

SUPREME COURT OF INDIA

Rajasthan Wakf Board

Vs.

Devki Nandan Pathak

C.A.No.6310 of 2017

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

04.05.2017

JUDGMENT

Abhay Manohar Sapre,J.,

SLP (Civil)No.13251/2014

1. Leave granted.

2. This appeal is filed by defendant No.6 against the final judgment and order dated 30.01.2014 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in CRP No.400 of 2001 whereby the High Court allowed the revision petition filed by the respondent Nos.1 to 5 herein and set aside the order dated 22.02.2001 passed by the Presiding Officer, Rajasthan Wakf Tribunal, Jaipur, wherein the Tribunal decreed the suit filed by the plaintiff-respondent No.6 herein against defendant Nos. 1 to 5 in respect of the suit land.

3. In order to appreciate the issue involved in the appeal, which lies in a narrow compass, it is necessary to state the relevant facts infra.

4. The appellant herein is defendant No. 6 whereas respondent Nos. 1 to 5 are defendant Nos. 1 to 5 and respondent No. 6 is the plaintiff in a suit out of which this appeal arises.

5. The appellant is a Wakf Board registered under the Waqf Act, 1995 (hereinafter referred to as “the Act”). It has an office at Jaipur in the State of Rajasthan.

6. There is a property called "Kauria Wali Masjid" situated in Town Hindaun, Tehsil Hindaun Barpara District Karauli, Rajasthan. The property is registered as "Wakf at Serial No. 23, Page No.116 in the list of Wakf published under Section 5 of the Act. Respondent No. 6 is the Mutawali of the Masjid.

7. On 05.06.1998, respondent No.5 claiming to be the owner of the land situated adjacent to “Kauria Wali Masjid” property measuring 37 feet x 34 feet (hereinafter called the “suit land”) sold to respondent Nos.1 to 4 by deed of sale. This sale gave rise to the dispute between the Wakf represented by respondent No. 6 on the one hand and Respondent Nos. 1 to 5 on the other.

8. Respondent No.6 filed a suit against respondent Nos.1 to 5 and the appellant before the Rajasthan Wakf Tribunal at Jaipur. The foundation on which respondent No. 6 (plaintiff) filed the suit for claiming relief therein, inter alia, was that the “suit land” is the Wakf property or, in other words, a part of the Wakf property and hence respondent No.5, who is an individual and unconnected with the affairs of the Wakf, had no right, title and interest to sell the suit land to anyone much less to respondent Nos. 1 to 4. It was alleged that the sale of the suit land was equally in contravention of Section 51 of the Act and hence the same was void and illegal (para 7 of the plaint). It was also alleged that even the plaintiff, who is a Mutawali of the Masjid (wakf), had no right to sell the Wakf property or/and any of its part without following the due procedure prescribed under the Act. Respondent No.6, therefore, claimed a relief that firstly, respondent Nos.1 to 4 (defendant Nos.1 to 4) should not forcibly take possession of the suit land and in the alternate the sale in question be declared void.

9. Respondent Nos. 1 to 5 filed the written statement and denied the claim set up by respondent No.6 in the plaint. According to them, the suit land was neither the Wakf property and nor a part of any Wakf property. It was alleged that respondent No.5 being the owner of the suit land had every right to sell the suit land to respondent Nos.1 to 4 and which he did by executing the sale deed. It was also alleged that the Tribunal has no jurisdiction to try the suit and the remedy of the plaintiff is to file civil suit before the Civil Court for claiming appropriate reliefs. The Tribunal, on the basis of the pleadings, framed the following issues for adjudication:

- “1. Whether the plaintiff is entitled to file the case?
2. Whether the property in suit is the part of Masjid Kauria Wali?
3. Whether this Board has no jurisdiction to entertain this case?
4. Whether the case is time barred?
5. To what relief the plaintiff is entitled?”

10. The parties adduced evidence. By order dated 22.02.2001, the Tribunal decreed the suit and accordingly passed an order against respondent Nos.1 to 5. It was held that firstly, the Tribunal has the jurisdiction to try the suit; secondly, the plaintiff (respondent No.6) is the Mutawali of the Wakf property and, therefore, competent to file the suit in relation to the suit land; and thirdly, the suit land is the Wakf property or, in other words, a part of the Wakf property and, therefore, it is subjected to the Wakf Act.

11. Felt aggrieved, respondent Nos.1 to 5 filed the revision under Section 83(9) of the Act in the High Court. By impugned order, the Single Judge of the High Court allowed the revision and set aside the order of the Tribunal on the ground that the Tribunal had no jurisdiction to try the suit and the remedy of respondent No.6 (plaintiff) was to file civil suit before the Civil Court. The High Court, therefore, did not examine the merits of the issues arising in the case.
12. Felt aggrieved, defendant No.6-Wakf Board filed this appeal by way of special leave petition questioning the legality and correctness of the order of the High Court.
13. Heard Mr. Salman Khurshid, learned senior counsel for the appellant and Mr. Nitin Bhardwaj and Mr. Praveen Chaturvedi, learned counsel for the respondents.
14. Mr. Salman Khurshid, learned senior counsel appearing for the appellant-Wakf Board while assailing the legality and correctness of the impugned order contended that the High Court erred in holding that the Tribunal did not have jurisdiction to try the suit out of which this appeal arises.
15. According to him, reading the averments made in the plaint as a whole would clearly go to show that the suit filed before the Tribunal was maintainable and, therefore, it was rightly tried and decreed by the Tribunal on merits holding the suit land to be the Wakf property.
16. Learned counsel urged that the basic question, which was required to be decided in the suit as would be clear from issue No. 2, was whether the suit land is a Wakf property or, in other words, whether it is a part of Wakf property or not. Learned counsel pointed out from the pleadings that it has been the case of the plaintiff (respondent No.6 herein) that the suit land has all along been the part of the Wakf property and hence neither respondent No.5 nor anyone had any right to sell the said land so long as the procedure prescribed under the Act for sale of such property is followed.
17. Learned counsel pointed out that under the Scheme of the Act, the question as to whether a particular property is a Wakf property or not has to be tried and decided by the Tribunal under Section 83 of the Act and the jurisdiction of the Civil Court to decide such question is expressly barred by Section 85 of the Act.
18. Learned counsel, therefore, urged that the impugned order should be set aside by holding that the Tribunal has the jurisdiction to try and decide the suit and the matter be accordingly remitted to the High Court for deciding the revision on merits with a view to decide as to whether the Tribunal was justified in holding the suit land to be part of Wakf property or not.
19. In reply, learned counsel for the respondents (defendant Nos. 1 to 5) supported the impugned order and contended that it does not need any interference and the same be upheld by dismissing the appeal.

20. Having heard learned counsel for the parties and on perusal of the record of the case, we find force in the submission of the learned counsel for the appellant.

21. The main question that arises for consideration in this appeal is whether the High Court was justified in holding that the suit was not capable of being tried by the Tribunal under Section 83 of the Act and the remedy of the plaintiff was to file a civil suit before the Civil Court.

22. The Waqf Act, 1995 was amended by The Wakf (Amendment) Act, 2013 (Act No. 27/2013). Since the case at hand is governed by the unamended Act, we take note of some of the relevant unamended provisions of the Act hereinbelow.

23. Section 51 of the Act provides that notwithstanding anything contained in the Wakf Deed, any gift, sale, exchange or mortgage of any immovable property, which is a Wakf property, shall be void unless it is effected with the prior sanction of the Board. Section 52 of the Act empowers the Board to approach the Collector of the District to obtain possession of such Wakf property, which is alienated in contravention of Section 51 or Section 56 of the Act. It also provides a right of appeal to the Tribunal against the order of the Collector passed under Section 52(2) of the Act. Section 54 of the Act provides that the Chief Executive Officer to approach the Tribunal to seek an order of eviction against any encroacher of the Wakf property.

24. Section 83 of the Act empowers the Tribunal to determine any dispute, question or other matter relating to a Waqf or Wakf property under this Act. Section 85 of the Act which deals with the Bar of jurisdiction of Civil Court provides that no suit or other legal proceedings 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 the Tribunal.

25. Reading the averments made in the plaint in the light of aforementioned sections, we are of the considered opinion that the Tribunal was right in its view in holding that it had the jurisdiction to try the suit on merits whereas the High Court was not so in holding the otherwise.

26. In other words, we are of the view that the Tribunal does have jurisdiction to decide the question arising in the suit filed by respondent No.6 and, therefore, the Tribunal rightly tried the suit on merits. The reasons are not far to seek.

27. In the first place, the main question involved in the suit was whether the suit land is a Wakf property or not. Plaintiff says that it is a Wakf property whereas the defendants say that it is not the Wakf property but it is their self property. This question, in our opinion, can be decided only by the Tribunal and not by the Civil Court as has been decided by this Court consistently in *Ramesh Gobindram vs. Sugra Hamayun Mirza Waqf*, and *Bhanwar Lal & Anr. Vs. Rajasthan Board of Muslim Wakf & Ors²*., Second, once the property is declared to be a Wakf property, a fortiori, whether the sale of such property is made by a

person not connected with the affairs of the Wakf or by a person dealing with the affairs of the Wakf, the same becomes void by virtue of Section 51 of the Act unless it is proved that it was made after obtaining prior permission of the Board as provided under the Act. One cannot dispute that the matters falling under Sections 51 and 52 of the Act are also required to be decided by the Tribunal and hence jurisdiction of the Civil Court to decide such matters is also barred by virtue of provisions contained in Section 85 of the Act.

28. In the light of foregoing discussion, we are unable to concur with the reasoning and the conclusion arrived at by the High Court as we find that the High Court while deciding the question did not examine the question in its proper perspective keeping in view the aforementioned provisions, their scope and the law laid down in the cases referred supra.

29. As a result, the appeal succeeds and is allowed. The impugned order is set aside.

30. As a consequence thereof, the matter is remanded to the High Court for deciding the revision afresh on merits with a view to decide as to whether the findings of the Tribunal on merits by which the suit was decreed are correct or not?

31. We, however, make it clear that we have not expressed any opinion on the merits of the case and hence the High Court would now decide the revision expeditiously on merits strictly in accordance with law uninfluenced by any of our observations.

Judgment Referred.

¹(2010) 8 SCC 0726

²(2014) 16 SCC 0051