

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANAAT CHANDIGARH**

**CWP No.19067 of 2017
Date of Order: 14.12.2017**

Randhir Singh through His son Vijay Singh

....Petitioner

Versus

State of Haryana & Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present : Mr. Akshay Jindal, Advocate for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Ghulam Nabi Malik, Advocate for respondent No.7.

RAKESH KUMAR JAIN, J (ORAL)

The Registrar General of this Court was served on the last date of hearing but no one had put in appearance on his behalf, therefore it was ordered that the Registrar General be informed regarding these proceedings besides the date fixed in this case.

Office of the Registrar General has placed on record an application bearing CM No.306/SPL Litigation dated 13.10.2017 in which it is mentioned that the High Court is not to contest this litigation because it does not have any interest. Accordingly, no one has put in appearance for respondent no.2.

The petitioner has challenged the order dated 12.5.2017 passed by the District & Sessions Judge, Karnal by which he has transferred eight appeals bearing Civil Appeal Nos.41,42,43,44,45,46,47 & 48 of 2017 to the Wakf. Tribunal, Rohtak filed under Section 96 of the Code of Civil Procedure, 1908 (for short "CPC") against the judgment and decree of the Civil Judge (Jr. Divn.) whereby suit for possession by way of eviction filed by the petitioner against the private respondents/tenants, after terminating

their lease by serving upon them a notice under the provisions of the Transfer of Property Act, was decreed and the private respondents were not only evicted from the property in dispute but also were directed to pay mesne profits.

In brief, the facts of the case are that the petitioner filed a suit for possession by way of eviction against the private respondents in which eviction order was passed on 31.3.2004. The private respondents challenged the eviction order by way of appeal. The appeal was allowed on the ground that the property in dispute is a Wakf. Property and thus after setting aside order dated 31.3.2004, the matter was remanded back by the Appellate Court to the Civil Court to decide the matter again. Since a dispute arose qua the ownership of the property by the Haryana Wakf Board (for short “the Board”), therefore the plaint was returned and the petitioner filed a case before the Wakf Tribunal. However, during the pendency of those proceedings before the Tribunal, the petitioner accepted the Wakf Board as the owner of the property in question and as such the order of eviction was passed by the Wakf. Tribunal against the private respondents, which led to filing of eight petitions before this Court out of which four petitions were preferred by the private respondents and the remaining four were filed by the Board. Revision petitions were allowed by this Court vide order dated 17.12.2014 holding that if the property belongs to the Board, then the Wakf Tribunal would not have jurisdiction as the proceedings would be exclusively triable by the Civil Court. Said order dated 17.12.2014 was challenged before the Hon'ble Supreme Court without any success.

The petitioner also filed an application for seeking clarification of the said order dated 17.12.2014 but the said application was dismissed on 24.7.2015. Thereafter the matter went before the Civil Court. Ultimately, the Civil Court decided the suit of the petitioner vide judgment and decree dated 06.01.2016 and passed the order of eviction and mesne profits. Aggrieved against the said judgment and decree, eight appeals were preferred (four filed by private respondents and other four by the Board). While these appeals were pending before the Appellate Court at Karnal, the District & Sessions Judge, Karnal passed the order dated 12.5.2017, transferring all the eight appeals to the Wakf Tribunal, Rohtak.

The petitioner has challenged the said order dated 12.5.2017 on the ground that the Civil Appeals could not have been transferred to the Wakf Tribunal as it pertains to the order of eviction of the private respondents from the Wakf Property and has referred to the decisions rendered by Hon'ble Supreme Court in **Ramesh Gobindram (Dead) through LRs Vs. Sugra Humayun Mirza Wakf 2010 AIR (SC) 2897** and **Faseela M Vs. Munnerul Islam Madrasa Committee and another 2015 (3) SCC (Civil) 419** to contend that it has been held that if the dispute is between the landlord and the tenant with regard to property belonging to the Wakf Board, then the Civil Court would have jurisdiction and not the Tribunal. It is further submitted that the learned District & Sessions Judge has committed error in appreciating the letter dated 27.3.2017 otherwise the order dated 12.5.2017 could not have been passed. It is submitted that in the letter dated 27.3.2017 issued by the Government of Haryana to the Registrar General of this Court, a request was made to make the Wakf

Tribunals functional and in terms of Notification dated 25.7.2014, four Wakf Tribunals were constituted at four Divisions of the State, namely, Ambala, Hisar, Rohtak and Gurgaon. The Learned District & Sessions Judge, Karnal has perhaps misread the clause (ii) of the letter dated 27.3.2017 wherein it is provided that “for issuing further directions to all the District and Sessions Judges of Haryana to transfer all the Wakf related litigations to the respective Wakf Tribunals”. It is submitted that there is no dispute about transferring of the cases relating to the Board but insofar as the disputes relating to the landlord and the tenant regarding the Wakf. Property are concerned, those are to be dealt with exclusively by the Civil Court as held in **Ramesh Gobindram's case (supra) and Faseela M's case (supra)** by the Hon'ble Supreme Court. It is averred that the Civil Appeals arising out of the eviction by the Civil Court in respect of the Wakf. Property against the tenant/lessee are only continuation of the suit and therefore the same have to be decided by the Civil Court and not by the Wakf. Tribunal.

Learned counsel for respondent No.7-Board has also supported the arguments of the petitioner as he cannot question the decisions of Hon'ble Supreme Court in the cases aforesaid as the petitioner has not disputed the title of the property in question.

Learned counsel for the respondents-State has referred to the judgment passed by Hon'ble Supreme Court titled **Lal Shah Baba Dargah Trust Vs. Magnum Developers and others 2016 (1) RCR (Civil) 558** to contend that all the civil matters pertaining to the Board have to be decided by the Tribunal and the Civil Court do not have the jurisdiction.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the order dated 12.05.2017 passed by the District & Sessions Judge, Karnal deserves to be set aside insofar as it relates to transfer of eight appeals of the petitioner to the Wakf Tribunal, Rohtak in view of the decisions of the Hon'ble Supreme Court in **Ramesh Gobindram's case (supra)** and **Faseela M's case (supra)** and insofar as the decision in **Lal Shah Baba's case (supra)** is concerned, it does not answer the question which has been posed in the aforesaid two cases before the Hon'ble Supreme Court. The said decision was pertaining to the constitution of the Tribunals under the provisions of Section 83(4) of the Wakf Act, 1995, which has otherwise been constituted by the State of Haryana vide Notification dated 25.7.2014.

As a sequel of aforesaid discussion, present petition succeeds and the order dated 12.5.2017 is hereby set aside and as a consequence thereof, all the eight appeals pertaining to the case of the petitioner transferred by virtue of the impugned order are to be returned to the Civil Court at Rohtak and shall be decided by the Civil Appellate Court in accordance with law.

December 14, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No