



1

903wp12083o19

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12083 OF 2019

Syed Abdulla s/o Syed Hasan,
Age : 75 years, Occupation : Labour,
R/o Gujar Chowk, Himayatnagar,
District Nanded.

...PETITIONER
(Orig. Defendant)

-VERSUS-

Rajeshwar Madhavrao Deshpande,
Age : 78 years, Occupation : Agriculture,
R/o Brahmangaon, Taluka Omerkhed,
District Yeotmal.

...RESPONDENT
(Orig. Plaintiff)

...

Advocate for the Petitioner : Shri Kadam Vithal P.
Advocate for the Respondent : Shri P.P.Mandlik
Amicus Curiae : Shri Ajay S. Deshpande, Advocate

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th December, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The issue raised in this petition by the petitioner, original defendant in Regular Civil Suit No.34/2016, is as to whether, the Civil

Court would have jurisdiction to deal with a suit purely filed for injunction in connection with the wakf property.

3 The grievance of the petitioner is that he had raised an objection in R.C.S. No.34/2016 that the suit is not maintainable since the suit property is admittedly wakf property. Based on such objection below exhibit 17, the Trial Court framed a preliminary issue regarding jurisdiction vide order dated 18.04.2017 and adjudicated the preliminary issue under Order XIV of the Code of Civil Procedure. Though the suit property is the wakf property, the Trial Court has delivered the impugned order dated 11.06.2018 holding that the suit is maintainable and the Trial Court has jurisdiction to decide the said suit.

4 After this matter was heard for some time on 02.12.2019, this Court requested Shri Ajay S. Deshpande, learned advocate, to render assistance to the Court. The matter was, therefore, posted today for considering the submissions of the learned advocates for the respective sides as well as the learned Amicus Curiae.

5 Shri Deshpande has prepared certain synoptical notes for the consideration of this Court in view of the judgments, which were being cited. It would be apposite to reproduce some of the contentions of Shri Deshpande as under :-

- (a) *"The decision in Ramesh Gobindram's case says that the bar under Section 85 would not be applicable for the proceedings instituted for injunction simplicitor, upon*

taking overall review of the provisions of the Wakf Act, 1995. Exclusion of jurisdiction of Civil Court, expressly or by necessary implications is considered essential for ouster of jurisdiction, especially in respect of a dispute regarding eviction from Wakf property. Couple of months thereafter, the Supreme Court in Board of Wakf, West Bengal vs. Anis Fatma has held that, the jurisdiction of the Civil Courts would be ousted, in as much as Section 83(5) of the Wakf Act confers powers on the Wakf Tribunal as are available to the Civil Court under Code of Civil Procedure and thus, has observed that, powers under Order 39 Rule 1, 2 and 2-A of CPC of granting temporary injunctions and enforcement thereof would as well vest with Wakf Tribunal, by recording that, a full-fledged remedy is available to the parties relating to Wakf or Wakf property. The earlier judgment in Ramesh Gobindram's case has also been referred while rendering the said decision and it has been held that the said case is distinguishable.

Earlier judgment in Ramesh Gobindram's case having been referred to in the subsequent judgment in Anis Fatma's case, it is saved from being termed as 'per-incurium'. The later decision of Anis Fatma's case pertains to demarcation of wakf property whereas the earlier decision in Ramesh Gobindram's case is in respect of eviction from wakf property."

- (b) "In a subsequent decision rendered on 15.12.2015 in Lal Shah Baba Dargah Trust vs. Magnum Developers, the Hon'ble Apex Court has considered the provisions of Sections 83 and 85 of Wakf Act, 1995 in order to exclude the jurisdiction of Revenue Courts and any authorities, however, besides Civil Courts in respect of disputes, questions or other matters relating to wakf. Albeit the Hon'ble Apex Court held that after the Amending Act of 2013, this Hon'ble Court has erred in law in directing the Civil Court to decide the disputes in respect of wakf property."
- (c) "The issue of jurisdiction of Wakf Tribunal under Section 85 of 1995 Act, as stood amended in 2013, however, has not been considered in the context of the provisions of Section 6(1) of the Wakf Act, 1995, which circumscribes the scope of Wakf Tribunal. Necessarily, the dispute

before the Hon'ble Apex Court was referable to Section 83 in Lal Shah Baba Dargah's case and the Hon'ble Apex Court was not called upon to consider ouster of jurisdiction of Civil Court viz-a-viz the provisions of Section 6(1) of the Wakf Act, 1995."

- (d) "In a recent decision rendered by the Hon'ble Apex Court in Punjab Wakf Board vs. Sham Singh Harike (2019) 4 SCC page 698, the issue of bar of jurisdiction of Civil Court under Section 83 of the Wakf Act was under consideration and in unequivocal terms the Hon'ble Apex Court has made it abundantly clear that bar of jurisdiction of Civil Court is confined only to those matters which are required to be determined by the Tribunal under the Wakf Act. Therefore, proceedings in which any of the two issues postulated under Section 6(1) are not under consideration, the Hon'ble Apex Court has ruled that the Civil Court shall have jurisdiction, in as much as the issues raised before the Civil Court are not mandated to be adjudicated upon by the Wakf Tribunal, in terms of Section 6 (1) of the Wakf Act, 1995."

6 Following judgments have been cited by the learned advocates and Shri Deshpande :-

- (a) **Ramesh Gobindram (dead) through Lrs. vs. Sugra Humayun Mirza Wakf, AIR 2010 SC 2897 : 2010 (8) SCC 726.**
- (b) **Board of Wakf, West Bengal and another vs. Anis Fatma Begum and another, (2010) 14 SCC 588.**
- (c) **Lal Shah Baba Dargah Trust vs. Magnum Developers and others, AIR 2016 SC 381 : (2015) 17 SCC 65.**
- (d) **Punjab Wakf Board vs. Sham Singh Harike, 2019 (4) SCC**

698 : 2019 (3) Scale 56 : 2019 (2) Bom. C.R. 674 (SC).

7 In **Ramesh Gobindram** (supra), the Honourable Supreme Court concluded in paragraphs 21, 22 and 23 as under :-

- "21. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends 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. 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. 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.
22. 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. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed.

23. *In the result these appeals succeed and are hereby allowed. The impugned orders passed by the High Court and those passed by the Wakf Tribunal shall stand set aside and the suit filed by the respondent-Wakf Board for the eviction of the appellants dismissed leaving the parties to bear their own costs. We make it clear that this order shall not prevent the Wakf Board from instituting, if so advised, appropriate civil action before the competent Civil Court for redress in accordance with law. No costs."*

8 It was, therefore, held that the bar introduced by Section 85 of the Wakf Act, 1995 r/w Section 83, would not push the exclusion of jurisdiction of civil courts to the extent beyond the prescription of Section 6(5), Section 7 and Section 85.

9 In the **Board of Wakf, West Bengal** (supra), the Honourable Supreme Court considered **Ramesh Gobindram** (supra) and observed in paragraphs 16, 17 and 18 as under :-

- "16. *In view of the above, we are of the opinion that since the matter fell under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction in the matter, and not the civil court. However, in view of the decision of this Court*

in Sardar Khan v. Syed Najmul Hasan (Seth), AIR 2007 SC 1447, the Wakf Act will not be applicable to suits/appeals/revisions/proceedings commenced prior to 1.1.1996 when the Wakf Act came into force.

17. *Learned counsel for the respondent, however, relied on the decision of this Court in Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726. In the aforesaid decision it was held that eviction proceedings can only be decided by the Civil Court and not by the Wakf Tribunal. The dispute in the present case is not an eviction dispute. Hence, the aforesaid decision in Ramesh Gobindram case is distinguishable.*
18. *For the reasons mentioned above, the impugned judgment of the Calcutta High Court cannot be sustained and it is hereby set aside. We hold that only the Wakf Tribunal has jurisdiction in the matter and the parties can approach the Wakf Tribunal, if so advised."*

10 It is, therefore, concluded that the matters which would fall within the prescription of Section 6(1) r/w 6(5) of the Wakf Act, 1995, would not be entertained by the Civil Courts and any issue, decision on which is prescribed by Section 6(1), would exclusively be dealt with by the Wakf Tribunal and the Civil Court's jurisdiction would then be excluded.

11 Insofar as the judgment delivered by the Honourable Supreme Court in *Lal Shah Baba Dargah Trust* (supra) is concerned, it was an issue before the Honourable Supreme Court as to whether, the constitution of the Tribunal comprising of only one member would still have jurisdiction to deal with cases falling within the ambit of the Wakf Tribunal. The issue as to what would be the scope and ambit of Section

6(1), was not before the Honourable Supreme Court in the said case.

12 It has been rightly submitted by Shri Deshpande and as has been the contention of Shri Mandlik, learned advocate, on behalf of the respondent that, the law does not hold that the moment there is a wakf property involved in a matter, the jurisdiction of the Civil Court would be ousted. Merely because the property is a wakf property, would not oust the jurisdiction of the Civil Court. If the issue as prescribed under Section 6(1) is the subject matter of the proceeding and if a decision is called for on such subject covered by Section 6(1), the Wakf Tribunal would have the exclusive jurisdiction and the jurisdiction of the Civil Court would, therefore, be ousted to that extent.

13 In **Punjab Wakf Board** (supra), the Honourable Supreme Court has held in paragraphs 52 and 53 as under :-

"52. Coming to Section 83 which relates to bar of jurisdiction of Civil Court, the relevant words are "any dispute, question or other matter relating to a wakf or wakf property" which is required by or under this Act to be determined by the Tribunal. Thus, bar of jurisdiction of Civil Court is confined only to those matters which are required to be determined by the Tribunal under this Act. Thus, Civil Court shall have jurisdiction to entertain suit and proceedings which are not required by or under the Act, 1995 to be determined. Thus, answering the question of jurisdiction, question has to be asked whether the issue raised in the suit or proceeding is required to be decided under the Act, 1995 by the Tribunal, under any provision or not. In the event, the answer is affirmative, the bar of jurisdiction of Civil Court shall operate.

53. In the judgment in **Ramesh Gobindram** (supra) this Court

after considering Section 83 and 85 as noted above has explained the provisions. We now have to apply the proposition of the law as noted above in facts before us in both the appeals."

14 It is, therefore, apparent that the judgment in ***Punjab Wakf Board*** (supra) is the last word of the Honourable Supreme Court on this issue. The judgments delivered in the ***Board of Wakf, West Bengal*** (supra) and ***Ramesh Gobindram*** (supra) have been considered by the Honourable Supreme Court in ***Punjab Wakf Board*** (supra).

15 Considering the above, I find that the impugned order passed by the Trial Court holding that though there is no dispute that the property at issue is a wakf property, the issue in the suit is only restricted to injunction and therefore, the Trial Court would have jurisdiction, cannot be faulted.

16 This Writ Petition, being devoid of merit is, therefore, dismissed. Rule is discharged.

17 I record my appreciation for the assistance rendered by Shri Ajay S. Deshpande on a short notice.

kps

(RAVINDRA V. GHUGE, J.)