

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

CR No.2800 of 2015 (O&M)

Date of decision: 02.03.2017

Haji Hassan Mohd. and others

..Petitioners

Versus

Punjab Wakf Board and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: None for the petitioners.

Mr. Shoaib Khan, Advocate
for respondent No.1.

Mr. Vikas Bali, Advocate
for respondent No.6.

Daya Chaudhary, J.

CM No.8540-CII of 2015

There is delay of 40 days in filing this revision petition.

Application is allowed as per the grounds mentioned therein
and delay of 40 days in filing this revision petition is condoned.

CR No.2800 of 2015

This revision petition has been filed to challenge judgment and
decree dated 14.10.2014 passed by Additional District Judge-cum-Tribunal
Wakf Act, Ludhiana, whereby, the suit filed by the petitioners-plaintiffs has
been dismissed.

Briefly, the facts of the case as made out in the present revision
petition are that the petitioners-plaintiffs are Muslim. They filed a suit in

representative capacity under Order 1 Rule 8 CPC for direction to the respondents-defendants to remove the superstructure illegally raised on some part of the land measuring 22 kanals 6 marlas bearing Khasra No.2249, Khata No.3140/4525 situated in Village Khanna Kalan, H.B. No.223, Tehsil Khanna, District Ludhiana, which was being used as Kabristan by the Mohammedans community of Khanna as a public grave yard. A prayer for permanent injunction restraining the respondents-defendants from changing the nature of the property from Kabristan to non-Kabristan and from raising any superstructure was also made. The said suit was dismissed vide judgment and decree dated 14.10.2014, which has been challenged in the present revision petition by raising various grounds.

Notice of motion was issued in the revision petition on 04.12.2015. Counsel for the respondents put in appearance in pursuance of notice of motion and the case was adjourned for arguments. Today, none has appeared on behalf of the petitioners but counsel for the respondents are present.

Learned counsel for the respondents have brought to the notice of this Court that the controversy in hand is squarely covered by the decision rendered by this Court in **CR No.4730 of 2004** titled as **Ashok Kumar and others vs. The Punjab Wakf Board, Ambala Cantt and another**, decided on **02.09.2015**, wherein it was held that the Tribunal has no jurisdiction to decide the claim.

Although certain other grounds have been mentioned in the revision petition but by considering the ratio of judgment in **Ashok Kumar's case (supra)** as well as the submission, it is to be seen as to

whether the Tribunal has jurisdiction to try or decide the suit or not?

For resolving the controversy in hand, it would be relevant to reproduce Sections 6 and 7 of the Wakf Act, 1995, which are as under: -

"Section 6. Disputes regarding wakfs.-

(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein 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 wakfs.

Explanation-For the purposes of this section and Section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry

under Section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf 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 wakfs 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)."

"Section 7. Power of Tribunal to determine disputes regarding wakfs.- 13 (1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified

in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that -

(a) in a case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement;

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf

shall be stayed by any Court. Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of [Section 6](#), before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be."

On perusal of reading of aforementioned Sections, the conclusion can easily be drawn that no suit or other proceeding is to be instituted or commenced in a civil Court in relation to any such question as to whether particular property is wakf property or whether wakf is a Shia

wakf or a Sunni wakf.

In the present case, there is a dispute with regard to jurisdiction of the Tribunal as to whether the Tribunal is having jurisdiction to decide the dispute for eviction over the land belonging to Wakf Board.

The issue was discussed at length in **Ashok Kumar's case (supra)**. The relevant portion of the said judgment is reproduced as under: -

“On going through the co-joint reading of the aforementioned Sections, irresistible conclusion which can be inferred, is that no suit or other proceeding would be instituted or commenced in a civil Court in relation to any such question whether particular property is wakf property or whether wakf is a Shia wakf or a Sunni wakf. In essence, in case, there is dispute with regard to jurisdiction of the Tribunal, it would be maintainable with regard to dispute for eviction of the tenant or lessee. There is no dispute with regard to ratio decidendi culled out in Ramesh Gobindram's case (supra) but the fact remains that there is no averment in the plaint that defendants at any point of time before filing of the suit disputed the ownership of the property as wakf, therefore, jurisdiction of the Tribunal had been invoked seeking declaration as to whether the property allegedly in dispute was a wakf or not. In the absence of such pleadings, respondent-plaintiff

cannot be permitted to take the benefit of the stand taken in the written statement. Respondent-plaintiff has to prove the averments by culling out the provisions as per Order 6 Rule 2 of the CPC. In Ramesh Gobindram's case (supra) and Faseela M's case (supra), the Hon'ble Supreme Court had been consistent in holding that where dispute, as to whether the property is wakf or not, Tribunal would have jurisdiction. The instant case is not the one falling within the ratio decidendi culled out in the judgment cited supra. There are no pleading in the suit that defendant denied the ownership of property as wakf, i.e., by using expression "when the defendant called upon to vacate the premises, they denied the ownership of the plaintiff being wakf property" in the absence of any such assertion, Tribunal, in my view and as per the judgment cited supra, had no jurisdiction."

In the present case also, the same controversy is involved. Keeping in view the claim of the plaintiff in the suit and the judgment passed by the Tribunal, it is apparent that the Tribunal was not having any jurisdiction to try the suit.

Since the Tribunal was not having jurisdiction to try the suit and against dismissal of suit, revision petition is not maintainable.

Accordingly, there is merit in the contentions raised by learned

counsel for the respondents and the revision petition being devoid of any merit is dismissed.

02.03.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No