

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3994 of 2012(O&M)
Date of decision : May 4, 2016

Gram Panchayat of Village Mahain

..... Petitioner

Versus

Punjab Wakf Board and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Gulam Nabi Malik, Advocate
for the respondents.

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?

Amit Rawal, J (oral).

The petitioner-Gram Panchayat is aggrieved of the impugned judgment and decree dated 18.11.2011 passed by the Additional District Judge-cum-Wakf Tribunal, Ropar whereby claim qua declaration to the effect that the petitioner-Gram Panchayat is the owner in possession of the suit land measuring 37 Kanals 5 Marlas bearing Kh/Kh.No.18/289, Khasra No.38// (37-5), situated in village Mahain H.b.No.358 Tehsil Anandpur Sahib, District Ropar has been dismissed.

Mr. Vijay Lath, learned counsel appearing on behalf of the petitioner submits that as per jamabandi for the year 1960-61, 1964-65, 1970-71 the land was shown in the ownership of Wakf

Board. However, possession was shown to be in the name of Rana Sahib. The column of ownership was changed in the name of Wakf Board in connivance with the revenue officials. The property to be shown in the name of Wakf Board has to be followed by some procedure as per provisions of Section 4 of the Wakf Act, 1995 (hereinafter called as 'the 1995 Act'). A survey Commissioner was appointed, therefore the entries recorded in the revenue record in the name of the Wakf Board are in defiance to the principles of natural justice. The defendants in the written statement have not placed on record any documents to prove the notification dated 22.8.1970, in compliance with the aforementioned provisions, much less any evidence that the property in dispute was dedicated to Islam as per provisions of Section 3 of 1995 Act. No doubt the previous suit was filed but the same was dismissed vide order dated 24.7.2007 for want of notice under the 1995 Act. All these facts have not been noticed by the trial court while dismissing the suit.

Even otherwise, it has not been proved that the land is being used by Rana Sahib and it would not change nature and status of the property being dedicated to Islam.

Mr. Gulam Nabi Malik, learned counsel appearing on behalf of the respondents submits that the aforementioned notification has not been challenged. The declaration of the notification is well within the knowledge of the petitioner-plaintiff but the petitioner did not challenge the same as per provisions of Section 5 (2) and 4 of the 1995 Act. The limitation period is 11 years. In case a person is not given notice the limitation would not come in the way

of civil court. There is candid admission of the plaintiff viz-a-viz use of the land for Mia Rana Sahib and therefore, in view of such admission, the suit has rightly been dismissed.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no substance in the submissions of learned counsel for the petitioner, for, it has been un-equivocally been admitted by DW-1 that the place of worship has been used by Rana Sahib. There is no challenge to the notification dated 22.8.1970. Had it been so, perhaps the question of limitation would have come in the way of civil court to decide the question qua title of the property and seek cancellation of the entries in the revenue record in the name of Wakf Board. The onus was on the plaintiff to prove the same that there was no compliance of provisions of Section 4 of 1995 Act, otherwise, it would have shifted upon the defendants. In the absence of discharging of the onus, the plaintiff cannot take up the onus upon defendants in proving entry and character much less nature.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

May 4, 2016
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