

**CR No.1970 of 2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.116****Case No. : CR No.1970 of 2024****Date of Decision : May 15, 2024**

Samim Ahmed

.... Petitioner

vs.

Haryana Waqf Board and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr.Vikram Singh, Advocate
for the petitioner.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the judgment dated 03.01.2023 (Annexure P-3), passed by learned Wakf Tribunal, Rohtak (hereinafter referred to as – the learned Tribunal), whereby suit filed by respondent Haryana Wakf Board for possession and permanent injunction has been decreed with costs.

2. The parties hereinafter are being addressed as per their original status in the suit.

3. Plaintiff Haryana Waqf Board filed suit for possession and permanent injunction restraining the defendants from changing the nature of plot measuring 67.72 sq. yds., as mentioned in the heading of the plaint and from raising any construction in any manner and for mandatory injunction directing the defendants to remove all unauthorized construction already



raised against the terms and conditions of lease order dated 22.11.1993 and also to hand over the vacant possession of the suit plot and further for directing them to make payment of mesne profits @ Rs.1200/- per month from 01.04.1993 till the day of its realization and recovery of possession of the suit plot along with interest, on the ground that the said plot was leased out to defendant no.1 by the plaintiff vide lease deed dated 22.11.1993 w.e.f. 01.04.1992. Defendant no.1 paid rent till 28.02.1993 but thereafter, failed to pay the rent and sub-let half portion of the plot to defendant no.2 and other half to defendant no.3. Defendants no.2 and 3 demolished original construction over the plot which was leased to defendant no.1 and raised new construction on the ground floor and first floor. Further, construction on the second floor was also in progress.

4. Defendant no.1 was proceeded ex-parte, whereas defendants no.2 and 3 contested the suit by filing their joint written statement, submitting therein that they are in possession of the suit land as owners for the last more than 14 years and got constructed a pucca house over it.

5. From the pleadings of the parties, following issues were framed :-

- “1. Whether the plaintiff is entitled to a decree of possession, as prayed for in the plaint? OPP
2. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for in the plaint? OPP
- 3, Whether the plaintiff is entitled to a decree of mandatory injunction, as prayed for in the plaint? OPP
4. Whether the plaintiff is entitled to recover



mesne profits from the defendants at the rate of Rs.1200/- per month from 01.04.1993 till the date of payment thereof? OPP

5. *Whether the court has no jurisdiction to try/decide the suit in question? OPD 2 & 3*
6. *Whether the suit in question has been filed by an unauthorized person? OPD 2 & 3*
7. *Whether the suit property is not a Wakf property? OPD 2 & 3*
8. *Whether no cause of action has accrued to the plaintiff to file the suit in question? OPD 2 & 3*
9. *Whether the plaintiff has got no locus standi to file the present suit? OPD 2 & 3*
10. *Whether the plaintiff has not come with clean hands and has concealed the material facts from this Court. If so, affect thereof? OPD 2 & 3*
11. *Relief."*

6. In order to prove his case, the plaintiff examined Khurshid Ahmed, Estate Officer as PW-1, Jameel Ahmed, Estate Officer as PW-2, Deena, the then Peon posted at Dargah Qualander, Panipat as PW-3, Azad, Rent Controller as PW-4 and Vedpal Dighaliya, Architect as PW-5 and inter alia proved various documents.

7. On the other hand, defendant no.2 Ameer Hyder himself appeared as DW-1 and defendant no.3 Samim Ahmed himself appeared as DW-2. They also placed on record copy of lease order as Ex.D-1, copy of agreement as Ex.D-2, copy of another agreement as Ex.D-3 copy of payment receipt as Ex.D-4, copy of agreement as Ex.D-6 along with other documents.



8. After hearing arguments and appreciating evidence on record, the learned Tribunal came to the conclusion that the plaintiff is owner of the suit property. The suit property was leased out to defendant no.1 for a period of 11 months w.e.f. 01.04.1992 @ Rs.125/- per month vide allotment order Ex.P-10 and rent deed Ex.P-11. Defendant no.1 did not pay the rent regularly. Defendant no.1 sub-let the property to defendants no.2 and 3 without the consent of the plaintiff. So, the plaintiff is entitled to decree for possession of the suit property and relief of injunction. Defendants no.2 and 3 were further directed to pay mesne profits @ Rs.250/- per month from 10.07.2011 i.e. three years prior to filing of the suit till realization of the possession of the suit property. The suit was filed by the duly authorized persons. The suit was accordingly decreed.

9. Learned counsel for the petitioner has argued that the Wakf Board filed the suit for possession and permanent injunction. The suit was triable by the Civil Court and not by the Tribunal. Defendants no.2 and 3 are owners of the suit property. Plaintiff is not owner of the suit property.

10. I have heard the submissions of learned counsel for the petitioner and perused the case file.

11. Learned counsel for the petitioner has argued that there is specific finding of the learned Tribunal that the ownership of defendants no.2 and 3 has not been proved from the documents on record i.e. Ex.D-1 to Ex.D-10 because none of the documents is sufficient to rebut the oral as well as documentary evidence produced by the plaintiff. From the evidence on record, it was proved that the plaintiff is owner of the suit property.



Whether the suit for possession and permanent injunction is maintainable by the Civil Court or Wakf Tribunal, is now well established in case titled **Haryana Wakf Board vs. Mahesh Kumar** reported as **AIR 2014 Supreme Court 501**. In this case after examining the provisions of Section 7 and section 85 of the Wakf Act, 1995, it was held that if a suit for possession of the property belonging to Wakf Board is filed, then Wakf Tribunal would have the jurisdiction. The conclusion drawn by the Hon'ble Supreme Court is in para 8, 9 and 10 of the judgment, which is extracted as under :-

“8. As per Sub-section (1) and Section 7 of the Act, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the tribunal is made final. When such a question is covered under Sub-section (1) of Section 7, then obviously the jurisdiction of the Civil Court stands excluded to decide such a question in view of specific bar contained in Section 85. It would be pertinent to mention that, as per Sub-section (5) of Section 7, if a suit or proceeding is already pending in a Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction.

9. On a conjoint reading of Section 7 and Section 85, legal position is summed up as under :

(i) In respect of the questions/disputes mentioned in Sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having



jurisdiction in relation to such property.

(ii) Decision of the tribunal thereon is made final.

(iii) The jurisdiction of the Civil Court is barred in respect of any dispute/question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal

(iv) There is however an exception made under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered under Sub-section (1) of Section 6, the Civil Court would not continue and the tribunal shall have the jurisdiction to determine those matters.

*10. Present suit was instituted in the year 2000 i.e. after the Wakf Act, 1995 came into force. Therefore, the present case is not covered by exception to Section 7(5) of the Wakf Act. Thus, on a plain reading of Section 7 read with Section 85 of the Act, it becomes manifest that wherever there is a dispute regarding the nature of the property, namely whether the suit property is Wakf property or not, it is the Tribunal constituted under the Wakf Act, which has the exclusive jurisdiction to decide the same. We need not delve into this issue any longer, inasmuch as in a recent judgment by this very Bench of this Court in the case of **Bhanwar Lal and Anr. v. Rajasthan Board of Muslim Wakf and Ors. 2013 (11) SCALE 210 decided on 9th September 2013**, this Court took the same view, after taking note of earlier judgments on the subject, namely, **Sardar***



Khan and Others v. Syed Najmul Hasan (Seth) and Others, 2007(2) RCR (Civil) 419, 2007(2) Recent Apex Judgments (RAJ) 78: 2007(10) SCC 727, Ramesh Gobindram (D) through LRs v. Sugra Humayun Mirza Wakf, 2010(2) RCR (Rent) 266 : 2010(5) Recent Apex Judgments (RAJ) 171 : 2010(8) SCC 726. This view has been re-affirmed in Akkode Jumayath Palli Paripalana Committee v. P.V.Ibrahim Haji & Ors., 2013(4) RCR (Civil) 10 : 2013(4) Recent Apex Judgments (RAJ) 626 : 2013 (9) SCALE 622.”

12. In case Rashid Wali Begh vs. Farid Pindari and others – Civil Appeal No.6336 of 2021, it is held by Hon’ble Supreme Court that suit for permanent injunction in respect of wakf property is maintainable before the Wakf Tribunal and not before the Civil Court.

13. In view of the above discussion, it is now settled that the learned Wakf Tribunal had jurisdiction to decide the suit in question and has accordingly decided the same. Accordingly, no ground is made out to interfere in the judgment passed by learned Tribunal. The present revision petition is devoid of any merit and the same is accordingly dismissed.

14. Pending applications, if any, shall stand disposed of along with this judgment.

May 15, 2024
monika

(GURBIR SINGH)
JUDGE

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