

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1155 of 2010 (O&M)

Date of Order: 22.08.2023

Punjab Wakf Board

.Petitioner

Versus

Nachhattar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Jugansh Goyal, Advocate, for
Mr. Denesh Goyal, Advocate
for the petitioner.**

**Mr. P.S.Dhaliwal, Advocate,
for respondents no.1 to 3.**

ANIL KSHETARPAL, J

1. The petitioner-Wakf Board filed a suit for possession of land measuring 50 kanals and 3 marlas situated at village Dhaner, Tehsil Barnala, while alleging that the father of the defendants (respondents herein) took the land on lease in the year 1975 and paid the lease money upto 1977-78 and thereafter he failed to pay any amount, therefore, the possession of the defendants over the suit land is illegal.

2. While contesting the suit, the defendants stated that the Punjab Wakf Board filed a suit for recovery before the Assistant Collector Ist Grade and therefore, the suit filed by the Wakf Board is liable to be dismissed. They are also claimed to be the permanent lessees over the suit land from the time of their predecessor-in-interest.

3. The Tribunal dismissed the suit on the ground that the property in dispute is a piece of agricultural land and the defendants continue to be in possession of the property at the same rate and the plaintiff has no right to

file a suit for possession.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book

5. On the one hand the learned counsel representing the petitioner while referring to Section 3(ee) of the Punjab Wakf Act, 1995, submits that the possession of lessee after the expiry of the term of lease becomes unauthorized as after such period expires they are included in the definition of encroacher.

6. On the other hand the learned counsel representing the respondents submits that the tenants over the agricultural land are protected by the provisions of the Punjab Tenancy Act, 1887 as well as the Punjab Security of Land Tenures Act, 1953.

7. In fact this particular issue has been examined in detail in **Harchand Singh (deceased) through LR vs. Punjab Wakf Board, Chandigarh**(Regular Second Appeal No.3668 of 2017, decided on 01.08.2023) in the following manner:-

“4. The provisions of the Punjab Tenancy Act, 1887, are governing tenancies of the agricultural land. However, Section 56 of the Wakf Act, 1995 (hereinafter referred to as the ‘1995 Act’), is a special provision to govern lease of wakf property. It has been provided that wakf property beyond the term of three years shall be voidable. The 1995 Act, being the special law for wakf, is a specific act dealing with the property, which belongs to wakf. Moreover, as per definition of the expression ‘encroacher’ in Section 3(ee) of the 1995 Act, the lessee after expiry of the term of lease would be treated as encroacher.

5. Hence, the provisions of the Punjab Tenancy Act, 1887

shall not override the provisions of 1995 Act as special law would prevail over general law. Therefore, properties belonging to wakf would essentially be governed by the 1995 Act.”

8. Similarly, the same issue was examined by the respected brother Judge in **Gurdeep Singh and others vs. Haryana Wakf Board**(Civil Revision No.2215 of 2017, decided on 20.11.2019), in the following manner:-

“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.”

9. Keeping in view the aforesaid facts and discussion, no further elaboration on this aspect of the matter is recurred to be made.

10. Consequently, the impugned order passed by the tribunal on 10.08.2009 is set aside. There shall be decree for the delivery of possession in favour of the appellant (plaintiff) with respect to the land measuring 50 kanals and 3 marlas, details whereof were given in the caption of the suit.

10. With these observations, the revision petition is disposed of.

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

August 22, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO