease deeds Annexure P-10 onwards, placed on record by the learned Counsel for the petitioners, would reveal that 7 Kanal of land were leased out to the petitioners out of total area of 9 Kanal 14 Marlas, which was comprised in Khasra No.26//26 (2 Kanal-0 Marlas), 27/10/2 (5 Kanal-14 Marlas) and 26 (2 Kanal-0 Marlas) for the period of 1992-93 to 1993-94 which continued till 2011. It is also an admitted fact that petitioner no.3, Neele Khan who was the original, lease holder had filed a civil suit for permanent injunction which was withdrawn by him on 28.03.2011. Before the said suit could be decided, the present petition was filed and after obtaining stay from this Court, the said civil suit was withdrawn. The argument raised by learned Counsel for the petitioners to the effect that respondent no.2 did not have the power to declare the land as Graveyard is completely devoid of any merit because, admittedly, the entire property, as is evident from the Revenue record is recorded as Kabaristan, therefore, the property in question is already a graveyard and there is no new declaration by respondent no.2 which would make the action of

respondent no.2 as illegal and warrant any interpretation from this Court for interpreting the powers of Board Under Section 32 of the Wakf Act, 1995.

Not only this, the question that property cannot be declared graveyard has to be decided by the Tribunal in view of the provisions of Section 83 of the Wakf Act, 1995 which provides that any person interested in a Wakf or any person aggrieved of an order made under the Wakf Act or Rules shall have to make an application before the Tribunal. Furthermore, this Court is of the opinion that alleged order Annexure P-6 whereby respondent no.2 is allegedly declaring 2 Kanal to be graveyard seems to be an incorrect inference of the order. A perusal of the impugned order would show that respondent no.2 has merely decided to reserve an area measuring 2 Kanal in Khasra No.26//26 for graveyard purposes and due to the unnecessary interference by the petitioners, graveyard for the benefit of the local Muslims could not be made. The petitioners are not tenants on the area upon which they are claiming themselves to be on lease and therefore the conduct of the petitioners is actually deplorable.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

May 04, 2015
Vinay