

(2010) 08 P&H CK 0374

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Punjab Wakf Board

APPELLANT

Vs

Gurudwara Bhai Joga Singh and
Another

RESPONDENT

Date of Decision: Aug. 13, 2010

Acts Referred:

- Waqf Act, 1995 - Section 6

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

The petitioner is aggrieved by the judgment and decree dated 30.11.2007 vide which the Punjab Wakf Board Tribunal dismissed its suit for permanent injunction seeking to restrain the respondents from raising construction after demolition of a mosque.

2. It is the conceded case of the parties that prior to the filing of the instant suit the petitioner had filed a suit for possession against these very respondents qua the very same property which was dismissed on 28.11.1969. The appeal against this judgment was also dismissed on 24.4.1971. The instant suit was dismissed by the Tribunal noticing these two facts and by observing that in the earlier suit which was decided it was categorically held that the respondents were the owners in possession of the property in dispute and the petitioner did not have anything to do with the said property. The said decree having become final was binding upon the parties and merely because a notification was issued by the Union of India on 1.1.1972 giving detail of the Wakf property in the State of Punjab, which notification remained unchallenged and which was the sole basis of filing of the instant suit, the same could not have any overriding effect over the judgment and decree passed by the civil court. The grievance of the petitioner is also limited. It is stated that once the notification dated 1.1.1972 was not challenged in accordance with Section 6 of

the Wakf Act, 1995, the same was binding on the general public as well and the property in dispute having been shown in the list of the properties detailed in the notification belonging to the Wakf Board, this gave the petitioner a distinct cause of action to agitate its matter before the civil court.

3. Learned Counsel for the respondents, on the other hand, has contended that the proceedings before the Punjab Wakf Board Tribunal are clearly hit by the principle of res judicata and further the notification dated 1.1.1972 could not give any fresh cause of action to the petitioner.

4. After hearing the learned Counsel for the parties, I am of the opinion that the present petition is totally misconceived. A categoric finding was recorded in the earlier suit that the respondents were owners in possession of the property in dispute. The petitioner failed to adduce any evidence before the civil court at that point of time which could have indicated that it was owner of the suit property. It is not conceivable that before the issuance of notification dated 1.1.1972 the Wakf was sans any document of title and, therefore, the Wakf was precluded from establishing its title before the civil court. Once it took recourse to the filing of a civil suit alleging that it was owner in possession and having failed to do so, merely because a notification which came into existence in 1972, in which the property of Wakf was mentioned as that of Wakf property and which remained unchallenged by the respondents, would not ipso facto give any fresh cause of action to the petitioner, more so when the said notification having come into existence in the year 1972 was to the knowledge of the petitioner and it chose to invoke its rights after more than 30 years.

5. Consequently, there is no merit in the instant revision petition and the same is hereby dismissed.