

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 15.7.2019

1.

RSA No.2700 of 2017(O&M)

Punjab Waqf Board

.....Appellant

VERSUS

Jamna Bai and others

.....Respondents

Present: Mr. G.N. Malik, Advocate for the appellant.

Mr. Raman Goklaney, Advocate for respondents.

2.

RSA No.2725 of 2017(O&M)

Punjab Waqf Board

.....Appellant

VERSUS

Sucha Singh and others

.....Respondents

Present: Mr. G.N. Malik, Advocate for the appellant.

Mr. S.K. Arora, Advocate for the respondents.

3.

RSA No.2781 of 2017(O&M)

Punjab Waqf Board

.....Appellant

VERSUS

Kirpal Kaur and others

.....Respondents

Present: Mr. G.N. Malik, Advocate for the appellant.

Mr. S.K. Arora, Advocate for respondents No.1 to 3.

4.

RSA No.2812 of 2017(O&M)

Punjab Waqf Board

.....Appellant

VERSUS

Thakur Singh (deceased) through his LRsRespondents

Present: Mr. G.N. Malik, Advocate for the appellant.

Mr. Raman Goklaney, Advocate for respondents.

5. **RSA No.3165 of 2017(O&M)**

Punjab Waqf BoardAppellant

VERSUS

Nishan Singh and othersRespondents

Present: Mr. G.N. Malik, Advocate for the appellant.

None for the respondents.

6. **RSA No.3438 of 2017(O&M)**

Punjab Waqf BoardAppellant

VERSUS

Baldev Singh and othersRespondents

Present: Mr. G.N. Malik, Advocate for the appellant.

Mr. N.K. Manchanda, Advocate for respondents.

7. **RSA No.5386 of 2017(O&M)**

Punjab Waqf BoardAppellant

VERSUS

Ajit Kaur and othersRespondents

Present: Mr. G.N. Malik, Advocate for the appellant.

8. **RSA No.5568 of 2017(O&M)**

Punjab Waqf BoardAppellant

VERSUS

Sukhwant Singh and others

.....Respondents

Present: Mr. G.N. Malik, Advocate for the appellant.

Ms. Monika Bansal, Advocate for
Mr. Pardeep Bajaj, Advocate for respondents.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of RSA Nos.2700, 2725, 2781, 2812, 3165, 3438, 5386 and 5568 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from 2781 of 2017.

Punjab Wakf Board through its Estate Officer, Ferozepur filed a suit for possession by eviction of respondents/defendants from Wakf property i.e. agricultural land 41 kanal 7 marlas situated in the area of village Kari Khurd, Tehsil and District Ferozepur, detailed in headnote of the plaint. It is averred that from the year 2003-04, defendant No.1 became defaulter and did not pay lease amount. Defendants are in illegal and unauthorized possession of the suit property and they have no right to retain the same. Defendants are also liable to pay damages for illegal use of suit land.

The respondents/defendants filed the written statement and raised preliminary objections including that Civil Court has no jurisdiction to entertain the suit as the property is of Punjab Wakf Board. Tenants can be evicted only under the Punjab Security of Land Tenures Act, 1953 and not by the Civil Court. On merits, it is pleaded that Puran Singh (since

deceased), father of defendants and answering defendants are not defaulters as they have already paid entire lease money to the plaintiff-Board. Some installments of lease money were received by the officials at the spot when they came for recovery of lease money from the tenants but they have not issued any receipt of rent/lease money. The answering defendants are ready to deposit the outstanding lease amount.

The appellant filed replication re-asserting its stand taken in the plaint while controverting the preliminary objections raised in the written statement.

The trial Court framed following issues for determination:-

1. Whether the plaintiff is entitled for possession and eviction of the defendants from the suit property as prayed for? OPP
2. Whether the present suit is not maintainable in the present form? OPD
3. Whether the present suit is bad for mis-joinder of necessary parties? OPD
4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court decreed the suit for possession of suit land and defendants were directed to hand over vacant possession of suit property to the plaintiff- Board.

Feeling aggrieved by the judgment and decree passed by the trial Court, the respondents/defendants filed appeal before the District Judge, Ferozepur and the same was decided by the Additional District

Judge, Ferozpur. The Appellate Court reversed findings of the trial Court on the question of jurisdiction of the Civil Court and as a consequence the appeal was allowed, judgment and decree passed by the trial Court was set aside and suit filed by the appellant- Board was dismissed.

Counsel for the parties are ad idem that only issue that survives for consideration is, whether the Civil Court has jurisdiction to entertain and decide the suit for possession by way of eviction of the respondents/defendants or the remedy lies with the revenue Courts under the Punjab Tenancy Act, 1887.

Counsel for the appellants would argue that lease created in favour of the respondents without previous sanction of the Board is *void ab initio* in view of the provisions of Section 36-F of the Wakf Act, 1954 (in short '1954 Act') that stands repealed by the Wakf Act, 1995 (in short '1995 Act') but the Act of 1995 also contains Section 56 which is *pari materia* to the provisions of Section 36-F of the 1954 Act. It is argued with vehemence that since the lease created either under the 1954 Act or under the 1995 Act without previous sanction of the Board is void notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, the first Appellate Court committed a gross error rather perversity by holding that the respondents are to be treated as tenants in the suit property and they can be evicted therefrom by initiating proceedings under the Punjab Tenancy Act, 1887, as has been so held by a Single Bench of this Court in **Dalwinder Singh and another Vs. Financial Commissioner, Punjab and others, CWP No.6652 of 2009 decided on 03.08.2011.** It is further argued that in **Dalwinder Singh and another case (supra),** this was not the issue before

the Court, whether a lessee in whose favour the lease was created without previous sanction of the Board can claim himself to be a tenant, therefore, entitle to protection of the tenancy laws in force in the State of Punjab. It is further argued that the judgment passed by the Single Bench in the aforesaid writ petition was challenged in Letters Patent Appeal No.2135 of 2011 decided on 09.08.2012 wherein a Division Bench of this Court has held that Sections 9 and 14 of the Punjab Security of Land Tenures Act, 1953 protect agricultural tenancies but did not apply to Wakf property. He has further argued that Hon'ble the Supreme Court in **Ramesh Gobindram (dead) through LRs Vs. Sugra Humayun Mirza Wakf, 2010 (9) SC 206** has held that a suit for ejectment has to be filed before a Civil Court and not before the Tribunal constituted under the 1995 Act.

Counsel representing the respondents, on the contrary, has supported findings of the first Appellate Court by relying upon judgment in **Dalwinder Singh and another case (supra)** wherein this Court has upheld the orders passed by the revenue authorities for eviction of Dalwinder Singh and another from land claimed to be property of Punjab Wakf Board situated in village Hamad, Tehsil and District Ferozepur.

I have heard counsel for the parties, perused the paper-book particularly the judgments passed by the Courts below.

The trial Court accepted plea of the appellant- Board with regard to its ownership of the suit land. Indisputably, there was no issue involved in the *lis* whether the suit land is Wakf property or otherwise. As has been noticed hereinbefore, the precise issue involved in the case is whether in the given circumstances, jurisdiction lies with the civil Court or the revenue Courts.

Before adverting to the submissions made by counsel for the parties, it is pertinent to mention that the judgment relied upon by the first Appellate Court **Dalwinder Singh and another case (supra)** has not dealt with the issue if Dalwinder Singh and another can be said to be tenants in the suit land of Punjab Wakf Board or not. On the other hand, Dalwinder Singh and another claimed themselves to be tenants in the land in question but still raised the issue that jurisdiction to evict them from suit land lies with the Civil Court and not with the revenue Courts under the Punjab Tenancy Act, 1887. On the contrary, the primary issue before this Court is whether the respondents can claim themselves to be tenants in the suit land. There is no clear evidence available on record as to the time when initially the suit land was given on lease to the respondents/defendants. However, counsel for the respondents/defendants had stated that as per his information, land was given on lease before the 1995 Act came into force whereby the 1954 Act stood repealed.

Section 36-F of 1954 Act, reads as follows:-

“36-F. Restrictions on the powers to grant lease of wakf property.- (1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or, instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for the making or renewal of lease under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.”

Section 56 of the 1995 Act also deals with restrictions on power to grant lease of wakf property. Sub – section (2) of Section 56 of 1995 Act before its amendment by Act No.27 of 2013 w.e.f. 01.11.2013, relevant in the present context, reads as follows:-

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.”

Perusal of the aforesaid extract from the 1954 Act and 1995 Act leaves no manner of doubt that lease for a period exceeding one year is to be treated as void and of no effect unless it is made with the previous sanction of the Board. Counsel for the respondents has fairly conceded that there is no evidence adduced by the respondents to prove that lease in favour of their predecessor in interest was created with the previous sanction of the Board, in compliance with the relevant provisions of the Act in force at that time. That being so, lease in favour of predecessor in interest of the respondents is void and of no effect, therefore, the respondents/defendants cannot claim themselves to be tenants in suit land. As such, they are not entitle to protection of the provisions contained in

Punjab Tenancy Act, 1887 nor can be heard to say that they cannot be evicted from the suit land except by filing appropriate application before the revenue Courts seeking eviction of the respondents under the Punjab Tenancy Act, 1887. In this view of the matter, judgment passed by this Court in **Dalwinder Singh and another case (supra)** has got no bearing to uphold plea of the respondents and findings of the first Appellate Court that jurisdiction to decide the suit does not lie with the Civil Court or the same lies with the revenue Courts under the Punjab Tenancy Act, 1887. That being so, findings of the first Appellate Court on the question of jurisdiction cannot be allowed to sustain and are accordingly set aside.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeals are allowed. Judgments and decrees passed by the first Appellate Court are set aside. As a natural consequence, judgments and decrees passed by the trial Court are restored.

JULY 15, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no