

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

CR No.1152 of 2013
Date of decision : 20.07.2017

Punjab Wakf Board

...Petitioner

Versus

Jagir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. S.K. Mahajan, Advocate for the respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The Punjab Wakf Board, Chandigarh has filed the present revision petition under Article 227 of the Constitution of India seeking quashing of the order dated 04.10.2012 (Annexure P-1) passed by Civil Judge (Junior Division), Amritsar, as also the order passed by the Additional District Judge-cum-Wakf Tribunal, Amritsar dated 16.08.2011 (Annexure P-2).

Facts in brief are that the respondent No.1-plaintiff filed a suit before the Wakf Tribunal seeking declaration to the effect that the defendant No.1 is not the owner of the land measuring 2 kanals 6 marlas and Notification issued by the Wakf Board dated 09.10.1999 including the property in the list of Wakf is baseless, illegal and void.

On notice issued, written statement was filed by the Punjab

Wakf Board-defendant No.1 contesting the claim setup by the plaintiff in the plaint. It was pleaded that the property in dispute is Wakf property and it has been declared and notified vide Notification dated 09.10.1999. The Wakf Tribunal unfortunately without correctly reading the judgment passed by the Hon'ble Supreme Court of India in the case *2010(8) SCC 726 titled Ramesh Gobindram (dead) Through LRs Vs. Sugra Humayun Mirza Wakf*, held that the Wakf Tribunal does not have the jurisdiction to try the suit for possession. It was in these circumstances, the learned Tribunal had transferred the file to the Civil Court.

Before the Civil Court, an application was filed by the Punjab Wakf Board requesting for transfer of the suit back to the Wakf Tribunal as the dispute in the present suit squarely falls within the domain of Wakf Tribunal as per Section 6 of the Wakf Act, 1995. However, the learned Civil Judge (Junior Division) has chosen to dismiss the application by taking very narrow interpretation of the Word “any person aggrieved”. Civil Court dismissed the application filed by the Wakf Board.

Now the Punjab Wakf Board has challenged the order passed by the Wakf Tribunal dated 16.08.2011 transferring the suit to the Civil Court, as also the order dated 04.10.2012 passed by the Civil Judge (Junior Division), Amritsar dismissing the application of the Wakf Board to transfer the case to the Wakf Tribunal.

I have considered the arguments addressed by the learned counsel for the parties.

It would be appropriate to extract Section 6 and Section 85 of the Wakf Act, 1995. The same are extracted as under:-

“6. Disputes regarding 4[auqaf].—(1) *If any question arises whether a particular property specified as [waqf] property in the list of [auqaf] is [waqf] property or not or whether a [waqf] specified in such list is a Shia [waqf] or Sunni [waqf], the Board or the mutawalli of the [waqf] or [any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:*

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of [auqaf]:

[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any [waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of [auqaf] shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

85. Bar of jurisdiction of civil courts.—*No suit or other legal proceeding shall lie in any [civil court, revenue court*

and any other authority] in respect of any dispute, question or other matter relating to any [waqf], [waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.”

A close look at Section 6 would establish that if any question arises whether a particular property specified as Wakf property in the list is Wakf or not. Not only the Board, even Mutawalli of Wakf or “Any person aggrieved” may institute a suit before a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final.

In the present case, plaintiff, as noticed above, had filed a suit claiming that particular property is not a Wakf property and it has been wrongly included in the list of Wakfs. Such dispute would exclusively fall within the domain of Wakf Tribunal as constituted under Section 83 of the Wakf Act, 1995. Apart from the above, Section 85 of the Wakf Act, 1995 bars the jurisdiction of the Civil Court in respect of the matters which fall within the exclusive jurisdiction of the Tribunal constituted under the Act. A cumulative reading of both the sections would show that the intention of the legislature was to give jurisdiction to the Tribunal to adjudicate upon whenever dispute arises whether a particular property is Wakf or not. The intention of Section 85 is to bar the jurisdiction of the Civil Court so that the Tribunal only exercise its jurisdiction to adjudicate upon such dispute.

Learned Counsel for the parties have brought to my notice the judgment passed by the Hon'ble Supreme Court of India reported as 2010(8) SCC 726 titled as *Ramesh Gobindram (dead) Through LRs Vs. Sugra Humayun Mirza Wakf*. In this case, the dispute was with regard to the

eviction of tenant. In para 2 of the judgment, the question framed was whether or not the Wakf Tribunal can entertain and adjudicate upon a dispute regarding eviction of a tenant holding wakf property under the Wakf Board, would depend upon the scheme of the Wakf Act, 1995 and express or implied exclusion of the jurisdiction of the Civil Courts to entertain any such dispute. If the Act excludes the jurisdiction of the Civil Courts, whether such exclusion is absolute and all pervasive or limited only to a particular class of disputes is also an incidental question that may have to be addressed.

In the context of the aforesaid question, the Hon'ble Supreme Court held as under:-

“21. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression “for the determination of any dispute, question or other matter relating to a wakf or wakf property” appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are

required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

22. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed.”

From the reading of the aforesaid judgment passed by the Hon'ble Supreme Court of India, it is clear that the Hon'ble Supreme Court was only dealing with a situation where dispute is between a tenant and the Wakf Board. In this context, the Hon'ble Supreme Court of India held that the Tribunal would not have the jurisdiction and the dispute would be decided by the Civil Courts.

Learned counsel for the petitioner has also brought to my notice another judgment of the Hon'ble Supreme Court of India reported as *AIR 2014 Supreme Court 501 titled as Haryana Wakf Board Vs. Mahesh Kumar*. In this case after examining the provisions of Section 7 and Section 85 of the Wakf Act, 1995, it was held that if a suit for possession is filed seeking possession of the property belonging to Wakf Board, then Wakf Tribunal would have the jurisdiction. The conclusion drawn by the Hon'ble Supreme Court is in para 8, 9 and 10 of the judgment, which is extracted as under:-

“8. As per Sub-section (1) and Section 7 of the Act, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the tribunal is made final. When such a question is covered under Sub-section (1) of Section 7, then obviously the jurisdiction of the Civil Court stands excluded to decide such a question in view of specific bar contained in Section 85. It would be pertinent to mention that, as per Sub-section (5) of Section 7, if a suit or proceeding is already pending in a Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction.

9. On a conjoint reading of Section 7 and Section 85, legal position is summed up as under:

(i) In respect of the questions/disputes mentioned in Sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having jurisdiction in relation to such property.

(ii) Decision of the tribunal thereon is made final.

(iii) The jurisdiction of the Civil Court is barred in respect

of any dispute/question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal

(iv) There is however an exception made under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered under Sub-section (1) of Section 6, the Civil Court would not continue and the tribunal shall have the jurisdiction to determine those matters.

*10. Present suit was instituted in the year 2000 i.e. after the Wakf Act, 1995 came into force. Therefore, the present case is not covered by exception to Section 7(5) of the Wakf Act. Thus, on a plain reading of Section 7 read with Section 85 of the Act, it becomes manifest that wherever there is a dispute regarding the nature of the property, namely whether the suit property is Wakf property or not, it is the Tribunal constituted under the Wakf Act, which has the exclusive jurisdiction to decide the same. We need not delve into this issue any longer, inasmuch as in a recent judgment by this very Bench of this Court in the case of **Bhanwar Lal and Anr. v. Rajasthan Board of Muslim Wakf and Ors. 2013 (11) SCALE 210 decided on 9th September 2013**, this Court took the same view, after taking note of earlier judgments on the subject, namely, **Sardar Khan and Others Vs. Syed Najmul Hasan (Seth) and Others, 2007(2) RCR (Civil) 419, 2007(2) Recent Apex Judgments (RAJ) 78: 2007(10) SCC 727, Ramesh Gobindram (D) through LRs v. Sugra Humayun Mirza Wakf, 2010(2) RCR (Rent) 266 : 2010(5) Recent Apex Judgments (RAJ) 171 : 2010(8) SCC 726**. This view has been re-affirmed in **Akkode Jumayath Palli Paripalana Committee v. P.V. Ibrahim Haji & Ors., 2013(4) RCR (Civil) 10 : 2013(4) Recent Apex Judgments***

(RAJ) 626 : 2013 (9) SCALE 622.”

It would be significant to note here that the Hon'ble Supreme Court of India in the later judgment i.e. Haryana Wakf Board (Supra) has considered the judgment passed by Hon'ble Supreme Court of India in Ramesh Gobindram's case (supra).

The Wakf Tribunal is constituted under Section 83 of the Act. Section 85 provides for bar of jurisdiction of Civil Court. It has been provided that if any dispute, question or any other matter relating to any Wakf or Wakf property or other matter is required by or under this Act to be determined by the Tribunal, then the jurisdiction of the Civil Court would be barred. Section 6 of the Wakf Act, 1995 provided that if any question arises whether a particular property specified as Wakf property in the list is Wakf or not, then the jurisdiction will vest in the Tribunal constituted under the Act.

But in the present case, the dispute is not with respect to tenancy or landlord or tenant. No one claims tenancy rights. Plaintiff claims ownership. Dispute is whether the suit property is Wakf property or not. This would exclusively fall within the domain of Wakf Tribunal. Therefore, the orders impugned dated 04.10.2012 (Annexure P-1), as also order dated 16.08.2011 (Annexure P-2) are set aside.

Revision petition is allowed.

Wakf Tribunal is requested to proceed with the trial of the suit in accordance with the provisions of law.

Civil Court is requested to remit the papers of the case to the Wakf Tribunal forthwith.

Parties are directed to appear before the Wakf Tribunal on
17.08.2017.

20.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No