



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230

CR-5083-2017 (O&M)
Date of Decision : 04.10.2024

Punjab Waqf BoardPetitioner

VERSUS

Mushtarka Malkan through Advisory CommitteeRespondent
Consolidation-cum-Gram Panchayat, Village Sarai

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.N. Malik, Advocate for the petitioner.
Mr. Lalit Sharma, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Present revision petition has been preferred by the Waqf Board challenging the order dated 17.04.2017 whereby the suit filed by the Waqf Board for declaration that the land measuring 4 Kanals 5 Marlas bearing Khewat No.76/79, Khatauni No.95, Khasra No.76(0-11), Gair Mumkin Khangah and Takia, Khatauni No.96, Khara No.23 (3-14) situated in village Sarai, Tehsil and District Hoshiarpur is the Waqf Property and vests with the Punjab Waqf Board and that the Punjab Waqf Board is managing the same as per notification dated 01.01.1972 and that the mutation was also entered on the basis of the said notification, has been dismissed.
- 2 The case set up by the plaintiff-petitioner is that after sanctioning of the mutation the plaintiff-petitioner leased out the suit land to Ramesh Chander who is presently in actual possession of the suit land in the capacity of lessee of the plaintiff-petitioner and neither the Gram Panchayat

nor the advisory committee has any concern with the property in dispute. About six months prior to filing of the suit, the Gram Panchayat objected to the possession of the lessee of the plaintiff-petitioner and as a result the plaintiff-petitioner approached the Sub Divisional Magistrate, Hoshiarpur for the correction of the revenue record by way of Fard Badar as the plaintiff-petitioner was not entered in the column of ownership in the revenue documents. Since the defendant-respondent was not admitting the claim of the plaintiff-petitioner, hence the present suit. The defendant-respondent filed a written statement raising various preliminary objections qua the maintainability, locus standi and jurisdiction. On merits it was denied that the land vests in the plaintiff-petitioner. The stand taken by the defendant-respondent was that the suit land was shown as Mushtarkan Malkan in the revenue record. It was further the stand taken that the land in question was shown as Mushtarkan Malkan since the formation of the village and the defendant-respondent was entitled to look after and maintain the property in question. Replication was filed. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to declaration as prayed for ? OPP
2. Whether the suit is not maintainable ? OPD
3. Whether suit is bad for non-joinder of necessary parties ? OPD
4. Whether this court has got no jurisdiction to try and decide the present suit ? OPD
5. Relief.

3. On the issue of jurisdiction it was held that the Tribunal did not have the jurisdiction while relying on a judgment passed by a Division Bench of this Court in the case of **Punjab Waqf Board vs. Gram Panchayat, Dakha, Tehsil and District Ludhiana [2012(3) RCR (Civil) 347]**. Though other issues were decided on merits, however, yet again on issue No.4 it was held that the question of title would be decided by the Collector under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and not by the Tribunal. The Tribunal accordingly dismissed the suit vide the judgment and decree dated 17.04.2017. Aggrieved by the same, the present revision petition has been filed.

4. Learned counsel for the plaintiff-petitioner would contend that the Tribunal having held that it has no jurisdiction could not have adjudicated on the merits of the case. Learned counsel for the plaintiff-petitioner has further relied upon a judgment of the Hon'ble Supreme Court in the case of **Punjab Waqf Board vs. Gram Panchayat Village Chak Haqim, Tehsil & District Phagwara & Ors. [SLP (C) No. 5502 of 2012]** to contend that the judgment in the case of **Punjab Waqf Board vs. Gram Panchayat, Dakha, Tehsil and District Ludhiana** (*supra*) was challenged before the Hon'ble Supreme Court in SLP (C) No.8087 of 2012 wherein it was held that once the land had been notified as Waqf property the Waqf Board was not excluded from seeking adjudication from the Waqf Forum under the Act in accordance with law and hence would contend that the Tribunal would have jurisdiction. It is further the contention that the finding on merits would have to go in view of the fact that once the Tribunal had

held that there was no jurisdiction the finding on merits was not sustainable in law.

5. *Per contra* learned counsel for the defendant-respondent is not in a position to deny the fact that as per the judgment of the Hon'ble Supreme Court in case of **Punjab Waqf Board vs. Gram Panchayat Village Chak Haqim, Tehsil & District Phagwara & Ors. [SLP (C) No. 5502 of 2012]** the Tribunal would have the jurisdiction to try the dispute.

6. Further still, it has been held by the Hon'ble Supreme Court in **Punjab Waqf Board vs. Gram Panchayat Village Chak Haqim, Tehsil & District Phagwara & Ors. [SLP (C) No.5502 of 2012]** that once the land has been notified as the Waqf Property the Tribunal would not be excluded from adjudicating the matter.

7. In view of the above and the fact that the Tribunal having held that it did not have the jurisdiction to try and decide the suit, the findings on merits on other issues could not have been rendered by it. Accordingly, the impugned judgment and decree dated 17.04.2017 passed by the Tribunal is set aside and the matter is remanded to the Tribunal for decision afresh in accordance with law. The parties are directed to appear before the Tribunal on 29.10.2024 at 10.00 am.

8. The present revision stands disposed off accordingly in the above terms. Pending applications, if any, also stand disposed off.

04.10.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO