



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

119

Date of Decision: 18.04.2026

1. CWP-16836-1992 (O&M)

PUNJAB WAKF BOARD

...Petitioner

Versus

STATE OF PUNJAB

...Respondents

2. CWP-19875-1998

PUNJAB WAKF BOARD

...Petitioner

Versus

STATE OF PUNJAB

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ghulam Nabi Malik, Advocate for the petitioner

Mr. Vikas Arora, Deputy Advocate General, Punjab

Mr. Ashwani Kumar Chopra, Sr. Advocate with

Mr. Vidul Kapoor, Advocate and

Ms. Ridhima Khindria, Advocate

for respondent No.7 (*in CWP-16836-1992*)

JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-16836-1992**.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 27.03.1991 (Annexure P-7) and 02.05.1991 (Annexure P-8) whereby revenue authorities have rejected its claim.

3. The writ petition was dismissed vide order dated 19.01.2012. The petitioner filed review application which was allowed and writ petition was allowed vide order dated 19.10.2012. The review application was allowed *ex parte*. The respondents preferred *LPA-1601-2014* which

came up for consideration before a Division Bench of this Court. The Appellate Court vide order dated 05.08.2015 allowed appeal in part and set aside order dated 19.10.2012. The matter was remitted to Single Judge for fresh adjudication of review application. By separate even dated order, the review application has been allowed to the extent of rehearing of the matter.

4. The official respondents allotted land situated in Village Maksudpur, Tehsil and District Kapurthala as evacuee property to private respondents. The petitioner-Punjab Wakf Board preferred revision petition under Section 27 of Administration of Evacuee Property Act, 1950 (for short '1950 Act') which came to be dismissed vide impugned order dated 27.03.1991. The Assistant Custodian General held that there is no force in the argument of petitioner because disputed land was 'Shaksi Muafi'. The assertion of private respondents carry weight. The petitioner preferred petition before Financial Commissioner who vide order dated 02.05.1991 dismissed its petition. Learned Financial Commissioner has held that land in question was 'Shaksi Muafi'. The exemption from land revenue was granted to Muslim owners for performing certain services to Khanqah. They migrated to Pakistan and their exemption came to an end. Only custodian under 1950 Act was empowered to institute an inquiry and to determine the evacuee character of the property and his jurisdiction was exclusive. The property has rightly been held as evacuee property.

5. Learned counsel for the petitioner submits that land as per revenue record was Khanqah. The competent authority in exercise of power conferred by Section 5 read with Section 4 of Wakf Act, 1954 vide notification dated 02.01.1982 declared land in question as Wakf. The said notification was never challenged, thus, property always remained as Wakf

Property. The respondent has wrongly declared suit property as evacuee property and allotted to private respondents.

6. *Per contra*, learned Senior counsel for private respondents submits that land in question was never exclusively donated. The owners remained owner of the property. There was Muafi in favour of ones named in the revenue record. The Muafi was from land revenue. The owners as well as persons who were authorized to use land migrated to Pakistan. In Tara Singh's case, Muafi was in favour of Masjid whereas in the present case, Muafi was in favour of persons named in the revenue record. The land was allotted prior to notification issued by authorities under Wakf Act, 1954, thus, land for all purposes was evacuee property because authorities under 1950 Act have exclusive authority to declare any property as evacuee property.

7. Heard the arguments and perused the record.

8. From the perusal of record, it is evident that notification under Section 5 was issued on 22.12.1981. The land was allotted to respondents as evacuee property on 09.11.1981 means notification under Wakf Act was later in time than date of allotment. The petitioner feeling aggrieved from allotment of suit property as evacuee land preferred revision under Section 27 of 1950 Act which came to be dismissed. The petitioner further preferred petition before Financial Commissioner who dismissed the same holding that authorities under 1950 Act have exclusive power to declare any property as evacuee property.

9. Section 4 of Wakf Act, 1954 provides that State Government may by notification appoint Survey Commissioner of Wakfs and as many Additional or Assistant Commissioners as may be necessary for the purposes of making survey of Wakf properties. Section 5 provides that

State Government shall forward copy of survey report to the Board which will examine the report and publish in official gazette list of Wakfs existing in the State. Sections 4 and 5 of Wakf Act, 1954 are reproduced as below:-

“4. Preliminary survey of wakfs (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many additional or assistant survey commissioners of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.

(2) All additional and assistant survey commissioners of wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report to the State Government containing the following particulars, namely:-

- (a) the number of wakfs in the State, showing Shia wakfs and Sunni wakfs separately ;*
- (b) the nature and objects of each wakf;*
- (c) the gross income of the property comprised in each wakf*
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of such property;*
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and*
- (f) such other particulars relating to each wakf as may be prescribed.*

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and examining any witness;*
- (b) requiring the discovery and production of any*

document;

(c) requisitioning any public record from any court or office

(d) issuing commissions for the examination of any witness of accounts;

(e) making any local inspection or local investigation;

(f) any other matter which may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3)

5. Publication of list of wakfs.-(1) *On receipt of a report under sub-section (3) of Section 4, the State Government shall forward a copy of the same to the Board.*

(2) The Board shall examine the report forwarded to it under subsection (1) and publish, in the Official Gazette, a list of wakfs in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter containing such particulars as may be prescribed."

10. The 1950 Act deals with evacuee properties. The expression 'evacuee property' has been defined under Section 2(f) of 1950 Act. Section 7 provides that custodian after holding inquiry may pass an order declaring any property as evacuee property. Section 8 provides that any

property declared to be evacuee shall be deemed to have vested in the custodian. Sections 2(f), 7 and 8 are reproduced as below:-

“2(f) "evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40, but does not include

(i) any ornament and any wearing apparel, cooking vessels or other household effects in the immediate possession of an evacuee,

(ii) any property belonging to a joint stock company, the registered office of which was situated before the 15th day of August, 1947, in any place now forming part of Pakistan and continues to be so situated after the said date;

XXXX

XXXX

XXXX

7. Notification of evacuee property.—(1) *Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.*

(1A) Where during the pendency of any proceeding under sub-section (1) for declaring any property to be evacuee property any person interested in the property dies, the proceedings shall, unless the Custodian otherwise directs, be continued and disposed of as if such person were alive.

(2) Where a notice has been issued under sub-section (1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(3) The Custodian shall, from time to time, notify, either by publication in the Official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1).

8. Vesting of evacuee property in the Custodian *(1) Any property declared to be evacuee property under section 7 shall be deemed to have vested in the Custodian for the State,*

(a) in the case of the property of an evacuee as defined in sub-clause (i) of clause (d) of section 2, from the date on which he leaves or left any place in a State for any place outside the territories now forming part of India;

(b) in the case of the property of an evacuee as defined in sub-clause (i) of clause (d) of section 2, from the 15th day of August, 1947; and

(c) in the case of any other property, from the date of the notice given under sub-section (1) of section 7 in respect thereof.

(2) Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest:

Provided that where at the commencement of this Act there is pending before the High Court, the Custodian or any other authority for or in any State any proceeding under section 8 or section 30 of the Administration of Evacuee Property Ordinance, 1949 (12 of 1949), or under any other corresponding law repealed by the Administration of Evacuee Property Ordinance, 1949 (27 of 1949), then notwithstanding anything contained in this Act or in any other law for the time being in force, such proceeding shall be disposed of as if the definitions of "evacuee property" and "evacuee" contained in section 2 of this Act had become applicable thereto.

(2A) Without prejudice to the generality of the provisions contained in subsection (2), all property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the invalidity of, such law or any judgment, decree or order of any Court, be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such within the meaning of this Act and accordingly, any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken.

(3) Where any property in a State belonging to a joint stock company had vested in any person exercising the powers of a Custodian under any law previously in force, then nothing contained in clause (f) of section 2 shall affect the operation of sub-section (2), but the Central Government may, by notification in the Official Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

(4) Where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorized by him in this behalf.”

11. In the case in hand, there is neither on record order passed under Section 7 of 1950 Act nor parties on being asked were able to confirm whether any order was passed or not, however, petitioner itself is not disputing the fact, thus, the Court presumes that there was order under one or another provision whereby subjected land was declared as evacuee property.

12. The petitioner has placed on record revenue entries which are not disclosing that land was donated for general purpose and owner waived off his right. The property owners remained owner of the property and exemption from land revenue was granted to individuals. Names of individuals were duly recorded in the revenue record. The owners and users as disclosed in revenue record have migrated to Pakistan after partition. The custodian treated subjected land as evacuee property and allotted to private respondents. As per 1950 Act, authorities under the Act have exclusive power to declare any property as evacuee property. The petitioner is assailing allotment, however, there is no challenge to declaration of property as 'evacuee property'.

13. Learned counsel for the petitioner on being confronted with the fact that notification under Wakf Act was issued after allotment of land by authorities under 1950 Act expressed his inability to refute said fact. He also failed to justify its claim when Maufi was meant for individuals as noted in revenue record.

14. In the wake of above discussions and findings, this Court is of the considered opinion that claim of petitioner cannot be countenanced. The revenue authorities have rightly rejected petitioner's claim. The petitions deserve to be dismissed and accordingly dismissed.

15. Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

April 18, 2026
Deepak DPA

Whether Speaking/reasoned: Yes/No
Whether Reportable: Yes/No