

(2009) 01 P&H CK 0201

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 32 of 2009 (O and M)

Surinder Singh

APPELLANT

Vs

Punjab Wakf Board
and Others

RESPONDENT

Date of Decision: Jan. 7, 2009

Acts Referred:

- Waqf Act, 1995 - Section 3(r), 83, 85, 89

Citation: (2010) 1 RCR(Civil) 144 : (2010) 1 RCR(Rent) 144

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Shailendra Jain, for the Appellant;

Final Decision: Dismissed

Judgement

Rajesh Bindal J.

Challenge in the present petition is to the order dated 08.11.2007 (Annexure P5), passed by learned Civil Judge (Senior Division), Kurukshetra, whereby the plaint filed by the petitioner-plaintiff was rejected under Order 7 Rule 11 of the CPC on the ground that the dispute being relating to Wakf property, the appropriate remedy was to file a petition before the Tribunal constituted under the Wakf Act, 1995 (for short, "the Act").

2. Briefly, the facts are that the plaintiff along with Harbans Kaur and Lamber Singh filed a suit for mandatory injunction that they are owners of the land comprised in Khewat No.2466, Khatoni No.2814, Khasra No.216/2/3(2-0), Khewat No.2467, Khasra No.216/2/2(3-3), Khewat No.2470, Khasra No.216/2/1(4-16), situated at Darra Kalan, Thanesar, District Kurukshetra. They are in possession of the suit property for the last more than two decades where they had constructed a petrol pump, service station and houses. In execution of the warrant of possession issued by the Court, boundary wall of the premises of the petitioner plaintiff was demolished and the

petitioner was sought to be dispossessed forcibly from the land owned by him. On an application filed by the respondent-Wakf Board under Order 7 Rule 11 of the Code of Civil Procedure, the plaint was rejected in terms of the provisions of Section 83 and 85 of the Act.

3. Challenging the order, learned counsel for the petitioner submitted that admitted position on record was that there is no dispute as regards the ownership of the petitioner of the property, as was enumerated by him in the plaint. The only dispute, which was sought to be projected by the Wakf Board, was that the disputed land comprised of Khasra No.216/3 which is in fact a Wakf property. The submission is that such a dispute will not be covered u/s 83 of the Act on account of which the jurisdiction of the Civil Court will be barred. All what the petitioner claimed was merely injunction from the court because only the property was to be demarcated. Explaining the delay in filing the petition, it was submitted that as per the advice received by the petitioner, he filed a petition before the Tribunal under the Act and the same was rejected only on 15.12.2008 and it was thereafter that as per the advice received, the petitioner is impugning the earlier order passed by the Civil Court, whereby his plaint was rejected on account of lack of jurisdiction. Accordingly, there was no delay as such in approaching the Court.

4. Having heard learned counsel for the petitioner, I do not find any merit in the submissions made. The undisputed facts on record are that the earlier suit filed by the petitioner was dismissed by the trial court vide order dated 08.11.2007 on an application filed by the Wakf Board under Order 7 Rule 11 of the Code of Civil Procedure, holding that the Civil Court did not have the jurisdiction in terms of Sections 83 and 85 of the Act. After rejection of the plaint, the petitioner filed a petition before the Tribunal constituted under the Act, which was dismissed on 15.12.2008 for the reason that the petitioner had not issued mandatory notice u/s 89 of the Act to the Wakf Board before filing the suit. The contention of learned counsel for the petitioner that the relief claimed by the petitioner was only injunction, where merely demarcation of property was required and the same will not fall within the ambit of jurisdiction vested in the Tribunal constituted u/s 83 of the Act is totally misconceived. Relevant parts of Sections 83 and 85 of the Act are extracted below:

83. Constitution of Tribunals etc. (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as maybe prescribed, to the Tribunal for the determination of any dispute,

question or other matter relating to the wakf.

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

xx xx xx

85. Bar of jurisdiction of civil courts. No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

5. A perusal of the provisions of Section 83 of the Act, as reproduced above, clearly shows that the Tribunals have been constituted for determination of "any dispute, question or other matter relating to wakf property". The contention that it is only the dispute regarding ownership of the property which can be decided by the Tribunal has no legs to stand. A perusal of the language of the section shows that the jurisdiction vested with the Tribunal constituted under the Act is quite wide, i.e., to decide any dispute, question or matter relating to a wakf property. In the present case, as per the admitted facts on record, though the petitioner claimed that he is in possession of the property owned by him as is narrated in the plaint. However, the stand of the Wakf Board is that in fact, the disputed land forms part of khasra No.216/3, which is a wakf property, meaning thereby the dispute regarding wakf property is also involved in the present case, which can only be gone into by the Tribunal constituted under the Act.

6. A similar issue was considered by a Division Bench of Kerala High Court in [Aliyathammada Beethathabiyyapura Pookoya Haji Vs. Pattakkal Cheriyaakoya and Others](#), . Relevant passage therefrom is extracted below:

We are therefore, of the considered view that the words any dispute, question or other matters relating to Wakf or Wakf property u/s 85 are wide enough to take in within its weep not only matters which are specifically conferred on the Tribunal by the various provisions of the Act but also any dispute, question or any other matter relating to any Wakf or Wakf property since those powers have also been conferred on the Tribunal by the Wakf Act itself. On examining the scheme of the Act and various provisions we are of the view that the intention of the legislature is to resolve all disputes by one machinery and forum provided in the Act itself, that, is the Wakf Tribunal and not by the civil Courts in the State.

7. A Division Bench of Madras High Court in [I. Salam Khan Vs. The Tamil Nadu Wakf Board and Others](#), had the occasion to consider the issue regarding the jurisdiction of the Tribunal constituted under the Act, whereby it was opined that the words used in Section 83 are of wide connotation. Relevant passage is extracted below:

Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word "Wakf has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal. It is not proper for this Court to straight away entertain writ petitions relating to a Wakf or Wakf property when there is a special Tribunal constituted for this purpose.

8. Still further, even the conduct of the petitioner itself shows that he is not entitled to invoke the jurisdiction of this Court at this stage. The plaint having been rejected by the Civil Court vide order dated 08.11.2007 and thereafter the petitioner having already approached the Tribunal for the relief available to him, which was rejected on account of non-compliance of pre-requisite of issuance of notice, the petitioner cannot be permitted to turn around again and approach this Court seeking a relief that the suit should be tried by the Civil Court only.

9. For the reasons mentioned above, I do not find any merit in the present revision petition. Accordingly, the same is dismissed.