

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 16th, 2016

1. C.R.No.1107 of 2012 (O&M)

Nimmo & another

...Petitioners

Versus

Punjab Wakf Board, Sector 22-B, Chandigarh

...Respondent

2. C.R.No.2661 of 2012 (O&M)

Punjab Wakf Board, Sector 22-B, Chandigarh

...Petitioner

Versus

Nimmo & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Sunil Chadha, Senior Advocate with
Mr.Chetan Bansal, Advocate,
for the petitioners in CR No.1107 of 2012 &
for the respondents in CR No.2661 of 2012.

Mr.Prateek Mahajan, Advocate,
for the respondent in CR No.1107 of 2012 &
for the petitioner in CR No.2661 of 2012.

AMIT RAWAL, J.

By this order, I intend to dispose of Civil Revision No.1107 of 2012 at the instance of defendants-Nimmo and another and Civil Revision No.2661 of 2012 at the instance of the plaintiff-Punjab Wakf Board claiming mesne profits for use and occupation of the Wakf property. However, the facts are being taken from Civil Revision No.1107 of 2012.

Wakf Board instituted a suit for possession of property

measuring 11 kanals 12 marlas comprised in Khasra No.65 min, Khewat No.256, Khatoni No.293, situated in the revenue estate of Village Panj Dhera, Tehsil Phillaur, District Jalandhar, Hadbast No.132 as per jamabandi for the year 2002-03 (Ex.P3) by invoking the jurisdiction of the Wakf Tribunal on the ground that the aforementioned property was duly notified as Wakf property vide notification dated 14.11.1992 (Ex.P6). The land was being used as Muslim Graveyard of public and charitable and religious nature. Since the defendants came into possession of suit property without any legal right and authority, they were required to hand over the possession from time to time. The use and occupation charges of the suit property @ ₹16.50 per square yard per month were sought.

The suit was contested by the defendants by raising numerous preliminary objections qua maintainability, misdescription, being barred, locus-standi etc. have been taken. It has been stated that the notification was false, defective and vague and could not be relied upon. In fact, the documents would reveal that even in the Khatauni Paimaish record of 1952-53, the alleged property, being claimed as gair mumkin graveyard, had been shown in possession of Chamaran (Maqbuja Chamaran) and after the scheme of consolidation, shown as graveyard of Chamaran. The expression “graveyard/kabristan does not necessarily mean Muslim graveyard as there are many communities amongst Hindus, who bury dead bodies. The revenue record shows that the property is dedicated to Kutia Maiya Bhagwan Da Bhawan. On the basis of the aforementioned objections, the trial Court framed the issues and ultimately while relying upon the documentary evidence brought on record, decreed the suit.

Mr.Sunil Chadha, learned Senior Counsel assisted by

Mr.Chetan Bansal, Advocate appearing on behalf of the petitioners in Civil Revision No.1107 of 2012 and for respondents in CR No.2661 of 2012 submits that in 1982-83, the aforementioned khasra number was bifurcated into slots of land 11 kanals 12 marlas each, one was shown as “Gair Mumkin Kabristan” and other one was “Kutia Maiya Da Bhagwan”. He further submits that in the jamabandi for the year 1941-42, under column of cultivation, shown as Maqbuja Ehle Islam and area of 29 kanals 14 marlas as gair mumkin kabristan, but after the consolidation, as per jamabandi for the year 1953-54 (Ex.P2), under the column of cultivation, shown as Maqbuja Chamaran and thereafter in the jamabandi for the year 2004-05 (Ex.P3) under the column of cultivation, it has been shown as Gair Mumkin Kutian Maiya Bhagwan Da Bhawan Maiya. The genesis of seeking possession is only notification without preferring there being any revenue record, much less the compliance of provisions of Sections 3 and 4 of the Punjab Wakf Act (for short “the Act”). Even jamabandi for the year 1977-78 (Ex.D1) also in the column of cultivation shows the land as Maqbuja Chamaran and, therefore, the Wakf cannot take the benefit of provisions of Section 3(b) of the Act, i.e., even after the property ceased to exist for the purpose, it would still remain Wakf. He also referred to Ex.D2 jamabandi for the year 1982-83 regarding bifurcation, aforementioned. Even in the jamabandi Ex.D3 for the year 1992-93, under the column of cultivation, its entry is Maqbuja Chamaran, i.e., 11 kanals 12 marlas has been shown as Gair Mumkin Kabristan and another 11 kanals 12 marlas recorded as Kutia Maiya Bhagwan, in essence the property was never dedicated to Islam. He further submits that the provisions of Section 4 of the Act have not been complied with as no survey was done before the promulgation of the

notification. The Wakf has failed to prove on record the compliance of aforementioned provisions. Neither the report of the Survey Commissioner or any proceedings initiated by him has been proved, much less placed on record. It is settled law that in case there is no compliance of provisions of Section 4 of the Act, the notification would not carry presumption of truth and give the character and nature of the property as Wakf. All these factors have not been noticed by the Court below and, therefore, there is illegality and perversity. In support of his contentions, he has relied upon the judgment rendered by the Division Bench of this Court in **Punjab Wakf Board Versus Joint Development Commissioner, 2008(4) R.C.R. (Civil) 693** to contend that notification issued by the Government of India under Section 5(2) of 1995 Act would not be conclusive piece of ownership in the absence of any notice issued to the Panchayat before inclusion of property in Wakf properties. To similar effect is the judgment rendered by the Single Bench of this Court in **Punjab Wakf Board, Jalandhar Versus Nagar Panchayat Shahkot, District Jalandhar, 2011 (2) LAR 294**. He has also placed reliance on the ratio decidendi culled out by Single Bench of this Court in **Punjab Wakf Board Versus Chander Bhan, 1982 CurLJ (CCR) 181** to contend that in case the property has been used some time before the partition, it cannot be said to have been dedicated to Ehle Islam or Islam and, therefore, would fall under the properties of Wakf.

Mr.Prateek Mahajan, learned counsel appearing on behalf of the Wakf Board submits that pre-consolidation/during partition and post consolidation and partition, many entries in the revenue records show that under column No.8, the land has been used as Kabristan. The bifurcation of the khasra number would be meaningless. Notification carries the

presumption of truth. There is no challenge to the notification and, therefore, it does not lie in the mouth of the petitioner-defendants to assert with regard to the alleged procedural lapses. The trial Court has given cogent reasons by holding the property to be a Wakf property. He also referred to cross-examination of PW1, who unequivocally admitted that the place was and is being worshipped by other persons and in all jamabandies, the land is shown as gair mumkin kabristan, though under the column cultivation, it is recorded as Maqbuja Chamaran, but the fact remains that even if the property is ceased to exist for the purpose it was being used, it cannot take away from the purview of Wakf as per the provisions of Section 3(b) of 1995 Act. He further submits that the trial Court failed to assign any reason in not granting use and occupation charges. The Court even did not grant the charges as claimed on account of the fact that once it has been held that the property is of Wakf Board, the period of occupation cannot remain without any charges. The owner cannot be prevented from realising its dues on account of the unlawful possession and, thus, urges this Court for affirming the finding qua possession and modification of the impugned judgment and decree qua use and occupation charges.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit and force in the submission of Mr.Chadha, for, the jamabandies, referred above, do indicate that the khasra number, in the year 1982-83 as per Ex.D1, was bifurcated in two sets of area, i.e., 11 kanals 12 marlas each and in column No.5, it has been shown as Maqbuja Chamaran and Kutia Maiya Bhagwan and in none of the column of possession, property was dedicated to Islam or for the purpose as indicated in the definition of Wakf Property and, therefore,

cannot be treated to be Wakf property. No report of Survey Commissioner has been placed on record, in essence there is no compliance of provisions of Section 4 of 1995 Act. In other words, Wakf Board has failed to prove on record that proper procedure was followed before declaring the property to be Wakf. Had there been any proper compliance, the party in occupation ought to have been given notice and right to file objections. Withholding of such record would lead to irresistible conclusion that no such procedure has been followed. Mere promulgation of the notification under Sections 5 of 1995 Act would not include the property under the definition of Wakf. This view of mine is supported by the judgment rendered in **Punjab Wakf Board Versus Joint Development Commissioner (supra)**. A stray entry “Ehle Islam” during pre-consolidation would not fall within the exception clause of Section 3(b) of the Act to form an opinion that even if the property had ceased to exist for period and still remain to be Wakf property. The post consolidation, khasra number shows the possession of aforementioned nature, much less in few of the jamabandies, it has been shown as “Kutia Maiya Bhagwan Da Bhawan”. The expression “itself” does not convey that it was dedicated to Ehle Islam. All these facts have totally been ignored, much less trial Court misdirected in misreading the evidence.

For the foregoing reasons, the judgment and decree of the trial Court is set-aside. Suit fails and the same is dismissed.

Civil Revision No.1107 of 2012 is allowed, whereas Civil Revision No.2661 of 2012 is dismissed.

May 16th, 2016
ramesh

(AMIT RAWAL)
JUDGE