

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 5th, 2019

1. Civil Revision No.4629 of 2013

Punjab Wakf Board

...Petitioner

Versus

State of Punjab & others

...Respondents

2. Civil Revision No.4653 of 2013

Punjab Wakf Board

...Petitioner

Versus

State of Punjab & others

...Respondents

3. Civil Revision No.4654 of 2013

Punjab Wakf Board

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ghulam Nabi Malik, Advocate,
for the petitioner in all the cases.

Mrs. Rajni Gupta, Sr.DAG, Punjab,
for the State.

Mr. Rakesh Verma, Advocate,
for respondent No.3 in CR No.4653 of 2013.

AMIT RAWAL, J.

This order of mine shall dispose of three Civil Revision
Petitions bearing No.4629, 4653 and 4654 of 2013 as the common questions
of law and fact are involved.

The aforementioned revision petitions are directed against the

decision dated 18.12.2012 rendered by the Tribunal under the Wakf Act, 1995 (for short, the Act), whereby the suit of the Wakf Board for declaration and permanent injunction to the effect that the land sought to be injuncted from forcible interference was not only owned by the Wakf Board, but is in possession of the Pattedars of the plaintiff. It was alleged that the suit property was Makbuja Ahle Islam Gair Mumkin Kabristan and vested with the Wakf Board owing to the notification dated 29.05.1971 and had been leasing out the property to the persons named in the plaint as Pattedars. The revenue agency erroneously made the entry with regard to the nature of the property as Arazi Matruka despite the directions of the State Government to all the Revenue Officers to sanction the mutation in favour of the Wakf Board. When a request for sanctioning the mutation was made to the revenue authorities, the same was erroneously rejected as the revision was stated to be pending before the Financial Commissioner.

The defendants contested the suit by denying the ownership of the Wakf Board and the nature of the property as Kabristan as well as factum of lease.

On the basis of the pleadings of the parties, the Tribunal framed the following issues:-

- “1) Whether plaintiff is entitled to declaration, if so its effect? OPP*
- 2) Whether the plaintiff is entitled to possession as alleged? OPP*
- 3) Whether the plaintiff has got no cause of action? OPD*
- 4) Whether the suit is not maintainable? OPD*
- 5) Relief.”*

Plaintiff, in support of the evidence, examined Abdul Shakoor,

Estate Officer as PW-1 and also brought on record the notifications dated

29.05.1971 Ex.P1, 27.02.1961 Ex.P2, copy of letter dated 21.05.1972 Ex.P3, copy of notice under Section 80 CPC Ex.P4 and postal receipts Ex.P5 and Ex.P6 and closed the evidence.

On the other hand, the defendants examined DW-1 Harphool Singh Gill, Tehsildar-cum-Managing Officer, Rehabilitation Department, Samana, who stated that according to the jamabandi for the year 1960-61, the suit property was shown under the ownership; of Arazi Matraka Billa Allat, but in the column of cultivation recorded as Makbuja Ahley Islam. The nature of the land as Chahi was shown in cultivation of Narsi Ram and Mani Ram to the extent of half share and various other persons. He further stated that the suit land was not owned by the plaintiff nor it was site of Kabristan or any Dargah. The defendants also examined DW-2 Managing Officer Rehabilitation Department Ram Kishan Tehsildar.

The Tribunal, on the basis of the aforementioned evidence dismissed the suit.

Mr. Ghulam Nabi Malik, learned counsel appearing on behalf of the petitioner-plaintiff submitted that proclamation of notification is the conclusive piece of evidence leading to presumption of land belonging to the Wakf Board. The Tribunal lost sight of the fact that the site was declared as Kabristan as per the gazette notification which was issued in compliance of provisions of Section 25 of the Act, which is a conclusive piece of evidence. The dispute with regard to the correction was pending adjudication before the Financial Commissioner. The revenue authorities erroneously rejected the mutation in connivance with the respondents. The Tribunal did not grant the opportunity to the petitioner to lead evidence, like lease deed and receipts. All the graveyards, takias, khankahs were

declared as Wakf properties after the partition of the country, therefore, there is an abdication.

Per contra, Mrs. Rajni Gupta, learned Senior Deputy Advocate General, Punjab representing the State supported the order under challenge on the premise that the plaintiff miserably failed to discharge the onus for proving the alleged lease, Pattedars or ownership. No revenue record pre and post notification has been brought on record and, thus, urged this Court for dismissal of the revision petitions.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioner.

Hon'ble the Supreme Court in **Board of Muslim Wakfs, Rajasthan Versus Radha Kishan, AIR 1979 SC 289** held that the stranger is not under any obligation to file a suit within one year from the date of notification and the list of Wakf properties, so published, cannot be final and conclusive. The trial Court was prevented in forming an opinion whether the suit property belonged to the Wakf Board as no documentary evidence has been placed on record that before promulgation of the notification, any objections were invited, even if the notification was correct. It was incumbent upon the petitioner-plaintiff to get the property demarcated. By just relying upon the notification, the onus with regard to the identity of the property cannot be discharged. Notification Ex.P1 just described the property of Wakf Board being graveyard, but no Khatoni Paimaish has been placed on record to establish and connect the khasra numbers mentioned in the notification vis-a-vis existing jamabandi. On the contrary, Ex.D1 jamabandi did not reflect the nature of the property as

Kabristan. It was shown as Arazi Matruka Billa Allat.

There is no evidence as to whether the property in dispute was ever dedicated for religious purposes nor any copy of the lease deed or rent receipts seen the light of the day. Even no attempt was made to place on record the documents by way of additional evidence. Mere by filing of the suit, a person cannot claim title as no requirement of law has been complied with.

For the reasons mentioned above, the order under challenge cannot be said to be suffering from any illegality or perversity. No ground for interference is made out. Resultantly, the revision petitions are dismissed.

February 5th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No