

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

CR No.2192 of 2013
Date of decision : 20.07.2017

Punjab Wakf Board

...Petitioner

Versus

Kamal Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Rajinder Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The Punjab Wakf Board has filed the present revision petition challenging the orders dated 16.08.2011 (Annexure P-2) passed by the Wakf Tribunal, Amritsar, as also the order passed by the Civil Judge (Junior Division), Amritsar dated 19.10.2012 (Annexure P-1).

The Punjab Wakf Board filed a suit for possession of the Wakf property measuring 89 square yards comprised in Khasra No.880 min. The suit was filed before the Wakf Tribunal. It was claimed in the suit that the Punjab Wakf Board is the owner of the Wakf property and the property is part of Khasra No.880. It was further claimed that the defendant is in illegal and unauthorised possession of the suit property and his capacity over the same is merely that of trespasser. It was further claimed that plaintiff is not only entitled to the possession but also entitled to decree for recovery of

mesne profits for unauthorised and illegal use and occupation of the property.

In the written statement, defendant took a stand that in fact he is not in possession of the land comprised in Khasra No.880 min rather he is in possession of the land comprised in Khasra No.881/2. The defendant further claimed that house has been constructed over the land comprised in Khasra No.881/2 and defendant is residing in the aforesaid house alongwith his family members.

During the pendency of the suit before the Wakf Tribunal, Wakf Tribunal passed an order dated 16.08.2011 relying upon the judgment passed by the Hon'ble Supreme Court of India in the case *2010(8) SCC 726 titled as Ramesh Gobindram (dead) Through LRs Vs. Sugra Humayun Mirza Wakf* held that the trial in the suit could only proceed before the Civil Court. Learned Tribunal further held that the Tribunal does not have jurisdiction. Therefore, the papers of the suit were transmitted to the Civil Court.

When the suit papers were received in the Civil Court, Wakf Board filed an application for transfer of the suit back to the Wakf Tribunal as according to the Wakf Board, the Wakf Tribunal has misread and misinterpreted the judgment passed by the Hon'ble Supreme Court of India in the case of Ramesh Gobindra's case (supra). However, Civil Court dismissed the application filed by the Wakf Board vide order dated 19.10.2012. The learned Civil Court ordered that since the matter in the application has already been decided by the Wakf Tribunal, therefore, the application is not maintainable.

Learned counsel for the petitioner has brought to my notice the judgment passed by the Hon'ble Supreme Court of India in Ramesh Gobindram's case (Supra). This judgment is basically adjudicating upon question whether Wakf Tribunal can entertain and adjudicate upon the dispute regarding the eviction of a tenant holding Wakf property. The question framed in para 2 of the judgment is extracted as under:-

“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.”

After detailed discussion, Hon'ble the Supreme Court of India arrived at the following conclusion:-

“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.”

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.

In the present case, there is no dispute with regard to the tenancy. Defendant has not taken any plea of tenancy. The only dispute which is required to be adjudicated upon is that whether the suit property is Wakf property or not. It may be a matter of only demarcation or identification of the property but still it will be a dispute whether a particular property is a Wakf property or not. Therefore, in my opinion such dispute would fall within the exclusive domain of the Wakf Tribunal as constituted under Section 83 of the Wakf Act, 1995.

Therefore, for the reasons stated above, orders dated 16.08.2011 (Annexure P-2) passed by the Wakf Tribunal, Amritsar and 19.10.2012 (Annexure P-1) passed by the Civil Judge (Junior Division), Amritsar are set aside.

Accordingly, present revision petition is allowed.

Civil Court is requested to transmit the papers of this case to the Wakf Tribunal.

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