

475.

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

Civil Revision No.3752 of 2005 (O&M)

Date of decision:21.01.2016

Punjab Wakf Board and another

... Petitioners

versus

Arshad Ahmed and others

.... Respondents

II. Civil Revision No.5861 of 2006 (O&M)

Tirlochan Singh alias Iqbal Singh

... Petitioner

versus

Arshad Ahmed and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Singh, Advocate,
for the petitioner in CR No.5861 of 2006.

Mr. Liaqat Ali, Advocate,
for respondents 1 and 2 in CR Nos.3752 of 2005 and
5861 of 2006.

Mr.Ghulam Nabi Malik, Advocate,
for respondents 3 & 4 in CR No.5861 of 2006.

K.Kannan, J. (Oral)

1. The two civil revisions are respectively cases filed by the Punjab Wakf Board and by the lessee. Both of them were aggrieved that the Tribunal had allowed for a suit to be decreed contending a relief of injunction against the lease of properties of the

Wakf Board. The injunction was sought on the ground that the property qualified as wakf graveyard cannot be used for any purpose in derogation of the purpose for which the wakf was created.

2. When a judgment was cited of an earlier decision that such lease is permissible, this court had disagreed with the view and sought for a reference to a larger Bench. Accordingly the Bench constituted came to decide on the reference but at the time of reference, there has been an amendment made by the Parliament allowing for a lease under Section 51 of the Wakf Act to be made in respect of unused mosque or graveyard if such lease was made prior to the commencement of the Wakf Act (Amendment) 2013. Admittedly, the suit itself came to be instituted only after the lease executed as unused graveyard prior to the amending Act. The Wakf Board's contention is that the actual graveyard is an extent of 5 kanals 1 marla and what was leased out is only a remaining portion of 11 marlas which was unused as graveyard though adjoining to it where the agricultural operations were being carried out. The counsel appearing on behalf of the plaintiff before the Tribunal wants the court to examine the fact that the lease has been in respect of the very same property where a graveyard actually existed and used as such.

3. The case has stood consideration on a point which is fully covered and leaves no scope for a doubt that if the Wakf Board

has leased a property which was unused as graveyard and that the lease has come about prior to the amending Act of 2013, the lease cannot be interdicted by any person including any member of the muslim public. The decree granted cannot be supported in the light of the changed position of law by virtue of the amendment. The judgment of the Tribunal is set aside in the light of the amended provisions holding that the plaintiffs have no right to question the lease granted in relation to the property over which there was no graveyard in existence. The revision petition filed by the Wakf Board and the lessee are both allowed. However, it is clarified that the power to the lease shall not be available for the Wakf Board after the commencement of the Act if any portion of the property is set apart as graveyard. This decree itself will operate to protect the right of the lessor and the lessee in relation to the lease granted in respect of property which was unused graveyard and cannot be stretched to derogate the existence of graveyard in any portion of property within the existent of 5 kanals 1 marla as stated by the counsel for the Wakf Board itself.

4. The revision petitions are ordered subject to the above observations.

(K.KANNAN)
JUDGE

21.01.2016
sanjeev