

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

SAO 17 of 2014

Date of Decision: April 24, 2015

Haryana Wakf Board

.....Petitioner

Vs.

Gulshan Valecha and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Deepak Sabherwal, Advocate
for the petitioner.

Mr. Vivek Khatri, Advocate
for respondents No.1 and 2.

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M.M.S. BEDI, J. (ORAL)

This is defendant's second appeal against the order passed by Additional District Judge, Hisar holding that notice under Section 89 of the Haryana Wakf Act, for short 'the Act', was not necessary and that as plaintiff- respondents having filed a suit without prior notice under Section 89 of the Act, the trial Court should have decided the suit on merits. This order was passed by the first Appellate Court while setting aside the findings of Civil Judge (Junior Division), Hisar that suit of the plaintiff- respondents

for injunction against the appellant Wakf Board was not maintainable for want of notice under Section 89 of the Act.

Brief facts relevant for adjudication of the present appeal are that the plaintiff- respondents had filed a suit for permanent injunction to restrain the defendant-appellant Wakf Board from interfering in the peaceful possession of the shop in dispute except by due process of law claiming themselves to be tenants under the Wakf Board. The trial Court framed seven issues including issue No.4 i.e. “whether suit is bad for want of notice under Section 89 of the Haryana Wakf Act, 1995” and issue No.6 was framed regarding the jurisdiction of the Civil Court. Both these issues were taken as preliminary issues. The suit was dismissed for want of notice under Section 89 of the Act vide order dated March 4, 2013.

On an appeal having been filed by the plaintiff- respondents before the Appellate Court, the Appellate Court has set aside the findings of the trial Court on preliminary issue No.4 and held that suit was not bad for want of notice under Section 89 of the Act and in the exercise of powers under Order 41 Rule 23 CPC remanded the case to the trial Court directing that the suit will be decided on merits by deciding the other issues.

The Wakf Board has preferred this second appeal against the said order claiming that the Appellate Court has not considered the judgment in **Rewti Vs. Raj Kumar and another**, 2010 (4) PLR 456 and **Syed Abdul Razzak Aminuddin and anr. Vs. Maharashtra State Board of Wakfs Head Office Panchakki Aurangabad**, 2009 (5) ALL MR 818, a judgment

of Bombay High Court, and wrongly held that the suit is maintainable without a notice under Section 89 of the Act.

Learned counsel for the appellant has submitted that the Wakf Board had admittedly issued a notice on September 5, 2011 under Section 106 of the Transfer of Property Act against the plaintiff- respondents. The plaintiff- respondents had submitted reply to the same and had also filed a suit for injunction without issuing notice under Section 89 of the Act. Referring to **Rewti's case** (supra), counsel for the appellant has submitted that issuance of notice under Section 106 of the Transfer of Property Act for terminating the tenancy which is a step prior to the act of seeking eviction is an act which is in pursuance to the provisions of the Wakf Act as such provisions of Section 89 of the Act would be applicable. Section 89 of the Act reads as follows:-

“89. **Notice of suits by parties against Board:** No suit shall be instituted against the board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.”

On asking of the Court, counsel for the appellant Board submits that till date proceedings for eviction have not been initiated pursuant to the notice dated September 5, 2011. Counsel submits that he has got instructions to state at bar that since the plaintiff- respondents are still in possession of the shop in dispute, the Wakf Board intends to eject them only by due process of law by adopting the due procedure.

In view of said statement, counsel for the plaintiff- respondents submits that the suit can be disposed of by issuing an injunction against the Wakf Board that they will not forcibly dispossess the plaintiffs except by due process of law.

In view of the said circumstances, without entering into the controversy regarding the maintainability of the suit for injunction filed by the plaintiff- respondents, the appeal is disposed of with the consent of the parties. It is ordered that the suit of the plaintiff- respondents is decreed on the basis of the consent of the Wakf Board that the plaintiff- respondents will be dispossessed only by adopting the due procedure of law by filing appropriate legal proceedings after termination of tenancy. Since the appellant Board has got an apprehension that precedent might not be created regarding the non-requirement of notice under Section 89 of the Act, the present petition has been filed to get the adjudication of dispute. It is observed that since the matter has been decided on the basis of the statement of the parties, the requirement of notice in peculiar circumstances of this case under Section 89 of the Act has not been adjudicated upon and is left

open. However, a liberty is given to the appellant to avail any legal remedy for seeking possession of the property in accordance with law. Nothing said in this order will prejudice the rights of the parties in the proceedings, if any, initiated for eviction.

April 24, 2015
sanjay

(M.M.S.BEDI)
JUDGE