

Champa Rani & another Vs Dhandev Singh & others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 6, 2008

Citation: (2009) 5 RCR(Civil) 716

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Advocate: Mr. Amarjit Singh Virk, Advocate. Mr. Jai Bhagwan, Advocate with Mr. Pritam Saini, Advocate., Advocates for appearing Parties

Judgement

Kanwaljit Singh Ahluwalia, J. (Oral)

1. It is not disputed between the parties that the property in question is a wakf property. Dhandev Singh claimed that he is tenant of the property,

which is a wakf property. In 1995 a lease was created in favour of the petitioner. Aggrieved against the same, Dhandev Singh in the year 1995,

had instituted a civil suit seeking relief of permanent injunction. An application was filed by the petitioner before the civil Court in view of Section

85 of the Wakf Act 1995 (hereinafter referred to as, 'the Act') that suit be transferred to the Tribunal. Section 85 of the Act reads as under :

Bar of jurisdiction of civil Court; No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question nor other matters

relating to any wakf, wakf property or other matters which is required by or under this Act, to be determined by a Tribunal.

2. Civil Court accepted the application and the original plaint along with other relevant documents were returned to the plaintiff for instituting the

same before the Tribunal. When the proceedings before the Tribunal were continuing on 5th October, 2007, following order was passed :

Present : Sh. R.K. Goel, Advocate for plaintiffs.

Sh. S.S. Saini, Advocate for Defendants 1 to 3,

Sh. J.S. Virk, Advocate for Defendants 4 & 5.

Order :

Present civil suit titled Dhandev Singh v. P.W.B. is under Wakf Act and the matter is controversy is whether the suit property is Wakf property or

not. As per provisions of the Wakf Act 1995 Section 83 ibid authorized the State Govt. to constitute a Tribunal under the Act. As per Section 85

of the Act there is bar of jurisdiction of civil Court with respect to matters which requires to be determined by the tribunal. In compliance of that

Haryana State issued notification on 25.9.2001, whereby Tribunals were constituted in the State of Haryana and one such Tribunal was

constituted for the area of Kurukshetra District. However, the present suit relates to the year 1995 and the said civil suit is to be decided by the

civil Court as the same is prior to Constitution of Tribunal under the Wakf Act at Kurukshetra. As such the case file is ordered to be placed before

Ld. District & Sessions Judge, Kurukshetra on 6.10.2007 at 10.00 A.M. sharp to pass the order as his goodself may deem fit. Parties through

their counsel are directed to appear before the said Court on 6.10.2007 at 10.00 A.M. sharp. Ahlmad to send the complete file well in time.

Announced. Sd/5.10.2007 Additional District Judge

(exercising the powers of Tribunal Under, Wakf Act) Kurukshetra

3. After the order was passed by the Tribunal, District Judge, vide order (Annexure P1) transferred the same to the Court of Civil Judge (Junior

Division), Kurukshetra. The order passed by the District Judge Kurukshetra is reproduced as under :

Order :

Reference made by Sh. Shekhar Dhawan Id. A.D.J., Kurukshetra dated 5.10.2007 perused. In view thereof, this case is withdrawn from his

Court and is transferred to the court of Sh. Narender Sharma Id. Civil Judge (Jr.Divn.) Kurukshetra for disposal in accordance with law. Parties

are directed to appear there itself. File be immediately sent to the transferee Court.

Sd/ 8.10.2007 District Judge Kurukshetra

4. Aggrieved against the same, misc. application was filed by the defendant No. 4 and 5 for sending back the suit to the Tribunal. District Judge

noticed the order passed by the Tribunal on 5th October, 2007 reproduced above and relying upon a Single Bench judgment of this Court, held

that the provisions of the Wakf Act are prospective in nature and not retrospective. Therefore, the suit could not be transferred to the Tribunal.

5. I have heard counsel for the parties and I have also perused the judgment of the Single Bench of this Court rendered in Punjab Wakf Board,

Ambala Cantt. v. Hukam Singh and others, 2007(4) RCR(Civil) 303 : 2008(1) HRR 35. Counsel appearing for the parties have placed reliance

upon a judgment rendered by Hon"ble Apex Court in Sardar Khan and others v. Syed Najmul Hasan (Seth) and others, 2007(2) RCR(Civil) 419

: 2007(2) RAJ 78 : AIR 2007 SC 1447. This judgment has been interpreted by both the counsels in their favour. Therefore this Court has to

decide whether as per the judgment of the Hon"ble Apex Court, rendered in Sardar Khan's case (supra), the suit has to be tried by the civil Court

or by the Tribunal. Hon"ble Apex Court had noticed Section 6 of the Wakf Act, which reads as under :

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 is 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.

Explanation. For the purposes of this section and Section 7, the expression ""any person interested therein"", shall, in relation to any property

specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not

interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by

notice served on him in that behalf during the course of the relevant inquiry under Section 4.

(2) Notwithstanding anything contained in subsection (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the

pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Chief Executive Officer shall not be made a party to any application under subsection (1).

(4) The Survey Commissioner shall not be made a party to any suit under sub section (1) and no suit, prosecution or other legal proceeding shall lie

against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under subsection (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that

State in relation to any question referred to in subsection (1).

6. It will be apposite here to consider and reproduce Section 7 of the Act, which reads as under :

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 interested 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 shall be final :

Provided that

(a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be

entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the

commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement :

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement,

the Tribunal shall not reopen such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of subsection (5), no proceeding under this section in respect of any

wakf shall be stayed by any Court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other

proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under subsection (1), the list as so modified,

shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subjectmatter of any suit or proceeding instituted or commenced in

a Civil Court under subsection (1) of Section 6, before the commencement of this Act or which is the subjectmatter of any appeal from the decree

passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding

or appeal, as the case may be.

7. After examining the provisions mentions mentioned in Sardar Khan"s case (supra), the Hon"ble Apex Court observed as under :

By virtue of subsection (5) of Section 7, it clearly transpires that the Tribunal shall not have jurisdiction to determine any matter which is the

subjectmatter of any suit or proceeding instituted or commenced in a Civil Court under subsection (1) of Section 6, before the commencement of

this Act, i.e., if any suit has been instituted in any Civil Court prior to coming into force of The Wakf Act, 1995, then the Tribunal will have no

jurisdiction to decide such matter and it will be continued and concluded as if Act has not come into force.

10. Now coming to the facts of the present case, it is an admitted fact that suit was filed on 19.12.1976 before Addl. District Judge, Jaipur and

arguments were heard and judgment was reserved on 16.12.1995 and the judgment was delivered on 23.1.1996 against which the appeal was

filed before the High Court on 1.3.1996. Therefore, from these facts it is clear that the suit was pending since 19.12.1976, i.e., prior to the

commencement of the Act, i.e. 1.1.1996. Therefore, by virtue of subsection (5) of Section 7, the Tribunal will have no jurisdiction to decide the

suit or the appeal arising from that suit. In the present case, the appeal which was filed by the Respondents (herein) arises out of the Judgment and

decree passed by the Addl. District Judge, Jaipur on 23.1.1996 in a suit filed on 19.12.1976. Therefore, the appeal which was filed before the

High Court against the judgment and decree passed on 23.1.1996 by the Addl. District Judge, Jaipur, will not be governed by this Act. By

subsection (5) of Section 7, a special provision has been made that on pending suit or proceeding or appeal or review or revision, the Act will not

be applicable. In the case of Syed Inamul Hawq Shah (supra), the learned Single Judge only considered the effect of Section 85 but did not

examine the effect of subsection (5) of Section 7 and, on the basis of Section 85, it was held that all the proceedings which were pending before

the Civil Court, the Civil Court will have no jurisdiction. With great respect, perhaps the attention of the learned Single Judge was not drawn to

subsection (5) of Section 7 which specifically provides an exemption that this will not be applicable to the pending suits, appeals and revisions. It

has purpose behind it that when Act was made prospective, how can it operate retrospectively, therefore, all pending matters were taken out from

purview of this Act.

8. From a bare reading of the provisions and the judgment of Hon"ble Apex Court, it is evident that all those cases where dispute involve a

question whether property is a Wakf property or not, in view of section 7 (5) of the Act, the suit will continue before the Court, where it was

instituted. But in all those cases, where it is admitted by the parties and there is no dispute that property in question is a Wakf property, in view of

the section 85 of the Act, case is to be decided by the Tribunal. Therefore, the words of wisdom recorded by the Hon"ble Apex Court are that

`by virtue of subsection (5) of Section 7, it clearly transpires that the Tribunal shall not have jurisdiction to determine any matter which is the

subjectmatter of any suit or proceeding instituted or commenced in a Civil Court under subsection (1) of Section 6, before the commencement of

this Act, i.e., if any suit has been instituted in any Civil Court prior to coming into force of The Wakf Act, 1995, then the Tribunal will have no

jurisdiction to decide such matter and it will be continued and concluded as if Act has not come into force".

9. Admittedly, in the present case, there is no dispute raised within the ambit of subsection (1) of Section 6. Therefore, the jurisdiction of the

Tribunal is not barred as under subsection (5) of Section 7 of the Act, it has only been stated therein that suits instituted or commenced before the

civil Court under sub Section (1) of Section 6 of the Act are not to be tried before the Tribunal as jurisdiction of the Tribunal is barred. In the

present case, no question is to be determined under sub Section (1) of Section 6, therefore, the order dated 5th October, 2007 passed by the

Tribunal and subsequent order dated 8th October, 2007 (Annexure P1) followed by order dated 17th March, 2008 (Annexure P2) cannot be

sustained and are liable to be set aside.

10. A harmonious reading of section 7 and Section 85 of the Act makes it abundant clear that Section 85 has barred the jurisdiction of the civil

Court regarding any dispute, question or other matter relating to Wakf Board. Since it is admitted case of the parties, that property in question is a

Wakf property, therefore, civil Court jurisdiction is barred.

11. Accordingly, the order passed by the Civil Judge (Junior Division), Kurukshetra dated 12th August, 2005 is upheld and the Tribunal shall try

the suit. Needless to say that papers shall be remitted back to the Tribunal.

With these observations, present revision petition is disposed off.