

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1729 of 2014 (O&M)

Date of Decision: October 30, 2018

Punjab Wakf Board & another

...Petitioners

Versus

Zahida Begum & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jogendra Pundir, Advocate,
for the petitioners.

None for the respondents.

AMIT RAWAL, J.

Punjab Wakf Board- defendant is in revision petition against the judgment dated 22.11.2013 of the Wakf Tribunal, whereby the suit of the respondent-applicant in part has been allowed by granting declaration and permanent injunction, whereas relief for mandatory injunction was declined.

The facts as emanated from the pleadings of the parties are that the respondent-applicant instituted the suit before the Wakf Tribunal by laying challenge to the notification No.391 dated 28.09.2007, whereby Sheesh Mahal was included in the list of Wakf Board on the premise that His Highness Nawab Iftexhar Ali Khan known as Deewan Khana gifted away Sheesh Mahal to Begum Sajida. Applicant Zahida Begum, in the year 1977, was married to Riaz Ali Khan, brother of Smt.Sajida Begum and since then she had been residing therein. As per writing dated 20.08.1977, Sajida Begum gifted away her residential portion to the applicant. The gift was stated to be witnessed by His Highness Nawab Iftexhar Ali Khan of

Malerkotla and Moti Singh of Chandigarh. The local administration, at the instance of the petitioners, sealed the portion of the building including one Hall where the dowry and other articles were kept. Owing to the existence of Mosque and a School within the premises of Deewan Khan, the Wakf Board initiated acquisition proceedings and in this process, an attempt was made to take over the entire property, thus, it was stated that notification was illegal, void and nonest in the eyes of law.

Wakf Board contested the suit aforementioned by raising objections qua maintainability on account of non-service of notice under Section 89 of Wakf Act and cause of action. The title and interest of Sajida Begum was emphatically denied, rather explained that she was appointed as caretaker of the property. On account of the divorce by Nawab Iftexhar Ali Khan, she was removed from the caretakership including the Deewan Khana. Vide notification dated 28.09.2007, the property was notified as Wakf property.

Respondent Nos.3 and 4 filed separate written statement.

The Wakf Tribunal, on the basis of the pleadings of the parties, framed the following issues:-

“1) Whether notification no.391 of 28.09.2007 declaring the Sheesh Mehal to be Wakf Property is illegal, null and void?

OPP

2) Whether applicant is entitled to declaration, as prayed for? OPP

3) Whether applicant is entitled to permanent injunction as prayed for? OPP

4) Whether applicant is entitled to mandatory injunction

directing respondents to release the property from acquisition?

OPP

5) Whether application is bad for non issuance of the notice under Section 89 of Wakf Act? OPD

6) Whether applicant has no locus standi and cause of action to file the present application? OPD

7) Whether application is bad for non-joining of Munawar-ul Nisa Begum widow of Nawab Iftikhar Ali Khan and Archaeological Department? OPD

8) Whether application is not properly valued for the purpose of court fee and jurisdiction?

Respondent-applicant examined three witnesses and brought on record Ex.P7 report of the Local Commissioner. On the other hand, defendants examined as many as eight witness and brought on record certain documents.

On the preponderance of the evidence, as noticed above, the Wakf Tribunal, decreed the suit.

Mr. Jogendra Pundir, learned counsel for the petitioner-defendants submitted that the findings of the Wakf Tribunal are not only erroneous but perverse as no evidence to belie the notification to be illegal or to be declared as illegal or null and void, has been led. The notification carries a presumption and conclusive proof unless and until the same is challenged within the period of one year. The possession was also not proved. Ex.D-8/1 to Ex.D-8/6 reflected that one Parveen Akhtar was the addressee of the property in dispute. The Wakf Tribunal did not have jurisdiction to set-aside the notification as it could be challenged in the writ

proceedings and, thus, urged this Court for setting-aside the findings.

There is no representation on behalf of the respondents. Accordingly, I proceed to decide the revision on merits.

I have heard the learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit and the findings rendered by the Wakf Tribunal are perfectly legal and justified. In order to establish the possession, various documents Ex.PE, Ex.PF, Ex.PB, Ex.PB/1 to Ex.PB/6, Ex.PC and Ex.PD, i.e., the certificate issued by the Registrar of Births and Deaths, telephone bills, receipts, bills of BSNL, passport, attempted to be brought but held to be not permissible in evidence. Ex.PJ and Ex.PK are also voter lists showing the applicant to be resident of the area. Section 4 of the Wakf Act stipulates to conduct survey before initiating the procedure bringing the property within the ambit of Wakf.

Petitioner-Wakf Board has not been able to bring on record any evidence to establish that such survey was ever done. The impugned judgment does not prevent it to follow the procedure in accordance with law.

I am of the view that the findings of the Wakf Tribunal are most innocuous as due procedure for proceeding to the notification has not been followed.

For the reasons stated above, I do not find any illegality or perversity in the judgment rendered by the Wakf Tribunal and cannot be said to be without jurisdiction. Accordingly, the revision petition is dismissed.

October 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No