

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.2200 of 2011

***Mirza Ushman Baig @ MirzaUshman Petitioners
and others***

Mr. D. K. Biswal, Advocate

-versus-

***Presiding Officer, Wakf Tribunal Opposite Parties
Cuttack and others***

Mr. Debakanta Mohanty, AGA and
Md. Fayaz, Advocate for Opposite Party No.5

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
12.04.2022**

Order No.

09. 1. The present petition challenges an order dated 8th October, 2010 passed by the Wakf Tribunal, Orissa ('Tribunal') in Case No.W.T.(O)/O.A-4 of 2008.
2. The background facts are that Opposite Party No.2, Mr. Abdul Hafiz (the Plaintiff) filed OA No.4 of 2008 before the Tribunal seeking to restrain the present Petitioners 1 to 6 [who were arraigned as Defendants 1 and 2 (a-c) and 3] as well as one Abdul Hamid (Defendant No.4), Premananda Pradhan (Defendant No.5), the Orissa Wakf Board (Defendant No. 6) and Sawari Begum (Defendant No.7)] from entering upon property admeasuring A.0.461 decimals in Consolidation Khata No.178 in Mouza-Paschimakachha, Thana- Jagatpur No.5 (hereafter 'the property in question') and not disturb the Plaintiff's peaceful possession thereof

or to cut and destroy the standing trees and crops to change the nature and character of the property in question in any manner whatsoever.

3. The claim was that the Plaintiff had been in possession of the property in question from the time of his ancestors i.e. for more than 30 years. He claimed that he and his family members were residing in a dwelling house standing over Plot No.619. The other plots of the suit land i.e. Plots 621, 597 and 598 were stated to be cultivable land. It was claimed by the Plaintiff that he and his family members had laboured hard to develop the suit land. The Plaintiff claimed that the Orissa Wakf Board had on 29th October, 2003 accepted him as Mutawalli and registered his name in respect of the property in question. He claimed to have submitted yearly accounts to the Competent Authority of the Wakf Board. It was claimed that Defendants 1 to 5 had in no manner of right, title and interest over the suit property. It was alleged that Defendants 1 to 4 were “goondas and rowdy types of persons of the locality and other Defendant No.5 was a local Sarpanch.” It was claimed that the Sarpanch had forcibly taken signatures on some plain papers.

4. The Plaintiff claimed that on 23rd July 2008, the Defendants came to the property in question and particular to Plot No.619 to cut valuable trees, but on account of the strong opposition of the family members of the Plaintiff and other villagers, they turned back with threats stating that within three to four days they would destroy the seasonal crops and cut the standing trees from the property in question and also destroy the dwelling house over Plot No.619. It

was in those circumstances, that the above suit was filed before the Wakf Tribunal.

5. After examining all the evidence brought on record, the Tribunal passed a detailed order on 8th October, 2010. The following nine issues were addressed by the Tribunal:

- “1. Are the suit filed by the plaintiff and counter-claim of Defendant No. 1 to 3 maintainable?
2. Has the plaintiff cause of action to file this suit?
3. Whether the suit filed by the plaintiff is bad for non-joinder and mis-joinder of necessary parties?
4. Is the suit filed by the plaintiff is barred by limitation?
5. Whether the suit properties are Wakf properties and the plaintiff is the Mutawalli of the Wakf?
6. Is the Plaintiff in the possession of suit properties?
7. Whether the Defendant No. 1, 2(a) to 2(c) have got right, title and possession over the suit properties?
8. Whether Defendant No. 1, 2(a) to 2(c) have cause of action to advance counter-claim?
9. To what relief, if any, the parties are entitled to?”

6. As far as Issues 5 and 6 are concerned, on examining the evidence in great detail, the Tribunal concluded that it was proved that the Plaintiff had been appointed as Mutawalli of the property in question. Further, the Defendants were unable to establish that the Plaintiff was removed from the Mutawalliship. It was observed that Ext.C was not a letter of removal of the Plaintiff from Mutawalli. It was further concluded as under:

“When admittedly suit property is Wakf property and plaintiff is proved as Mutawalli of the property and he has been paying contribution to Wakf Board till 20.6.08, I am to conclude that plaintiff is in possession of suit property as

it's Mutawalli. Therefore both the issues are answered affirmatively in favour of plaintiff."

7. On Issue No.7, it was concluded that Defendants 1, 2 (a-c) have no manner of right, title, interest and possession over any portion of the property in question.

8. The preliminary issues were decided in favour of the Plaintiff. On Issues 2, 8 and 9, it was concluded that "the plaintiff being the Mutawalli of the property has not only right to manager but also protect the suit property and in order to prevent the infringement of his legal right the plaintiff has cause of action to file this suit for injunction and also entitled to the relief of injunction as prayed for."

9. Finally, the relief granted by the Tribunal in the suit was as under:

"The suit filed by the plaintiff be and the same is decreed on contest against the defendants No. 1, 2(a) to 2(c), 3 and 7 and ex-parte against other defendants. Defendant No. 1, 2(a) to 2(c), 3, 4, 5 and 7 are hereby restrained to enter upon the suit property and disturb the possession of the plaintiff over the suit property till he continues as Mutawalli. Counter-claim of defendant No. 1, 2(a) to 2(c) is hereby dismissed on contest. In the peculiar circumstances of this case the parties are bear their own cost."

10. This Court has heard the submissions of Mr. D. K. Biswal, learned counsel for the Petitioners, Mr. Debakanta Mohanty, learned Additional Government Advocate and Md. Fayaz, Advocate for Opposite Party No.5.

11. Learned counsel for the Petitioners has sought to submit that the suit was not maintainable as since the Najra Imman was the owner of the suit property and the Plaintiff had no *locus standi* to file the suit. It was submitted that the Tribunal had erred in not considering Ext.C

in its proper perspective. This was a letter issued by the Chief Executive Officer in-charge of the Wakf Board to the Tahasildar requesting that the suit property be mutated in favour of the Defendants, which was itself indicated that the Wakf Board had admitted that the Petitioners herein were in possession of the suit property. It was submitted that there was no occasion for the Tribunal to have disbelieved that the Defendants had purchased the suit property at Exts.A and B.

12. Having heard learned counsel for the parties, the Court is not persuaded that any error has been committed by the Tribunal in entertaining the suit and in allowing the prayer of the Plaintiff and granting the permanent injunction as prayed for by him.

13. The scope of the writ jurisdiction to judicially review the orders of the Wakf Tribunal is of a limited nature. Importantly, the Court is not sitting in an appeal over the order of the Wakf Tribunal.

14. As regards the plea that the Najra Imman was the owner of the suit property, it overlooks the fact that the Plaintiff was seeking an injunction and not a declaration of title. He was asserting his right to remain in possession on the strength of his being legally recognised as a mutawalli, and this he was able to prove through documents. Secondly, Ext. C has indeed been discussed by the Tribunal at great length and the version of the present Petitioners has been disbelieved.

15. Nothing has been shown in the impugned order, which can be said to be perverse requiring interference by the Court. In the circumstances, the Court finds no merit in the writ petition and it is dismissed as such.

15. The interim order, if any, stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda

