

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 14381 of 2018 (O&M)

Date of decision : 16.12.2019

...

Punjab Wakf Board

.....Petitioner

vs.

Mohinder Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. G.N. Malik, Advocate for the petitioner.

Mr.Sahil Sharma, Advocate for respondents No. 1 to 5 & 11.

...

H. S. Madaan, J.

Briefly stated, facts of the case are that Punjab Wakf Board, Chandigarh had filed a suit for permanent injunction against Mohinder Singh and others before Additional District Judge, Ludhiana, acting as Wakf Tribunal (hereinafter to be referred as 'the Tribunal').

On notice, some of the respondents had appeared, whereas others did not put in appearance, despite service, as such they were

proceeded against ex parte. The respondents who had appeared had contested the suit. Issues on merits were framed. Parties were given adequate opportunities to lead evidence. On conclusion of the trial, the Tribunal dismissed the suit, vide judgment dated 9.10.2018. The Tribunal has observed that “it is crystal clear that if the nature of the land is shamlaat Deh, as it was described in the revenue record relied upon by the plaintiff Board itself, the question of title regarding the controversy whether the land vests in the Gram Panchayat or it vests in the Wakf Board in terms of Notification issued under Section 5(2) of the Wakf Act, the same has to be decided by the authorities under the Punjab Village Common Land Regulation Act, 1961 and not before the Wakf Tribunal. Therefore, this Tribunal has no jurisdiction to entertain and try the present suit nor under the circumstances, any injunction can be issued against the defendants. Accordingly, issues No. 1 and 3 are decided against the plaintiff and in favour of the defendants.”

Punjab Wakf Board – plaintiff felt aggrieved by the said judgment and has approached this Court by way of filing a revision petition, submitting that the impugned judgment and decree passed by the Tribunal be set aside.

Notice of the revision petition was given to the respondents. Only respondents No. 1 to 5 and 11 have put in appearance through counsel, whereas respondents No. 6 to 10 were proforma respondents, therefore issuance of notice to them was dispensed with.

I have heard learned counsel for the parties, besides going

through the record.

Learned counsel for the revisionist has argued that the Tribunal has wrongly drawn an inference that it lacks jurisdiction to entertain and try the suit, when it had every jurisdiction to do so. In support of his that contention, learned counsel for the revisionist has referred to judgment passed by the Apex Court in *Special Leave to Appeal (C) No. 5502 of 2012* titled as *Punjab Wakf Board vs. Gram Panchayat Village Chak Haqim, Tehsil and District Phagwara and others, decided on 11.1.2018.* The operative part of the judgment runs as under :-

“ Notice was issued limited to the question whether the petitioner could be permitted to pursue remedy under Section 6 read with Section 83 of the Wakf Act, 1995.

The land in dispute was entered as ownership of the Panchayat in the revenue record. The revenue authorities upheld the claim of the Panchayat. However, the same was declared as Wakf Board by a notification.

In view of the fact that the land has been notified as Wakf property, the Wakf Board is not excluded from seeking adjudication from the Wakf Forum under the Act in accordance with law.

However, if such proceedings are initiated, the concerned Forum may issue notice to the

Panchayat or any other party interested and may consider their views accordingly.

The special leave petitions are accordingly disposed of.

We make it clear that all contentions available under the law may be gone into by the concerned authority. We have not expressed any opinion on merits of the respective contentions.

SLP(C)NO.25608/2012:

Heard.

We do not find any ground to interfere with the impugned order.

The special leave petition is accordingly dismissed.

Pending applications, if any, shall also stand disposed of.”

On the other hand, learned counsel for the respondents have also relied upon various judgments, the first being **Punjab Wakf Board vs. Gram Panchayat, Dakha, Tehsil and District Ludhiana and others 2012 (3) RCR (Civil) 347**, by a Division Bench of this Court, wherein it was observed that merely by issuing a notification under Section 5 (2) of the Wakf Act, declaring the disputed land as wakf property, would not divest the Gram Panchayat of its ownership, which stood already vested in it by virtue of the Act of 1953. It was further observed that to adjudicate the dispute whether

certain land vests in Gram Panchayat or the Wakf Board, only the authorities under the Village Common Lands Act have the jurisdiction and not the Wakf Tribunal, established under the Wakf Act.

He had further relied upon judgment **Mahant Hari Gir Chela Baba Nihal Gir Chela Bankandhi Gir vs. Punjab Wakf Board, Ambala Cantt. Through its Estate Officer, 2009 (3) RCR (Civil) 265** by a Single Bench of this Court. It was a case where Wakf Board had failed to prove that suit land was ever dedicated by pious Muslim for Charitable purpose, though in some of jamabandis it has been recorded as grave yard, but there was no evidence to establish that such user had continued after partition of country. Under such circumstances, merely because a notification had been issued describing it as a wakf property in year 1970 would not *ipso facto* imply that suit land belonged to Wakf Board, since essential of wakf are (i) dedication by person professing Islam for a pious, (ii) by way of user.

Another authority referred to was **Punjab Wakf Board vs. Joint Development Commissioner 2008 (4) RCR (Civil) 693**, by a Division Bench of this Court, wherein it was observed that when notification was issued by Government of India under Section 5(2) of Wakf Act declaring certain land as Wakf property, but no notification had been issued to Panchayat before inclusion of property in Wakf properties. Such notification was not conclusive of ownership of Wakf Board and Wakf Board had to show that the land was dedicated

by a Muslim i.e. A person professing Islam for charitable purposes and it had to be proved that the land was used as a *Kabristhan*.

The last authority relied upon by counsel for the respondents was *Yogesh vs. Kallu and others 2013 (1) PLR 522*, by a Single Bench of this Court, wherein it was observed that Wakf Tribunal under the Act has no jurisdiction to adjudicate upon the suit for injunction and possession.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal fell in error in coming to the conclusion that it lacked jurisdiction to entertain and try the suit. If we see Section 83 of the Wakf Act, 1995, sub-section 5 thereof provides that 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 while trying a suit or executing a decree or order.

Learned counsel for the revisionist has referred to various judgments, the first being *Syed Mohideen and another vs. Ramanathapura Peria Mogallam Jamath and others 2010 (4) RCR (Civil) 833*, by the Apex Court, wherein it was observed that Wakf Tribunal is a Civil Court in terms of Section 85 (5) of Wakf Act, and like Civil Court, Wakf Tribunal is competent to issue injunctions and interim injunctions in terms of Order 39 Rule 1 and 2 of Civil Procedure Code.

In second judgment, referred to by him, *Board of Wakf, West Bengal vs. Anis Fatma Begum and another 2011(1) RCR*

(Civil) 303, wherein the Hon'ble Supreme Court while dealing with scope and object of Section 83 (5) of the Wakf Act, 1995, with reference to powers of Wakf Tribunal, had held that Tribunal has all powers of the Civil Court under the Civil Procedure Code, and hence it has also powers under Order 39 Rules 1, 2 and 2A of Civil Procedure Code to grant temporary injunctions, in that way a full fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property.

In the third judgment referred by the learned counsel for the revisionist, Akkode Jumayath Palli Paripalana Committee vs. P.V. Ibrahim Haji and others 2013 (4) RCR (Civil) 10, the Apex Court had observed that the question that arises for consideration in this appeal is whether the Wakf Tribunal has got jurisdiction to entertain a suit for injunction restraining the defendants from interfering with the administration, management and peaceful enjoyment of the Mosque and *madrassa* run by it and all the assets attached to the Mosque.

Therefore, I find that the jurisdiction of the Tribunal in such type of dispute is not barred. It has to be taken note of that in the revenue record vide mutation No. 818, the ownership of the suit land has been transferred to the Wakf Board. In jamabandi for the year 2008-2009, in the remarks column, a note in that regard is there. In the present suit, the dispute is not between the Wakf Board and the Gram Panchayat with regard to the nature of the land, rather the Wakf Board has filed suit against private individuals i.e. defendants No. 1

to 5 that they should be restrained from interfering in the peaceful use of the Muslim Graveyard property of the plaintiff and of the lessees and from disturbing the possession of the plaintiff and its lessees over that land. Therefore, the question, merely by issuing notification by the Wakf Act, whether the Gram Panchayat should be divested of its title, has not directly arisen in this case. If the Gram Panchayat has got any grievance, it can avail of its legal remedy. In the suit in question, the Wakf Board had not sought any relief against the Gram Panchayat. Therefore, the impugned judgment dismissing the suit on account of lack of jurisdiction cannot stand judicial scrutiny. The same is based upon wrong interpretation of law, resulting in failure of justice, calling for interference by this Court while exercising the revisional jurisdiction.

Accordingly, the impugned judgment and decree are set aside by way of acceptance of the revision petition. The matter is remanded to the Tribunal for fresh decision on merits, after hearing learned counsel for the parties. Parties through their counsel are directed to appear there on 20.1.2020. Since the parties have already led evidence, the Tribunal shall make its earnest efforts to decide the suit expeditiously.

16.12.2019

chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No