

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

Civil Revision No.3714 of 2016

Date of Decision: 30.08.2016

Haryana Wakf Board

.....Petitioner

Vs

Om Parkash and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.N. Malik, Advocate
for the petitioner.

Mr. Rose Gupta, Advocate
for respondent Nos.1 to 4.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed order dated 28.03.2016 passed by Civil Judge (Jr. Divn.) Hisar whereby application under Order 7 Rule 11 CPC filed by the defendant-Haryana Wakf Board (petitioner herein) was disposed of by transferring the case to the Wakf Tribunal constituted under Section 83 of the Wakf Act 1995 (hereinafter to be referred as 'the Act').

[2]. In a suit for declaration filed by the plaintiff /respondents, a declaration was sought to the effect that plaintiffs along with other inhabitants of Ward No.12, Hisar have a right of worship in the Hindu Shrine popularly known as

Akhara Baba Chandergiri Mandir and defendant Nos.1 to 3 have no concern with the suit property situated at Tibba Danasher, Ward No.12, Hisar. The judgment and decrees passed in civil suit No.223 of 1984 titled as Haryana Wakf Board vs. Vinod Kumar and others, civil suit No.RBT 564 of 2000 titled as Haryana Wakf Board vs. General Public and others and civil suit No.55-C/84 of 2000 titled as Vinod Kumar vs. Imam Mohammed and others, were also assailed along with judgment and decree dated 04.10.2002 passed by the lower Appellate Court on the basis of fraud, collusion, concealment and misrepresentation. The suit was filed in the year 2011.

[3]. In the aforesaid suit filed by the plaintiffs, an application under Order 7 Rule 11 CPC was filed by the defendant-Haryana Wakf Board through its Estate Officer, Hisar in which precisely two grounds were taken, which are given as under:-

- (a) That the suit involving dispute with regard to nature of property being wakf property has to be decided by the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995. Therefore according to Section 85 of the Act, the jurisdiction of civil Court is barred and only the Wakf Tribunal is competent to decide such

cases.

- (b) Since the suit had already been decided by the civil Court against general public in respect of same property, therefore, the suit was claimed to be not maintainable.

[4]. Civil Court vide the impugned judgment dated 28.03.2016 only adverted to the first ground i.e. dispute involving title viz-a-viz. vesting of land in Wakf is the subject matter of jurisdiction before the Wakf Tribunal, constituted under Section 83 of the Act and, therefore, transferred the suit to the Wakf Tribunal as per Sections 83 and 85 of the Act. So far as second question is concerned, the trial Court has not adverted anything in the impugned order.

[5]. Both the parties are *ad idem* that second issue has not been answered by the trial Court.

[6]. Be that as it may, since the suit has been transferred to the Wakf Tribunal, it would be open to the petitioner to move an appropriate application before the Wakf Tribunal in respect of second ground. In the event of filing such application, the Wakf Tribunal would be obligated to decide the same in accordance with law within reasonable time.

[7]. With the aforesaid observation, the revision petition stands disposed of.

August 30, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No