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

**RSA No.2390 of 2013 (O&M)
Date of decision : 28.08.2017**

Alamgir

.....Petitioner

versus

Haryana Wakf Board and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Nidhi Garg, Advocate
for the appellant.

Mr. Athar Ahmed, Advocate
for respondent Nos. 1 & 2.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vijay S. Kajla, Advocate
for respondents No.3 & 4.

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ANIL KSHETARPAL, J. (ORAL)

Plaintiff is in regular second appeal against concurrent finding of fact, arrived at by the Courts below.

It is the case of the plaintiff that the property is a wakf property and defendants No.3 & 4 are in unauthorised possession of the same.

Learned trial Court as well as first appellate Court have held that such suit is not maintainable before the civil Court. The dispute can only be resolved by appropriate proceedings before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995.

Sections 6, 83 and 85 of the Wakf Act, 1995 are reproduced as under: -

“6. Disputes regarding [auqaf] – (1) if any question arises whether a particular property specified as [wakf] property in the list of [auqaf] is [waqf] property or not or whether a [waqf] specified in such list is a Shia [Waqf] or Sunni [Waqf], the Board or the mutawalli of the [waqf] or [any person aggrieved] 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 [auqaf].

[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any [waqf] 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) This list of [auqaf] shall, unless it is notified 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).”

83. Constitution of Tribunals, etc.---- [(1) The State Government shall, by notification in the Official

Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;]

(2) Any mutawalli, person interested in a [waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the [waqf].

(3) Where any application made under sub-section (1) relates to any [waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the [waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the [waqf] or any other person interested in the [waqf] or the [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such [waqf] or [waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so

transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

[(4) Every Tribunal shall consist of---

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court.

(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision

or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.”

85. Bar of jurisdiction of Civil Courts.--- *No suit or other legal proceeding shall lie in any [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any [waqf], [waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.”*

From the reading of the aforesaid provisions, it is clear that if any question arises whether a particular property is a wakf property or not, the jurisdiction to decide such a dispute exclusively vest with the Tribunal constituted under Section 83 of the Wakf Act, 1995. Section 85 of the Wakf Act, 1995 lays down that no suit or other legal proceedings shall lie before the Civil Court, Revenue Court or any other authority in respect of any dispute, question or other relating to any wakf property which is required to be determined by a Tribunal.

In view thereof, the judgments passed by the Courts below, concluding that the suit filed by the plaintiff is not maintainable before the Civil Court, are correct.

For the reasons recorded above, I do not find any ground to interfere with the concurrent findings of fact, arrived at by the Courts below. However, plaintiff would be at liberty to file an appropriate

proceedings before the Wakf Tribunal, constituted under the Wakf Act, 1995.

Hence, Regular Second Appeal is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

August 28, 2017

sahil soni

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