

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7700 of 2016 (O&M)

Date of decision:16.11.2016

Punjab Wakf Board

... Petitioner

Vs.

Rajinder Pal Singh Gill and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ghulam Nabi Malik, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner/defendant No.3 is aggrieved of the impugned order dated 01.08.2016, whereby, the application filed under Order 7 Rule 11 of Code of Civil Procedure seeking rejection of the plaint for want of service under Section 89 of the Wakf Act, 1995 (hereinafter referred to as “1995 Act”), has been dismissed.

Mr. Ghulam Nabi Malik, learned counsel for the petitioner/defendant No.3 submits that this Court, vide order dated 11.12.2015 passed in CR No.8168 of 2014 had allowed the impleadment of the petitioner as defendant subject to the provisions of Article 21 of the Limitation Act. In essence, suit with the following prayer:-

“Amended suit for permanent injunction restraining the defendants, their servants and agent from interfering or cause to interfere in the peaceful and exclusive possession of the

plaintiff over the property measuring 1831.62 sq.yards comprising in khasra no.223 situated on The Mall, Patiala marked by letters ABCD as shown in the site plan attached with the plaint and bounded as under:-

East : Mall Road

West : Railway Line

North : Property of Wakf Board

South : Property of Wakf Board

AND

Further suit for declaration to the effect that the lease order dated 04.07.2013 passed by Punjab Wakf Board, defendant No.3 in favour of defendant No.1 and 2 of the land measuring 1831.62 sq. yards is illegal, null and void, without jurisdiction and is liable to be set aside and ignored.”

was earlier instituted against Jarnail Singh and Jagtar Singh and the suit could not have proceeded further for want of service under Section 89 of 1995 Act. It is in this background of the matter, the aforementioned application, was filed but the same has erroneously been dismissed.

In support of his aforementioned submissions, he relies upon the ratio decidendi culled out by this Court in **Ram Partap vs. Punjab Wakf Board, Ambala Cantt. and others 2007(2) L.A.R. 196** and **Rewti vs. Raj Kumar and another 2010(4) PLR 459**.

I have heard learned counsel for petitioner/defendant No.3 and

appraised the paper book and of the view that operative part of the order dated 11.12.2015 allowing the impleadment of Wakf Board reads as under:-

*“It is a matter of record that the application for amendment was filed after the respondent-defendant filed the written statement. This Court while deciding the application of seeking amendment in the plaint is not to comment upon the merits and demerits of the suit. The amendment sought in my view would not alter the nature of the suit rather it would avoid the multiplicity of the litigation and since the respondents have also set up lease, executed by Wakf Board, thus, Wakf Board would also be necessary part. The law on impleadment of a party whether, necessary or essential has been laid by Hon'ble Supreme Court in **“Thomson Press (India) Ltd. V/s Nanak Builders and Investors (P) Ltd. & others” 2013 (5) SCC 397.***

In view of the aforementioned, the impugned order is set aside and much less the application for impleadment of the Wakf Board is accordingly allowed. The impleadment of the Wakf Board shall be subject to the provisions of Article 21 of the Limitation Act.

Civil Revision petition is allowed.”

There is no dispute with regard to the ratio decidendi culled out by this Court in the aforementioned judgments but that was a case, where originally, the suit was filed against the Wakf Board without complying

with the provisions of Section 89 of 1995 Act.

The Wakf Board was not party in the revision petition. On being impleaded, the Wakf Board had moved the application, in my view, in such a situation, the provisions of Section 89 of 1995 Act, do not come into play. At the best, the petitioner shall be at liberty to take the objections by filing the written statement and press for issues. The order declining the application is perfectly legal and justified, much less does not call for any interference.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No