

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

CR No.2104 of 2016 (O&M)

Date of Decision:09.03.2018

Madan and another

...Petitioners

Versus

Haryana Waqf Board, Ambala Cantt

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rajendar Chhokar, Advocate for the petitioners.
Mr.B.S.Bedi, Advocate with
Mr.Simar Bedi, Advocate for the respondent-Board in
CR No.2104 of 2016.
Mr.Gulab Nabi Malik, Advocate for the respondent in
remaining cases.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, a bunch of fourteen civil revision bearing Civil Revision Nos. 2104, 2133, 4557, 4670 to 4674, 4680, 4718, 4719, 5013, 5023 and 5024 of 2016 shall stand disposed of with the consent of learned counsel for the parties as the issues which need consideration are common.

Petitioners-defendants have filed this revision petition against the judgment dated 28.10.2015 passed by the Waqf Tribunal, constituted under the Waqf Act, 1995. Haryana Waqf Board filed a suit for possession and mesne profits with consequential relief of permanent injunction claiming to be owner of the property and the defendants who in all the cases to be in unauthorized possession. It was further pleaded that the defendants have denied the title of the plaintiff and claiming themselves to be the owner in possession.

The defendants appeared and pleaded that the Haryana Waqf

Board-plaintiff is not the owner of the property. It was further claimed that the suit in question is barred under the principles of *resjudicata*. It was next averred that the plaintiff earlier filed an application under Section 14-A (ii) of The Punjab Security of Land Tenures Act, 1953 ('the 1953 Act' for short), seeking ejectment of the predecessors of the defendants, which was dismissed by the revenue courts set up under the 1953 Act. It was further pleaded that the Haryana Waqf Board has never remained in possession of the property in dispute and the defendants and their predecessors-in-interest are in possession of the property for the last more than 100 years and entry in the revenue records, *Dargah Khawaja Shamshudin Tarak Panipat* to the owner.

Replication was filed by the Board. The Waqf Tribunal framed the issues and allowed the parties to lead the evidence.

The Waqf Tribunal, after appreciating the evidence available on the file, has recorded a finding that the property in dispute vests with the waqf Board as per notification dated 27.10.1970 Ex.PW1/D issued by the competent authority. The Tribunal has also recorded a finding that even the revenue record has been corrected and the property is recorded in the revenue record as owned by the Waqf Board. With these findings, the suit filed by the plaintiff-respondent was decreed.

Learned counsel for the petitioners has submitted that the finding of the revenue authorities, while deciding the application under Section 14-A (ii) of the 1953 Act, is final and binding, and, therefore, the Haryana Waqf Board has no right to file the suit. He has produced on file the final order passed by the revenue court as Annexure P-2, which is

passed by the Commissioner Ambala Division, Ambala dated 30.10.1980.

A careful reading of the aforesaid order shows that the revenue courts refused to order the ejectment on the ground that entry in the revenue record does not show that the Waqf Board is owner of the property. The Commissioner, while deciding revision petition clearly recorded that till the entries in the revenue record are corrected, the Waqf Board cannot be stated to be the owner. The relevant extract of the finding of the Commissioner is as under:-

“Till the entry in the revenue record with regard to the ownership is made in favour of the petitioner, the revenue officers cannot treat the petitioner to be the owner because they are to give preference to the revenue record.”

In view of the aforesaid discussion, this Court finds that the findings arrived at by the revenue courts would not operate as *resjudicata*. Further, the revenue courts were deciding the ejectment petitions under Section 14 of the 1953 Act, which is a summary proceeding. The ejectment petition is not tried as a regular suit. Such finding of the revenue courts cannot be binding on the civil suit.

Further, learned counsel for the petitioners could not point out as to whether the revenue courts ever framed the issue questioning the title of the Waqf Board and called upon the Waqf Board to lead evidence.

Learned counsel for the petitioners has further argued that the suit filed by the plaintiff was barred by time. He has further submitted that the revenue courts decided the case finally in the year 1989, whereas the suit was filed on 4.6.2011. However, when confronted with the provisions of

Section 107 of the Waqf Act, learned counsel for the petitioners withdrew

this submission.

Section 107 of the Haryana Waqf Act provides that nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Waqf. Section 107 of the Waqf Act is extracted as under:-

“107. Act 36 of 1963 not to apply for recovery of Waqf properties. - Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Waqf or for possession of any interest in such property.”

Still further, even in absence of Section 107 of Waqf Act, the suit for possession would be maintainable at the hands of the owner under Section 65 of the Limitation Act, 1963. The litigation begins to run from the date the defendants claim that they have perfected their title by way of adverse possession.

The next argument of the learned counsel for the petitioners is that the plaintiff-respondent is estopped from filing the suit for possession as the plaintiff earlier filed an ejectment petition.

It may be noticed that the rule of estoppel would not apply, because initially the plaintiff-respondent Board sought ejectment of the petitioners in the present petition. The petitioners denied the relationship of the landlord and the tenant. The revenue authorities found that there is no relationship of landlord and tenant as the Waqf Board has failed to prove that the land was ever given on lease to the petitioners. Hence, there is no substance in the argument of the learned counsel for the petitioners.

The next argument of the learned counsel for the petitioners is

that the suit for possession is not maintainable before the Waqf Tribunal. He submitted that the suit for possession and mesne profits would be maintainable only before the Civil Court. In support of his argument, learned counsel for the petitioner has relied upon a judgment passed by Hon'ble the Supreme Court in **Bhanwar Lal and another Vs. Rajasthan Board of Muslim waqf and others, AIR 2014 SC 758.**

The judgment passed by Hon'ble the Supreme Court in the case of **Bhanwar Lal (supra)** is entirely on different facts. It is also interpreting the provisions of Rajasthan Waqf Act. A sale-deed had been executed by one of the trustee which was challenged. In those circumstances, Hon'ble the Supreme Court held that since the suit is for cancellation of sale-deed, rent and possession, therefore, the jurisdiction is only with the civil court. Para 23 of the judgment passed in **Bhanwar Lal's case (supra)** is extracted as under:-

“The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit are not filed before us and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. Going by the ratio of Ramesh Gobind Ram (AIR 2010 SC 2897 (supra), suit for possession and rent is to be tried by the civil court. However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by Section

6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decided such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession and inextricably mixed with each other. We have made these observations to clarify the legal position. In so far as present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan case (AIR 2007 SC 1447), it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and civil court would be competent to decide the same.”

Under Section 83 of the Waqf Act, Waqf Tribunals have been constituted. Section 85 of the Waqf Act, 1995 provides that no civil suit or any legal proceeding shall lie in the Civil Court, revenue court or any other authority in respect of any dispute/matter relating to any Waqf. Section 7 of the Waqf Act empowers the Waqf Tribunal to decide whether a particular property is a Waqf property or not. Sections 7, 83 and 85 of the Waqf Act are extracted as under:-

7. Power of Tribunal to determine disputes regarding Auqaf.-

(1) If, after the commencement of this Act, [any question or dispute] arises, whether a particular property specified as Waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia Waqf or a Sunni Waqf, the Board or the mutawalli of the waqf, [or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and decision of the Tribunal thereon shall be final:

Provided that-

(a) in the case of the list of auqaf relating to any part of the

State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of auqaf; and

(b) in the case of the list of auqaf relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such a question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under the section in respect of any waqf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of auqaf and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

[(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to

penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]

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 45 Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction of 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 any thing 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 it self as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such 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.”*

In the present case, the petitioners are disputing that the property is not a waqf property and, therefore, does not vest with the Haryana Waqf Board. So the issue which needs determination is, whether the property is Waqf or not. Such issue is to be exclusively determined by the Waqf Tribunal. Hon’ble the Supreme Court, while interpreting the

provisions of the Waqf Act, 1995, has held that the jurisdiction of the Waqf Tribunal is exclusive where the dispute is whether the property is waqf or not in the case of **Ramesh Gobindram (Dead) through LRs vs Sugra Humayun Mirza Wakf**, AIR 2010 SC 2897. Para 12 of the aforesaid judgment is reproduced 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.”

In view of the aforesaid discussion, there is no substance in the argument of the learned counsel for the petitioners.

Learned counsel for the petitioners has further argued that the property is not a waqf property as it does not fall within the definition of waqf as defined in Section 3 (r) of the Waqf Act. In this regard, it may be noticed that the Waqf Board has produced on file the notification issued declaring the property to be waqf property available on the file as Ex.DW1/D dated 27.10.1970. Before this notification, the property was described in the revenue record as *Dargah Khawaja Shamshudin Tarak Panipat*. It is clear that the property was initially owned by a religious institution. Thereafter, the property vested with the Waqf Board as has been

notified by the Government. The petitioners have not produced any evidence on record to prove that it is not a waqf property. Hence, this Court does not find any substance therein. It may be significant to note that the predecessors of the petitioners filed a suit before the civil court admitting that property in dispute is under the management of Waqf Board. The Waqf Board was party in the aforesaid civil suit. The pleadings have been extracted as under:-

“That the land detailed below is the muslim wakf property of Dargah Khwaja Shamas-ud-Din Turk, Panipat, under the management of Wakf Board defendant No.1.

The description of the suit land is as under:-

Khewat No.94, Khatoni No.168, fields Nos.3/25, 11/26, 12/5, 5\6,15,16,24,21/4/6,7,22/12/1,20,21,32/5/1, Khatoni No.169, field Nos.11/16,23, min west, 11/24,25/1, 21/5,14/2/2,25; Khatoni No.170, fields No.11/3,6,7,8,min(north), Khatoni No.178 field 11/22, Khatoni No.173 fields No.21/16, 22/2,3,8,10,11; Khatoni No.174 fields No.4/21, 11/11,14,19, 21/15, 22/9, Khatoni No.175 field No.11/10 south, Khatoni No.176 field No.11/13, Khatoni No.177, Field No.11/21 min (south)-23 min (East), 12/25, 22/4, Khatoni No.(illegible) fields No.4/23 (min) (east) 24, 11/4, 5/1,8 min, Khatoni No.179, fields No.11/15,17,18 Khatoni No.180 fields No.4/22, 23, min (west), 11/1,2,10, min(north), Khatoni No.181, field No.11/12; Khewat No.95, Khatoni No.182, field No.22/1, total No. of fields 62, measuring 367 Kanals 14 marlas according to jamabandi 1963-64, situated in village Dhandola, Tehsil Panipat, District Karnal.

That the plaintiff's ancestors took the suit land for cultivation as tenants from the mutwallis of the Durgtah-Khwaja Shamas-Ud-Din more than sixty years back and since then, their ancestors and then the plaintiffs have been in

possession of the land in dispute as tenants paying rent which is now Rs.160/- per annum, except that field No.22/1 of Khewat no.95 Khatoni No.182 is now in possession of plaintiffs No.1 and 2 only as mortgagees.”

Now, learned counsel for the petitioners wants to argue that the property is not waqf property and it is not under the management of Haryana Waqf Board.

In the considered opinion of this Court, the petitioners are not entitled to raise a contradictory plea.

In view of what has been discussed hereinabove, this Court does not find any good ground to interfere with the judgment passed by the Waqf Tribunal, constituted under the Waqf Act, 1995. All the civil revision petitions are hereby dismissed. Pending application, if any, shall also stand disposed of.

09.03.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No