

SUPREME COURT OF INDIA

Faseela M.

Vs.

Munnerul Islam Madrasa Committee

C.A.Nos.4250-4252 of 2014

(R.M.Lodha and Kurian Joseph JJ.)

31.03.2014

JUDGMENT

R.M. LODHA, J.

1. Leave granted.

2. Sections 6 and 7 of the Waqf Act, 1995 (for short, 'Act') provide for determination of certain disputes regarding auqaf only by the Waqf Tribunal. These provisions as amended by Act 27/2013 read as under:

Section 6. Disputes regarding auqaf.- (1) If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf.

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the

provisions contained in sub- section (6) of section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of auqaf shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

Section 7. Power of Tribunal to determine disputes regarding auqaf.- (1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia waqf or a Sunni waqf, the Board or the mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section 5 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 auqaf 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 auqaf; and

(b) in the case of the list of auqaf 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 provisions of sub-section (5), no proceeding under this section in respect of any waqf 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 made a party to any application under sub-section (1).

(4) The list of auqaf 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 (1) 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.

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

3. Thus, Sections 6 and 7 of the Act not only confer exclusive jurisdiction upon the Waqf Tribunal for determination of certain disputes regarding auqaf but also take

jurisdiction of the civil court away in respect of such disputes.

4. Munnerul Islam Madrasa Committee “ respondent No. 1 “ filed a suit for eviction against the appellant before the Waqf Tribunal, inter alia, setting up the plea that respondent No. 1 is the landlord and the appellant is the tenant in the subject property. The subject property is described as waqf property.

5. The appellant denied that the subject property was waqf property. He also challenged the jurisdiction of the Waqf Tribunal in determining the dispute between the parties.

6. On 18.09.2010, the Waqf Tribunal, after hearing the parties, directed the plaint to be returned to the civil court having jurisdiction in the matter. However, on the next date, i.e., on 19.09.2010, the Waqf Tribunal suo motu recalled the order passed on 18.09.2010 and passed the following order:-

Called. It seems that issue framed included whether property is Wakf property or not. Hence to that extent this Tribunal have jurisdiction. But due to oversight and mistake it is ordered to return the Plaint. That order is an error apparent on face of records and suo motu reviewed. Call on 30.9.2010.

7. The appellant filed two revision petitions before the High Court “ one, against the order dated 19.09.2010 and the other, for declaration that the Waqf Tribunal has no jurisdiction in the matter.

8. The High Court dismissed both revision petitions and one original petition by the impugned order giving rise to the present Appeals, by special leave.

9. The question, for determination in these appeals, is as to whether the suit for eviction by the landlord against the tenant relating to waqf property is triable by the civil court or the suit lies within the exclusive jurisdiction of the Waqf Tribunal.

10. For determination of the above question, besides Sections 6 and 7, the two other provisions which deserve to be noticed are Sections 83 and 85 of the Act. These provisions read:

Section 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 waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

(2) Any mutawalli or person interested in a waqf 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 may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf.

(3) Where any application made under sub- section (1) relates to any waqf 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 waqf 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.

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred, shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of-

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any

dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

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

11. In Ramesh Gobindram (Dead) through LRS. Vs. Sugra Humayun Mirza Wakf¹, this Court considered Sections 6(1), 6(5), 7(1), 7(5), 83, 85 and few other provisions of the Act and explained the jurisdiction of the Waqf Tribunal vis-a-vis Civil Court. As regards the suit for eviction against the tenant(s) of waqf property, the Court held that such suit is triable by the Civil Court as it is not covered by Sections 6 and 7 of the Act.

12. The Court in para 35, page 738 held as follows : 35. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.

13. Mr. Renjith Marar, learned counsel for respondent No. 1, submits that in a subsequent decision in Bhanwar Lal & Anr. Vs. Rajasthan Board of Muslim Wakf and Ors.², this Court has taken a different view. According to him, Section 85 of the Act leaves no manner of doubt that the Waqf Tribunal has jurisdiction to decide the suit for eviction. It is so because one of the questions for determination is whether the suit property is waqf property or not.

14. The Court in Bhanwar Lal² considered the decision in Ramesh Gobindram¹ at quite some length. Besides Ramesh Gobindram¹, the Court in Bhanwar Lal² also considered two other decisions, one, Board of Wakf, West Bengal & Anr. Vs. Anis Fatma Begum & Anr.³ and two, Sardar Khan and Ors. Vs. Syed Nazmul Hasan (Seth)

and Ors.⁴. In *Anis Fatma Begum*³, this Court had held that the Waqf Tribunal constituted under Section 83 of the Act will have exclusive jurisdiction to deal with the questions relating to demarcation of the waqf property.

15. Pertinently, the Court in *Bhanwar Lal*² held that the suit for cancellation of sale deed was triable by the civil court.

16. *Bhanwar Lal*² follows the line of reasoning in *Ramesh Gobindram*¹. The decision of this Court in *Bhanwar Lal*² is not in any manner inconsistent or contrary to the view taken by this Court in *Ramesh Gobindram*¹. We fully concur with the view of this Court in *Ramesh Gobindram*¹, particularly with regard to construction put by it upon Sections 83 and 85 of the Act. In *Ramesh Gobindram*¹, the Court said:-

32. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the civil courts stands completely excluded by reasons of such establishment.

33. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the civil courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the civil court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal.

34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

17. The matter before us is wholly and squarely covered by Ramesh Gobindram¹. The suit for eviction against the tenant relating to a waqf property is exclusive triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.

18. In view of the above, the impugned order cannot be sustained and it is liable to be set aside and is set aside. The order passed by the Waqf Tribunal on 19.09.2010 is also set aside. The order of the Waqf Tribunal dated 18.09.2010 is restored. The Civil Court shall now proceed with the suit accordingly.

19. Civil Appeals are allowed with no order as to costs.

(2010) 8 SCC 726

2013 (11) SCALE 210

(2010) 14 SCC 588

(2007) 10 SCC 727