

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

RSA No.5230 of 2017 (O&M)

Date of decision:12.11.2018

Lakhwinder Singh and another ... Appellants

Vs.

Punjab Wakf Board ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Impinder Singh Dhaliwal, Advocate for
Mr. N.S.Dhaliwal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The sole contention which has been raised before this Court is that suit before the trial Court on behalf of Wakf Board for possession of land measuring 13 kanals 18 marlas in view of the provisions of Section 85 of the Wakf Act, 1995 (hereinafter called as “1995 Act”), was not maintainable.

Respondent/plaintiff had claimed the possession on the basis of the ownership that suit property had already been notified with the wakf property. Possession of the defendants was alleged to be illegal. In the reply, defendants emphatically denied the title of the Wakf Board.

I have heard the learned counsel for the appellants and of the view that there is no force and merit in the submissions of Mr. Dhaliwal.

The provisions of Sections 6 and 7 of 1995 Act, provide the procedure for Tribunal to adjudicate the lis. For the sake of brevity, Sections

6 and 7 of 1995 Act, read as under:-

6. Disputes regarding wakfs.—

(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is 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 interested therein 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 wakfs.

Explanation.—For the purposes of this section and section 7, the expression “any person interested therein”, shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under 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 wakfs shall, unless it is modified in pursuance of a decision or 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 wakfs.—

(1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs 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 wakfs 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 wakfs; and

(b) in the case of the list of wakfs 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 wakf 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 wakfs 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:”

The defendants are the LRs of Makhan Singh, who was recorded as a tenant in the revenue record. The tenant has no right to challenge the title of the Wakf Board. This is what the import of the findings of the Courts below.

In view of what has been observed above, I do not find any illegality and perversity in the judgments and decrees rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed. Consequently, the application seeking condonation of delay is also dismissed.

(AMIT RAWAL)
JUDGE

November 12, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No