

# SUPREME COURT OF INDIA

Haryana Wakf Board

Vs.

Mahesh Kumar

S.L.P.(Civil.)No.10947 of 2012

(K.S. Radhakrishnan and A.K.Sikri, JJ.)

21.11.2013

## JUDGMENT

**A.K. Sikri, J.**

1. The petitioner is the original plaintiff. It is a Wakf Board which had filed Civil Suit in the Court of Civil Judge, Junior Division, Karnal, Haryana way back in the year 2000 seeking possession of property admeasuring 21 square yards which was allegedly given on rent by the Wakf Board to one Major Ram Prakash. This piece of land is a part of Khasra No.4129, Kasba Karnal, Haryana. The petitioner claims that the entire land is a Muslim graveyard land and hence the same is Wakf property. The entire Khasra measures 800 square yards and is given on lease to different persons by different allotment letters. As stated above, 21 square yards out of this land was given to Major Ram Prakash on monthly rent vide allotment letters dated 1.9.1969. The petitioner also claims that the suit property was formally notified under Section 5 (2) vide Notification dated 19.12.1970 of the Wakf Act, 1954 as Wakf property. After the death of Major Ram Prakash, his son Gurcharan Singh and his widow Smt. Savitri Kadyan executed a long term lease in favour of the present defendant/ respondent Shri Mahesh Kumar in the year 1991 and put him in possession. As per the case of the petitioner, the petitioner came to know about this alleged illegal creation of lease deed in favour of the respondent in the year 1996 and treated it as illegal encroachment by the respondent. The petitioner requested him to vacate the premises. When he did not do so, the aforesaid suit was filed in the Court of Civil Judge, Junior Division, Karnal, Haryana for possession of the suit property.

2. The respondent appeared and filed the written statement raising several preliminary objections regarding maintainability of the suit. Apart from stating that the suit was bad for non-joinder of necessary party, lack of locus standi and barred of principle of estoppel, it was also barred by limitation. On merits, the respondent stated that he was in possession of the suit property for the last 10 years as a tenant of Smt. Nirmala Devi and it is Nirmala Devi who was the lessee of the property vide a registered lease deed and the suit property was not wakf property.

3. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to decree of possession, as prayed for? OPD
2. Whether the suit of the plaintiff is not maintainable in its present form: OPD
3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the suit is time barred? OPD
6. Relief.

4. Both the parties led their evidence in support of their evidence. After hearing the counsel for either side, the trial court decreed the suit vide judgment and decree dated 30th May 2007 holding that the lease agreement dated 2.5.1991 executed by Savitri Devi, widow of Major Ram Prakash in favour of Nirmala Devi for a period of 99 years was bad in law inasmuch as Savitri Devi was predecessor in interest of Major Ram Prakash as his widow to whom the property was rented out by the petitioner. Therefore, she was not capable of entering into such lease deed in favour of Nirmala Devi and in turn Nirmala Devi had no right to put the respondent in possession by executing any lease in his favour. The trial court also recorded categorical finding that Wakf Board had by clear, cogent and consistent evidence proved its title over the land in question and it is the Wakf Board who was the actual owner of the suit property.

5. The respondent challenged the aforesaid judgment and decree by filing First Appeal under Section 96 of the Code of Civil Procedure, before the Additional District Judge, Karnal which was registered as Civil Appeal No.49/2007. The learned Additional District Judge decided the said appeal vide his judgment dated 15.6.2009. Deciding the question of maintainability and locus standi, in respect of which issue nos. 2 and 4 were framed, the first appellate court held that since the claim in the suit by the petitioner which is a Wakf Board, was on the basis that suit property was Wakf property and since the respondent had denied it to be the Wakf property, the question had arisen as to whether suit property is Wakf Property or not. Such a question, in the opinion of the learned ADJ,

could be decided only by the Tribunal constituted under the Wakf Act. The appeal court, therefore, returned of the plaint to the petitioner under Order VII of Rule 10, CPC for presentation to the court of competent jurisdiction, namely, the Tribunal. The result was that the decree passed by the trial court was set aside and the plaint returned.

6. The petitioner approached the High Court by way of Regular Second Appeal under Section 100 of the CPC challenging the aforesaid findings of the First Appellate Court returning the plaint for want of jurisdiction of the Civil Court. The High Court, has, however, dismissed the appeal in limine observing that the Appellate Court has taken right view in the matter. Against that order, the present Special Leave Petition is filed.

7. From the aforesaid, it is clear that the only question which calls for consideration is as to whether Civil Court had the jurisdiction to entertain the suit. The issue depends upon the interpretation of Section 7 read with Section 85 of the Haryana Wakf Act, 1995 (hereinafter referred to as the "Wakf Act"). These provisions read 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.

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 re-open such question.

2. Except where the Tribunal has no jurisdiction by reason of the provision of sub-section (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 Chief Executive Officer shall not be mad a party to any application under

sub-section (1).

4. The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub- section (1), the list as so modified, shall be final.

5. The Tribunal shall not have jurisdiction to determine any matter which is the subject matter of any suit or proceeding instituted or commenced in a civil court under sub-section 91) of section 6, before the commencement of this Act or which is the subject matter 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".

Section 85 of the Act bars the jurisdiction of the Civil Court to decide such issues. Section 85 reads as under:

"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".

8. As per Sub-section (1) and Section 7 of the Act, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the tribunal is made final. When such a question is covered under sub-section (1) of Section 7, then obviously the jurisdiction of the Civil Court stands excluded to decide such a question in view of specific bar contained in Section 85. It would be pertinent to mention that, as per sub-section (5) of Section 7, if a suit or proceeding is already pending in a Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction.

9. On a conjoint reading of Section 7 and Section 85, legal position is summed up as under:

i) In respect of the questions/ disputes mentioned in sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having jurisdiction in relation to such property.

ii) Decision of the tribunal thereon is made final.

iii) The jurisdiction of the Civil Court is barred in respect of any dispute/ question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal

iv) There is however an exception made under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is

covered under sub section (1) of section 6, the Civil Court would not continue and the tribunal shall have the jurisdiction to determine those matters."

10. Present suit was instituted in the year 2000 i.e. after the Wakf Act, 1985 came into force. Therefore, the present case is not covered by exception to Section 7(5) of the Wakf Act. Thus, on a plain reading of Section 7 read with section 85 of the Act, it becomes manifest that wherever there is a dispute regarding the nature of the property, namely whether the suit property is Wakf property or not, it is the Tribunal constituted under the Wakf Act, which has the exclusive jurisdiction to decide the same. We need not delve into this issue any longer, inasmuch as in a recent judgment by this very Bench of this Court in the case of *Bhanwar Lal & Anr. vs. Rajasthan Board of Muslim Wakf & Ors*<sup>1</sup>, decided on 9th September 2013, this Court took the same view, after taking note of earlier judgments on the subject, namely, *Sardar Khan & Ors. Vs. Syed Nazmul Hasan (Seth) & Ors*<sup>2</sup>. *Ramesh Gobindram (D) through LRs. Vs. Sugra Humayun Mirza Wakf*<sup>3</sup>. This view has been re-affirmed in *Akkode Jumayath Palli Paripalana Committee vs. P.V.Ibrahim Haji & Ors*<sup>4</sup>.

11. We, thus, do not find any fault with the view taken by the High Court in the impugned judgment. The Special Leave Petition is, accordingly, rejected.

*Judgment referred*

<sup>1</sup>(2013) 11 SCALE 0210

<sup>2</sup>(2007) 10 SCC 0727

<sup>3</sup>(2010) 8 SCC 0726

<sup>4</sup>(2013) 9 SCALE 0622