

Before M. Jeyapaul, J.

PUNJAB WAKF BOARD, CHANDIGARH—Petitioner

versus

GURDEV RAJ—Respondent

CR No. 5599 of 2012

September 24, 2012

Punjab Wakf Board Act, 1955 - S.6 & 7 - Punjab Wakf Board filed civil suit for possession and permanent injunction claiming ownership claimed and defendant to be in unauthorized occupation - Wakf Tribunal dismissed the suit on maintainability - Revision filed also dismissed - Held - Ownership of Wakf Board admitted in written - The Wakf Tribunal can only decide whether a property mentioned in list of Wakfs is Wakf property or not - Tribunal does not have jurisdiction to decide the dispute between the parties and it is only the civil Court which has the jurisdiction to entertain the suit.

Held, that under Section 6(1) and 7(1) of the Wakf Act, the Tribunal has the authority to decide the question as to whether a property specified as a wakf property in the list of wakfs is a wakf property or not. The Tribunal also shall decide whether a wakf specified in such list is a Shia wakf or Sunny wakf. The decision of the Tribunal with respect to such dispute shall attain finality.

(Para 9)

Further held, that the bar imposed under Section 85 of the Wakf Act on the civil Courts is found to be wide enough to include the other matters relating to the wakf, wakf property or other matter which is required under the Act to be determined by the Tribunal. It is to be noted that "other matters relating to wakf, wakf property" have been specifically referred in various provisions of Wakf Act. In my considered view, the scope of the suit also does not fall under any other provision of the Act which deals with the matters relating to wakf and wakf property.

(Para 10)

Further held, that even in a case where the suit is not one for eviction of the tenant from the property of the Wakf Board, a suit filed for recovery of possession where the ownership of the Wakf Board was admitted, the Tribunal does not have jurisdiction to decide the dispute between the parties and it is only the civil Court which has the jurisdiction to entertain the suit.

(Para 11)

Neelofer Abida Perveen, Advocate, *for the Petitioner.*

M. JEYAPPAUL, J.

(1) The suit filed by the plaintiff-Punjab Wakf Board, Chandigarh for delivery of possession as well as for permanent injunction was dismissed by the Wakf Tribunal (for short 'the Tribunal') on the ground that the suit filed before Wakf Tribunal is not maintainable.

(2) The suit was filed by the plaintiff-Punjab Wakf Board, Chandigarh claiming that it was the owner of the suit land which was leased out to one Jiwan Mal upto the year 1986-87. After the death of Jiwan Mal, defendant Gurdev Raj did not become the lessee under the plaintiff-Board, but he has been in unauthorized occupation of the suit property. Therefore, delivery of possession and also permanent injunction was sought for by the plaintiff-Board.

(3) The defendant resisted the suit on the ground that the suit itself was not maintainable. It has also been contended that the father of defendant by the name of Jiwan Mal took the suit land on lease for 99 years. On the death of Jiwan Mal in 1994-95, the defendant inherited his estate being the heir of deceased Jiwan Mal.

(4) The Tribunal took up a preliminary objection as to the maintainability of the suit and having found, in the background of the decision of the Hon'ble Supreme Court in *Ramesh Gobindram (dead) through Lrs. versus Sugra Humanyun Mirza Wakf (1)*, that the suit for eviction of the tenant in occupation of the Wakf property, when the ownership of the Wakf Board was admitted, would not lie before the Tribunal dismissed the suit as not maintainable.

(5) Learned counsel appearing for the revision petitioner referred to the decision of the Hon'ble Supreme Court in *Ramesh Gobindram's case* referred to above to contend that the aforesaid decision has been misread by the Tribunal, inasmuch as the said decision would apply in a case where the suit has been filed for eviction of the tenant from the property of the Wakf Board. The Tribunal failed to note that the suit has been filed against the trespasser and not against the tenant of the Wakf Board. Therefore, it is her contention that the order passed by the Tribunal is liable to be set aside.

(6) I find that there is no merit in the submission made by learned counsel appearing for the revision petitioner. It is the admitted position that the suit property owned by the plaintiff/Wakf Board was leased out to Jiwan Mal, father of the defendant. After the demise of Jiwan Mal, the defendant being the legal heir has been in occupation of the suit property. The defendant also in unambiguous terms admits in the written statement that the Wakf Board is the owner of the suit property. Under such circumstances, the question that arises for consideration is whether a suit for recovery of possession from the person who actually admits the ownership of the property of the Wakf Board would lie before the Tribunal.

(7) It is relevant to refer to Section 6 and 7 of the Wakf Act, 1995. Section 6(1) of the Wakf Act reads as follows:-

"6. Disputes regarding wakfs.-(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs." Section 7(1) reads as follows:-

"7. Power of Tribunal to determine disputes regarding wakfs.-(1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any

person interest therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon be final:"

(8) The very same subject matter found in Section 6(1) has been dealt in Section 7(1) of the Wakf Act, the difference being that Section 7(1) refers to the disputes arising after the commencement of the Act.

(9) Under Section 6(1) and 7(1) of the Wakf Act, the Tribunal has the authority to decide the question as to whether a property specified as a wakf property in the list of wakfs is a wakf property or not. The Tribunal also shall decide whether a wakf specified in such list is a Shia wakf or Sunny wakf. The decision of the Tribunal with respect to such dispute shall attain finality.

(10) The bar imposed under Section 85 of the Wakf Act on the civil Courts is found to be wide enough to include the other matters relating to the wakf, wakf property or other matter which is required under the Act to be determined by the Tribunal. It is to be noted that "other matters relating to wakf, wakf property" have been specifically referred in various provisions of Wakf Act. In my considered view, the scope of the suit also does not fall under any other provision of the Act which deals with the matters relating to wakf and wakf property.

(11) It is true that the above decision in *Ramesh Gobindram's case* rendered by the Hon'ble Supreme Court relates to a suit filed for eviction of the tenants before the Wakf Tribunal by the Wakf Board, but the ratio laid down in the above decision would apply to the facts of this case, inasmuch as the present suit laid before the Tribunal did not relate to any dispute as to the ownership of the wakf qua the suit property. Even in a case where the suit is not one for eviction of the tenant from the property of the Wakf Board, a suit filed for recovery of possession where the ownership of the Wakf Board was admitted, the Tribunal does not have jurisdiction to decide the dispute between the parties and it is only the civil Court which has the jurisdiction to entertain the suit.

(12) In view of the above, I find that the Tribunal has rightly dismissed the suit as not maintainable. I do not find any merit in the revision petition and therefore, the revision stands dismissed. There is no order as to cost.