

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3022 of 2016

Shivdas Pandey, Son of Late Deopati Pandey, Resident of Mohalla ; Shikehak colony, P.S. - Agam Kuan, District - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through Home Secretary, Government of Bihar, Bihar, Patna
2. The District Magistrate, Patna
3. The Senior Superintendent of Police, Patna
4. The Superintendent of Police, Patna
5. Deputy Superintendent of Police, Patna City, Patna
6. The Officer-in-charge of Agamkuan Police Station, Patna
7. The S.D.O., Patna City, Patna
8. The Circle Officer of Patna City, Patna
9. The D.C.L.R., Patna City, Patna

... Respondents 1st Set

10. The Bihar State Shiya Waqf Board, Patna, Bihar
11. Syed Neaz Hasan Kazmi, Son of Late Riazul Hasan Leazami, Mutawalli of the Khurshaid Hasan Waqf Estate, Resident of Waqf House, Gulzarbagh, P.S. - Agamkuan, Patna – 7

... Respondent 2nd Set

Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate
		Mr. Bijendra Kumar
For Respondent nos.1 to9:		Mr. AC to AAG 13
For the Respondent		
Nos. 10 and 11	:	Mr. S.M. Ashraf

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-02-2018

Heard Mr. Jitendra Singh, learned Senior Counsel for the petitioner, Mr. S.M. Ashraf for the respondents 2nd Set and AC to learned AAG - 13 for the respondent nos. 1 to 9.



The present writ application has been primarily filed with a prayer for issuance of a writ in the nature of mandamus, commanding upon the respondents Ist Set to get the encroachment removed from the land appertaining to Khata No.842, Plot No. 2202, measuring area 1 katha 10 dhur, situated at Jaipur Dhunki, Purani By-pass road, P.S. - Agamkuan, District – Patna, which has been encroached by respondent IInd set, by forcefully constructing boundary wall. The relief prayed for in Paragraph 1 of the writ application reads as follows:

“1(i) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondents 1st set to remove encroachment over land of Khata no. 842, Khesra no. 2202, area 1 kattha 10 dhur situated at Jaipur Dhunki, Purani bypass road, P.S. Agamkuan, District – Patna.

(ii) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondents 1st set get to vacant encroachment on land of petitioner as stated above upon which respondent 2nd set have forcefully and illegally constructed boundary wall and are ready to do construction work.

(iii) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondents 1st set to give vacant position on the land above mentioned so, that the



petitioner's valuable property shall be saved from hand of land mafiya and petitioner can utilize his land for betterment of his family.

(iv) For issuance of any other writ/writs/order/orders/direction/directions for which the writ petitioner is legally found entitled under the facts and circumstances of the case.”

I.A. No. 3065 of 2016 was filed for initiating a contempt proceeding against respondent nos. 10 and 11 who willfully disobeyed the interim order dated 11.3.2016 passed by a co-ordinate bench of this court, whereby the parties were directed to maintain status quo with regard to the land in question.

The factual matrix of the case would unveil that the petitioner claims to be in possession of the land measuring 1 katha 10 dhurs appertaining to Khata no. 842, Plot No. 2202, situated at Jaipur Dhunki, Purani By-pass road, P.S. - Agamkuan, District – Patna, having purchased it through a registered sale deed dated 21.10.1978 from Mosmat Pachama Devi. Accordingly, Jamabandi no. 2855/1 was created in the name of the petitioner vide order dated 17.2.1982 passed in Mutation Case No. 400/81-82 and since then he is in peaceful possession of the same and has been paying rent.



However, respondent 2nd set claims that one Khurshid Hussain purchased the land appertaining to Tauzi No. 303, Khewat No. 342, Plot No. 2199, area 0.67 acre, Khewat No. 842 Plot No. 2201, area 0.30 acres, Khewat No. 842, Plot No. 2202, area 0.68 acres, Khewat no. 846, Plot No. 2203, area 0.04 acres (kabristan) and Khewat No. 846, Plot No. 2200, area 0.04 acres (Masjid) through registered sale deed on 2.1.1929. The said Khurshid Hussain was in peaceful possession of the said land and prior to his death, the aforesaid property was dedicated to the Wakf through registered Waqfnama, on the basis of which, the property was registered on 21.11.1979 with Bihar State Shia Wakf Board vide Wakf Estate No.184. As such, the property was vested with Shia Wakf Board vide Wakf Estate No. 184. Hence, it is said that the property got vested with the Wakf Board.

The respondent 2nd set filed Title Suit No. 164 of 1982 for - declaration of different properties, including the property in dispute, i.e. land appertaining to Plot No. 2201, as Wakf property. Further declaration was sought, for confirmation of the possession of the plaintiff i.e. the respondent 2nd set and if the plaintiff is found to have been dispossessed during the pendency of the suit or otherwise, possession be delivered to the plaintiff. Besides this, grant of decree of permanent injunction restraining the



defendants from interfering with the possession and management of the plaintiff and prayer was also for setting aside the sale deed in favour of others including in favour of the petitioner.

Initially, the petitioner was not party defendant in the suit but subsequently he was made party defendant. The suit got dismissed for default vide order dated 31.3.1993. The said order of dismissal was neither challenged nor restoration of the suit was prayed for by the respondent 2nd set.

The respondent 2nd set filed a case before the DCLR, Patna City vide Jamabandi Case No. 5 of 1994-95 for cancellation of Jamabandi of Plot No. 2202 (land in dispute) along with Plot Nos. 2199, 2200, 2201 and 2203 of Khata No. 842. The D.C.L.R., Patna City, vide order dated 26.10.1995 came to a conclusion that the decision with regard to cancellation of Jamabandi cannot be made till the judgment is pronounced in Title Suit No. 164 of 1982.

A proceeding under section 144 of the Cr.P.C. was initiated on the land in question, i.e. Plot No. 2202 vide Misc. Case No. 518 of 2003 wherein the S.D.O., Patna City vide order dated 27.11.1993 found the possession of the petitioner and the notice, as contained in Annexure 3, issued to respondent 2nd set was made absolute. Measurement Case No. 26 of 2013-14 was registered on the application of the petitioner, wherein the Circle Amin



submitted a report on 2.12.2013, as contained in Annexure 4, to the Circle Officer, Patna Sadar, which suggested the existence of a hutment of the petitioner over the land in question.

The petitioner also claims that in Patna Municipal Corporation also, Holding No. 1286/1 of Ward No. 55, Anchal 50B has been created in favour of the petitioner. The Chief Executive Officer, Bihar State Shia Wakf Board vide letter no. 184 dated 19.2.2013 requested the Circle Officer, Patna Sadar for initiation of Jamabandi Cancellation Case with regard to Plot Nos. 2199, 2201, 2202 (disputed plot), 2203 (Kabristan) and 2200 (Masjid). Accordingly, Jamabandi Cancellation Case No. 7 of 2013-14 was initiated and the Circle Officer, Patna Sadar vide order dated 21.10.2014, referred the matter, for taking appropriate action for cancellation of Jamabandi under section 9 of the Land Mutation Act, 2011, to the Additional Collector, Patna. Consequently, the proceedings were drawn up before the Additional Collector vide Jamabandi Cancellation Case No. 25 of 2013-14 and the same is admittedly pending till date. The petitioner gave several representations to the District Magistrate, Superintendent of Police, Patna against the illegal encroachment but the encroachment has not been removed.



It is submitted by learned Senior Counsel for the petitioner that the petitioner's purchase of the land in question is dated 21.10.1978 whereas Wakfnama registration date is 21.11.1979 whereas Sale deed executed in favour of respondent 2nd set is dated 2.1.1929. The Jamabandi was created in the name of the petitioner on 17.2.1992 and it has not been cancelled till date. Hence, the petitioner is having a bonafide title and he has remained in possession and has been paying rent to the State of Bihar concerning the land in dispute. It is hence submitted that the respondents 2nd set have illegally encroached upon the land and have made illegal constructions over the same. Basically there is no dispute with regard to the title and possession though the respondent 2nd set, unsuccessfully tried to challenge the title and possession of the petitioner through Title Suit No. 164 of 1982, but since it was dismissed for default and the order of dismissal was never challenged, hence respondent 2nd set does not have any claim over the land in question.

Learned Senior Counsel has relied upon the decision rendered in the case of Bishan Das and Ors. Vs. State of Punjab and Ors. AIR 1961 SC 1570, The Gait Public Library and Institute Vs. The State of Bihar & Ors. 1995 (1) PLJR 585 and the case of M/s Hindustan Petroleum Corporation Ltd. Vs. The State of Bihar &



Ors. 1996(2) PLJR 621, wherein the lessee's/settlee's forceful unlawful dispossession were directed to be restored. It is further submitted that the possession of the petitioner was found by the S.D.O., Patnacity in proceeding under sections 144 and 145 of the Cr.P.C. as gets reflected from the order dated 27.11.2003 passed in Misc. Case No. 518 of 2003. The boundary wall was constructed by the respondents 2nd set on the land of the petitioner and the same has been accepted by the respondent nos. 2 to 7 and 9 in their counter affidavit. The report of the Anchal Amin dated 2.12.2013 submitted to the Circle Officer, Patna also suggests the possession of the petitioner. Moreover, the respondent 2nd set has deliberately violated the interim order dated 11.3.2016, passed by this court, whereby the parties were directed to maintain status quo, but in gross violation of such order, iron poles and advertisement board were erected subsequently, hence they are liable to be punished for committing willful violation of the order of this court.

Accordingly, Interlocutory Application has been filed for initiation of contempt proceeding. It transpires from the entire affidavit filed on behalf of the respondent nos. 3 to 6 that in violation of this Court's interim order, some advertisement board was fixed, accordingly, Agamkuan P.S. Case No. 414 of 2016 was registered on 22.11.2016 under Section 188 of IPC. It is lastly



submitted by learned Senior Counsel for the petitioner that it is a simple case of dispossession of the petitioner over the land in question as a result of encroachment made by respondent 2nd set. Hence, this Court should direct for removal of encroachment and restoration of possession of the petitioner.

Learned counsel for respondent nos. 10 and 11, however, submits that the land in question was purchased by Khurshid Hussain on 2.1.1929 and before his death he dedicated it to Shia Wakf Board which was registered on 21.11.1979. During the pendency of Misc. (Measurement) Case No. 518 of 2013-14, the respondent 2nd Set were not noticed. The Circle Officer has, prima facie, found that Jamabandi has illegally been created in favour of the petitioner on the recommendation of Circle Officer, Patna. Jamabandi Cancellation Case No. 25 of 2013-14 was registered and is still pending before the Additional Collector, Patna. The dismissal of Title Suit No. 164 of 1982 on the ground of default does not amount to declaration of title and possession of the petitioner over the land in question. The issue involves disputed question of fact and the same cannot be decided in the writ proceeding.



It is further contended that the Wakf Tribunal under The Wakf Act, 1995 has the jurisdiction to decide the question of title, therefore, the present writ application is not maintainable.

Considering the rival submissions of the parties, this is not in dispute that the petitioner and respondent 2nd set are litigating, raising dispute with regard to the title and possession over the land in question since last three decades. This is also not in dispute that Jamabandi cancellation with regard to the land in question vide Jamabandi Cancellation Case No. 25 of 2013-14 is still pending before the Additional Collector, Patna.

Hence, in view of the aforesaid circumstances, this Court feels inclined to deliberate upon the issue, whether factual issues and disputed question of facts can be looked into, while exercising discretionary jurisdiction under Article 226 of the Constitution of India. There is no binding rule that the High Court cannot try the issue of facts in a writ application, but in such cases where relief has been prayed for on the basis of disputed question of facts, which cannot be determined without leading of evidence, the Court should ordinarily relegate the parties aggrieved to agitate the issue before Civil Court. This is, however, a rule of practice and not an incident of jurisdiction of the High Court.



Facts are of two types. (i) The facts which the court or an authority determines for the purpose of deciding the question before it; and (ii) the facts which must exist before the Court or a Tribunal for exercise of its jurisdiction which is called jurisdictional or preliminary facts. When the writ discretion cannot be exercised for deciding the question before the court in view of disputed question of fact, it falls in the first category but where alternative remedy is available to the party concerned then it falls under jurisdictional or preliminary facts.

In each case, the court has to consider whether the party seeking relief has an alternative remedy which is equally efficacious. Hence, when the party claims title or possession over the property then in such case equally efficacious remedy is by way of suit.

In a petition under Article 226 of the Constitution of India the High Court has the jurisdiction to try the issue both on facts and law. Exercise of jurisdiction is, no doubt, discretionary but discretion must be exercised on sound judicial principle. When the petitioner raises complex question of law and facts which may, for their determination, require oral evidence to be taken, then in that case the court should ordinarily restrain to exercise the discretionary remedy.



The Apex Court elaborated the same view in the case of Real Estate Agencies Vs. State of Goa and Ors. (2012) 12 Supreme Court Cases 170 where certain development works/raising construction over some plot of land was in dispute though the title over the land was not in dispute but it was held that the writ court may refuse to interfere if the process of determination of the issue, the disputed question of fact or title would be required to be adjudicated. Paragraph 16 reads as follows:-

“16. A reading of the order of the High Court would go to show that its refusal to interdict the developmental works undertaken or about to be undertaken is on the ground that the Petitioner has an efficacious alternative remedy, i.e. a suit for injunction. The Writ Court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the Writ Court may refuse to



interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated.”

The High Court is not expected to convert itself, while exercising jurisdiction under Article 226 of the Constitution of India, into a fact finding authority, particularly, where the facts are disputed. The High Court has the jurisdiction to try the issue both on facts and law but this discretion has to be exercised on sound judicial principle.

The Supreme Court, in the case of Union of India and Others Vs. Ghaus Mohammad, AIR 1961 Supreme Court 1526, held that a proceeding under Article 226 of the Constitution of India is not an appropriate forum to seek relief if such relief is based on disputed question of facts. Paragraph 9 reads as follows:

“9. The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Art. 226 of the Constitution would not be appropriate for a decision of the question. In our view, this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the respondent free to file such a



suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future.”

Same view has been reiterated by the Apex Court in the case of State of Rajasthan Vs. Bhawani Singh and Others, AIR 1992 SC 1018, holding that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 9 reads as follows:

“9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”

In the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others, (1976) 3 Supreme Court Cases 160, the question related to the right of ownership over a land, a Four Judge Bench of the Apex Court held that in a case where the basic facts are disputed and complicated question of law and fact



depending on evidence are involved, the writ court is not a proper forum for seeking relief. Paragraph 18 reads as follows:

“18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.”

The judgments relied upon by the learned Senior Counsel for the petitioner, are basically not applicable to the facts of the present case. In the case of Bishan Das (supra), the ancestors of the petitioners were permitted by the State to build Dharmshala, Temple and shop on the Government land by the joint family. Subsequently, the joint family continued the management but were dispossessed by an Executive order passed by S.D.O. in pursuance to the direction given by the Deputy Commissioner and



management of the property was placed in charge of Municipal Committee, where the Apex Court held that in such a case, the lessee or licensee cannot be held to be a trespasser and resumption of the land cannot be made through an executive order and in that circumstance, dispossession was interfered with. In the case of Gait Public Library and Institute (supra) wherein the issue in concern was that the then Collector, Patna took forceful possession of the land and structures settled with the Gait Public Library and Institute, in purported exercise of Rule 21 of Bihar Government Estate (Khas Mahal) Manual, 1953 (hereinafter referred to as Khas Mahal Manual), this Court held that though the lease had expired, but the lessee was in possession and under Rule 21 of the Khas Mahal Manual, the power of resumption could have been exercised on fulfillment of two conditions; firstly, there should be a provision in the lease authorizing the lessor to resume possession of the whole or part of the land and, secondly, if the land is required for a public purpose. Since the lease had expired, hence, the power of resumption under Rule 21 of Khas Mahal Manual could not have been exercised. In such circumstance, the Court held that the possession could have been taken under the orders of a competent Civil Court.



Similarly, in the case of M/s Hindustan Petroleum Corporation Ltd. (supra) the learned Single Judge held that even after expiry of the lease, the lessee cannot be treated as trespasser and he could not have been dispossessed forcefully as has been done in the said case.

In the present case, neither the petitioner nor the respondent 2nd set have brought on record the exact total area of Plot no. 2202. However, respondent 2nd set in their counter affidavit claimed that dedication of 0.68 acres were made to the Wakf, but the petitioner has not disclosed that how much land was purchased by him through registered sale deed nor the sale deed was brought on record. However, the report of the Amin dated 2.10.2013, as contained in Annexure 4, reflects that the area of the petitioner's land is 1 katha 10 dhurs. In considered view of this Court, all these issues can only be resolved through leading of evidence before competent Civil Court.

Even assuming, as submitted by learned Senior Counsel for the petitioner, that it is a simple case of dispossession, as per Section 6 of the Specific Relief Act, if any person is dispossessed without his consent, in due course of law, he may recover the possession by filing a suit subject to limitation stipulated therein.

In the present case, the petitioner is not claiming himself to be a lessee. He is claiming the title and possession over the land in question by virtue of registered sale deed and subsequent dispossession at the hands of the respondent second set. In both the



circumstances, either title has to be decided or the fact of possession has to be decided or the recovery of the possession is claimed, therefore, it requires leading of evidence, which can be appropriately done by a competent Civil Court.

So far as the question of jurisdiction of Wakf Tribunal is concerned, as claimed by respondent 2nd set, Sections 6 and 7 of the Wakf Act specifically excludes the jurisdiction of the Civil Court where the property is specified as Wakf property in the list of Wakf. There is no pleading by respondent 2nd set that the property in question is specified in the list of Wakf property and in such circumstance, there is a presumption that the Civil Court has the jurisdiction, as has been held by the Supreme Court in the case of Ramesh Gobindram (deceased by L.Rs.) Vs. Sugra Humayun Mirza Wakf AIR 2010 Supreme Court 2897. Paragraph nos. 6 and 7 read as follows:

“6. 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 negative exclusion of the Civil Courts jurisdiction would not be ordinarily inferred. In Rajasthan SRTC v. Bal



Mukund Bairwa (2), (2009) 4 SCC 299, 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 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.”

“7. To the same effect are the decisions of this Court in Pabbojan Tea Co. Ltd. v. Dy. Commr (1968) 1 SCR 260, Ramesh Chand Ardawatiya v. Anil Panjwani AIR 2003 SC 2508, Dhulabhai v. State of M.P. (1968) 3 SCR 662, Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, State of A.P. v. Manjeti Laxmi Kantha Rao (2000) 3 SCC 689, Dhruv Green Field Ltd. v. Hukam Singh and Ors. (2002) 6 SCC 416, Dwarka Prasad Agarwal v. Ramesh Chandra Agarwala, AIR 2003 SC 2696 and State of Tamil Nadu v. Ramalinga Samigal Madam AIR 1986 SC 794.”



Section 6(1) of the Wakf Act clearly stipulates that if any question arises whether a particular property specified as wakf property in the list of auqafs is a waqf 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. But in the instant matter, there is nothing on record to suggest that the land in question is specified as waqf property in the list of auqafs, nor respondent 2nd set ever moved the Tribunal for resolving the dispute rather respondent 2nd set filed Title Suit No. 164 of 1982 for declaration of title and possession before the Civil Court.

Apart from that, Section 6(5) of the Wakf Act bars the jurisdiction of the Civil Court to determine the matter referred to in Section 6(1) and 7, while Section 85 of the Wakf Act also bars the jurisdiction of Civil Court to entertain any legal proceeding in respect of any dispute, question or matter relating to any waqf property, which is required under the Act to be determined by a Tribunal.

Paragraph no. 16 of Ramesh Gobindram (supra) reads as follows:



“16. A plain reading of the above would show that the Civil Court’s jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words “which is required by or under this Act to be determined by Tribunal” holds the key to the question whether or not all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the Civil Court. Whenever a question arises whether “any dispute, question or other matter” relating to “any wakf or wakf property or other matter” falls within the jurisdiction of a Civil Court the answer would depend upon whether any such dispute, question or other matter is required under the Act to be determined by the Tribunal constituted under the Act. If the answer be in the affirmative, the jurisdiction of Civil Court would be excluded qua such a question, for in that case the Tribunal alone can entertain and determine any such question. The bar of jurisdiction contained in Section 85 is in that sense much wider than that contained in Section 6(5) read with Section 7 of the Wakf Act. While the latter bars the jurisdiction of the Civil Court only in relation of questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the jurisdiction of the Civil Courts not only in relation to matters that specifically fall in Sections 6 and 7 but also other matters required



to be determined by a Tribunal under the Act. There are a host of such matters in which the Tribunal exercises original or appellate jurisdiction. To illustrate the point we may usefully refer to some of the provisions of the Act where the bar contained in the said section would get attracted. Section 33 of the Act deals with the power of inspection by a Chief Executive Officer or person authorized by him. In the event of any failure or negligence on the part of a mutawalli in the performance of his duties leading to any loss or damage, the Chief Executive Officer can with the prior approval of the Board pass an order for the recovery of the amount or property which has been misappropriated, misapplied or fraudulently retained. Sub-section (4) of Section 33 then entitles the aggrieved person to file an appeal to the Tribunal and empowers the Tribunal to deal with and adjudicate upon the validity of the orders passed by the Chief Executive Officer.”

It has been finally held by the Supreme Court in Ramesh Gobindram (supra) that section 85 of the Wakf Act, in specific and unambiguous terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under the Act to be determined by the Tribunal. Paragraph 21 reads as follows:



“21. 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. 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. 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.”

The ratio laid down in Ramesh Gobindram (supra) has further been upheld by the Apex Court in the case of Bhanwar Lal and Anr. Vs. Rajasthan Board of Muslim Wakf and Ors. (2014) 16 Supreme Court Cases 51.

In view of the discussions made above, the contention of the respondent 2nd set that the Tribunal has the jurisdiction to entertain the issue involved in the present matter is without any factual detail whether the property in question has been specified in the list of Wakf property, which is pre-condition for exercise of jurisdiction under sections 6 and 7 of the Wakf Act. Hence, this contention is rejected.

So far as initiation of contempt proceeding is concerned, in view of the contention of respondents 2nd set that the contract for fixing poles and advertisement board was made prior to the filing of the writ application and after they came to know about the passing of the interim order, they have got the structure removed. Hence, this court is prima facie not convinced that the action, if any, on behalf of respondent 2nd set was deliberate and willful, and



accordingly, this Court is not inclined to initiate any contempt proceeding. Accordingly, I.A. No. 3065 of 2016 is dismissed.

In view of the discussions made above, this Court is not inclined to grant any relief as prayed for.

Accordingly, the writ application is dismissed.

(Dinesh Kumar Singh, J)

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