

CWP No.9906 of 2009

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

CWP No.9906 of 2009

Date of decision:27.02.2017

Pritpal Singh and another

... Petitioners

Vs.

The Tribunal Wakf Act, Ludhiana and another

... Respondents

CR No.5070 of 2011

Avtar Singh and others

... Petitioners

Vs.

Punjab Wakf Board and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Liaqat Ali, Advocate
for the petitioners (in CWP No.9906 of 2009).

Mr. Abhishek Bhardwaj, Advocate, for
Mr. H.S.Brar, Advocate
for the petitioners (in CR No.5070 of 2011).

Mr. G.N.Malik, Advocate
for the Wakf Board.

AMIT RAWAL J. (Oral)

This order of mine shall dispose off one writ petition bearing No.9906 of 2009 and one revision petition bearing No.5070 of 2011, at the instance of the respondent/defendants in a civil suit filed by the Wakf Board by invoking the jurisdiction of the Wakf Tribunal under Section 83 of the Wakf Act, 1995 (hereinafter referred to as “1995 Act”) on the premise that the provisions of Section 6 and 7 of the Act regarding the title of the

property are in dispute.

Mr. Liaqat Ali and Mr. Abhishek Bhardwaj, learned counsels appearing on behalf of the petitioners submit that predecessors-in-interest of the petitioners were inducted as tenants by virtue of the lease deed and the rent in lieu thereof, had been paid. However, on account of default payment of the *chakota*/rent, the suit aforementioned was filed. The Tribunal decided the matter by treating the suit for possession and mesne profit on the premise that it would have the jurisdiction to deal with the eviction of the tenant. They further submit that in view of the law laid down by the Hon'ble Supreme Court in ***Bhanwar Lal and another v. Rajasthan Board of Muslim Wakf and others 2013(4) RCR (Civil) 758***, the Tribunal had the jurisdiction only in respect of the matters involving the adjudication of the dispute falling under Sections 6 and 7 of 1995 Act which read as under:-

“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 or 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).

7. Power of Tribunal to determine disputes regarding wakfs.

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(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 the 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 relating 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.”

Whereas, in judgment aforementioned, i.e., in paragraphs 19 and as well as 23, it has been held that in all other matters, the suit seeking eviction of the

tenant would be in Civil Court. However, since the land is an agricultural land, the Wakf Board would only be under the local law, i.e., Punjab Occupancy and Tenancy Act, 1887 and in support of their contention, rely upon the judgment rendered by this Court in ***RSA No.2617 of 2010 titled as Punjab Wakf Board vs. Harvallabh Parkash (deceased) through LRs decided on 28.11.2016.***

Per contra, Mr. G.N.Malik, learned counsel appearing on behalf of respondent No.2 submits that CWP No.9906 of 2009 was decided in favour of the petitioners and the matter reached the Hon'ble Supreme Court in Civil Appeal bearing No.8194 of 2013 arising out of SLP (C) No.9304 of 2011. Vide order dated 13.09.2013, the matter has been remanded back to this Court. The observations of the Hon'ble Supreme Court have been referred which read thus:-

“Having heard learned counsel for the parties, we are of the opinion that the high Court had erred in holding that the suit was for ejectment and that being so the Wakf Tribunal had no jurisdiction. As we have observed earlier the suit filed before the Wakf Tribunal was for possession and mesne profit and therefore, the High Court had erred in settling aside the order of the Wakf Tribunal.

As the High Court has not gone into the merits of the case, the order of the High Court deserves to be set aside and the matter remitted back to it for reconsideration in accordance with law.

In the result, we allow this appeal, set aside the impugned judgment and order of the High court and remit the matter back to it for its reconsideration in accordance with law.”

He, thus, submits that as regards the jurisdiction of the Tribunal, there is no dispute, therefore, there is no force and substance in the plea of the petitioners. The status of the petitioners would be of tress passers, and not of tenants and thus, remedy availed is perfectly legal in law and orders under challenge are liable to be upheld.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsels for the petitioners, for, the ratio decidendi culled out by the Hon'ble Supreme Court in paragraph 19 and 23 of Bhanwar Lal 's case supra reads as under:-

“19. It would also be profitable to refer to that part of the judgment where the Court gave guidance and the need for a particular approach which is required to deal with such cases.

In this behalf the Court specified the modalities as under:

“11. Before we take up the core issue whether the jurisdiction of a civil court to entertain and adjudicate upon disputes regarding eviction of (sic from) wakf property stands excluded under the [Wakf Act](#), we may briefly outline the approach that

the courts have to adopt while dealing with such questions.

12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted.

13. Even in cases where the statute accords finality to the orders passed by the Tribunals, the court will have to see whether the Tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in the negative, exclusion of the civil court's jurisdiction would not be ordinarily inferred. In Rajasthan SRTC v. Bal Mukund

Bairwa, a three- Judge Bench of this Court observed “There is a presumption that a civil court has jurisdiction. Ouster of civil court’s jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.

23. The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit are not filed before us and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. Going by the ratio of *Ramesh Gobind Ram (supra)*, suit for possession and rent is to be tried by the civil court. However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for

the reason that it is not covered by Section 6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decided such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession and inextricably mixed with each other. We have made these observations to clarify the legal position. In so far as present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan case, it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and civil court would be competent to decide the same.”

The Full Bench of this Court in **Shiv Charan vs. Financial Commissioner, Haryana and others 2004(4) RCR (Civil) 543**, held that as per the provisions of Section 77(3) (d) of the Punjab Tenancy Act, 1887, a person seeking relief under Section 5 and 8 of the Act, the Civil Court would have the jurisdiction and not the revenue Court.

The language enshrined in Section 9 of Punjab Security of Land Tenures Act, 1953 (being local Act) reveal that “Notwithstanding” anything contained in any other law for the time being in force no land owner shall be competent to eject a tenant except on the grounds enumerated therein. For the sake of brevity, Section 9 of 1953 Act reads as under:-

“9 Liability of tenant to be rejected- (1) Notwithstanding

*anything contained in any other law for the time being in force
no land owner other than a land owner who is a member of the
Armed Forces of the Union or a Non-Resident Indian shall be
competent to eject a tenant except when such tenant-*

*(i) is a tenant on the area reserved under this Act or is a tenant
of a small landowner[or]*

(ii) fail to pay rent regularly without sufficient cause [or]

(iii) is in arrears of rent at the commencement of this Act [or]

*(iv) has failed, or fails, without sufficient cause, to cultivate the
land comprised in his tenancy in the manner or to the extent
customary in the locality in which the land is ;situate [or]*

*(v) has used, uses the land comprised in his tenancy in a
manner which has rendered, or renders it unfit for the purpose
for which he holds it;*

*(vi) has sublet the tenancy or a part thereof; provided that
where only a part of the tenancy has been sublet, the tenant
shall be liable to ejected only from such part [or]*

*(vii) refuses to execute a Qabuliyat or a Patta, in the form
prescribed, in respect of his tenancy on being called upon to do
so by an Assistant Collector on an application made to him for
this purpose by the land-owner.*

*(viii) has the tenancy for a fixed term, supported by a
registered agreement entered into by the landowner and the
tenant, and such term has expired.*

Explanation -- For the purposes of clause (iii) a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the of execution or decree or order , directing him to pay such arrears of rent.

(2) Notwithstanding anything contained herein before a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area :

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option only if the area of his tenancy under the landowner concerned is in excess of the area from which he can be ejected by the said land owner:

Provided further that if the tenant holds land of several land owners and more than one land owner seeks his ejectment, shall be exercised in the order in which the applications have been made or suits have been filed by the landowners concerned and incase of simultaneous applications or suits the priority for ejectment shall commence serially from the smallest land owner.

Explanation -- Where a tenant holds land jointly with other tenants only his share in the joint tenancy shall be taken into account in computing the area held by him.”

In the absence of the aforementioned provisions of law being not adverted, the Hon'ble Supreme Court had an occasion to draw a distinction between the maintainability of the suit with regard to the interpretation of the provisions of the Wakf Act, conferred upon the Tribunal or otherwise, thus, the opinion expressed by the Hon'ble Supreme Court that all the disputes other than the dispute under the provisions of Section 6 and 7 would be tried by the Civil Court. The only difference would be that landlord instead of availing the remedy in Civil Court, has to file an ejectment petition for ejectment in the prescribed form under the aforementioned provisions of Act. The status of the Wakf Tribunal is only for determination of ownership. This view of mine is reiterated from the ratio decidendi culled out in **Ram Lal v. Darshan Lal and others 2008(3) RCR (Civil) 427**, in essence, the tenants becomes statutory tenant and not an un-authorized tenant and can only be evicted only on the grounds specified in 1953 Act. The suit was filed on the premise that the predecessors-in-interest of the petitioners were inducted as tenants and possession has been sought on account of default payment of the rent, in essence, it was eviction under the garb of possession. Once the title was not in dispute, the Wakf Tribunal, in my view, would not have any jurisdiction to try and decide the suit as applicability of provisions of Section 6 and 7 was not in dispute. Remedy, if any, for the Wakf Board was to take the recourse as indicated herein-above. It is not a case of the Wakf Board that it had not been availing the remedy under the local law for seeking ejectment.

Resultantly, the orders under challenge passed by the Tribunal are hereby set aside leaving Wakf Board to avail the remedy as indicated above in accordance with law.

Accordingly, both writ petition and revision petition stand allowed.

(AMIT RAWAL)
JUDGE

February 27, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No