

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

**CRR No.266 of 2014
Decided on: 10.11.2017**

Haryana Wakf Board

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sandeep Punchhi, Advocate for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. S.S. Malik, Advocate for respondent No.2.

Mr. Simar Bedi, Advocate for respondent No.3.

Mr. Yashveer Kharb, Advocate
for Mr. Ajay Ghangas, Advocate for respondents No.4 & 5.

ARVIND SINGH SANGWAN, J.

The present revision petition has been filed challenging the judgment dated 14.07.2011 passed by the trial Court vide which the respondents/accused were acquitted as well as the judgment dated 06.08.2013 vide which the two appeals filed by the petitioner/complainant as well as State of Haryana were dismissed.

Brief facts of the case are that FIR No.98 dated 23.06.2004 under Sections 447 of the Indian Penal Code, 1860 (in short 'IPC') and 306 of the Places of Worship (Special Provisions) Act, 1991 (hereinafter to be referred to as 'the Act') at Police Station Sadar Panipat was registered against the respondents/accused. It is alleged in the FIR that a complaint dated 22.06.2004 was lodged by the Estate Officer, Haryana Wakf Board, Panipat (in short 'the Board') with the police that

some persons have encroached upon the land of the Board which was reserved for graveyard situated in village Nimbri, Tehsil and District Panipat. The said land bears Khasra No.50 and 51 measuring 09 kanals 06 marlas and accused persons have taken illegal possession over the same.

After completion of the investigation, the report under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted and charges were framed against the accused. The prosecution in its evidence produced PW1 – Abdul Sattar, PW2 – HC Sushil Kumar, PW3 – Daya Nand and PW4 – Fateh Mohd., Estate Officer (retired), Haryana Wakf Board, to prove its case and produced on record certain documents, as well. PW1 – Abdul Sattar stated that the land comprising in Khasra Nos.50 and 51 measuring 09 kanals 06 marlas situated in village Nimbri is a place of worship under Section 6 of the Act and in the month of June, 2004, the accused persons have encroached upon the same. PW2 – HC Sushil Kumar stated that he has taken the photographs Ex.P1 to P11 and also proved the negative Ex.P12 to ex.P22. PW3 – Daya Nand stated that about 100 people of the village have encroached upon the land by putting their kurries (cow dung) and thereafter, no one is in possession of the same. PW4 – Fateh Mohd., Estate Officer has stated that he moved an application Ex.PW4/A dated 22.06.2004 with the police regarding the encroachment made by the accused persons.

The trial Court after appreciating the evidence led by the prosecution came to a conclusion that the revenue documents i.e. the Jamabandi to prove the title has not been proved on file as the

Investigating Officer – ASI Raj Kumar was not examined by the prosecution. It was further observed that PW3 – Daya Nand has not supported the prosecution version. It was also observed that PW4, the Estate Officer of the Board could not prove any document regarding the encroachment except the application filed with the police. With reference to cross-examination of this witness, the trial Court observed that the land of the accused persons is adjoining land in dispute and some inhabitant of Muslim community have raised construction of their residential houses on the land. Thus, the trial Court recorded a finding that no document has come on record to prove the fact that the accused persons have committed any offence much less that they have encroached upon the land of the Board and thus, the charge under Section 447 IPC is not proved.

The appeal filed by the State of Haryana as well as the Board was also dismissed by the Lower Appellate Court. The operative part of the judgment passed by the Lower Appellate Court is reproduced as under:-

“15. I have given due consideration to the arguments advanced by learned counsel for complainant, learned Public Prosecutor for the State and learned defence counsel. The onus lay upon the prosecution to prove each and every ingredient of the offence alleged to have been committed by the accused. The prosecution case against the accused is that they have encroached upon the land comprising of khasra nos.50 and 51 situated within the revenue estate of Village Nimbri belonging to Haryana Wakf Board which has been reserved for being used as a grave-yard. It is thus evident that dispute between Haryana Wakf Board and the accused is essentially of a

civil nature. Admittedly civil litigation with regard to some part of the land comprising of khasra no.50 is still sub-judice before the Hon'ble High Court of Punjab and Haryana. The operation of the judgment and decree dated 11.8.2010 Ex.P24 and Ex.P28 respectively has already been stayed by the Hon'ble High Court vide order dated 15.11.2010 passed in RSA no.4197 of 2010. So no benefit can be derived by any of the parties from the aforesaid judgments and decrees.

16. As per the prosecution case and the averments made in the complaint Ex.PW4/A the representation was made by Islam son of Mir Hassan and others residents of Village Nimbri before National Commission for Minorities, New Delhi regarding encroachment upon the land reserved for being used as a Kabristan. Neither any such copy of representation has been placed or proved on file by the prosecution nor any of the persons who made the said representation before National Commission for Minorities, New Delhi has been cited as a witness or examined by the prosecution. The complaint Ex.PW4/A has been lodged by Fateh Mohd, Estate Officer. He has appeared in the witness box as PW4. He simply stated that he made the complaint Ex.PW4/A with the police with regard to encroachment upon khasra no.50 and 51 measuring 9 kanals 6 Marlas. During his cross-examination he could not tell the date or month when he visited the spot and found the encroachment having been made by the accused persons. He also could not tell the exact dimensions or measurements of the land alleged to have been encroached upon by the accused persons. Although he stated that demarcation of the land belonging to the Haryana Wakf Board was obtained but he could not tell the date, month and year of said demarcation. He also could not tell as to

who conducted the demarcation at the spot. Even no copy of any such demarcation report has been produced or proved on file by the prosecution or the complainant which may show that any part of khasra nos.50 and 51 has been encroached upon by the accused.

17. The only eye witness joined to the investigation namely Daya Nand son of Ranjit has not supported the prosecution case. He has appeared in the witness box as PW3. He stated that about 100 persons had placed kuraries at the spot alongwith the road. All of them have since removed the kuraries from the spot. None of the residents of village was in possession of any part of the land belonging to the Haryana Wakf Board. Although he was got declared hostile by the prosecution and cross-examined by the Public Prosecutor but no support for the prosecution case could be solicited. He denied having made any statement Ex.PW3/A before the police. The hostile testimony of this witness has also put the prosecution case in a jumbled state of affairs. The photographs Ex.P1 to Ex.P11 proved by HC Sushil Kumar also do not prove the alleged encroachment upon any part of the land belonging to the Wakf Board. From the photographs it cannot be said that the construction shown in the photographs has been made by the accused and that too upon khasra nos.50 and 51 belonging to the Wakf Board. PW2 HC Sushil Kumar stated during his cross-examination that he himself did not demarcate the khasra numbers at the spot. He also could not tell the khasra numbers of the land of which the photographs were taken by him. So the testimony of this witness also does not prove the identity or guilt of accused in any manner.

18. The Investigating Officer has also not been examined by the prosecution. He was the best witness to prove the alleged encroachment by the accused upon any

part of the land belonging to Wakf Board, Panipat. The site plan showing the existing position of the land in question has also not been proved on file by the prosecution. The prosecution has miserably failed to prove that the alleged encroachment has been made by any of the accused persons upon any part of the land belonging to the Wakf Board. In the absence of demarcation report, it also cannot be said that any part of khasra nos.50 and 51 has been encroached upon by the accused. Even no copy of aksajra showing the existing position of khasra nos.50 and 51 has been placed or proved on file by the prosecution.

19. The reliance has been placed by the prosecution upon the statement made by Abdul Sattar, Estate Officer as PW1. The testimony of this witness is neither worthy of credence nor proves the identity or the guilt of the accused in any manner. Although he stated that nishandehi/demarcation of the land belonging to the Wakf Board was got conducted at the spot, however as already observed, no copy of any such demarcation report has been produced or proved on file by the prosecution. PW1 Abdul Sattar has also admitted that land owned by accused Zile Singh adjoins the land of grave-yard. Earlier some part of the land in question was allotted to fourteen different persons. They were allowed to raise the boundary wall upon the portion of the land allotted/leased out to them. The said persons included some of the accused persons facing trial in this case. He could not tell the names of those persons who were allotted the land belonging to the Wakf Board. The said plots were leased out to fourteen different persons for raising construction of shops measuring 50' x 50'. It implies that the Wakf Board has itself changed the nature and user of the property owned by it. PW1 Abdul Satar during his further

cross-examination has categorically admitted that presently none of the accused persons had been in possession of any part of the land belonging to the Haryana Wakf Board. He also could not tell the length or breadth or dimensions of the gobar gas plant and kotha alleged to have been constructed by the accused. He also could not tell the names of the accused persons who had placed bitoras and kuraries in the land in question. The testimony of this witness thus does not prove the alleged encroachment upon any part of the land comprising of khasra nos.50 and 51 by the accused present in Court.

20. *The complainant Haryana Wakf Board has tried to circumvent the jurisdiction of Civil Court by filing the present complaint after a considerable long period of time. As per the report made by the Investigating Officer, fourteen plots were leased out by the Wakf Board to different persons for raising construction vide lease agreement dated 24.3.1998. No such document has been placed on file by the appellant which may show that the said lease in favour of fourteen different allottees since stand cancelled. It is thus evident that some of the accused persons facing trial or their predecessors in interest became legal and authorized occupants of the land belonging to Haryana Wakf Board. If any of the allottees still continued in possession after the expiry of the lease, the efficacious remedy available with the Haryana Wakf Board would have been to approach the competent Court of law seeking eviction of the unauthorized occupants. It is also well settled that the matter which squarely falls within the ambit and jurisdiction of the civil court cannot legally be permitted to be to be re-agitated in the parallel proceedings in the criminal court. The complainant cannot be legally permitted to re-agitate the same under the garb of a criminal case by way of impugned complaint*

Ex.PW4/A. Reference in this regard may also be made to the ruling Harcharan Singh and others Vs. Satvinder Satara (supra) cited by learned defence counsel.

21. *There is no dispute about the ratio of law laid down in the ruling Shamasuddin Khan and others Vs. Abdul Aziz and others (supra) cited by learned counsel for complainant. No-doubt where grave-yard is reserved for the use of a community, and one member of it prevents common use of it by leasing it out, he would be guilty of tres-pass on the person as well as on the land. However the said ruling is clearly distinguishable on facts. In the present case, the Haryana Wakf Board has itself been leasing out the land owned by it to different persons including the accused. As already observed, the operation of the judgments/decrees Ex.P23/ExP27 and Ex.P24/ExP28 already stand stayed by the Hon'ble High Court in RSA no.4197 of 2010. The observations made by the learned Civil Judge (Sr. Division), Panipat and the learned Addl. District Judge, Panipat in the aforesaid judgments also does not help the case set up by the complainant. A perusal of the decree sheet passed in the aforesaid civil suit and the civil appeal show that the suit was filed only with regard to land measuring 2 kanals 0 marla comprising of khasra no.50 min shown as 'gair mumkin makan' in the revenue record i.e. jamabandi for the year 2000-01. The jamabandi for the year 1960-61 shows the area of khasra no.50 to be 8 kanals 18 marlas and that of khasra no.51 to be 2 kanals 8 marlas; total 11 kanals 6 marlas. However in the complaint Ex.PW4/A the total area of land of khasra nos.50 and 51 has been shown to be 9 kanals 6 marlas. The area of khasra no.50 is shown to be 6 kanals 18 marlas and that of khasra no.51 to be 2 kanals 8 marlas. The present complaint has been filed with regard to encroachment upon the land comprising of*

khasra no.50 measuring 6 kanals 18 marlas and not the entire khasra no.50 measuring 8 kanals 18 marlas as shown in the jamabandi for the year 1960-61. It implies that the area of land measuring 2 kanals 0 marla of khasra no.50 which has been the subject matter of civil litigation is not the subject matter in dispute in the present criminal complaint.

22. In view of the observations made above, I have formed the opinion that the prosecution has miserably failed to prove the alleged encroachment/trespass by the accused upon any part of the land belonging to the Haryana Wakf Board, beyond a shadow of reasonable doubt. No offence under Section 447 of Indian Penal Code is thus proved to have been committed by any of the accused persons. The contention of the learned counsel for complainant and learned Public Prosecutor to the effect that the allegations made in the complaint make out a case of contravention of the provisions of Section 3 of the Act also cannot be accepted. The allegations made in the complaint regarding alleged encroachment does not fall within the purview of Section 3 of the Act. The object clause of The Places of Worship (Special Provisions) Act, 1991 says that this is an act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947, and for matters connected therewith or incidental thereto. Section 2(c) of the Act says that "place of worship" means a temple, mosque, gurdwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called. Further Section 3 of the Act says that no person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different

section of the same religious denomination or of a different religious denomination or any section thereof. I am afraid the alleged tres-pass by the accused upon the land belonging to the Wakf Board would not make out a case of contravention of the provisions of Section 3 of the aforesaid Act punishable under Section 6 of the Act.

23. In view of the observations made above, I have formed the opinion that the prosecution has miserably failed to bring home the guilt of accused present in Court beyond a shadow of reasonable doubt. Therefore the judgment dated 14.7.2011 passed by learned trial Court is upheld and hereby affirmed. Consequently both the criminal appeals filed by the complainant Haryana Wakf Board and the State against the aforesaid judgment dated 14.7.2011 stand dismissed. Bail bonds of accused stand discharged. The copy of this judgment be placed on the file of criminal appeal no.238 of 2012 titled 'State of Haryana Vs. Hawa Singh and others. Files be consigned to the record room after due compliance.'"

Counsel for the petitioner has submitted that the Lower Appellate Court has allowed the application under Section 391 Cr.P.C., thereby allowing Ex.P23 to Ex.P28 to be taken on record. With reference to these documents which are certified copy of the judgment and decree dated 15.03.2010 and 18.08.2010 as well as the Jamabandi for the year 1960-61, it is submitted that it is proved that the Board is owner of the land in dispute and respondents have taken unauthorized possession. It is also submitted that since unauthorized possession of the respondents is proved, the offences punishable under Section 447 read with Section 6 of the Act are proved and the respondents should be punished and convicted accordingly.

On the other hand, counsel appearing for the respondents have submitted that there is no evidence on record to prove that the land in dispute is a place of worship and the accused persons have taken unauthorized possession over the same. It is further submitted that the Board was leasing out the land to different persons and has constructed a boundary wall as the land of some of the accused persons is adjoining the graveyard. It is further submitted that no part of the graveyard has been encroached upon by any one. It is also submitted that the accused persons namely Zile Singh, Gaffur, Basir and Narender @ Kala were not the party in the civil suit and the matter is *sub judice* before this Court which has not been decided so far. It is also submitted that the only independent witness i.e. PW3 – Daya Nand has not supported the prosecution case and, therefore, there is no corroboration to the statement of PW1 – Abdul Sattar. It is also submitted that from the statement of PW4 – Fateh Mohd., it is not proved that before registration of the FIR, he has taken any demarcation about the land in dispute and thus, the prosecution has failed to prove that the respondents/accused have taken unauthorized possession over the land in dispute. Lastly, it is submitted that the matter is of civil nature and the Board has already resorted its remedy before the Civil Court where the matter is pending in the High Court in RSA No.4197 of 2010 wherein, the judgment and decree dated 11.08.2010 is under challenge.

After hearing counsel for the parties, I find no merit in the present petition. Firstly, there is no eye-witness to prove that the respondents/accused have taken the illegal possession over the land in dispute as PW3 – Daya Nand has not supported the prosecution

version. It has also come in evidence that about 100 persons of the village after encroaching the land in dispute put kurries (cow dung) and they have removed the same from the spot. None of the accused has been named by PW3 – Daya Nand. From the perusal of the photograph, it cannot be held that the same relates to the Khasra Nos.50 and 51 as there is no demarcation report on record to prove the alleged encroachment at the instance of the respondents/accused. Even, the site plan (aks shijra) of the land in dispute as prepared by the Revenue Department has not been placed on record. The statement of PW1 – Abdul Sattar, Estate Officer, nowhere proves either the identity of any of the accused that they have taken any unauthorized possession or that the same is sufficient to hold them guilty of taking the possession of land of the Board. PW1 – Abdul Sattar during his cross-examination has categorically admitted that at present none of the accused persons is in possession of any part of the land belonging to the Board and further stated that he could not tell the dimensions of the alleged encroachment on the land. This witness even could not given specific name of the persons who have encroached upon the land. During the investigation by the police, it has come on record vide lease agreement dated 23.03.1998, the Board itself has given 14 plots to different persons for raising the construction and nothing has come on record that the Board at any stage has cancelled the lease of aforesaid 14 persons and thus, it is apparent that the nature of the land i.e. graveyard has been changed by the Board itself by leasing the land to 14 persons.

The argument raised by counsel for the petitioner that as per the Civil Court judgment, the accused persons are found to be in an

unauthorized possession is without merit as the judgment and decree Exs.P23, P24, P27 and P28 relates to 02 kanals of land whereas the complaint has been filed with regard to 09 kanals 66 marlas of land. As noticed above, that nothing has come on record either during investigation or in the prosecution evidence to prove which accused has come in unauthorized possession and on which part of the land. Therefore, I find no illegality in the judgments passed by both the Courts below who have concurrently, held that the offence under Section 447 IPC is not made out as the prosecution has failed to prove the encroachment/trespass by the accused persons.

So far as the offence under Section 3 of the Places of Worship (Special Provisions) Act, 1991 is concerned, the same is also not proved as it is provided under Section 3 that there is a prohibition of converting the place of worship and to provide maintenance of the religious character of any place of worship as it existed on 15.08.1947. The alleged trespass by the accused persons does not amount to contravention of provision of Section 3 of the Act which is punishable under Section 6 of the Act. It may be relevant to mention here that the Board itself has leased out 14 plots out of this land and, thus, has itself has converted the nature of the land.

For the foregoing reasons, finding no merit, the revision petition fails and is accordingly dismissed.

10.11.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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