

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

CR-165-2006 (O&M)

Date of decision: 11.09.2019

Som Nath

...Petitioner

Versus

Punjab Wakf Board and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Satpal Bhasin, Advocate for
Mr. Harkesh Manuja, Advocate for the petitioner.

Mr. G.N. Malik, Advocate for respondent No.1.

Mr. Ajay Aggarwal, Advocate for
Mr. Dinesh Goyal, Advocate for respondent No.2.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Som Nath had filed a suit before Tribunal Wakf Act, Ludhiana against the defendants Punjab Wakf Board, Ambala Cantt etc., seeking grant of permanent injunction on the averments that he is in possession of the suit property as lessee and licensee at monthly rent of Rs.5/-, vide allotment letter dated 26.03.1969/10.04.1969. As a matter of fact, plaintiff and late Sh. Ramji Dass had taken the suit property on lease from defendant Nos. 1 & 2 but later on with malafide intention the latter did not accept the rent w.e.f. 01.04.1984 onwards and rather, tried to interfere in possession of the plaintiff. Feeling aggrieved, the plaintiff had brought the suit in question. It may be mentioned here that the suit was earlier pending

before Civil Judge (Jr. Divn.) but on a reference having been made by him, it was transferred to the Tribunal under Wakf Act at Ludhiana as per orders of learned District Judge, Ludhiana.

On notice, defendant Nos. 1 & 2 put in appearance and filed joint written statement, contesting the suit. Inter alia, it is contended that the suit was not maintainable, in view of non service of notice under Section 56 of the Wakf Act by the plaintiff upon the answering respondents before filing of the suit; the plaintiff did not have any cause of action to bring the suit, the plaintiff lacked locus standi to institute the suit and the suit property is presently in possession of defendant No.3 as a tenant under defendant Nos.1 & 2 at monthly rent of Rs.720/- w.e.f. 01.04.1991, the plaintiff is not in possession of the suit property. The answering defendants denied that plaintiff and Sh. Ramji Dass had been paying rent and licence fee to them regularly or that such answering defendants with malafide intention had not accepted the rent w.e.f. 01.04.1984, which as alleged was tendered and offered by the plaintiff and late Sh. Ramji Dass.

By moving an application, defendant No.3 Madhu Kamal Sehgal got himself impleaded as a party. He also filed written statement, taking various legal pleas, rather contending that he is in possession of the suit property as it was allotted to him by Punjab Wakf Board; his tenancy came into being w.e.f. 01.01.1992 onwards for commercial shed, vide allotment order dated 07.03.1992 and 'No Objection Certificate' was issued in his favour by defendant Nos.1 & 2, allowing him to raise

construction on the ground floor of the suit property and for constructing commercial shed thereon; when the present plaintiff and his associates, namely, Smt. Shashi Bala and Om Parkash etc., made an abortive attempt to usurp the suit property, defendant No.3 had filed a civil suit and along with that had moved an application under Order 39 Rules 1 & 2 CPC for grant of ad-interim injunction; the said application for grant of ad-interim injunction was accepted by the trial Court on 03.08.1998. Resultantly, the present plaintiff and his associates were restrained from interfering into the suit property. Such defendant denied that the plaintiff and late Sh. Ramji Dass had taken the suit property on lease in the year 1989, vide allotment order dated 10.04.1969 or that any mosque was allotted to them on payment of license fee @ Rs.1/- per month. According to such defendant, the plaintiff does not have any right or concern with the suit property. Such defendant prayed for dismissal of the suit.

Plaintiff filed replication. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is in possession of suit property?
OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed? OPP
3. Whether the suit is not maintainable in its present form?
OPD
4. Whether no notice as required under Section 56 of the Wakf Act was served upon the defendants? OPD
5. Whether the plaintiff has no locus standi to file present suit? OPD
6. Whether the plaintiff has no cause of action to file present suit? OPD
7. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the Tribunal decided issues No.1, 2 and 3 against the plaintiff and in favour of defendants. Issues No.4 & 5 were also decided against the plaintiff and in favour of defendants. Issue No.6 was decided against the plaintiff and in favour of defendants. Consequently, the suit of the plaintiff was dismissed with costs by the Tribunal, vide judgment and decree dated 25.10.2005.

Feeling aggrieved, the plaintiff has approached this Court, by way of filing the present revision petition, notice of which was given to the respondents/defendants, who have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal by proper appraisal of evidence and correct interpretation of law has returned a finding that as per allotment order dated 26.01.1968 (Ex.P2), the suit property bearing khasra No.B.III-585, measuring 10 sq. yards, was allotted to the plaintiff and late Sh. Ramji Dass at monthly rent of Rs.5/- commencing from 01.01.1969 for a period of 11 months and that plaintiff and late Sh. Ramji Dass had paid the lease amount of this area on 06.04.1971, which was to the tune of Rs.60/-, vide receipt Ex.P7. Apart from that, plaintiff and late Sh. Ramji Dass had paid Rs.60/- as lease amount on 02.03.1972. As a matter of fact, the lease amount had been paid by them till 31.03.1973 and not afterwards. As such, their possession became unauthorized and illegal, even, it is

assumed for the sake of arguments that the plaintiff is in possession of the suit property. Learned Tribunal has further observed that East Punjab Urban Rent Restriction Act does not apply to the Wakf property and for the said reason, possession of the plaintiff over the property covered by allotment order Ex.P2 became unauthorized either after expiry of 11 months or at least after he stopped paying the lease amount of this property after 31.03.1973 and such like illegal occupant cannot be held entitled for grant of permanent injunction against true owners i.e. defendant Nos.1 & 2. The Tribunal has further observed that the other property shown in the site plan Ex.P1 except room covered in the allotment order Ex.P2 was not allotted to the plaintiff by way of any allotment order like Ex.P2, though the plaintiff and late Sh. Ramji Dass continued paying rent of that property, vide rent receipts. As such, after the year 1983-84, the plaintiff and late Sh. Ramji Dass did not pay the rent for the area allegedly occupied by them shown in red colour in the site plan Ex.P1 over and above the room allotted to them vide allotment order Ex.P2. Therefore, on account of non payment of rent by the plaintiff to defendant No.1 of the suit property over and above the property covered in the allotment order Ex.P2, the possession became unauthorized after 1983-84 and such occupant cannot be held entitled for grant of permanent injunction against true owners i.e. defendant Nos. 1 & 2 and after the year 1983-84, the plaintiff had no right to remain in possession of the disputed property, which was not even allotted to him by defendant Nos. 1 & 2. The Tribunal found that the plaintiff had no

right to maintain his suit for grant of permanent injunction and further he cannot be said to be occupier of the suit property in a lawful manner.

While dealing with issue No.4, the Tribunal has observed that since the plaintiff had not served statutory notice under Section 56 of the Wakf Act upon defendant Nos. 1 & 2 before filing of the suit, the suit was not maintainable and the plaint was even liable to be rejected by the Civil Court at the time of presentation of the plaint.

Dealing with issue No.5, the Tribunal has observed that the plaintiff had no locus standi to file the present suit since he had failed to prove authorized and lawful possession over the suit property. For similar reasons, no cause of action had arisen to him to bring the suit.

Counsel for the petitioner had referred to judgment titled **Punjab Wakf Board Vs. Sham Singh Harike, (2019) 4 SCC 698** in support of his contention that jurisdiction of the Tribunal constituted under Wakf Act, 1995 to try the suit was not there and only Civil Court could adjudicate the dispute. This judgment does not help the appellant much, since the order passed by the Civil Judge (Jr. Divn.) making reference for transfer of the suit to the Tribunal under Wakf Act, 1995 and the order passed by the District Judge, Ludhiana in that regard were not challenged by the plaintiff. He is bound by the judgment and decree passed by the Tribunal. No objection seems to have been taken before the Tribunal with regard to its jurisdiction in the matter. Both the parties had led evidence and counsel for the parties had addressed arguments before the Tribunal.

The judgment passed by the Tribunal is well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity with the impugned judgment and decree, which might have called for interference by exercising revisional jurisdiction. As such, finding no merit in the revision petition, the same stands dismissed.

11.09.2019

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(H.S. MADAAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No