

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

CR No.6269 of 2016 (O&M)
Date of decision : 23.05.2018

Idara Islam Panipat and others

...Petitioners

Versus

Haryana Wakf Board, Ambala Cantt. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. B.S. Bedi, Advocate for the petitioners.

Mr. G.N. Malik, Advocate for respondent Nos.1 to 3.

Mr. Kunal Mulwani, Advocate for
Mr. Aditya Singh, Advocate for respondent Nos.4 to 6.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

The issue which needs determination in this revision petition is that what is the jurisdiction/scope of the Wakf Tribunal constituted under the Wakf Act, 1995. Whether it is only restricted to the cases where the question which needs determination is whether the property is wakf or not or in other words, the dispute is whether the question of title of the wakf is involved or the Wakf Tribunal would be entitled to examine any dispute, question or other matter relating to wakf or wakf property?

Parliament enacted the Wakf Act, 1995 while repealing the Wakf Act, 1954. The relevant provisions of the Wakf Act which require

interpretation are contained in Sections 6, 7, 83 and 85, extracted as under:-

“6. Disputes regarding (auqaf). —(1) *If any question arises whether a particular property specified as wakf property in the list of auqaf in wakf 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 aggrieved 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 :*

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf.

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of auqaf shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

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 wakf property in a list of auqaf is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, (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 the 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 question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this 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 unauthorized occupation of waqf property and to penalise such unauthorized 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 Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction 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 may 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 anything 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 itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other 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 plaintiffs-petitioners filed a suit for declaration before the Wakf Tribunal. The Wakf Tribunal has noticed the assertions made in the plaint in the following words:-

“Plaintiffs filed suit for declaration to the effect that letter No. 24/ Lease-F54P/2045 dated 2.6.1965 regarding allotment of the land measuring 2965 square yards, comprising in khasra No. 1993/1 on lease at a monthly rent of Rs. 50/- for the period of 11 months for temporary constructions issued by Secretary Punjab Wakf Board, Ambala Cant is illegal, against facts and without jurisdiction and is ineffective upon the ownership rights of God Almighty and under the management and control of then Punjab Wakf Board and Muslim Community at large including the plaintiffs and is not binding upon the Muslim Community. Similarly, rent note dated 26.6.1965 executed by Sh. Jahur Ahmed Rent Controller, Rewari on behalf of the then Punjab Wakf Board in favour of Om Prakash Sanghi etc. is also illegal, null and void and ineffective upon the rights of the God Almighty and Muslim Community at large including the plaintiffs. Similarly, the rent note dated 29.7.1971 registered vide deed No. 766 dated 29.7.1971 executed by Om Prakash Sanghi and others in favour of Sahid Anish Property Officer of Punjab Wakf Board is forged, fabricated and is created in collusion with Sahid Anish and officers of the Punjab Wakf Board and the same rent note dated 29.7.1971 is without jurisdiction, illegal and null and void and against the law relating to wakf and is not binding upon the rights of the God Almighty, Punjab Wqkf Board, now Haryana Wakf Board the

Muslim Community at large including the plaintiffs. Further compromise deed dated 27.5.1971 and judgment and decree in civil suit No. FAO 326/596 instituted on 4.8.1969 decided on 27.5.1971, titled as Om Prakash Sanghi and others Vs. M.C. Narnaul and Punjab Wakf Board, is the result of mismanagement of the officers of the then Punjab Wakf Board and the connivance of the defendants and Muslim Community Officers. Further, suit No. 397 of 1975 instituted on 20.11.1975 decided on 15.6.1978 titled as Om Prakash and others Vs. PWB and others regarding land measuring 2965 Sy. comprised in khasra No. 1993/1 decided on the basis of the compromise passed by resolution dated 1.6.1978 on the recommendation of the lease committee vide resolution No. 3 dated 31.5.1978 is also illegal and null and void and ineffective upon the rights of the God Almighty and Muslim Community in General including the plaintiffs and is result of fraud, mis-representation and collusion between Sh. Om Prakash Sanghi and others and officials of the then PWB. Further, letting of the wakf property and allowing permanent constructions on the land of Kabristan is also illegal and without jurisdiction. Further the withdrawal of notice vide letter No. 2248 dated 29.2.1980 regarding cancellation of the tenancy and permission to compromise the notice dated 7.12.1979 issued through its Advocate for terminating the tenancy of Musaddi Lal, Om Prakash and Kalu Ram and directing them to handover the possession of the land on 31.12.1979 is also illegal, without jurisdiction. The judgment and decree dated 5.4.1980 in case Om Prakash and others Vs. PWB is also null and void and same are ineffective upon the rights of God Almighty and the plaintiffs and the religious feeling of the Muslim Community. It is further averred that the relief of permanent injunction against the defendant No. 4 sought that he be restrained from

recovering rent from the alleged sub-tenants under the garb of illegal lease order, rent note and registered rent note etc. It is further averred that the plaintiffs are registered bodies and work for the benefit and welfare of the Muslim community at large and work for protection of the Muslim Wakf property and other property. From the time immemorial, land comprised in khasra No. 1993 previous khasra No. 4089 is being used for religious and pious purposes by the Muslim community. They used to bury their dead bodies and the land vests in God Almighty. The land is described as Kabristan Wala in the jamabandi for the year 1932 BK and 1971-72 BK. After partition of the country, the land comprised in khasra No. 1993 vested in custodian department Govt. of India and continued to be land of Kabristan as per records. After carving out Narnaul Rewari road, the land comprised in khasra No. 1993 was divided in Min Numbers i.e. 1993/1 and 1993/2 min. File No. 3 Scheme Narnaul Rewari road decided on 23.12.1957 and as per field book and sazra Aks prepared with the file, land measuring 1 biswa was acquired for the purpose of construction of Narnaul Rewari road and remaining land measuring 1 Bigha 11 Biswa was released being land of Kabristan, thus land bearing khasra No. 1993/1 measuring 1 biswa remained with PWD (B&R) and land bearing khasra No. 1993/2 measuring 1 bigha 11 biswa remained and continued to vest with God Almighty. Om Prakash Sanghi, Sh. Radhey Shyam, Sh. Kalu Ram, Sh. Musaddi Lal, Sh. Sohan Lal hatched a criminal conspiracy in order to grab the land vested in God Almighty and managed and controlled by PWB, now HWB, which was being used by Muslim at large. Om Prakash Sanghi etc. in collusion with revenue officials, municipal officials, board officials first of all got changed the revenue record and got the entries regarding khasra No. 1993 measuring 1 bigha 12

biswa as 1993/1, measuring 1 bigha and 1993/2 measuring 0-12 biswa is wrong and fraudulent manner. Sh. Om Prakash Sanghi etc. were successful in obtaining letter No. 24/ lease-F-54P/205 dated 2.6.1965 from the Secretary PWB, Ambala Cant and land bearing khasra No. 1993/1 measuring 2965 sy. allotted on lease to Sh. Om Prakash Sanghi etc. for a period of 11 months for temporary construction. Under the garb of allotment order Sh. Jahur Ahamed Rent Controller, Rewari executed a rent note dated 26.6.1965 in favour of Om Prakash Sanghi etc. It is further averred that Om Prakash etc. in connivance with PWB through its collector filed a civil suit No. FAO-326/ 598 instituted on 4.8.1969 decided on 27.5.1971 for declaration that khasra No. 1993/1 is the land of PWB, Ambala Cant and Khokha put up by the MC is wrong and illegal. The said suit was compromised on 27.5.1971 and decreed accordingly in connivance with PWB and MC, Narnaul. It is further averred that in order to retain illegal possession upon khasra No. 1993/1, Om Prakash Sanghi etc. filed a civil suit No. 387 of 1975 decided on 15.6.1978 for declaration that they are tenants of PWB over the land measuring 2965 sy. This suit was also got compromised in connivance with the then Secretary PWB, Ambala Cant. For this compromise, board passed a resolution dated 1.6.1978 on the recommendation of lease committee vide resolution No. 3 dated 31.5.1978 that Om Prakash Sanghi etc. will pay Rs. 150/- as monthly rent from the date of institution of the suit i.e. 20.11.1995 and they will be entitled to sublet the leased premises. It is further averred that they sublet the land and started earning lacs of rupees per month on the land khasra No. 1993/1. Upon which, the PWB started the process of allotment to the persons who were in possession of the property alleged to be sub-lessee of Om Prakash Sanghi and others. Om Prakash Sanghi etc.

filed a civil suit against PWB for declaration that they are tenants under PWB and the defendants board has no right to interfere in the rights and possession of them. Reply to that suit was filed by the defendant board denying the allegations of Om Prakash etc. In connivance of the board and its officials, the suit was compromised that they will pay rent Rs. 150/- per month from the institution of the suit, Rs. 360/- as costs of the suit and they will be entitled to sublet the leased premises. The legal heirs of Om Prakash Sanghi, Ram Sharan Dass Sanghi and Kalu Ram are in illegal possession of the property through their sub-tenant. Musaddi Lal is also in illegal possession. The secretary PWB Ambala Cant issued notice through its Advocate dated 7.12.1979 terminating the tenancy of Musadi Lal, Om Prakash and Kalu and directing them to handover the possession of the land on 31st Day of December, 1979. They filed again a civil suit No. 691 dated 18.12.1979 for permanent injunction restraining the defendants from interfering in the possession and canceling the tenancy and leasing out the property to any other person. In the said suit, no reply was filed and the Secretary of the Board withdrew the notice regarding cancellation of the tenancy and permitted to compromise the suit. The said permission to withdraw the suit and withdrawal of notice by Secretary PWB is illegal, without jurisdiction . The judgment and decree dated 5.4.1980 titled as Om Prakash and others Vs. Punjab Wakf Board is also null and void and ineffective on the rights of the God Almighty. It is in the interest of justice that the tenancy in favour of Musaddi Lal, Om Prakash Sanghi and Kalu Ram and its successor in interest be cancelled in the interest of Muslim Community.”

The suit was contested by defendant Nos.1 to 3, however, no issue was framed whether the property is wakf or not.

Learned Tribunal dismissed the petition on the premises that since no dispute regarding question of title relating to the property whether the property is wakf or Aukf or not, is involved, therefore, the Tribunal does not have the jurisdiction. This order is under challenge before this Court.

Learned counsel for the petitioners-plaintiffs has submitted that on co-joint reading of Sections 6, 7, 83 and 85 of the Wakf Act, 1995, the jurisdiction of the Tribunal cannot be given a restrictive/narrower meaning. He has submitted that Section 83 of the Wakf Act, 1995 which provides that constitution of the Tribunal has to be given full meaning and effect wherein the words used are of “any dispute, the question or other matter relating to a wakf or wakf property”. He has further submitted that as per the Act No.27 of 2013, the Wakf Act, 1995 has further been amended and even eviction of a tenant or determination of rights and obligation of the lesser and the lessee of such property has also been included within the jurisdiction of the Wakf Tribunal. He has further submitted that the provisions made in Sections 6 and 7 cannot be read in isolation of the provisions made in Section 83 of the Act. He has also drawn the attention of the Court to amended Section 85 of the Wakf Act, wherein the jurisdiction of not only the Civil Court but the Revenue Court and any other authority in respect of any dispute, question or other matter relating to any Wakf, Wakf Tribunal or other matter which is required by or under the Wakf Act to be determined by the Tribunal, has been barred.

On the other hand, learned counsel representing the Wakf Board has supported the argument of the learned counsel for the petitioners and has submitted that the judgment under challenge is erroneous and the Tribunal

has committed an error in narrowly construing the jurisdiction of the Wakf Tribunal.

Learned counsel for the private respondents has submitted that the provisions of the Wakf Act has been interpreted by Hon'ble the Supreme Court in **Faseela M. Vs. Munnerul Islam Madrasa Committee and anothers, (2014) 16 SCC 38**, to contend that view of the learned Wakf Tribunal is correct and, therefore, this Court should not interfere with the order.

Let us analyze the judgment passed by Hon'ble the Supreme Court in Faseema M. case (Supra).

In the aforesaid case, Hon'ble Supreme Court was dealing with a situation when eviction of a tenant by the landlord relating to the wakf property was filed before the Wakf Tribunal. In para 9 of the judgment, Hon'ble the Supreme Court culled out the question which needs determination, which is extracted as under:-

“9. The question, for determination in these appeals, is as to whether the suit for eviction by the landlord against the tenant relating to waqf property is triable by the civil court or the suit lies within the exclusive jurisdiction of the Waqf Tribunal.”

Thereafter, Hon'ble the Supreme Court while relying upon the judgment passed in the case of **Ramesh Gobindram (Dead) through LRs Vs. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726**, held that the Wakf Tribunal does not have the jurisdiction if the suit for eviction against tenant is filed relating to a wakf property.

In the case of Ramesh Gobindram (dead) through LRs (Supra),

Hon'ble the Supreme Court also interpreted various provision of the Wakf Act, as were existing before the Wakf (Amendment) Act 2013 and laid down that in a dispute between the landlord and a tenant where question with regard to the property being wakf or not is not involved, the Wakf Tribunal would not have the jurisdiction to deal with such case.

However, the judgments passed by Hon'ble the Supreme Court in the cases of Faseela M. (Supra) and Ramesh Gobindram (dead) through LRs (Supra) have to be read in context the aforesaid judgments were written. The judgments passed by Hon'ble the Supreme Court are binding on all the Courts in India. The judgments passed by the Courts are not to be read as a statute. The only ratio decidendi in a judgment is binding and not obiter dicta.

In the present case, the dispute is not between the landlord and a tenant and the question of their eviction is not involved. In the present case, the plaintiffs challenge the certain action of the Wakf Board and has pointed out certain alleged illegalities committed by the officials. Hence, both the judgments referred to above, passed by Hon'ble the Supreme Court would not have any application.

Still further, the words used in the statute has to be given full meaning. No doubt, Sections 6 and 7 deals with the power of the Tribunal. On exclusive reading of the aforesaid provisions, no doubt the Tribunal gets jurisdiction in a situation where questions arise whether a particular property is wakf property or not. However, Section 83 provides for constitution of the Tribunal and in the aforesaid Section, the important word used are “for the determination of any dispute, question or other matter relating to a wakf or wakf property”. After the amendment of the Wakf Act 1995 by Act No.27 of

2013, the words which has been added is “eviction of a tenant or determination of rights and obligation of lessor and lessee of such property”. The intention of the Parliament was to expand the jurisdiction of the Wakf Tribunal. Sub-Section 4 of Section 83 as amended in 2013 further provides that the Tribunal has to be multi member Tribunal having specialist in their fields. Hence, in the considered view of this Court, the jurisdiction of the Wakf Tribunal cannot be only restricted to the cases where the question involved is whether the property is wakf or not. The words “any dispute question or other matter relating to wakf or wakf property” which existed even before 2013 amending Act have to be given meaning.

In view of what has been discussed above, in the considered opinion of this Court, the order under challenge was wrongly passed by the Tribunal by overlooking the provisions of Section 83 of the Wakf Act, 1995.

In view of the aforesaid, the order under challenge is set aside.

The revision petition is allowed.

The Wakf Tribunal constituted under the Wakf Act, 1995 is directed to decide the case on merits.

23.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No