

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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CR-3463-2010 (O&M)

Date of Reserve: 14.09.2023.

Date of Pronouncement: 29.09.2023.

Ranbir Singh and others

...Petitioners.

Versus

Punjab Wakf Board and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Rajinder Sharma, Advocate
for the petitioners.

Mr. S.K. Jain, Advocate and
Mr. Akshay Jain, Advocate for the respondents.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners alongwith proforma respondents No.2 to 6/defendants have challenged the judgment and decree dated 07.01.2010 passed by the learned Presiding Officer, Wakf Tribunal, Amritsar, whereby suit for possession and mesne profits filed by respondent No.1/plaintiff-Punjab Wakf Board was decreed.

2. The brief facts as per revision petition are that respondent No.1-plaintiff filed suit for possession of land measuring 24 kanals 09 marlas bearing khasra No.44(23-19) and 45(0-10) as entered in the jamabandi for the year 2004-05, situated at village Jaspal, Tehsil Baba Bakala, District Amritsar and for mesne profits at the rate of Rs.1,000/- per kanal per annum for illegal and unauthorized used and occupation of the

said land. It was pleaded that plaintiff Wakf Board is owner of the suit land which is a religious, charitable, Muslim minority community property being managed by the plaintiff Board under the Central Wakf Act, 1995. The defendants have no right, title or interest in the said land and the plaintiff is shown as owner of the suit land in the jamabandis and in the Gazette notification of the Central Government, the said property is shown as graveyard. It was further averred that Pritam Singh, predecessor of the defendants (father of defendants No.1 to 5, 7 and 8 and husband of defendant No.6) had also no right, title or interest in the suit land and he was a trespasser and his possession over the suit land was illegal and unauthorized. After his death, the possession of the defendants over the said land is also illegal and unauthorized. The defendants being trespassers and for illegally and unauthorizedly using the Wakf property are liable to pay mesne profits to the plaintiff @ Rs. 1000/- per kanal per year w.e.f. 1985 and the defendants being in unauthorized possession of the suit land are liable to vacate and hand over possession of the same to the plaintiff. Pritam Singh had filed a suit for declaration to the effect that he is owner in possession of land measuring 23 kanals 19 marlas with consequential relief of permanent injunction restraining Wakf Board from interfering into his possession, wherein Wakf Board had filed written statement taking the plea that Pritam Singh being a trespasser has no right, title or interest in the disputed land and is in illegal possession of the same and Wakf Board is owner of the said land. Plaintiff Wakf Board requested the defendants time and again to vacate and hand over possession of the disputed property and to pay mesne profits for unauthorized occupation of the same but the

defendants flatly refused to do so.

3. Notice of the suit was issued to the petitioners/ defendants. The suit was duly contested by the petitioners/defendants raising preliminary objections regarding maintainability of the suit, locus standi of plaintiff and cause of action to file the suit; suit being time barred; plaintiff was estopped to file the suit by its own act and conduct; proper Court fees had not been affixed, suit being bad for mis-joinder and non-joinder of necessary parties and concealment of facts. On merits, it was denied that Estate Officer is competent to file a suit. It was submitted that plaintiff has left with no right, title and interest in the suit land bearing Khasra No.44 (29-19) as its rights are extinguished by efflux of time as defendants No.1 to 5 and before them their predecessor S. Pritam Singh had become owner in possession. Prior to the defendants the possession of their father Pritam Singh was continuous, uninterrupted, adverse, hostile and to the knowledge of the entire world including the plaintiff. It was further submitted that the said land has never been used as religious charitable Muslim minority property since partition of the country, as no Muslim is residing in village Jaspal and the said property has never been used by Muslims since 1947 for the purpose of pious, religious or charitable nature. Denying the ownership of the plaintiff over the suit property, it was averred that defendants became owner of the suit land by adverse possession and prior to them, their father Pritam Singh was owner in possession of the suit land for the last 40 years. Thus their adverse possession has ripened into ownership. The notification of the Central Government showing ownership of the plaintiff over the suit land was stated to be wrong, illegal, null and void as plaintiff has been left with

no right, title or interest in the suit land by efflux of time. Therefore, dismissal of the suit was prayed for.

4. On the basis of the pleadings of the parties, learned Tribunal framed various issues. In order to prove their case the petitioners examined Meharban Ali, Rent Collector as PW1 and also tendered into evidence notification dated 01.01.2000. On the other hand, the defendants examined DW1-Harbej Singh, Patwari, DW2-Sandeep Singh, Record Clerk, Sessions Court and defendant No.2 Gurbhoop Singh himself appeared in the witness box as DW3, besides that defendants also tendered into their evidence jamabandies Ex.D6 to Ex.D13 in support of their case. On the basis of the evidence led by the parties the learned Tribunal returned the finding in favour of the Wakf Board on vital issues and the suit was decreed. Hence, this revision petition.

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

6. Learned counsel for the petitioner has contended that the suit had not been filed through a proper person. The Chief Executive Officer or the Executive Officer duly appointed by the Board are the competent persons to institute suit on behalf of the Wakf Board and the Estate Officer has no authority to file a suit on behalf of the Wakf Board, so finding of the Tribunal regarding it is liable to be set aside. He has further contended that Pritam Singh, father of the petitioners was in possession of the suit land for the last more than 40 years and from the revenue record also it is abundantly clear that Pritam Singh was in cultivating possession of the suit land. But before issuance of notification on 09.11.1971 whereby the suit property was

declared to be the ownership of the Wakf Board, no notice was issued to Pritam Singh. The notification as such is void ab initio being violative of the Principles of Natural Justice and the Wakf Board is not entitled to take the possession on the basis of the said notification. He has further contended that as per the jamabandi for the year 1969-70 the suit land is shown as owned by Gram Panchayat Deh and Pritam Singh has been shown in possession with respect to Khasra No.44. There is no reference to the said land being a graveyard or Muslim property. But subsequently name of the Wakf Board has been illegally entered in the revenue record. The Gram Panchayat was also not given any notice before issuance of the notification and the Wakf Board has usurped this land by an illegal notification. He has vehemently contended that the Wakf Board has also failed to prove that this land was ever donated or gifted by a muslim or a non-muslim for pious, religious or charitable purposes, so in the absence of such proof this property cannot be declared as Wakf property. No muslims were ever residing in this village and this property had never been used as a graveyard. The entries depicting this property as graveyard are palpably wrong and incorrect. He has further urged that the Tribunal had also returned the wrong findings regarding adverse possession of the petitioners. The petitioners have proved that earlier their father and then the petitioners have been in continuous, hostile and adverse possession for the last more than 40 years and hence their possession has matured into ownership by efflux of time. But the Tribunal has illegally held that the Wakf Board was having notice of their possession, as in the year 1983 Wakf Board had issued notice to Pritam Singh asking him to hand over the possession of suit land. Once Pritam

Singh, did not hand over possession to the Board then the possession in hands of the Pritam Singh becomes hostile and adverse. As he claimed his ownership over the property and denied the title of the Wakf Board, so adverse nature of possession of Pritam Singh was made known to the Board. The Wakf Board did not file suit within a period of 12 years and hence the suit is barred under Section 65 of the Indian Limitation Act. He has further contended that as evident from the revenue record the adverse possession of the Pritam Singh started in the year 1969 and continued up to the filing of the suit. While relying upon **Ramesh Gobindram (Dead) through LRs Vs. Sugra Humayum Mirza Wakf, AIR 2010 SC 2897**, he has contended that the Wakf Tribunal had no jurisdiction in the present case to pass the eviction order. It has also been contended that vide order dated 17.07.2013 of this Court, the interim relief was given to the petitioners subject to the conditions that the petitioners shall continue to deposit Rs.25,000/- per annum every year with the Wakf Tribunal. The amount already deposited, pursuant to interim order and to be deposited hereinafter, was to be invested by Wakf Tribunal in some Fixed Deposit, to be disbursed as per final judgment in the revision petition. But in compliance of said order no such amount had been deposited by the petitioners, so equity is also not in favour of the petitioners. He has further submitted that the impugned judgment and decree passed by the learned Tribunal is not sustainable as per law and the same may be set aside and suit filed by the Wakf Board may be dismissed.

7. Per contra, it has been contended by learned counsel for respondent No.1 that the present suit has been filed by a competent person as the Estate Officer was duly authorized to file the present suit. He has

further contended that the plaintiff/respondent No.1 Wakf Board is the owner of the suit land which fact has also been proved from the revenue record. So when the ownership of the plaintiff/ respondent No.1 stands established then the petitioners are in illegal possession and defendant No.1 is entitled to the relief of the possession as well as relief of the mesne profits. He has strenuously contended that the plea of adverse possession raised by the petitioners/ defendants is without any merit as neither their possession was peaceful nor adverse to the plaintiff, rather the notice Ex.D3 and its reply given by the defendants through their counsel goes a long way to prove that the plaintiff from time to time had made the efforts to get possession of the suit land through its agents, but defendants did not agree to deliver the possession. He has contended that suit of the plaintiff has been rightly decreed by the Tribunal and the present revision petition is liable to be dismissed.

8. So far as this contention of the learned counsel for the petitioners is concerned that the present suit has not been filed by the competent person, it is without any substance. Plaintiff has placed on record notification dated 17.03.2006, Ex.P1, perusal of which reveals that Estate Officers of the Wakf Board have been authorized to institute suits for possession, ejectment and permanent injunction etc. So when plaintiff is a statutory body and the Estate Officers of the Wakf Board have been authorized vide gazette notification dated 17.03.2006 to institute suit for possession then it is held that the instant suit has been filed by the competent person.

9. The present suit has been filed by the plaintiff Board for

seeking the possession while claiming ownership over the suit land and by alleging the defendants to be in illegal possession over the same. The plaintiff has proved on record notification dated 09.01.1971 Ex.P3. At serial No.142 of the said notification, suit property has been shown as graveyard at village Jaspal Hadbast No.76 bearing Khasra No.44 (23-19) and 45 (0-10). Rent Controller, Meharban Ali, while appearing as PW1 has also categorically stated that the plaintiff is owner of the suit property and earlier Pritam Singh father of the defendants was in illegal possession as trespasser. Several times, he was requested to deliver the possession but he did not pay any heed. After his death, the defendants were also requested to deliver the possession but they also refused to do so.

10. Defendants have produced on record jamabandies for the year 1969-70 Ex.D6, 1974-75 Ex.D7, 1979-80 Ex.D8. In these jamabandies, the name of village Gram Panchayat has been depicted in the ownership column while the suit land has been shown under cultivation of Pritam Singh through Wakf Board. Defendants have also produced on record jamabandies for the year 1984-85 Ex.P9, 1989-90 Ex.D10, 1994-95 Ex.D11, 1999-2000 Ex.D12 and 2004-05 Ex.D13. From the perusal of the aforesaid jamabandies, it is revealed that in the column of ownership Punjab Wakf Board has been recorded as owner whereas in the column of cultivation, Pritam Singh son of Wasawa Singh has been reflected as Gairmrusi. In the jamabandi for the year 1984-85 Ex.D9, in the column No.12 of the jamabandi, there is entry regarding sanctioning of the mutation No.183 in favour of the Punjab Wakf Board. The Tribunal has rightly held that from the notification dated 09.01.1971, Ex.P3 and the above said jamabandies,

the ownership of the Punjab Wakf Board over the suit land stands established.

11. This contention of learned counsel for the petitioners is also devoid of any force that the suit property is not a graveyard and was never used for this purpose. As per notification dated 09.01.1971, suit property has been shown as graveyard and this fact has also been mentioned in the above referred jamabandies which have been produced on record by defendants themselves. As already observed, vide mutation No.183 as reflected in the jamabandi for the year 1984-85, the mutation of suit property was sanctioned in favour of the Punjab Wakf Board in place of village Gram Panchayat. The presumption of correctness is attached to the jamabandies. The Tribunal has rightly observed that when village Gram Panchayat till today has not challenged the said notification and mutation, then the defendants who are in illegal and unauthorized possession have no right to challenge the validity of the said notification as well as mutation.

12. As per the defendants, earlier their father Pritam Singh was in possession who died on 12.04.2003 and after his death they are in possession over the suit property. It has been claimed that possession of defendants is uninterrupted, peaceful, hostile and adverse and as such defendants have become owner by efflux of time. But as per Ex.D1 memo dated 22.07.1983, which had been issued by Estate Officer, Punjab Wakf Board, Amritsar to Pritam Singh son of Wasawa Singh, it has been mentioned therein that as his possession was illegal so for use and occupation he was liable to pay Rs.15,000/- as compensation. It has also been mentioned therein that in case he failed to pay the said amount then

legal action would follow. The said memo was replied by the defendants vide Ex.D2 through their counsel, in which it is alleged that the area measuring 23 kanals 19 marlas is neither a Wakf nor vests in Punjab Wakf Board and said property was never dedicated to Punjab Wakf Board. Another notice Ex.D3 issued on behalf of Estate Officer towards Pritam Singh has also been produced on record, which was issued to vacate the Wakf property bearing No.44 measuring 23 kanals 19 marlas situated at village Jaspal. Again notice Ex.D4, was also issued by Estate Officer, Wakf Board to Pritam Singh to the same effect. Ex.D5 is postal receipt vide which Pritam Singh sent reply to the memo towards Wakf Board. The Tribunal has rightly observed that these documents which have been produced on record by the defendants themselves, falsify this plea of the defendants that their possession was open, hostile, peaceful, uninterrupted and to the knowledge of the whole world. Rather from these documents it is evident, that the plaintiff Wakf Board, even during life time of Pritam Singh father of defendants, made efforts to get the suit property vacated from Pritam Singh and also asked him to pay the compensation for the illegal and unauthorized use and occupation of the suit land. In that eventuality, the Tribunal has rightly held that the possession of defendants cannot be said to be adverse, open, hostile and peaceful and without any interference. Moreover, the pleadings are completely silent regarding the specific date when the defendants came into possession over the suit property.

13. Learned counsel for respondent No.1 brought to the notice of this Court that earlier Pritam Singh had filed a suit for declaration and injunction regarding the suit property in the year 2006 which was dismissed

on 28.03.2007 by Wakf Tribunal, Amritsar. Counsel for the petitioners very fairly conceded to this fact that the said suit was filed on 06.02.2006 and was titled as Pritam Singh Vs. Punjab Wakf Board, which was dismissed on 28.03.2007 by the Wakf Tribunal, Amritsar and the said order has attained finality. So, I find substance in this contention of learned counsel for respondent No.1 that now the petitioners/ defendants cannot again take the plea of adverse possession, when their earlier suit has already been dismissed.

14. This contention of learned counsel for the petitioners is also without any substance that Wakf Tribunal was lacking the jurisdiction in the present case. In this context reliance can be placed upon **Rashid Wali Beg Vs. Farid Pindari and others, 2021 (4) R.C.R. (Civil) 718**, wherein it has been held by the Apex Court that:-

“We have already seen that it is not as though there was no provision in the Waqf Act conferring jurisdiction upon the Tribunal in respect of the waqf property. We can break the first part of Section 83 into two limbs, the first concerning the determination of any dispute, question or other matter relating to a waqf and the second, concerning the determination of any dispute, question or other matter relating to a waqf property. After Amendment Act 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal. Though the proceedings out of which the present appeal arises, were instituted before the Amendment Act, the words “any dispute, question or other matter relating to a waqf or waqf property” are sufficient to cover any dispute, question or other matter relating to a waqf property. This is why Ramesh Gobindram was sought to be distinguished both

in Anis Fatma Begum and Pritpal Singh and such distinction was taken note of in Akkode Jumayath Palli Paripalana Committee. Additionally, this Court in Kiran Devi, refused to apply the ratio of Ramesh Gobindram, on the ground that the suit was originally instituted before the Civil Court, but was later transferred to the Waqf Tribunal and that after allowing the order of transfer to attain finality, it was not open to them to resurrect the issue through Ramesh Gobindram.

It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).

In fact, Section 83(5) of the Act makes it clear 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 CPC, while trying a suit or executing a decree or order.

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At the cost of repetition we should point out that Section 83(1) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.

In the case on hand, the property is admitted to be a waqf property. Therefore, to allow the plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction and mandatory injunction from a civil court,

would be ignore the mandate of section 83 and 85 which speak of any dispute, question or other matter relating to a waqf or a waqf property.

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The trial court shall return the plaint to the plaintiff, for presentation to the jurisdictional Waqf Tribunal. Since pleadings are complete, the Waqf Tribunal shall proceed from the stage of framing of issues and dispose of the suit within a period of 6 months.”

In the light of above, it cannot be assumed that the Tribunal was lacking the jurisdiction to decide the present suit.

15. The possession of defendants over the suit property has been held to be illegal and unauthorized. The plaintiff has also claimed mesne profits over the suit property @ Rs.1,000/- per kanal per year since 1985. PW1-Meharban Ali, Rent Controller, has also categorically deposed in his sworn affidavit qua the relief of mesne profits @ Rs.1,000/- per kanal per year. Trial Court has rightly observed that during the cross-examination of this witness nothing was put to this witness that the mesne profits being claimed are excessive or the plaintiff is not entitled for the same. It has been further rightly observed by the trial Court that as the defendants have admitted in their evidence that the suit land is good for cultivation and is being irrigated by canal water, so the claim of the plaintiff qua mesne profits @ Rs.1,000/- per kanal per year is genuine and reasonable and has rightly held plaintiff entitled to recover the said mesne profits for the illegal use and occupation of the suit land @ Rs.1,000/- per kanal per year with effect from three years preceding to the filing of the suit i.e. 26.08.2006 till the defendants deliver the vacant possession of the said property to the plaintiff.

16. Thus, there being no illegality or perversity in the findings of learned Wakf Tribunal, the impugned judgment does not call for any interference by this Court. The present revision petition being bereft of any merits stands dismissed.

17. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

29.09.2023.

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No