

RAJASTHAN HIGH COURT

Rajendra Kumar Sharma

Vs.

Rakesh

S.B. Civil Revision Petition No. 154 of 2007

(Narendra Kumar Jain, J.)

08.07.2008

JUDGMENT

Narendra Kumar Jain, J.

1. Admit.
2. Heard the learned counsel for the parties.
3. The plaintiffs - respondents filed a suit for eviction and recovery of arrears of rent in respect of rented property against defendants - petitioners in the trial court. The defendants filed their written statement, wherein they raised number of objections including the objection relating to denial of title of the plaintiffs in respect of disputed property. The trial court framed seven issues. Thereafter both the parties led their evidence on the issues framed in the case and case was fixed for final arguments. The learned counsel for the defendants raised a preliminary objection in the trial court about maintainability of the present suit in Civil Court in view of specific bar of jurisdiction of civil court as contained in Section 85 of the Wakf Act, 1995. It was contended that owner of the disputed property is Muslim Wakf Board and not the plaintiffs; therefore, this being a matter relating to wakf property, the civil suit is barred under Section 85 of the Wakf Act.
4. It is relevant to mention here that no such objection, in the written statement, was raised by the defendants and no specific issue in this regard was framed by the trial court. However, the learned trial court entertained this issue raised on behalf of the defendants and recorded a finding that suit is not maintainable in the Civil Court in view of specific bar contained in Section 85 of the Wakf Act and consequently without going into other issues framed in the case passed an order to return the suit for its

presentation before the competent Tribunal. Being aggrieved with the same, the plaintiffs preferred an appeal. The appellate court reversed the finding of the trial court and recorded a finding that the present suit was a suit for eviction and recovery of arrears of rent and the question of landlord and tenancy was relevant in it, therefore, suit was maintainable before the civil court and consequently remanded the matter to trial court for fresh decision on all issues framed in the case after hearing both the parties. The defendants challenged the aforesaid order of the first appellate court before this Court in this revision petition.

5. The learned counsel for the defendants - petitioners contended that the disputed property was a wakf property and even if the present suit was a suit for eviction and recovery of arrears of rent but the same was relating to wakf property itself, therefore, trial court was fully justified in returning the suit to plaintiffs for its presentation to competent Tribunal. He contended that first appellate court committed an illegality in setting aside the finding recorded by the trial court which was in accordance with Section 85 of the Wakf Act, therefore, the finding of the first appellate court may be set- aside and finding of trial court be restored.

6. The learned counsel for the non petitioners contended that a bare perusal of suit filed by the plaintiffs - non petitioners shows that it was a suit for eviction of tenant i.e defendants from the rented property and for recovery of arrears of rent. There was no dispute in between Wakf Board and plaintiff about title of the property. In these circumstances, the trial court committed an illegality in returning the plaint to plaintiffs being not maintainable in view of Section 85 of the Wakf Act and first appellate court was right in setting aside the order passed by the trial court and remanding the matter for fresh decision on each issue. He further contended that the disputes regarding wakfs have been prescribed in Section 6 of the Wakf Act and those disputes which have been mentioned in it are tribal by Tribunal and not by civil court. He also referred to Section 7 of the Act of 1995 - Power of Tribunal to determine disputes regarding wakfs. He, therefore, contended that the submission of learned counsel for the petitioners is not tenable in the facts and circumstances of the present case and the revision petition is liable to be dismissed.

7. I have considered the submissions of learned counsel for the parties and examined the impugned judgment passed by trial court as well as appellate court both. Section 6, 7 and 85 of the Wakf Act, 1995 are reproduced as under :

"6. *Disputes regarding wakfs.* - (I) If any question arises whether a particular

property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf -specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein 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 wakfs.

Explanation. - For the purposes of this section and Section 7, the expression "any person interested therein" ,shall,in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4.

(2) Notwithstanding anything contained in sub-section (I) no proceeding under this Act in respect of any wakf 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 subsection(I) 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 there under.

(4) The list of wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (I), 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 (I).

7. Power of Tribunal to determine disputes regarding wakfs. - (I) 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; and
(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 provisions 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 made a party to any application under sub-section (I).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section(I), 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.

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. The Allahabad High Court in *Yashpal Lala Shiv Narain v. Allatala Tala Malik Waqf Ajakhan Mus*, ¹ considered the same point relating to jurisdiction of civil court in respect of disputes in between the landlord and tenant relating to wakf property itself. The Allahabad High Court held that bar created by Section 85 of the Wakf Act, 1995 does not apply in the present case. The relevant paras 116, 119, 170 and 171 in *Yashpal Lala Shiv Narain* case (supra) are reproduced as under:

"116. This decision thus laid down that the discretion exercised by the courts below giving relief against forfeiture of tenancy for non-payment of rent under

Section 114 of the Transfer of Property Act should not normally be interfered with by the higher court.

119. Thus, it follows from this decision that in case, the discretionary power under Section 144 of the Transfer of Property Act is shown to have been exercised in violation of some principle of law then interference by the higher court under Section 115 of the Civil Procedure Code is permissible.

170. Further, analysis of various provisions of the Wakf Act, 1995, particularly, Sections 6, 7, 32, 33, 35, 40, 51, 52, 54, 64, 67, 69 and 83 thereof, shows that such a Suit for eviction of the tenant [i.e. petitioner (defendant)] after determination of the tenancy/lease is also not covered within the purview of the words "other matter which is required by or under this Act to be determined by a Tribunal."

171. In the circumstances, I am of the opinion that the bar created by Section 85 of the Wakf Act, 1995 does not apply in the present case, which pertains to a Suit for eviction of the tenant from the disputed shop after determination of the tenancy/lease. As such, in my opinion, the submissions made by the learned counsel for the petitioner (defendant) in this regard, cannot be accepted."

9. The above referred provisions make it clear that wakf disputes have been referred in Section 6 of the Act i.e. a dispute whether a particular property specified as wakf property in the list of wakfs is a wakf property or not or a wakf specified in such list is a shia wakf or sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question. The tribunal is empowered under Section 7 of the Act that any question arises, whether a particular property specified as wakf property in the list of wakf is a wakf property or not or whether a wakf specified in such list is a shia wakf or a sunni wakf, the Board or mutawallai, may apply to the Tribunal. A bar to institute a civil suit in respect of disputes regarding wakf as enumerated in Section 6 and 7 of the Act, has been created so as to avoid any conflict in respect of jurisdiction of Tribunal and the Civil Court and for the said purpose a specific provision has been enumerated in Section 85 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 a Tribunal. If a dispute arises in respect of wakf property which is required by or under the Wakf Act, to be determined by a Tribunal, then only a jurisdiction of civil court has been barred under Section 85 of the Act. So far as the present case is concerned, the case of plaintiffs is that the disputed property was taken by them from the Board and it was let

out to defendants, meaning thereby, the plaintiffs are landlord and defendants are tenant in disputed property. The defendants may be subtenant for the purpose of Wakf Board but it is a dispute in between the landlord and tenant and no relief has been sought in the civil suit against Board nor any question is required to be determined in the present suit under any provisions of the Wakf Act. The present suit is a simple suit relating to relationship of landlord and tenant. The plaintiffs were landlord and defendants are their tenant and there is a prayer about eviction of tenant in the suit on the grounds mentioned in the plaint. The civil court has already framed the issues and both the parties have also led their evidence. The Wakf Board is not claiming the disputed property as its own property in the present case. The issues formulated in the suit are not covered by Sections 6 and 7 of the Act and in these circumstances the bar created under Section 85 of the Act for jurisdiction of the Civil Court is not attracted in the facts and circumstances of the present case. The learned trial court committed an illegality in returning the plaint to plaintiffs. The appellate court has rightly set aside the order of the trial court and the same does not call for any interference by this Court.

10. In view of above discussions, I do not find any merit in this revision petition and the same is, accordingly, dismissed with no order as to costs.

Petition dismissed.

Cases Referred.

1. 2006(2) RCR(Civil) 712 : 2006(1) RCR(Rent) 475 : (AIR 2006 All 1115)