

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.441 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.294 of 2015 in O.S.No.1605 of 2014 passed by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, dismissing the application filed under Order VII Rule 10 r/w Section 151 C.P.C on the preliminary objection as to the inherent jurisdiction of Civil Court, in view of Sections 83 & 85 of Wakf Act, which came into effect on 01.11.2013, as amended by Act.27 of 2013. But, the Trial Court, based on the law declared by the Apex Court in **Faseela M. Vs. Munnerul Islam Madrasa Committee and another**¹ held that the Civil Court jurisdiction is not ousted and thereby declined to order return the plaint.

The said order is now under challenge on various grounds mainly on the ground that, when the Court lacks inherent jurisdiction, the Court cannot proceed with the Trial and thereby, requested this Court to direct the Trial Court to return the plaint by exercising power under Order VII Rule 10 C.P.C.

During hearing, learned counsel for the petitioner while reiterating the grounds urged before the Trial Court and the grounds of revision, drawn attention of this Court to the judgment in **Lal Shah Baba Dargah Trust v. Magnum Developers and**

¹ AIR 2014 SC 2064

others² and requested this Court to set-aside the order passed by the Trial Court.

Whereas, learned counsel for respondents contended that, before approaching the Civil Court, the respondents filed suit before the Wakf Tribunal and the Wakf Tribunal based on the judgment in **Faseela**¹ case, returned the plaint for presentation in appropriate Court, in view of the order passed by the Wakf Tribunal.

No doubt, O.S.No.1605 of 2014 was filed before the Trial Court in the year 2014. By 2013 amendment to Section 85 of the Act, ousted the jurisdiction of the revenue Court or any other authorities along with the civil court. Meaning thereby the legislatures wanted to make sure that no authorities apart from the Tribunal constituted under Section 83 of the Act shall determine any dispute, question or other matter relating to a wakf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property under this Act.

Thus, there is an express ouster of jurisdiction and thereby the Tribunal lacks inherent jurisdiction to entertain the suit relating to property belonging to Wakf Board. Admittedly, the respondents filed suit for eviction, alleging that the property belonging to the respondents is a notified Wakf property. In such case, the Civil Court has no jurisdiction and only the Tribunal constituted under Section 83 of the Wakf Act is alone competent to decide such questions.

² AIR 2016 SUPREME COURT 381

Under Section 9 of C.P.C, the Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

But, in the present case, there is a express bar to entertain O.S.No.1605 of 2014, in view of the amendment to Section 85 of the Wakf Act.

The Constitutional Bench of the Supreme Court in **M/s Kamala Mills Limited v. State of Bombay**³ held as follows:

“Exclusion of jurisdiction of civil court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court shall consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then court will enquire whether remedies normally available in civil court are prescribed by such statute.”

In **Dhulabai Vs. State of Madhya Pradesh**⁴, the Apex Court laid down the following seven guide lines to determine jurisdiction of Civil Court, they are as follows:

“(1) *Whether the statute gives finality to the orders of the special tribunals the Civil Court’s jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*

³ AIR 1965 SC page 1942

⁴ AIR 1969 Supreme Court page 78

- (2) *Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decision to sustain the jurisdiction of the Civil Court.*

Where there is no express exclusion the examination of the remedies and scheme of particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all the questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

- (3) *Challenge to the provisions of the particular Act is ultra vires cannot be brought before Tribunals constitutes under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.*
- (4) *When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.*
- (5) *Where the particular Act contains no machinery for refund of tax collected in excess of*

constitutional limits or illegally collected, a suit lies.

(6) *Questions of the correctness or the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined, because it is a relevant enquiry.*

(7) *An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”*

The main consideration to decide ouster of jurisdiction is whether adequate machinery is provided under the special statute when Civil Court jurisdiction is ousted.

In the present case, adequate machinery and remedy under Section 83 of Wakf Act is provided which would cater purpose and the parties can redress their grievances and pursue remedies to vacate the tenant in occupation. Therefore, when a remedy is available under special statute, the jurisdiction of the Civil Court is ousted, in view of the law declared by the Constitutional Bench in the judgment referred supra.

In another judgment reported of the Apex Court in **M/s.K.S. Venkataraman and Co.(P) Ltd. Vs. State of Madras**⁵, it was held that, if a statute imposes a liability and creates an effective

⁵ AIR 1966 SC page 1089

machinery for deciding questions of law or fact by necessary implication civil court's jurisdiction is barred.

In view of the law declared by the Supreme Court in the judgments referred supra, the jurisdiction of the Civil Court is ousted and thereby the Civil Court cannot entertain the plaint. The plaint can be returned finally when it lacks territorial or pecuniary jurisdiction, but not on the ground of inherent jurisdiction.

However, learned counsel for the respondent drawn attention of this Court to the judgment of this Court in C.R.P.No.4129 of 2012, where a similar issue came up for consideration, liberty was given to the plaintiff either to return the plaint and present it before a competent civil court or alternatively to institute a fresh suit before the Wakf Tribunal for eviction of the respondents from the suit schedule property. But, it is not the law declared by the Apex Court. However, in the present case, it is for the Trial Court whether to return the plaint dismissing the suit due to lack of inherent jurisdiction and pass appropriate orders.

With the above direction, the civil revision petition is allowed, setting aside the order in I.A.No.294 of 2015 in O.S.No.1605 of 2014 passed by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.

Consequently, miscellaneous petitions pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:05.07.2017

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