

Punjab Wakf Board

Vs

Bachan Chand

Civil Appeal No. 1191 of 1984

(M.P. Thakkar, K.N.Singh, N.D. Ojha JJ)

21.01.1988

ORDER

1. The principal controversy in this appeal centres around the question as to whether the Punjab Wakf Board (Board) can lawfully invoke the jurisdiction of the civil court in respect of wakf property which was once declared as evacuee property on account of the migration of the trustees of the wakf to the areas now forming a part of Pakistan.

2. A suit for possession was instituted by the appellant-Punjab Wakf Board against the respondent who was in possession of wakf land to the extent of 9 kanals and 13 marlas in Village Bassi Babu Khan in Hoshiarpur District of Punjab. The defence of the respondent-defendant was that he was a tenant under the Waki Board and was liable to pay Rs. 15 per kanal per annum as rent out he pleaded that the civil court had not jurisdiction to entertain the suit. The trial court concluded that the respondent-defendant was a tenant but came to the conclusion that he could be evicted only by the revenue court and not by the civil court. The lower appellate court took a contrary view. It formed the opinion that (1) the respondent-defendant had failed to establish that he was a tenant and (2) that the civil court did have the jurisdiction to entertain the suit. Accordingly, the lower appellate court allowed the appeal preferred by the Wakf Board and decreed the suit against the respondent-defendant. The matter was carried by the defendant to the High Court by way of second appeal. The High Court has taken the view that the civil court had no jurisdiction inasmuch as Section 11 of the Administration of the Evacuee Property Act was attracted and that Section 15 of the Punjab Wakf Board Act, 1954 had no overriding effect vis-a-vis the said provision. In this view of the matter, the High Court allowed the appeal preferred by the defendant reversed the decree passed by the lower appellate court and dismissed the suit for possession instituted by the Wakf Board. Thereupon the Punjab Wakf Board has approached this Court by way of present appeal by special leave.

3. The validity of the view taken by the Punjab High Court as on the date when the judgment was rendered need not be examined for reasons which will become evident presently. Subsequent to the decision of the High Court giving rise to the present appeal, Wakf Act of 1954 has been amended and a new provision has been incorporated. The provision in question has been embodied in Section 66-H (66-H. Special provision as to evacuee wakf properties - The provisions of this Act shall apply, and shall be deemed always to have applied in relation to any evacuee property within the meaning of clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950) which immediately before it became such evacuee property within the said meaning was property comprised in any wakf and, in particular, any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purposes) of any such property to a Board made before the commencement of the Wakf (Amendment) Act 1984 in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act,

1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to -

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of each entrustment, and

(b) authorise such Board to assume direct management of the wakf concerned for no long as it might deem necessary) of the Act by the virtue of Wakf (Amendment) Act of 1984 which has been given retrospective effect from the date of the enforcement of the Act. It has been provided therein that this provision shall be anything contained in any other provisions of the Act. Having regard to the aforesaid newly added provisions, a wakf property would vest in the Wakf Board in the same manner and the same effect as in a trustee of such property for the purpose of sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 with effect from the date of such entrustment. In the present case, the wakf property has been handed over to the Wakf Board as a trustee pursuant to an order dated January 31, 1961 issued under the signature of the Additional Custodian, Jullandar, Punjab. The averment made in the pleading that the wakf property had been so handed over to the Board was not controverted by the other side. Nor has the correctness of this fact been disputed before this Court. Under the circumstances having regard to the provision contained in Section 66-H the property must be treated as having vested in the Wakf Board by the Custodian under the Administration of Evacuee Property Act, 1950 in 1961. The Wakf Board, therefore, was entitled to maintain an action for possession against the respondent-defendant having regard to the subsequent development in the from of amendment of the law in the context of the incorporation of a new provision viz. Section 66-H during the pendency of this appeal, which has been retrospective operation. The plea of bar of jurisdiction can no longer survive in view of the legislative changes particularly having regard to the fact that Section 15(1) (2). 15. Functions of the Board - (1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State in relation to all matters, except those which are expressly required by this Act to be dealt with by the Wakf Commissioner shall vest in the Board established for the State; and it shall be the duty of the Board so to exercise its power under this Act as the ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income therefore is duly applied to the objects and for the purposes for which such wakfs were created or intended :

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or customs of the wakf sanctioned by the Muslim law

Explanation - For the removal of doubts it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of the Wakf (Amendment) Act, 1984) read with Section 15(2) (3). 15(2)(i) - Without prejudice to the generality of the foregoing power, the functions of the Board shall be to institute and defend suits and proceedings in a court of law relating to wakfs) of the Act empowers and authorizes the Board to institute a suit in respect of a property vesting unto the

Board. The impediment arising in the context of the fact that the former trustees had become evacuees and new trustees had not been appointed has lost its relevance. For, now the Board can maintain the action by virtue of the authority conferred by Section 15(1) read with Section 15(2) (i) of the Act.

4. The question now remains as to whether the Wakf Board is entitled to a decree for possession. It was suggested to the learned counsel for the Wakf Board that in the facts and circumstances of the case the respondent-defendant may be permitted to continue if he was prepared to pay all the arrears and to pay reasonable rent for the future. Having regard to the fact that the respondent has been cultivating the land for more than fifteen years, the learned counsel for both the sides ultimately left it to us to pass appropriate orders to achieve the ends of justice. Under the circumstances, instead of passing a decree for payment of arrears and an unconditional order for possession, we pass a conditional decree in the following terms :

The respondent-defendant shall pay the arrears of rent at the rate of Rs. 15 per kanal per annum that is to say, Rs. 140 per annum for the disputed land with effect from the date of the institution of the suit till December 31, 1987. The total amount of arrears would come to Rs. 1820 for the period expiring on December 31, 1987. We direct the respondent to pay the arrears by depositing his amount in his Court within four months from today. With regard to the subsequent period commencing January 1, 1988 respondent will be continued as a tenant with full tenancy rights and will have to pay rent at the rate of Rs. 900 per annum in respect of the land in question. In case the respondent is unwilling to continue as a tenant on the basis of the formula evolved by the court, it would be open to the respondent to surrender possession to the Wakf Board. The respondent-defendant will file an affidavit to the effect that he is willing to continue as per this formula on or before April 30, 1988. If such an affidavit is not filed or in case of failure of payment of arrears which has been computed at Rs. 1820 on or before April 30, 1988, there will be a decree for possession in favour of the appellant Board which will be entitled to execute decree for possession. There will also be a decree for payment of Rs. 1820 which the appellant Board will be entitled to execute in case arrears are not paid within the specified time frame apart from being entitled to execute the decree for possession. In the event of the respondent-defendant filing the affidavit and paying the arrears within the specified time the respondent-defendant will be entitled to continue as tenant with full tenancy rights at an annual rent of Rs. 900 commencing from January 1, 1988. The appeal shall stand disposed of accordingly in these terms. There will be no order as to costs throughout.

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