

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

CR-8286-2015 (O&M)
Date of Decision: -**01.08.2023**

S.D. EDUCATION TRUST NABHA

... Petitioner

Versus

PUNJAB WAKF BOARD AND ANR.

... Respondents

-. -

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

-. -

Present:- Mr. Ravinder Singh Randhawa, Advocate with
Ms. Tarranum Madan, Advocate
for the petitioner.

Mr. Ghulam Nabi Malik, Advocate
for the respondents.

-. -

KARAMJIT SINGH, J. (Oral)

1. Instant revision petition has been filed by petitioner/plaintiff for setting aside judgment and decree dated 24.8.2015 passed by the Tribunal, Wakf Board, Patiala (for short 'the Tribunal'), whereby the suit filed by the plaintiff seeking declaration to the effect that the plaintiff-Trust is owner-in-possession of the suit property and that notice dated 17.2.2012 issued under Section 54(1) of the Wakf Act and order dated 17.10.2012 passed by Estate Officer, Punjab Wakf Board are illegal null and void, has been dismissed.
2. The brief facts of the case are that the petitioner filed suit for declaration to the effect that the petitioner-Trust is owner-in-possession of the suit property No.B-II/997 measuring 200 square

yards situated in Mohalla Aap, Nabha wherein the petitioner-Trust is running branch of S.D. Boys High School and for further declaration to the effect that notice dated 17.2.2012 issued under Section 54(1) of Wakf Act and order dated 17.10.2012 passed by Punjab Wakf Board against Jatinder Kumar Bansal are null and void.

3. The suit was contested by the respondents, who filed written statement contesting the claim of the petitioner. On the pleadings of the parties following issues were framed by the Tribunal:-

- i. Whether the plaintiff is owner of the property in dispute, as mentioned in the head note of the suit? OPP
- ii. Whether the impugned notice dated 17.2.2012 and the consequent order dated 17.10.2012 are illegal null and void? OPP
- iii. Whether the plaintiff is entitled to declaration as prayed for? OPP
- iv. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
- v. Whether the suit is not maintainable in the present form? OPR
- vi. Whether the plaintiff has concealed the material facts from the Court, if so its effect? OPD
- vii. Whether the suit is bad for want of notice under Section 89 of Wakf Act?
- viii. Whether the suit is barred by principles of resjudicata? OPD
- ix. Relief.

4. Both the parties led evidence. Counsel for the plaintiff examined PW-1 Amrit Lal; PW-2 Barjinder Lal; PW-3 Tirlok Batta; PW-4 Subhash Chand, Clerk, Municipal Committee, Nabha; and PW-5

Sukhdev Sharma, Vice President, S.D. Educational Trust Nabha, who tendered documents Ex.P1 to Ex.P5.

5. On the other hand, the counsel for the defendants examined DW-1 Mohamad Arshraf, Estate Officer, Punjab Wakf Board, who proved documents Ex.D1 to Ex.D6, which also includes Notification dated 29.5.1971.
6. After hearing the counsel for the parties, the Tribunal decided issues No.1, 2, 3, 4 and 8 against the plaintiff and consequently the suit was dismissed by the Tribunal vide judgment dated 24.8.2015.
7. The counsel for the petitioner *inter alia* submits that the petitioner was non-suited for want of notice under Section 89 of Wakf Act, by the Tribunal. That actually mandatory notice as per the provisions of Section 89 of Wakf Act was issued to the respondents by the petitioner before the filing of the suit and the Copy of the same was marked as Ex.P9 in its evidence by the petitioner. That however, the Tribunal while passing the impugned judgment did not take into consideration the said notice and wrongly concluded that the suit is not maintainable for want of statutory notice as per provisions of Section 89 Wakf Act.
8. The counsel for the petitioner has further contended that the findings of the Tribunal with regard to issue No.8 are also not sustainable. That while deciding issue No.8, the Tribunal came to conclusion that the suit of the petitioner is barred by principle of res-judicata on the ground that previously also suit for title regarding suit property filed by Punjab Wakf Board against primary school, Nabha was decided in

favour of Punjab Wakf Board vide judgment dated 24.8.1968 passed by the Court of the Sub-Judge 1st Class, Nabha and the same was upheld by the Appellate Court vide judgment dated 27.2.1969. The counsel for the petitioner submits that the present petitioner was not party to the said civil suit and it has got no connection with primary school Nabha as is evident from Annexure P-3 and Annexure P-4, as per which the petitioner-Trust was registered as a society on 14.3.1959 and at that time it was running S.D. High School at Nabha. The counsel for the petitioner further submits that in the given circumstances, it is apparent that principle of res-judicata is not applicable to the present case.

9. The counsel for the petitioner further submits that the petitioner is in possession of the suit property since long and has sought declaration with regard to its ownership and thus the suit is not time barred. It is further submitted that the impugned notice issued under Section 54 of the Wakf Act by the respondents is in the name of one Jatinder Kumar Bansal as is evident from Annexure P-2, directing him to remove encroachment from the Wakf property. The counsel for the petitioner further contends that said Jitender Kumar Bansal is not associated in any manner with the petitioner-Trust and thus the impugned notice issued under Section 54 of the Wakf Act is illegal and is not binding on the petitioner.
10. The counsel for the petitioner further submits that the Tribunal did not enter into the merits of the case and dismissed the suit on technical grounds of want of notice under Section 89 of Wakf Act and principle

of res-judicata. The counsel for the petitioner further submits that thus the impugned judgment is not sustainable and is liable to be set aside.

11. The counsel appearing on behalf of the respondent while supporting the impugned judgment and decree, contends that there is no illegality or infirmity in the judgment passed by the Tribunal. That the Tribunal took into consideration, the evidence (including the documents) produced by both the parties while passing the judgment in question. The counsel for the respondents further contends that the Tribunal after going through the entire record rightly concluded that the suit is barred by principle of res-judicata being covered under the judgment dated 24.8.1968 passed by the then Sub-Judge 1st Nabha and upheld by Additional District Judge, Patiala vide judgment dated 27.2.1969. The counsel for the respondents further submits that the Tribunal also rightly held that the suit is not maintainable for want of statutory notice as per the provisions of Section 89 of Wakf Act. The counsel for the respondents further contends that the suit property was declared as Wakf property vide Notification dated 29.5.1971 (Annexure A-5) and in the absence of any challenge to said Notification, the Court has to draw presumption with regard to the same as per the provisions of Section 81 of the Evidence Act. The counsel for the respondent further made prayer that the revision petition be dismissed being devoid of merits.
12. I have considered the submissions made by the counsel for the parties.
13. From the perusal of the impugned judgment, it appears that the Tribunal dismissed the suit of the appellant mainly on the ground that

the same is barred by principle of res-judicata and being not maintainable for want of statutory notice under Section 89 of the Wakf Act. The respondents in order to establish that the present suit is barred under the provisions of Section 11 CPC has relied upon the judgment and decree dated 24.8.1968 passed by the Court of Sub-Judge 1st Class, Nabha in civil suit titled Punjab Wakf Board vs. Primary School Nabha and judgment and decree dated 27.2.1969 passed by the Court of Additional District Judge, Patiala whereby the appeal filed by the Primary School Nabha was dismissed. The counsel for the petitioner has placed reliance upon the documents Annexure P-3 and Annexure P-4 in order to show that the petitioner-Trust is having no concern with primary school Nabha and that the petitioner was not party to the aforesaid judgments and decrees of year 1968-69.

14. From the perusal of impugned judgment, it could be noticed that the petitioner was also non-suited on the ground that no prior notice was issued under Section 89 Wakf Act by the petitioner to the defendant before filing of the suit. The counsel for the petitioner while referring to the plaint (Annexure P-5) submits that there are specific pleadings in the plaint itself that legal notice dated 1.11.2012 (Annexure P-9) was issued to the defendants through post and the concerned postal receipt is Annexure P-10 and the respondents in their written statement simply stated that the plaintiff be put to strict proof of the same. However, the Tribunal while passing the impugned judgment did not take into notice the aforesaid facts and simply concluded that the suit is bad for want of notice under Section 89 of the Wakf Act.

15. Further the impugned notice under Section 54(1) of Wakf Act dated 17.2.2012 was not issued in the name of the petitioner and rather the same appears to be issued in the name of one Jitender Kumar Bansal. As per the counsel for the petitioner, in the instant case respondents have apparently failed to establish that said Jitender Kumar Bansal is associated with the petitioner-Trust in any manner.
16. In the light of the above discussion, this Court is of the view that the impugned judgment and decree are not sustainable as the same appears to be passed against the facts appearing on the record. This Court is further of the view that the case requires to be remanded back to the Tribunal for proper and effective adjudication of the matter in dispute.
17. Consequently the appeal is allowed and the judgment and decree passed by the Tribunal dated 24.8.2015 are set aside and the case is sent back to the Tribunal to decide the same afresh, in accordance with law. In case, the parties intend to produce additional documents in support of their evidence, the Tribunal should consider the said prayer in accordance with law while taking into consideration the fact as to whether the said documents are required for just decision of the case. The parties are directed to appear before the Tribunal concerned on **4.9.2023**.

18. It is made clear that the Court has not touched the merits of the matter and none of the observation made here-in-above would in any manner weigh with the learned Tribunal while deciding the suit afresh on merits.

01.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No