

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

LPA No.299 of 2015 (O&M)

Date of decision: 09.04.2015

Punjab Wakf Board

....Appellant

Versus

State of Haryana and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. B.S. Bedi, Advocate
for the appellant.

P.B. Bajanthri, J.

The appellant aggrieved by the order of the learned Single Judge, dated 07.10.2014 passed in CWP No. 14823 of 1994 filed this Letter Patent Appeal.

(2) The appellant is Punjab Wakf Board (for short "Board"). In the year 1969 by the Managing Officer (P), Jalandhar transferred the property bearing No.13-XI-673 situated at Kaithal in the name of one, Daulat Ram son of Shri Natha Ram for a sum of Rs.12,702/- vide communication dated 03.03.1969. Since Sh. Daulat Ram failed to execute agreement by paying necessary amount, the property in dispute stood restored in favour of the State Government for disposal under the Administrative and Financial Department. On 30.11.1971, Naib Tehsildar (Sales)-cum-M.O., Kaithal inspected the spot after receipt of the property

file.

(3) Thereafter, there was proposal for disposal of the plots by way of auction. Sh. Daulat Ram aggrieved by the proceedings preferred an appeal before the Additional Settlement Officer/Assistant Settlement Commissioner, however, in pursuance of the order dated 30.11.1971, the property was put to auction in two lots on 28.01.1972. Sh. Harbhajan Singh and Sh. Deva Ram were the highest bidders. When things stood thus, one Sh. Jagdish Ram filed an objection petition against the auction and sought for transferring the property in his favour at reserved price on the basis of his possession. The Additional Settlement Officer (Sales)-cum-A.S.C. rejected appeals while confirming the auctions in favour of Sh. Harbhajan Singh and Sh. Deva Singh. Sh. Daulat Ram aggrieved by the rejection of appeal filed revision petition. It was also dismissed while upholding the auction proceedings. Further Daulat Ram filed petition under Section 33 before the Financial Commissioner, which too was dismissed on 05.11.1986. It was noticed that one Sh. Anil Kumar was in possession unauthorizedly. He filed a civil suit in the Court of Sub-Judge, Kaithal in which status quo was granted.

(4) At this juncture, the appellant approached the Custodian General Haryana, under Section 27 of the Administrative of Evacuee Property Act, 1950 (for short referred as "Act") seeking declaration that shop No.338, Ward No.2, Kaithal and part of Kila No.223 min. (0 kanal and 5 marlas) situated at Patti Gaadar, Tehsil and District Kaithal be declared as 'Wakf property' and not 'evacuee property'. Even property in favour of the private respondent considering as the evacuee property was also questioned.

The Custodian General Haryana, Chandigarh vide detailed order on 26.05.1993 dismissed the application filed by the appellant/Board on 26.05.1993. Reading of the aforesaid order is crystal clear. Each and every fact has been taken into consideration including the delay of 2 decades in filing the application before the Custodian General Haryana, Chandigarh.

(5) Aggrieved by the order of the Custodian General Haryana, Chandigarh dated 26.05.1993, the appellant/Board preferred revision petition before the Financial Commissioner and Secretary to Government, Haryana Rehabilitation, Department. The said authority while upholding the order of the Custodian General Haryana, taken note of the Civil Court proceedings. An extract of the proceedings dated 03.12.1993 is reproduced herein:-

“Once the civil court has held that the property is in the ownership of the Custodian General that finding can only be challenged before a higher competent civil court. The petitioner has also not produced the relevant revenue records to prove that the land shown in khasra no. 1753/37 in the jamabandi 1943-44 is the same as the present killaa no. 223 after consolidation. In view of the failure of the petitioner to establish this point and also in view of the fact that the civil court had given its finding that the land was in the ownership of the custodian General.”

(6) Feeling aggrieved by the order of the respondents No. 3 and 2, the appellant preferred writ petition. On 07.10.2014, the learned

Single Judge turned down the writ petition while recording that claim of the appellant/Board rejected by the authorities mainly on the ground that Civil Court had already decided the ownership in favour of respondent No.3-Custodian General Haryana, Chandigarh and against the appellant/Board. The appellant/Board aggrieved by the order of the learned Single Judge has filed this Letter Patent Appeal.

(7) Counsel for the appellant raised various contentions in support of the appeal however attainment of finality in the civil proceedings has not been explained as to why rights of the Boards have not been agitated before the appropriate forum. In other words, appellant/Board accepted the judicial pronouncement in respect of status of the property i.e. evacuee property in a civil proceeding.

(8) Learned counsel for the respondents took us to the written statement filed in the writ petition and contended that Civil Court has held the property in question vested in the custodian and the findings on the factual aspects have attained finality. The appellant/Board have not challenged the judicial order before higher Court. It was also pointed out that the property which has been disputed by the appellant/Board is registered in the Custodian/Government therefore, the appellant/Board has not made out a case so as to claim that the property is a wakf property. It was further contended that appellant/Board approached Custodian General, Haryana/respondent No.3 after lapse of 21 years for which no explanation has been given. The delay and laches on the part of the appellant/Board has been taken note of by respondent no.3 as well as respondent No.2 while deciding the appeal as well as revision petition. One of the grounds for

rejection of the appellant's/Board claim is delay and latches. Learned counsel for the respondents has rightly pointed out that the property in dispute claimed by the appellant/Board was the subject matter of proceedings in the Civil Court.

(9) In view of the facts and circumstances of the case, the appellant/Board has not made out a case so as to interfere with the order of respondent No.3, respondent No.2 and order of learned Single Judge. In fact no material has been produced to demonstrate that it is a 'wakf property'. On the other hand, sufficient materials have been considered by respondent No.3 as well as respondent No.2 in the quasi judicial proceedings dated 26.05.1993 and 03.12.1993 respectively and held that it is evacuee property. Absolutely there is no infirmity in the order of the learned Single Judge. We refuse to interfere with the order of the learned Single Judge. Accordingly, the LPA is dismissed.

No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

09.04.2015
pooja saini