

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

**C.R. No.5451 of 2014 (O&M)
Date of Decision.14.12.2016**

Haryana Wakf Board

.....Petitioner

Vs

Union of India and others

.....Respondents

Present: Mr. B.S. Bedi, Advocate
for the petitioner.

Mr. Manoj Dhankar, Advocate
for respondent Nos.2 and 3.

Mr. Jatin Hans, Advocate
for respondent Nos.4 to 6.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.19216-CII of 2016

For the reasons stated in the application, order passed by this Court on 30.08.2016 is recalled and the revision petition is restored to its original number.

Application is allowed.

C.R. No.5451 of 2014

The petitioner-plaintiff is aggrieved of the judgment rendered by the trial Court whereby the suit seeking declaration has been dismissed.

Mr. Bedi, learned counsel appearing for the petitioner-plaintiff submits that the suit was filed by invoking the provisions of Section 6 of the Wakf Act, 1995 on the premise that prior to the entry of the year 1960-61, the property had been shown in revenue record as *Ahelle Islam* and *kabristan*. The impugned entry reflecting the property to be in ownership of evacuee was also challenged by impleading the concerned department and since defendant Nos.4

and 5 were in unauthorized occupation, resultantly the possession was also

sought. The jamabandies for the year 1941-42, 1945-46, 1953-54, 1957-58, 1965-66, 1966-67 and 1976-77 (Ex.P1 to P7) reflect the aforementioned fact. There is gross misconstrual of the aforementioned documentary evidence. The defendants have failed to establish their plea regarding ownership. The Courts below, thus, have abdicated in non-suited the petitioner.

Per contra, Mr. Jatin Hans, learned counsel appearing for respondent Nos.4 to 6 and Mr. Manoj Dhankar, AAG, Haryana for respondent Nos.2 and 3 submit that there is no notification under the 1995 Act or the erstwhile Act of 1954 declaring the property to be wakf, in essence, no survey to be conducted by the commissioner and notified so that objections before declaring the property to be wakf could be invited. In the absence of the same, some entry in the revenue record would not clothe status of ownership in view of the provisions of the Wakf Act and rightly so, the Courts below have declined the relief.

I have heard learned counsel for the parties, appraised the paper book and of the view that the finding arrived at by the trial Court is perfectly legal and justified. As per the erstwhile provisions of 1954 Act before declaring the property, there has to be survey conducted under Section 4 of the Act, only then the Government can issue a notification. The notification issued without survey is not valid one for branding/accruing status of ownership as wakf land by merely relying upon the use of the land for the purpose of user or other religious purpose, in essence, the plaintiff has failed to establish the aforementioned fact. The entry in the evacuee property was made in the year 1960-61 whereas the suit had been filed in the year 2008. No explanation of having not acquired knowledge during all this period is also one of the factors in declining the claim, as for the suit seeking declaration, the time prescribed is three years. The objection of limitation can always be looked into by taking

the aid of provisions of Section 3 of the Indian Limitation Act, 1963. All these factors lead to irresistible conclusion that the plaintiff has miserably failed to establish his ownership and rightly so, the Courts below did not grant the relief as sought for.

There is another aspect of the matter. The petitioner had sought the two-fold relief of declaration of ownership and as well as possession against the respondents who are alleged to be tenant. In the judgment rendered by Hon'ble Supreme Court in *Faseela M. Vs. Munnerul Islam Madrasa Committee and another 2014(2) RCR (Civil) 890* it has been held that for seeking possession, the remedy would not be of a Tribunal but of Civil Court which is only under Section 6 of the Act and not under Section 7, thus, the petitioner could not have clubbed aforementioned two reliefs by invoking the jurisdiction of the Tribunal but as per judgment rendered by this Court in *Ram Lal Vs. Darshan Lal and others 2008(3) RCR (Civil) 427* after expiry of lease period tenant becomes statutory tenant and not an unauthorized tenant and can be evicted only on the ground specified in the Punjab Security of Land Tenures Act, 1953 and Civil Court has no jurisdiction.

For the foregoing reasons, I do not intend to differ with the finding rendered by the Court below, much less, the order under challenge cannot be said to be passed without jurisdiction. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

December 14, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No