

Punjab-Haryana High Court

Punjab Wakf Board vs Gram Panchayat on 23 September, 2011

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

C.W.P. No. 19962 of 2009

DATE OF DECISION : 23.09.2011

Punjab Wakf Board

.... PETITIONER

Versus

Gram Panchayat, Dakha, Tehsil and District Ludhiana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE M. JEYAPPAUL

Present: Mr. Baldev Raj Mahajan, Advocate,
for the petitioner.

Mr. H.S. Dhindsa, Advocate,
for respondent No.1.

SATISH KUMAR MITTAL , J.

Punjab Wakf Board has filed the instant petition under Articles 226/227 of the Constitution of India for quashing the order dated 12.1.2006 (Annexure P-9), passed by the Collector, whereby its petition/suit under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Village Common Lands Act'), for declaring it as owner of the disputed land has been dismissed; as well as the order dated 25.4.2008 (Annexure P-11), passed by the Commissioner, dismissing its appeal against the aforesaid order.

The dispute in this case is regarding 2 Bighas 14 Biswas and 6 Biswas of land, situated in village Dakha, Tehsil and District Ludhiana. As per the revenue record, the said land is recorded under ownership of the Gram Panchayat. The Gram Panchayat has been leasing out this land to various persons for cultivation from time to time, for the benefit of the Gram Panchayat. Last time, this land was given on lease to respondent No.4 Bant Singh. After the expiry of the lease period, when he did not hand over the vacant possession of the land to the Gram Panchayat, the Gram Panchayat filed an application under Section 7 of the Village Common Lands Act against him. In the said application, the petitioner Board filed an application to become party, and subsequently, it filed a petition/suit under Section 11 of the Village Common Lands Act for declaring it as owner of the disputed land.

In the petition/suit, filed by the petitioner Board under Section 11 of the Village Common Lands Act, it has been contended that the land in dispute, being a Muslim graveyard, is a Wakf property. It has been so notified vide notification dated 19.9.1970 (Annexure P-3), issued by the Central Government under Section 5 (2) of the Wakf Act, 1954 (now repealed, a new Wakf Act, 1995 has been enacted), which according to the petitioner Board is the conclusive proof of its ownership. The Gram Panchayat never filed any civil suit claiming this land as Panchayat land. It is further case of the petitioner Board that the Gram Panchayat has nothing to do with the disputed land, which is not shamilat deh and was never used for common purpose of the village. The land is wakf property and it was leased out by the petitioner Board to respondent No.4.

After taking into consideration the evidence led by both the parties, the Collector decided the aforesaid petition against the petitioner Board. It was held that after the year 1947, through out in the revenue record, the land in dispute has been recorded to be owned by the Gram Panchayat. However, in the column of cultivation, it has been recorded as Maqbooza Ahley Islam/Kabristhan. It has been further held that after partition of the country in the year 1947, the land in dispute is being used for cultivation. It has also been held that with the enactment of the Punjab Village Common Lands (Regulation) Act, 1953 (Punjab Act No.1 of 1954) (hereinafter referred to as 'the Act of 1953'), by virtue of Section 3 of the Act of 1953, the land in dispute vested in the Gram Panchayat, and since then, in the revenue record, name of the Gram Panchayat has been recorded as owner. While relying upon the decision of the Hon'ble Supreme Court in Gram Panchayat of village Jamalpur v. Malwinder Singh & others, 1985 PLJ 463, it has been further held by the Collector that merely by issuing a notification under the Wakf Act, the petitioner Board does not become the owner of the land in dispute, which is neither a conclusive proof of ownership, nor is binding on the Gram Panchayat. It has been further held that since in the revenue record, the land is recorded to be owned by the Gram Panchayat, the petitioner Board was not competent to lease out the same to respondent No.4. In view of these findings, vide order dated 12.1.2006 (Annexure P-9), the petition/suit filed by the petitioner Board under Section 11 of the Village Common Lands Act was dismissed by the Collector.

On appeal filed by the petitioner Board, this order was affirmed by the Commissioner, vide order dated 25.4.2008 (Annexure P-11). Hence, this writ petition.

We have heard learned counsel for the parties and have gone through the impugned orders.

Learned counsel for the petitioner Board argued that though in the revenue record, the Gram Panchayat has been recorded as owner of the land in dispute, but possession of the same has been shown in the name of Maqbooza Ahley Islam/Kabristhan, therefore, on the basis of the said entry, a notification under Section 5 (2) of the Wakf Act declaring the disputed land as Wakf property was issued. He further argued that under Sections 6 and 7 of the Wakf Act, if any question arises whether a particular property specified as Wakf property in the list of Wakfs is Wakf property or not, the same can be determined only by the Wakf Tribunal, and such question could not have been decided by the Collector under Section 11 of the Village Common Lands Act. He further pointed out that under Section 85 of the Wakf Act, jurisdiction of the civil court to determine the question relating to any wakf or wakf property has been barred. Thus, according to the learned counsel, the authorities under the Village Common Lands Act have no jurisdiction to adjudicate as to whether

any particular property is wakf property or not. Thus, the Collector as well as the Commissioner have committed jurisdictional error, while deciding that the land in dispute is not a wakf property and the same vests in the Gram Panchayat. Learned counsel further argued that once as per the revenue record, the land in dispute was recorded as Gair Mumkin Kabristhan, such property vests in the wakf property and merely changing of its use will not make any effect.

On the other hand, learned counsel for respondent No.1 argued that as per the admitted position, prior to the year 1947, and when the Act of 1953 came into force, the land in dispute was shamilat deh and in view of Section 3 of the Act of 1953, such land vests in the Gram Panchayat having the jurisdiction over the village. Therefore, while taking into consideration this legal position and the factual position that since then, in the revenue record, the land in dispute has been recorded to be owned by the Gram Panchayat as well as the fact that the land in dispute was never used for Kabristhan and is always being used for cultivation purpose, the authorities have rightly dismissed the petition/suit filed by the petitioner Board, holding that the land in dispute is owned by the Gram Panchayat and not by the petitioner Board.

After hearing learned counsel for the parties and perusing the impugned orders, we do not find any force in the contention raised by learned counsel for the petitioner Board.

It is undisputed position that in the revenue record, the land in dispute has been recorded under the ownership of the Gram Panchayat. However, in the column of possession, it has been recorded as Gair Mumkin Kabristhan/Maqbooza Ahley Islam. It is also admitted position that at the time of coming into force of the Act of 1953, the land in dispute was recorded as shamilat deh, nature of which was recorded as Gair Mumkin Kabristhan/Maqbooza Ahley Islam. Section 3 of the Act of 1953 provides that notwithstanding any thing to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the shamilat deh of any village shall, on the appointed date, vest in the Gram Panchayat having jurisdiction over the village. Since in the revenue record, the land in dispute was described as shamilat deh and it was being used for Kabristhan, which was a common purpose of the village, by virtue of Section 3 of the Act of 1953, such land vests in the Gram Panchayat. Both the authorities found as a fact that after partition of the country, the land in dispute was never used as Kabristhan and it was being used for cultivation. At the time of partition of the country, all the Muslims of the village had migrated to Pakistan. It is further admitted position that much before the notification dated 19.9.1970, issued by the Central Government declaring the disputed property as wakf property, the land in dispute already stood mutated in favour of the Gram Panchayat and in the jamabandi for the year 1965-66, name of the Gram Panchayat is recorded as owner of the land in dispute. It is not the case of the petitioner Board that before issuing the notification, any notice was issued to the Gram Panchayat and it was heard. Merely by issuing a notification under Section 5 (2) of the Wakf Act declaring the disputed land as wakf property, in our opinion, would not divest the Gram Panchayat of its ownership, which stood already vested in it by virtue of the Act of 1953. It is settled proposition of law that the notification with regard to a wakf property is not conclusive qua third party and the same is not binding on it. In this regard, reference can be made to a Division Bench decision of this Court in Punjab Wakf Board Versus Joint Development Commissioner, 2008 (4) RCR (Civil) 693, wherein it has been held that

when before issuing the notification issued under Section 5 (2) of the Wakf Act declaring certain land as wakf property, no notice is issued to the Panchayat, then such notification is not conclusive of ownership of the Wakf Board. The Wakf Board has to show that the land was dedicated by a Muslim i.e. a person professing Islam for charitable purposes and it has to be proved that the land was used as a Kabristhan. The Hon'ble Supreme Court in Punjab Wakf Board Versus Gram Panchayat @ Gram Sabha, 2000 (2) SCC 121, while considering the Explanation added to sub-section (1) of Section 6 of the Wakf Act, by the Central Act, 69 of 1984, has held that if any stranger claiming interest in the property does not file a civil suit within one year, the notification would be binding on him, provided he was given notice in the inquiry under Section 4 preceding the notification under Section 5 (2) of the Wakf Act. Thus, in our opinion, in the present case, the notification was neither conclusive of ownership nor binding on the Gram Panchayat.

Now, after filing the title suit before the Collector, getting it adjudicated and loosing the case, now the petitioner Board is taking U turn by raising the contention that the authorities under the Village Common Lands Act have no jurisdiction to adjudicate whether the land in dispute is a wakf property and the said jurisdiction exclusively vests in the Wakf Tribunal, established under the Wakf Act. In our opinion, to determine the controversy as to whether the land in dispute vests in the Gram Panchayat or in the petitioner Board, only the authorities under the Village Common Lands Act have the jurisdiction and not the Wakf Tribunal, established under the Wakf Act. In Punjab Wakf Board Versus Gram Panchayat @ Gram Sabha (supra), the Hon'ble Supreme Court, while considering this issue, has held that when the issue is whether a particular land falls under the definition of shamilat deh and is being used for the common purpose of the village community, such dispute can be adjudicated only by the authorities under the Village Common Lands Act, and merely because a notification was issued by the Central Government, such dispute could not have been raised before the civil court. In the said case, where in the revenue record, the disputed land was recorded as shamilat deh and Gair Mumkin Kabristhan, it was held by the civil court that in view of Section 13 of the Village Common Lands Act, jurisdiction of the civil court is barred. This decision of the civil court was upheld upto the Hon'ble Supreme Court and it was held that in such dispute, only the Collector under the Village Common Lands Act has the jurisdiction to determine the question of title of such land. The said decision was followed by a Division Bench of this Court in Punjab Wakf Board Versus Joint Development Commissioner (supra). The issue in this case was whether the land in dispute was shamilat deh before coming into force of the Village Common Lands Act and whether the same has vested in the Gram Panchayat or not. The issue is not whether the land in dispute is wakf property or not. As earlier stated, it is admitted position that before coming into force of the Act of 1953, in the revenue record, the land in dispute was recorded as shamilat deh and it was being used for Kabristhan, a common purpose of the village, as the proprietors of the village used this land as graveyard. Keeping in view the nature of the land being shamilat deh used by the inhabitants of the village for common purpose, the land vested in the Gram Panchayat under Section 3 of the Act of 1953, which provides that notwithstanding any thing to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the shamilat deh of any village shall, on the appointed date, vest in the Gram Panchayat having jurisdiction over the village. Thus, keeping in view the fact that the land already stands mutated in favour of the Gram Panchayat, the only remedy available to the petitioner Board was to file a title suit under Section 11

of the Village Common Lands Act. It is well settled that the Collector has the exclusive jurisdiction to determine whether a particular land is shamilat deh or not and vests in the Gram Panchayat or not and jurisdiction of the civil court is barred. In Gram Panchayat of village Jamalpur v. Malwinder Singh & others, 1985 PLJ 443, a question came for consideration before the Hon'ble Supreme Court as to whether the shamilat deh owned by the Muslim proprietors will vest in the Gram Panchayat under the Act of 1953, or being a Muslim property, it will vest in the Central Government under the provisions of the Administration of Evacuee Property Act. It was held that the effect of the Administration of the Evacuee Property Act was not to take away the character of shamilat deh but only to vest in the Custodian such interest as the evacuee possessed in the shamilat deh. The interest which the erstwhile evacuees possessed in the shamilat deh was neither enlarged nor abridged. The land continued to be shamilat deh and it could be the subject of competent State Legislation as shamilat deh. If the State has enacted the legislation, it has to be given precedence over the Central Act. The same reason and logic is applicable in the instant case. In our opinion, the Act of 1953 will prevail over the Wakf Act and nature of shamilat deh vesting in the Gram Panchayat could not be questioned before the Wakf Tribunal, merely on the basis of a notification issued under Section 5 (2) of the Wakf Act, raising the argument that such property is a wakf property. If the question arises whether such property is shamilat deh or not, the same has to be gone into and determined by the authorities under the Village Common Lands Act and not by the Wakf Tribunal, where the question as to whether a particular property is a wakf property or not can be gone into. In the present case, the dispute is whether the land in dispute was shamilat deh or not, or whether it was vesting in the Gram Panchayat or not.

Earlier the contention of the petitioner Board was that the disputed land was not a shamilat deh and was a wakf property, therefore, it had approached the Collector under Section 11 of the Village Common Lands Act by filing the title suit. Subsequently, when the title suit was decided by the Collector as well as the Commissioner against the petitioner Board and the said order became final under the Village Common Lands Act, the petitioner Board took U turn and started agitating that the authorities under the Village Common Lands Act had no jurisdiction to determine the question. As discussed above, in our opinion, this contention has no force and the authorities under the Village Common Lands Act have the jurisdiction to decide the controversy involved in the present case, which has been decided against the petitioner Board. Admittedly, at the time of coming into force of the Act of 1953, the land in dispute was shamilat deh and was being used by the proprietors of the village as Kabristhan. Earlier, majority of the proprietors in the village may be Muslims and after partition of the country, the Muslims of the village migrated to Pakistan, but merely because majority of the proprietors were Muslims and the disputed land was being used as Kabristhan, it will not make the disputed land as wakf property. Such shamilat deh, which is used for common purpose by the proprietors of the village, shall vest in the Gram Panchayat, by virtue of Section 3 of the Act of 1953. It is not the case of the petitioner Board that the land in dispute is not shamilat deh, as provided under Section 2 (g) of the Village Common Lands Act and it falls under any of the exceptions, provided in clauses (i) to (ix) of Section 2 (g) (5) of the Village Common Lands Act. In Section 2 (g) (5) (ix) of the Village Common Lands Act, there is an exception, which provides that the land, which was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act, does not vest in the Gram Panchayat. But it is not the case of the petitioner Board at all that the land in dispute was used as a place of worship or

for the purposes, subservient thereto. Even as per the case of the petitioner Board, at one point of time before partition of the country, this land was being used as Kabristhan and after the partition, even the same was not so used, as according to it, it was leased out for agriculture purpose. Therefore, the land in dispute being shamilat deh rightly vests in the Gram Panchayat. Section 2 (g) (1) of the Village Common Lands Act clearly provides that the land described in the revenue record as shamilat deh vests in the Gram Panchayat. Therefore, in our opinion, the title suit of the petitioner Board claiming the property as wakf property has been rightly dismissed by the authorities under the Village Common Lands Act.

In view of the above, we do not find any ground to interfere in the impugned orders.

Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

September 23, 2011
ndj

(M. JEYAPPAUL)
JUDGE

Refer to Reporter