

**SUPREME COURT OF INDIA**

Tamil Nadu Wakf Board

Vs.

Larabsha Darga Panruti

C.A.No.1559 of 2007

(Tarun Chatterjee and P.sathasivam JJ.)

23.11.2007

**JUDGMENT:**

**P. SATHASIVAM, J.**

1) This appeal is preferred by the Tamil Nadu Wakf Board represented by its Chief Executive Officer, Chennai against the final judgment dated 25.6.2004 and decree dated 28.6.2004 passed by the High Court of Madras in Second Appeal No. 641 of 1996 whereby a learned Judge of the High Court allowed the second appeal reversing the judgment and decree of the first appellate Court and restoring the judgment and decree of the trial Court.

2) The facts which are necessary for the disposal of this appeal are as follows:

Originally the suit property was Wakf property being a part of a Wakf property belonging to one Noor Mohammedsha Aulia Darga. One Bahadursha, the 5th Janishan of Noor Mohammad Shah Khadari Darga, Panruti conveyed the suit property to his disciple Shabansha and he was in possession and enjoyment of the same through his disciple Larabsha. Larabsha conveyed the suit property to his wife Khathija Bi by way of a Hibba with the intention of doing certain pious, religious and charitable purposes. Khathija Bi conveyed the suit property to her grandson Syed Umar. After the death of Syed Umar, his wife Safia Bi was managing the suit property and was performing the said pious, religious and charitable purposes. In 1978, Safia Bi filed O.S. No. 189 of 1978 in the sub-Court, Cuddalore for declaration that the suit property is not wakf property and it is their private property. The said suit was dismissed holding that the suit property is wakf property belonging to Larabsha Darga. Against the said order, Safia Bi filed an appeal being A.S. No. 108 of

1980 in the District Court, Cuddalore and the same was dismissed on 22.4.1983. Aggrieved by that judgment and order, Safia Bi filed a second appeal being S.A. No. 1104 of 1983 in the High Court. In the meanwhile, on 8.8.1985, Safia Bi died and Adbarbasha and Abdulsalam were impleaded collusively and fraudulently. Heeralal and Khaleel Basha filed a petition in A.No. 20 of 1985 before the Tamil Nadu Wakf Board, Madras to recognize and appoint them as hereditary Muthavllis to Larabsha Darga and its properties and the Wakf Board after holding enquiry appointed the respondents herein-plaintiffs as joint Muthavallis recognizing their right to be hereditary trustees and legal representatives of late Larabsha. The High Court on 10.1.1990 dismissed the second appeal holding that the suit property is wakf property and not a private trust property. Against the said dismissal, S.L.P. (c) No. 2486 of 1990 was filed by the respondents herein/plaintiffs before this Court and the same was dismissed. Respondents herein filed O.S. No. 20 of 1992 in the sub-Court, Cuddalore for a declaration that the suit Darga and its property belongs to a wakf i.e., Wakf-alal-aulad, and the Wakf Board had no jurisdiction to appoint Muthavllis for the said Darga and for injunction restraining the Wakf Board from interfering with the suit Darga and its property except claiming contribution from the net income of the wakf. The trial Court decreed the suit holding that the suit Darga and its property belong to a private wakf. Aggrieved by the said order, Tamil Nadu Wakf Board filed an appeal being A.S. No. 206 of 1994 in the District Court, Cuddalore and the same was allowed holding that the suit Darga and its property do not belong to a private wakf. Against that order, the respondents herein filed a second appeal being S.A. No. 641 of 1996 in the High Court. The High Court allowed the second appeal reversing the judgment of the first appellate Court and restoring the judgment of the trial Court. Hence the present appeal is filed by the Tamil Nadu Wakf Board by way of special leave petition before this Court.

3) Heard Mr. J.M. Khanna, learned counsel appearing for the appellant and Mr. P.S. Misra and Mr. K. Samidurai, learned senior counsel appearing for the respondents. 4) Mr. J.M. Khanna, learned counsel for the appellant-Tamil Nadu Wakf Board mainly contended that in view of the decision in the earlier proceedings filed by Safia Bi and the ultimate decision in Second Appeal No. 1104 of 1983 which was affirmed by this Court, the subsequent proceedings in respect of the same issue/property cannot be proceeded with and hit by the principle of res judicata. On the other hand Mr. P.S. Misra, learned senior counsel for the respondents after taking us through the earlier as well as the present proceedings submitted that the decision rendered therein has no bearing to the issue raised in the subsequent proceedings. He also contended that in view of Ex.A-22 (proforma report) and other materials, the conditions/objects therein, the plaintiff had proved their case that the suit property belongs to Wakf-alal-aulad and the trial Court rightly decreed the suit though the lower appellate court wrongly concluded as it belongs to Wakf property and the High Court allowed the appeal and restored the decree of the trial Court. 5) In order to understand the dispute raised, it is relevant to refer the geneology of the family of late Larabsha referred to in the plaint in O.S. 20 of 1992 on the file of the subordinate Judge, Cuddalore.

LARABSHA (HUSBAND) DIED

Kathija Bi (Wife) (Died)

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Syed Magdoom (Son) (died)

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| Safia Bi

| (died on 8.8.1985)

| Issueless

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Sainath Syed Ali

Hi (died)

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(Son) (Son)

Khaleel Basha Heeralal

(2nd Plaintiff) (1st Plaintiff)

The plaintiffs therein prayed for a decree declaring that Larabsha Dharga and its properties described in the schedule appended in the plaint are a private Wakf/Wakf-alal-aulad. They also prayed for declaration that Hiralal and Kalilal Basha (plaintiffs) are the hereditary trustees of Larabsha Dharga and also prayed for permanent injunction. The learned trial Judge after considering the relevant materials both oral and documentary particularly on the basis of Ex. A1 and A2 granted decree as prayed for in favour of the plaintiffs. In the appeal, namely, A.S. 206 on the file of District Court, Cuddalore filed by Tamil Nadu Wakf Board, the appellate Judge basing reliance on earlier judgment of the High Court in Second Appeal No. 1104 of 1983 (Ex. A3) accepted the stand of the Wakf Board and concluded that the suit property is a Wakf property and not private Wakf-alal-aulad as claimed by the plaintiffs. The said decision was taken up to the High Court by way of Second Appeal No. 641 of 1996 by the plaintiffs. The High Court framed the following substantial question of law:-

Whether the lower appellate court had failed to consider absence of specific plea of denial in the written statement that the said Dharga is not a private Wakf

Based on the same, heard the argument on either side and finally by the impugned judgment allowed the appeal and restored the decree of the trial Court. In the light of the controversy between the parties by way of suits, first appeals and second appeals, we verified the reliefs prayed in the earlier proceedings, stand taken by both the parties and ultimate decision including the one taken by the High Court in second appeal No. 1104 of 1983.

6) Section 3 (l) of the Wakf Act, 1954 defines wakf as under:

(l) wakf means the permanent dedication by a person professing Islam or any other person of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes-

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser; (ii) grants including mashrut-ul-khidmat, muafies, khairati, qazi services, madadmash for any purpose recognized by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad;

and wakif means any person making such dedication; Provided that in the case of a dedication by a person not professing Islam, the Wakf shall be void if, on the death of such person, any objection to such dedication is raised by one or more of his legal representatives;

The plaintiffs claim that the suit property belongs to private Wakf, Wakf-alal-aulad and it is not a public Wakf. On the other hand, it is the specific stand of the Wakf Board the same is a public Wakf. As said earlier, the High Court heavily relied on Ex.A-22 which is a proforma maintained by the Wakf Board. The learned Judge has extracted all the details/entries made in the proforma. Those details are available in the High Courts judgment and we perused the same. It mentions that the object of the Wakf is for the support of feeding the fakirs and lighting the tomb of Larabsha and to do fateah. It further shows that these services are to be rendered without alienating the properties. Name of the beneficiaries are noted as Mrs. Safia Bi, wife of Syed Umar, Larabsha Dharga. In column-9, the rule of succession, it is stated that hereditary as per T.D. It further shows that out of the income derived from the suit property, a portion of the same is meant for pious, religious and charitable purposes and remaining was used for the maintenance of the family. Column-17 of the remarks states that originally R.S.No.24, 205 acres dry belong to Nur Mohammed Dargah, Panruti. One Inayath Shah a sixth successor Jainishin conveyed this land containing houses and shops to one of his disciples shabansha by means of settlement (Hibba) in 1939. This Shanbans, in his turn made a settlement in favour of Larabsha who is the paternal grand father of the Husband of Safia Bi, who is now enjoying the lands. No accounts are maintained. Only Fateah is done on every Thursday evening and the tomb is lighted daily. At present Safia Bi is the Muthavalli. A few rupees are spent for the Dargah and the balance is utilized for the maintenance of the family. The above details furnished in the proforma clearly reveal that succession to the office of Muthavallis is by hereditary and the income has got to be spent for pious, religious and charitable purposes and a portion was also used for management of the family.

7) As rightly observed by the High Court, inasmuch as a portion of the income is to be spent for the family apart from pious, religious and charitable purposes, it satisfies the character of a private Wakf i.e. Wakf-alal-aulad. The said document i.e. Ex.A-22 also supports the claim of the plaintiffs that they are the hereditary Muthavallis of the private Wakf. These aspects have been fully considered and rightly concluded by the trial Judge as well as the High Court. On the other hand, as rightly pointed out by learned senior counsel for the respondents/plaintiffs, the lower appellate Court on mis-construing the decision in S.A. No.1104 of 1983 wrongly allowed the appeal. As observed earlier, in second Appeal No. 1104 of 1983, the High Court had no occasion to consider whether it is a private Wakf or a public Wakf, but, on the other hand, in the earlier suit, the plaintiffs claimed the suit property as their private property and not as private Wakf property and only in the said circumstance the High Court in Second Appeal No. 1104 of 1983 rendered the finding that the suit property is a Wakf property and it is not a private trust property. Inasmuch as in appreciation of acceptable material, the trial Court as well as the High Court arrived at a conclusion that the suit property is a private Wakf and not a private property, we are in agreement with the conclusion of the High Court that the decision in S.A. 1104 of 1983 has no bearing to the issue in the latter proceeding. The High Court has also rightly concluded from Ex.A1 that there is no indication that the Wakf is a public Wakf and Hibba only indicates that certain things have got to be carried out in respect of pious, religious and charitable purpose and proforma Ex.A22 supports the claim of the plaintiffs. Looking at any angle, in the light of the materials placed particularly additional documents Ex.A22, A23 and A24 which were received on the basis of an application which was ordered on 20.04.2004, we are in entire agreement with the conclusion arrived by the High Court and do not find any valid ground for interference.

8) In the light of the above discussion, the appeal fails and the same is dismissed. No costs