

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No.1954 of 2016
Date of Decision:28.4.2016**

Hans Raj

---Petitioner

vs.

Haryana Waqf Board and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Vimal Kumar Gupta, Advocate
for the petitioner

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

Rekha Mittal, J.

The present petition lays challenge to order dated 14.12.2015 (Annexure P-6) passed by the Civil Judge (Junior Division), Jagadhari dismissing application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure (for short “CPC”) for rejection of the plaint.

Kamal Kant respondent No. 2 has filed a suit for permanent injunction restraining the defendants from interfering in his peaceful and cultivating possession of agricultural land measuring 138 kanals 13 marlas,

detailed in head note of the plaint (Annexure P-1) on the plea that he is the chakotedar/pattedar/tenant since the year 2007-08 of Haryana Waqf Board (for brevity “the Board”) and has made various payments, detailed in the plaint. It has further been pleaded that he has planted popular trees and installed tube well in the land in question and has been paying electricity bills to the Electricity Department regularly.

The petitioner (defendant No. 2) filed an application under Order 7 Rule 11 CPC for rejection of the plaint that came to be dismissed by the trial court vide order impugned.

Counsel for the petitioner has assailed the impugned order primarily on the ground that jurisdiction of the civil court is barred to entertain and try the present suit and the jurisdiction exclusively lies with the waqf Tribunal under Section 85 of the waqf Act, 1995 as amended by Act No. 27 of 2013 with effect from 1.11.2013 (for short “the Waqf Act”) therefore, the trial court has committed a serious error rather illegality in rejecting his application. In support of his contention, he has relied upon the latest judgment of the Hon'ble Supreme Court of India **Lal Shah Baba Dargah Trust vs. Magnum Developers and others 2015(5) Law Herald (Supreme Court) 4151.**

I have heard counsel for the petitioner, perused the records and the provisions of the Waqf Act relevant in the context as well as the judgment of the Hon'ble Supreme Court cited at Bar.

The sole question that calls for determination in the present proceedings is “*whether a suit for permanent injunction of the kind instituted by Sh. Kamal Kant respondent No. 2 cannot be entertained and*

tried by the civil court or to say it differently, whether jurisdiction of the civil court to entertain and try the present suit is barred keeping in view the provisions of the Waqf Act particularly Section 85 thereof?"

To adjudicate upon the aforesaid question, a brief reference to the relevant provisions of Sections 6, 7 and 85 of the Waqf Act is pertinent and the same are reproduced hereunder:-

6. Disputes regarding Auqaf:- (1) If any question arises whether a particular property specified as Waqf property in the list of Auqaf is Waqf property or not or whether a Waqf specified in such list is a Shia Waqf or Sunni Waqf, the Board or the mutawalli of the Waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of Auqaf.

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any Waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done intended to be done in

pursuance of this Act or any rules made thereunder.

(4) The list of Auqaf shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

7. Power of Tribunal to determine disputes regarding

Auqaf:-(1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as Waqf property in a list of Auqaf is Waqf property or not, or whether a Waqf specified in such list is a Shia Waqf or a Sunni Waqf, the Board or the mutawalli of the Waqf, or any person aggrieved by the publication of the list of auqaf under section 5 therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and decision of the Tribunal thereon shall be final:

Provided that-

(a) in the case of the list of Auqaf relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of Auqaf; and

(b) in the case of the list of Auqaf relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit

instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any Waqf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of Auqaf and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

85. Bar of jurisdiction of Civil Courts:-No suit or other legal proceeding shall lie in any Civil Court, revenue court and any other authority in respect of any dispute, question or other

matter relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by a Tribunal.”

A conjoint and careful reading of the aforesaid provisions, in my considered opinion, does not support contention of the petitioner that jurisdiction of the civil court to entertain and try the present suit for injunction is either ousted or the same exclusively lies with the waqf Tribunal. Counsel for the petitioner, on a pointed query raised by the Court, has fairly conceded that none of the questions envisaged in Section 6 or / and Section 7 of the Waqf Act are involved in the present litigation, therefore, I find it difficult to accept contention of the petitioner that either the trial court has committed any error much less illegality or the civil court has got no jurisdiction to entertain and try the present suit.

Counsel for the petitioner has referred to judgment of the Hon'ble Supreme Court **Lal Shah Baba Dargah Trust's case (supra)**. With due regard to the observations made in the referred authority, no such question was raised or adverted to in the referred authority if jurisdiction of the civil court is barred to entertain and try a suit for permanent injunction filed by a person who is claiming himself to be in possession of waqf property being chakotedar/pattedar/tenant and he being liable to protect his possession except in due course of law. Counsel for the petitioner without appreciating that only ratio of a judgment is binding upon the courts, has referred to para 27 and 40 of the judgment wherein the Court has held that the High Court erred in law in directing the civil court to decide the dispute in respect of waqf property. In the referred authority, the issue before the Hon'ble Supreme Court was as to whether after Amendment of Waqf Act in

2013 till the time the State constitutes Tribunal consisting of three members, whether the one member Tribunal continues to exercise jurisdiction under the Waqf Act or the jurisdiction would lie with the civil court. The Bombay High Court has held that till the time a proper Tribunal is constituted, in strict compliance with the amended provisions of Waqf Act, the civil court will exercise the jurisdiction. In such a situation, judgment of the Bombay High Court was set aside by Hon'ble the Supreme Court by holding that the High Court has committed a serious error of law in saying that one member Tribunal exercising jurisdiction cease to exist even though a fresh notification constituting three members Tribunal has not been notified. The judgment relied upon by counsel for the petitioner has got no bearing on the facts of the case in hand, therefore, cannot enure to benefit of the petitioner to substantiate his plea that jurisdiction of the civil court is barred in the given facts and circumstances.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

28.4.2016
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