

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CR No.1512 of 2015 (O&M)
Date of decision : February 01, 2018

Guramardeep Singh and another Petitioners

Versus

Ved Vyas and another Respondents

2. CR No.1574 of 2015 (O&M)
Date of decision : February 01, 2018

Punjab Wakf Board Petitioner

Versus

Ved Vyas and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vivek Salathia, Advocate for the petitioners
in CR No.1512 of 2015 and
for respondent Nos.2 and 3 in CR No.1574 of 2015.

Mr. A.P.S. Sandhu, Advocate for respondent No.1
in CR Nos. 1512 and 1574 of 2015.

Mr. Suvir Kumar, Advocate for respondent No.2
in CR No.1512 of 2015 and for the petitioner
in CR No.1574 of 2015.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J.

By the single judgment order, I shall dispose of two connected revision petitions bearing CR No.1512 of 2015, titled as ***“Guramardeep Singh and another vs Ved Vyas and another”*** and 1574 of 2015, titled as ***“Punjab Wakf Board vs Ved Vyas and others”***, arising out of the same

order dated 10.01.2014 passed by the learned Civil Judge (Jr. Divn.), Amritsar, as well as the order dated 19.09.2014 passed by learned Addl. District Judge, Amritsar, whereby *ad interim* injunction was granted in favour of plaintiff-respondent No.1.

The facts of the case are extracted from CR No.1574 of 2015.

Plaintiff-respondent No.1 filed a suit for permanent injunction before the learned Civil Judge (Jr. Divn.), Amritsar, against the present petitioner-defendant No.1-Punjab Wakf Board (for short the 'Board') as well as Guramardeep Singh and Rajkaran Singh, respondent-defendant Nos.2 and 3 for permanent injunction for restraining them from dispossessing or interfering in his possession over the property consisted of two shops-cum-store and saw mill measuring 327 sq. yards, bearing kharsa No.209 Min. and 210 Min., situated at Verowal Road, Jandiala Guru, Tehsil and District Amritsar, illegally and forcibly in any manner.

Plaintiff-respondent No.1 claimed that the said land was leased out by the Board in the year 1965 and since then, he is in continuing possession of the said property as tenant. On 07.03.1990, the saw mill was burnt and it was reconstructed. FIR regarding the said incident was lodged. The Board executed a fresh order dated 02.03.2009 in respect of the said property @ ₹1,200/- per month commencing from 01.12.2007. The plaintiff-respondent No.1 was paying the rent regularly. Defendant-respondent Nos.2 and 3 claimed that they got the said property on rent from defendant No.1-Board.

The stand of the Board in the written statement before the trial court was that though, the tenancy was created in favour of plaintiff-

respondent No.1, it was renewed in the year 2007 and same has been terminated by service of notice dated 24.01.2013 on the ground that the plaintiff-respondent No.1 has sub-let some portion of property to one Parminderpal Singh son of Kashmir Singh without any written consent of the Board and the possession of the remaining property was transferred to one Harbans Lal son of Piara Lal, vide agreement dated 22.11.2012. Said Harbans Lal entered into further agreement dated 29.12.2012 in favour of Guramardeep Singh, defendant-respondent and Guramardeep Singh came in possession of the said property. It is further stated that Parminderpal Singh, who is in possession of 16sq. yards of the property out of the disputed property admitted the ownership of the Board and the said property was allotted to him, vide allotment order dated 28.02.2013 and he executed a lease deed in favour of the Board. Guramardeep Singh and Rajkaran Singh, defendant-respondent Nos.2 and 3 being in possession of the remaining ownership of the Board applied for allotment of the said portion, which was allotted to them, vide order dated 30.04.2013 and they executed lease agreement in favour of the Board. Now, they are tenants/lease under the Board in their respective parts of the property since creation of said sub tenancy and execution of agreement dated 22.11.2012. It was also stated that property measuring 311 sq. yards have been leased to defendant-respondent Nos.2 and 3 and remaining portion of the property i.e. 16 sq. yards was leased out to Parminderpal Singh.

Along with the suit, an application under Order 39, Rule 1 & 2 CPC read with Section 151 CPC was also filed, which was allowed by the trial Court, vide order dated 10.01.2014 and was upheld by the first

appellate Court vide order dated 19.09.2014.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, in this case the Board admitted that a lease was executed in favour of the plaintiff-respondent No.1, which was terminated, vide notice dated 24.01.2013 on account of the fact that the plaintiff-respondent No.1 sub-let some portion of the property and parted the same as pleaded in the written statement. The said sub tenants were allotted land by the Board i.e. in favour of Parminderpal Singh, being in possession of 16 sq. yards and defendant-respondent Nos.2 and 3, namely, Guramardeep Singh and Rajkaran Singh being in possession of 311 sq. yards and they have executed a lease agreement in favour of the Board.

A perusal of the copy of the agreement dated 22.11.2012 shows that plaintiff-respondent No.1 Ved Vyas executed an agreement regarding the land in dispute measuring 327 sq. yards in favour of Harbans Lal son of Piara Lal for ₹43,00,000/-. ₹13,00,000/- were received as earnest money and ₹30,00,000/- were to be paid at the time of delivery of the possession. The remaining balance was to be received till 22.02.2013.

There is nothing on file to show that on the said date, the balance amount of ₹30,00,000/- was also received and the possession was delivered by plaintiff-respondent No.1 Ved Vyas to Harbans Lal. Therefore, from the agreement, it cannot be said that the plaintiff-respondent No.1 had parted with the possession. Further, agreement by Harbans Lal shows that he agreed to transfer the possession to Guramardeep Singh, defendant-respondent No.2 for ₹43,00,000/-. He received ₹15,00,000/- and remaining

consideration was to be received at the time of delivery of possession till 11.03.2013. In this way, even Harbans Lal has not proved to have delivered the possession of the disputed property, which he himself never got from Ved Vyas.

Further, question will arise “whether on the basis of notice, the lease could be terminated?”

I find reply in negative. If the lease agreement is executed and the Board feels that the plaintiff-respondent No.1 has rendered himself liable for ejectment, it is required to approach the civil courts for this purpose. Mere alleged breach of lease deed, *ipso facto* would not mean that tenancy stands terminated, merely by serving a notice and possession revert back to the Board.

Learned counsel of the petitioner-Board has argued that jurisdiction of Civil Courts is barred. A copy of Notification dated 23.12.2001 has been produced, under which a Tribunal has been constituted in the exercise of power under Section 83(1) of the Wakf Act, 1995 for the State of Punjab, and first Addl. District Judge and Sessions Judge of each Sessions Division has been named as a ‘Tribunal’.

Learned counsel for the petitioner-Board has further argued that once a Tribunal is constituted, the jurisdiction of civil courts is barred in granting injunction.

Learned counsel for the petitioner-Board has relied upon the authority of “***Board of Wakf, West Bengal vs Anis Fatma Begum & Anr.***”, ***2010(6) Law Herald (SC) 4459***, delivered by the Division Bench of Apex

Court on 23.11.2010, wherein while referring to Section 83(1) of the Wakf Act, 1995, it was held that the word ‘any dispute’ means that the Tribunal has power to deal with all the disputes and the Tribunal has jurisdiction in all matters. It was observed as under:

“16. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83 (1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83 (2) refers to the orders passed under the Act, but, in our opinion, Sections 83 (1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Sections 83 (1) and 84 indicates.”

Sections 83(1) and 84 of the Wakf Act, 1955 before the amendment are reproduced as under:

12. Section 83(1) of the Wakf Act, 1995 states,

“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 Wakf or Wakf property under

this Act and define the local limits and jurisdiction under this Act of each or such Tribunals.”

13. Section 84 of the Act states,

“84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision – Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute”.

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words “any dispute, question or other matters relating to a Wakf or Wakf property” are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word ‘Wakf’ has been defined in Section 3 (r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3 (r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.”

It is further argued that the judgment of **“Ramesh Gobindram vs Sugra Humayun Mirza Wakf[2010(5) Law Herald (SC) 3697]** delivered by the Apex Court was discussed and dealt with in the said case of Anis Fatma Begums’s case (supra).

On the other hand, learned counsel of respondent No.1- plaintiff has produced the judgment of **“Ramesh Gobindram (dead)**

through Lrs. vs Sugra Humayun Mirza”, 2010 AIR (SC) 2897, rendered on 01.09.2010. The Apex Court while dealing with Sections 6, 7, 83 and 85 of the Wakf Act, 1955, held that jurisdiction of civil courts is not barred.

Learned counsel for respondent No.1-plaintiff has also produced another latest judgment of the Apex Court rendered on 31.03.2014, in case of ***“Faseela M. vs Munnerul Islam Madrasa Committee and anothers”, 2014(2) AIR Jhar R. 821***, in which the cases of Anis Fatma Begum’s case (supra) and Ramesh Gobindram’s case (supra) were considered by the Division Bench of Apex Court. The Apex Court dealt with Sections 6 and 7 of the Wakf Act, 1955 and specific question was paused as to whether the suit for eviction of landlord against the tenant relating to wakf property is triable by the civil courts or a suit lies within the exclusive jurisdiction of Wakf Tribunal, the Apex Court dealt with the amended definition of Section 83 of the Wakf Ac, 1995, which gives power even to deal with the eviction of tenant.

The Apex Court in dealing with the judgments of Ramesh Gobindram’s case (Supra) observed as under:

“12. From a conjoint reading of the provisions of Sections 6 and 7 (supra) it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal and no suit or other proceeding can be instituted or commenced in a Civil Court in relation to any such question after the commencement of the Act. What is noteworthy is that under Section 6 read with Section 7 (supra) the institution of the Civil Court is barred only in regard to

questions that are specifically enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property.”

It is held that controversy is covered by the said judgment of ***Ramesh Gobindram's case (supra)*** and the judgment of ***Anis Fatma Begum's case (supra)*** was negated. In view of the latest pronouncements by the Apex Court, it is to be held that the jurisdiction of the civil courts is not barred, in case of civil dispute regarding the wakf property.

A Single Bench of this Court recently in case of ***“Haji Hassan Mohd. and others vs Punjab Wakf Board and others”, 2017(3) R.C.R. (Civil) 491***, decided on 02.03.2017, considered the same question and held that civil court in such matters has got jurisdiction.

It being so, it has to be held that the civil courts have the jurisdiction. Both the courts below after going through the record and after considering the facts and law on the point granted injunction. Therefore, there is no ground to interfere in the same.

As such, both the revision petitions are dismissed.

(KULDIP SINGH)
JUDGE

February 01, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes