

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4449 of 2018
Date of Decision: November 28, 2018

Avtar Singh

...Petitioner

Versus

Haryana Wakf Bord, Ambala Cantt

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Akshay Kumar Jindal, Advocate,
for the petitioner.

AMIT RAWAL, J.

The present revision is directed against the judgment and decree dated 05.04.2018 rendered by the Wakf Tribunal, Rohtak, whereby the suit of the respondent-plaintiff for declaration and permanent injunction, has been decreed.

It was alleged that in pursuance to the judgment and decree dated 30.01.1999, which was upheld by this court in Regular Second Appeal No.1211 of 2005, the ownership conferred upon Avtar Singh was set-aside and it was held that the Wakf Board was entitled to seek the possession from the defendant in accordance with law. In such circumstances, the plaintiff sought the possession of the suit property conferring the status upon the defendant of a trespasser and claimed mesne profits @ ₹ 30,000/- per month from March, 1963 to April, 2010 along with interest @ 12% per annum.

Defendant opposed the suit and claimed to be exclusive owner of the property in dispute and relied upon the mutation No.15595 dated 30.01.1999. It was alleged that a sum of ₹ 30.00 lacs was spent on the

construction of the building and two shops under the name and style of Paul Furniture and Mahindra Furniture were in existence. Previous litigation between the parties was admitted.

Plaintiff in support of the aforementioned pleadings, brought on record the judgment and decree dated 18.11.2012, order dated 28.01.2018 passed in Regular Second Appeal No.1211 of 2003, notice under Section 32 of the Wakf Act (for short, the Act) and gazette notification dated 26.02.2008, whereas the defendant brought on record the jamabandi, mutation, notices received etc.

The Wakf Tribunal, on the basis of the evidence brought on record, partly decreed the suit holding plaintiff-Wakf Board to take possession of the suit property measuring 901 sq.yards out of 20 bighas 17 biswas being part of Khasra No.1054, situated at Asandh Road, Panipat and mesne profits ₹ 2540/- per month for three years immediately preceding to the suit along with interest @ 6% per annum.

Mr. Akshay Kumar Jindal, learned counsel for the petitioner-defendant submitted that as per the amended provisions of Section 83 of the Act, at the time of pronouncement of the judgment, the Additional Magistrate, the third member of the Wakf Tribunal was not present, but one Data Entry Operator has been marked as present on behalf of the Additional Magistrate, Rohtak, therefore, the entire purpose of creation of the Tribunal under sub-section (4) of Section 83 of the Act had been defeated. Petitioner was ready to tender higher rent and execute the lease deed subject to any terms and conditions which the Board deemed appropriate. If the possession has been taken by the Wakf Board, it will seriously affect his livelihood owing to the fact that he was carrying on the business,

I have heard the learned counsel for the petitioner-defendant, appraised the paper book and of the view that there is no force and merit in the submissions, for, in the decision rendered in the RSA, *ibid*, it was held that the petitioner-defendant was not the owner of the property belonging to the Wakf Board. In such circumstances, the defendant in the second round of litigation cannot rake up the issue of ownership. As per the notification brought on record, in the absence of any title, the person who is in occupation of the building or vacant land, is required to pay the use and occupation charges. In this background of the matter, mesne profits claimed from March, 1963 to April, 2010 has been confined to three years.

The argument regarding non-compliance of the provisions of the aforementioned Act is also meritless as the provisions of sub-section (4) of Section 83 of the Act provide that every Tribunal shall consist of 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. The order under challenge has been authored by District Judge and other members of the Tribunal, therefore, the same cannot be said to be suffering from non-compliance of the aforementioned provisions.

For the reasons stated above, no ground for interference in the impugned order under challenge is made out. Resultantly, the revision petition is dismissed.

November 28, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No