

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

CR-2215-2017 (O&M)

Date of decision: 20.11.2019

Gurdeep Singh and others

.....Petitioners.

vs.

Haryana Wakf Board

.....Respondent.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. Malkeet Singh, Advocate for the petitioners.

Mr. Gulam Nabi Malik, Advocate for the respondent.

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Sanjay Kumar, J. (ORAL)

This revision, filed under the *proviso* to Section 83(9) of the Wakf Act, 1995 (hereinafter, 'the Act of 1995'), arises out of the judgment dated 3.3.2017 passed by the learned Additional District Judge-cum-Chairman, Wakf Tribunal, Ambala (hereinafter, 'the Wakf Tribunal'), in Civil Suit No. 9 of 2011. The said suit was filed by the respondent herein, the Haryana Wakf Board, Ambala Cantonment, Ambala, seeking eviction of the petitioners from the wakf property, viz., the land admeasuring 35 kanals 11 marlas situated at Village Dheen, Tehsil Barara, District Ambala. By the judgment under revision, the Wakf Tribunal decreed the suit and directed the petitioners herein to hand over vacant possession of the suit property to the plaintiff-Wakf Board within three months. Aggrieved thereby, the petitioners approached this Court.

By order dated 28.3.2017 passed in this revision, this Court while directing notice of motion returnable on 10.7.2017, stayed the

dispossession of the petitioners/defendants in the meantime. Mr. Gulab Nabi Malik, learned counsel, would however concede that despite there being no extension of the aforesaid interim order thereafter, no steps have been taken for dispossessing the petitioners/defendants.

Mr. Malkeet Singh, learned counsel, raised the issue of jurisdiction of the Wakf Tribunal to entertain the subject suit on the ground that it was instituted on 4.8.2011, long prior to the amendment of the Act of 1995 by Act 27 of 2013, w.e.f. 1.11.2013. He would contend that the said amendment has no retrospective effect but is unable to establish before this Court that a suit instituted prior to 1.11.2013 would continue to remain on the file of the civil Court in which it was instituted and that the amendments effected under Act 27 of 2013 would not denude such civil Court of jurisdiction. On the other hand, Section 85 of the Act of 1995 makes it clear that that no suit or other proceedings can lie in any civil Court in respect of any dispute, question or other matter relating to any wakf or wakf property which is required by or under the Act of 1995 to be determined by the Wakf Tribunal constituted under Section 83 thereof. The phrase in Section 85 of the Act of 1995, viz., '*no suit or other proceedings shall lie in any civil Court.*' makes it clear that the date of institution is of no relevance and once the jurisdictional Wakf Tribunal is constituted, the suit or other legal proceedings cannot 'lie' before the civil Court thereafter. Therefore, any eviction suit which was pending on the file of the civil Court at the time of passing of the Act 27 of 2013 necessarily had to be transferred to the file of the jurisdictional Wakf Tribunal. That was the import of the order passed on 24.8.2016 by the civil Court in the case on hand. Significantly, the petitioners/defendants did not choose to challenge the said order and

submitted themselves to the jurisdiction of the Wakf Tribunal and suffered the adverse judgment, presently under revision. It is therefore not open to them to now raise the issue of jurisdiction. In any event, this Court finds no merit in their contention.

Insofar as the merits of the case are concerned, the record reflects that the petitioners/defendants failed to establish that they were tenants in possession of the subject Wakf property since the year 1948. The admitted position, therefore, is that they were tenants therein for the period of one year, i.e., 2006-2007. No document was executed thereafter extending their lease. The letter (Ex.D3) addressed by the petitioners/defendants to the respondent/plaintiff-Wakf Board, seeking renewal of the lease, demonstrated that they admitted that the lease was only for one year and that it required further extension. In the absence of such an extension and given the definition of an 'encroacher' in Section 3 (ee) of the Act of 1995, the petitioners/defendants continued in possession thereafter only as tenants at sufferance,. Therefore, the petitioners/defendants had no manner of right in the eye of law to remain in possession after expiry of the lease.

It is an admitted fact that the petitioners did not pay any rentals after the expiry of the lease and even during the course of the suit proceedings, they seem to have deposited the lease rentals for four years, that is upto 2011, though they made the said deposit in the year 2013. By virtue of the interim order passed in this revision they are still continuing in possession without paying any amounts.

This Court therefore finds no grounds to interfere with the well reasoned and cogent judgment passed by the Wakf Tribunal holding against the petitioners/defendants.

The Civil Revision is accordingly dismissed.

Interim order dated 28.3.2017 shall stand vacated.

No order as to costs.

(SANJAY KUMAR)
JUDGE

20.11.2019

preeti

whether speaking/non speaking

whether reportable/non reportable

yes/no

yes/no