

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 7601 of 2013

Date of Decision: 17.8.2017

Hakam and others

---Petitioners

vs.

Tahla and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Jagdeep Rana, Advocate
for the petitioners

Mr. Amit Jain, Advocate
for respondent Nos. 1 to 4

Mr. Sandeep Punchhi, Advocate
for respondent NO. 5

Rekha Mittal, J.

The present petition directs challenge against judgment and decree dated 30.8.2013 passed by the Additional District Judge-Wakf Tribunal, Nuh whereby suit of the respondents-plaintiffs has been decreed.

Respondent Nos. 1 to 4 filed a suit for permanent and mandatory injunction directing defendants No. 1 to 3 (petitioners herein) to restore the suit property bearing khasra No. 150 in its original shape and wind up/close the bore installed in the suit property during pendency of

the suit and restraining the defendants from dismantling graves existing in the suit property and changing its nature. On conclusion of trial, the judgment and decree dated 30.8.2013 was passed in favour of the respondents/plaintiffs and a relevant extract from para 35 of the judgment reads as follows:-

“In view of my above discussion on the foregoing issues, the suit of the plaintiff succeeds and the same is hereby decreed with costs. The defendants are mandated to restore the suit property i.e. Khasra No. 150 to its original shape and wind up/close the bore installed during pendency of the suit or before filing the suit, in the suit property and the defendants are further restrained from dismantling the graves existing in the suit property and from changing the nature of the same. Decree sheet be prepared accordingly. File be consigned to the record room after compliance.”

The sole question that calls for determination is “*whether the Wakf Tribunal has the jurisdiction to decide the matter in controversy?*”.

Counsel for the petitioners has submitted that as in the lis filed by the respondents/plaintiffs, there was no dispute as to whether property in question is a Wakf property or otherwise nor any other such question was involved which is to be decided exclusively by the Wakf Tribunal in view of provisions of the Wakf Act, 1995 (in short “the Act”), the judgment and decree passed by the Wakf Tribunal (hereinafter to be referred as “the Tribunal”) cannot be allowed to sustain and liable to be set aside. In support of his contention, he has referred to judgments of Hon'ble the Supreme

Court of India **Ramesh Gobindram (Dead) through LRs vs. Sugra Humayun Mirza Wakf (2010) 8 Supreme Court Cases 726 and Haryana Wakf Bord vs. Mahesh Kumar (2014) 16 Supreme Court Cases 45.**

Counsel representing the contesting respondents/plaintiffs, on the contrary, has supported the judgment and decree passed by the Wakf Tribunal with the submission that Deenu alias Deen Mohd. (since deceased) defendant No. 1 filed the written statement and in reply to para 2 of the plaint, he denied that Haryana Wakf Board is owner of the suit property with the averment that the suit property is being used by inhabitants of village Bisru for different purposes but not for the purpose of burial. The suit property was reserved for Makbuja Ahle Islam but now the villagers are using the suit land for their personal purposes. It is argued with vehemence that in view of averments raised in para 2 of the written statement filed by defendant No. 1, there was certainly a dispute involved as to whether the suit property is a Wakf property or otherwise, bestowing jurisdiction upon the Wakf Tribunal in view of provisions of Sections 6,7 and 85 of the Act. In the alternative, it has been argued by counsel that even a suit for injunction lies within the domain of the Tribunal, therefore, contention of the petitioners challenging jurisdiction of the Tribunal is misconceived and liable to be rejected. For this purpose, he has referred to judgment of Hon'ble the Supreme Court of India **Akkode Jumayath Palli Paripalana Committee vs. P.V. Ibrahim Haji and others (2014) 16 Supreme Court Cases 65.**

Counsel representing the Wakf Board has supported the contention of counsel for the petitioners that the Wakf Tribunal does not

have the jurisdiction to entertain and try the present suit involving a contest between the private parties for injunction without there being any such dispute if the property is a Wakf property and the same belongs to Haryana Wakf Board.

I have heard counsel for the parties, perused the paper book and the records.

As has been noticed hereinbefore, plaintiffs Tahla and others filed a suit for permanent and mandatory injunction for the reliefs, detailed hereinbefore. The suit was filed against defendants No. 1 to 3 though Haryana Wakf Board, Ambala was also impleaded as one of the defendants being defendant No. 4.

On the basis of pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the plaintiffs are entitled to the relief of permanent injunction, as alleged?OPP
2. Whether the plaintiffs are entitled to the relief of mandatory injunction, as alleged?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
4. Whether they have no locus standi to file the present suit?OPD
5. Whether the plaintiffs have concealed the true and material fact from the Court, as such the suit is liable to be dismissed?OPD
6. Whether the plaintiffs are estopped from filing the present

suit by their own act and conduct?OPD

7. Whether the present suit is barred by limitation?OPD

8. Relief.”

No issue was framed by the Tribunal as to whether the property in question is Wakf property or otherwise. In para 2 of the written statement filed by defendant No. 1, he has raised a plea of denial qua ownership of the suit property by the Wakf Board but has admitted that the suit land was reserved for Makbuja Ahle Islam. Defendant No. 1 has not claimed ownership of the suit property and has simply raised the plea that the suit property is being used by inhabitants of village Bisru for their personal purposes. Defendant Nos. 2 and 3 have raised a plea that out of the suit property, area measuring 338 square yards was given on lease to defendant No. 1 by defendant No. 4 in which defendant No. 1 has installed a tube well (bore) for supplying water to his fields since 2004.

A careful reading of written statements filed by the contesting defendants would make it evident that the defendants have neither claimed their ownership of the suit property nor have specifically denied ownership of the Wakf Board and for that reason, no issue was framed by the Tribunal whether the property in question was Wakf property or otherwise. In this view of the matter, I find myself unable to accept the submissions made by counsel for the contesting respondents that dispute with regard to ownership of the suit property was involved conferring jurisdiction upon the Tribunal in terms of Section 6, 7 and 85 of the Act.

This brings the Court to the judgments cited by counsel for the parties. In **Ramesh Gobindram's case (supra)**, Hon'ble the Supreme Court

on a detailed consideration has concluded in paras 32 to 35, quoted thus:-

“32. 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.

33. 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.

34. 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.

35. 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.”

In **Haryana Wakf Board's case (supra)**, Hon'ble the Supreme Court has arrived at a conclusion recorded in para 12 and 13, reads as follows:-

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

12.1 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.

12.2 Decision of the tribunal thereon is made final.

12.3 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

12.4. 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 continue and the tribunal shall have the jurisdiction to determine those matters."

13. 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 vs. Rajasthan Board of Muslim Wakf 2014 (16) SCC 51 decided on 9th September 2013, this Court

took the same view, after taking note of earlier judgments on the subject, namely, Sardar Khan & Ors. Vs. Syed Nazmul Hasan (Seth) & Ors. 2007 (10) SCC 727, Ramesh Gobindram (D) through LRs. Vs. Sugra Humayun Mirza Wakf 2010 (8) SCC 726. This view has been re-affirmed in Akkode Jumayath Palli Paripalana Committee vs. P.V.Ibrahim Haji & Ors 2014 (16) SCC 65.”

In **Akkode Jumayath Palli Paripalana Committee's case (supra)**, there was a dispute with regard to management and peaceful enjoyment of mosque, madarsa and assets which relate to Wakf. Hon'ble the Supreme Court has held that nature of the relief clearly shows that Wakf Tribunal has got jurisdiction to decide those disputes. Counsel for the contesting respondents has failed to advance any arguments much less meaningful as to how the observations made in the referred authority have any bearing on the facts of the case at hand as in the instant case, there is no dispute between the plaintiffs and the contesting defendants regarding management, enjoyment of the mosque, madarsa and assets which relate to Wakf. The only dispute involved in the present lis is with regard to entitlement of the contesting respondents/plaintiffs to seek injunction against user property of the Wakf Board in a manner in which the same is being used by petitioner Nos. 1 to 3. In this view of the matter, the respondents cannot derive any advantage to their contention from the judgment in **Akkode Jumayath Palli Paripalana Committee's case (supra)**. In view of the above, the respondents/plaintiffs had chosen a wrong forum for redressal of their grievance. They instead of filing a suit before the civil court have wrongly invoked jurisdiction of the Tribunal and

the Tribunal without going into the question of jurisdiction in the light of various pronouncements on the issue has decided the suit in favour of the respondents/plaintiffs. As the Tribunal has no jurisdiction to decide the dispute in question, the judgment and decree passed by the Tribunal is nullity for want of inherent jurisdiction, thus, liable to be set aside. Accordingly, the aforesaid question is answered in favour of the petitioners and against the contesting respondents.

For the foregoing reasons, the petition is allowed. The impugned judgment and decree is set aside leaving the parties to bear their own costs. However, the respondents/plaintiffs shall be at liberty to take recourse to appropriate remedy in a competent fora, in accordance with law.

(Rekha Mittal)
Judge

17.8.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No