

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6601 of 2017(O&M)
Date of decision: 14.07.2022

Mohd. Rashid and others

...Petitioners

Versus

Punjab Wakf Board and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate,
for the petitioners.

Mr. G.N.Malik, Advocate
for respondent no.1 and 2.

Mr. Nitesh Singla, Advocate
for respondent no.13, 18 to 22..

ANIL KSHETARPAL, J (Oral)

1. The petitioners are the occupants of 82 bighas and 14 biswas of land which is a notified wakf property from the date i.e. 01.05.1971. The Wakf Board on discovering about the encroachment, sent a notice to the petitioners on 27.09.2012. The notices were sent to the various petitioners who had encroached upon the wakf property. It was specified that the encroachment by the petitioners is over an area comprised in Khasra No.285, 286, 288, 289, 290, 291, 292 and 293.

2. Since, the petitioners did not vacate the wakf property, the proceedings under Section 54 of the Wakf Act, 1995 were taken up by the Chief Executive Officer, who passed a detailed order on 03.12.2012. The Wakf Board filed an application for delivery of possession before the Sub Divisional Magistrate (SDM). Rather than vacating the land, the petitioners

filed a petition before the Wakf Tribunal while taking a stand that they are the tenants of Karmat Ali and others. It was claimed by the petitioners that the property does not vest in the Wakf Board as it is not the wakf property.

3. On the other hand, the Wakf Board claims that the property in dispute is a wakf property and the petitioners are the unauthorized occupants. The Tribunal after framing the issues permitted the parties to lead evidence. The issues framed by the Tribunal are extracted as under:-

- “1. *Whether the order dated 13.12.2012 passed by CEO Punjab Wakf Board is illegal, null and void and ineffective qua the rights of the plaintiffs?OPP*
2. *Whether the plaintiffs are in legal, peaceful and cultivating possession of the suit land?OPP*
3. *Whether order dated 13.08.2013 passed by SDM, Malerkotla directing the Tehsildar Malerkotla to deliver the possession to defendants no.1 and 2 is illegal, null and void?OPP*
4. *Whether the plaintiffs are entitled to declaration as prayed for?OPP*
5. *Whether suit is not maintainable in the present form?OPD*
6. *Whether the plaintiffs have no cause of action to file the suit ?OPD*
7. *Whether the suit is bad for misjoinder of necessary parties?OPD*
8. *Relief.”*

4. The petitioners examined witnesses from their side as PW1-

Umardin, PW2-Hanif, PW3-Mohammad Sabbar, PW4-Jamaldin and produced the copies of the jamabandis for the years 1969-70, 1974-75, 1979-80, 1984-85, 1989-90, 1994-95, 1999-2000, 2004-05, 2009-10.

5. On the other hand, the Wakf Board examined DW1-Shakeel Ahmed, Section Officer in Punjab Wakf Board, Chandigarh and DW2-Mohd. Bashir Shamoan, Estate Officer in Punjab Wakf Board, Malerkotla.

6. The Tribunal after appreciating the evidence found that the petitioners have failed to prove that the property in dispute was not a wakf property.

7. The correctness of the aforesaid judgment passed by the Tribunal has been questioned before this Court.

8. The learned counsel representing the petitioners, while drawing the attention of the court to the notice dated 31.05.2012, submits that the Wakf Board while issuing notice to the petitioners, only referred to certain khasra numbers, without specifying the area in possession of each of the petitioner. He submits that the notice did not specify the location of the land or its area. Hence, the notice issued by the Wakf Board is vague. He further submits that the petitioners are recorded as "Gair Marusi" in the revenue record, therefore, they are in occupation of the property as a tenant.

9. Per contra, the learned counsel representing the Wakf Board while defending the judgment of the Tribunal prays for the dismissal of this civil revision.

10. It is evident that the petitioners claim that they are tenants under Karmat Ali etc., however, no evidence in this regard has been produced/placed on the record. The aforesaid Karmat Ali has also not been examined. Moreover, the entry of the petitioners as "Gair Marusi" is not

itself sufficient to determine the relationship between the parties. Unless, there is an entry in column no.9 of the jamabandi, reflecting the payment of rent, the phrase “Gair Marusi” is not sufficient to return a finding with regard to tenancy. Further, the petitioners do not claim to be tenant under the Wakf Board. The notification issued by the Government declaring the property to be Wakf was issued on 01.05.1971 i.e. approximately 51 years ago. Its correctness has never been questioned either by the petitioners or through the alleged landowners, namely, Karmat Ali etc.

11. As regards the argument of the learned counsel representing the petitioners with reference to the notice being vague, it may be noted that the petitioners do not dispute their possession over the land comprised in the aforesaid khasra numbers. Moreover, the matter has been examined in detail by the Tribunal. While exercising the revisional jurisdiction, this Court has a limited scope. The conferment of revisional jurisdiction is to keep subordinate courts within the limits of their jurisdiction. In absence of perversity or material irregularity, the revisional court is not expected to interfere. The High Court may refuse to interfere in revision on equitable grounds if it is satisfied that substantial justice has been done.

12. Hence, dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

July 14, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No