

(1995) 04 MP CK 0025
In the Madhya Pradesh High Court
Case No : Second Appeal No. 37 of 1993

Intazamiya Committee Id Gah, Morar

APPELLANT

Vs

M.P. Wakf Board, Bhopal

RESPONDENT

Date of Decision : 24-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10(1)
Waqf Act, 1954 — Section 43(4A), 55C

Citation : AIR 1996 MP 47 : (1995) ILR (MP) 304 : (1996) 1 MPJR 393 : (1996) 41 MPLJ 37 : (1996) MPLJ 37

Hon'ble Judges : Tej Shankar, J

Bench : Single Bench

Advocate : P.D. Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Tej Shankar, J.

This second appeal raises a short question relating to jurisdiction under the following circumstances:

A suit was filed by the plaintiff for declaration to the., effect that the letter No. 2426 dt. 22-4-1987 of the defendant through which the management committee of the plaintiff was dissolved and plaintiff No. 2 was removed from the post of Adhyakshya was illegal and it be set aside. A relief for injunction was also claimed restraining the defendant from interfering in the functioning of the plaintiff and removing him from the post of Adhyakshya. It was alleged that there was an Id Gah at Thandi Sadak, Morar which was known as Morar Id Gah. It was registered under the M. P. Wakf Act, 1954 with the M. P. Wakf Board. Plaintiff was Prabandhak of the Id Gah Committee and Mutawalli for the last 10 years and had been performing his duties as Mutawalli. Several litigations were going on with respect to the property of the Id Gah and he had been doing Pairawi. Several compromises were also entered into and the plaintiff obtained a sum of Rs. 20,000/- out of those compromises. That amount was spent in the

constructions of shops. On I-12-1986, the plaintiff received a notice, which was replied. Certain persons bore enmity with the plaintiff and wanted to remove him and take possession over the Id Gah and its committee. They taking the office bearers of the defendant under their pressure, got the Committee of the plaintiff No. 1 dissolved and it was directed that the plaintiff No. 2 shall give charge to another person vide letter received by the plaintiff on 1-5-1987. This notice was illegal. No intimation was given to him nor any opportunity was given to him of being heard. An application for issue of temporary injunction was also given. The defendant did not file any written statement but filed an application purporting to be one u/s 55C of the Wakf Act read with Section 151, CPC and prayed that the suit be dismissed, as the Court had no jurisdiction.

The learned trial Court by its order dated 24-2-1988 passed an order that the question would be determined after framing of issues. The defendant can take that plea in the written statement. It, therefore, "rejected the application and directed the case to be listed for further proceedings. A revision petition was preferred against the order which was allowed on 15-7-1988 and it was specifically held that it was not necessary that written statement be filed. Reliance was placed on Dilip Singh Vs. Malam Singh and Another, . The revising Court directed the trial Court to hear both the parties on the question of jurisdiction:and decide it in accordance with law. The learned trial Court thereafter heard the parties and decided the question of jurisdiction on 4-2-1989 holding that the Civil Court had no jurisdiction. It, therefore, dismissed the suit. The plaintiff unsuccessfully preferred appeal and has now knocked the doors of this Court in second appeal.

Learned counsel for the appellant firstly argued that because the procedure prescribed u/s 43 of the Wakf Act has not been followed, the Civil Court under the circumstances has got the jurisdiction Section 55C cannot be a bar to the jurisdiction of the Civil Court under the circumstances. He placed reliance on Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . Another contention of the learned counsel is that without filing the written statement, the question of jurisdiction cannot be raised and in this connection he placed reliance on Naresh Saxena v. President Adarsh Nagrik Sahkari Bank, 1984 WN SN 44 and Moolchand v. N. K. Satsangi, 1992 JLJ 340. Learned counsel for the respondent did not appear and hence he could not be heard,

As far as the first argument of the learned counsel for the appellant is concerned, we must look to the authority of the Apex Court relied upon by the learned counsel for the appellant as mentioned above. In the said authority of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , the Apex Court laid down seven principles relating to the exclusion of jurisdiction of Civil Court. Principle No. 2 is relevant for our purpose, it runs as follows (at p. 89):

"Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but it is not decisive to sustain the

jurisdiction of the Civil Court where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all question about the said right and liability shall be determined by" the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

A careful perusal of the aforesaid principle shows that the present case is covered within the four corners of this principle. Section 43 of the Wakf Act provides for removal of mutawallies. Sub-clause (4A) thereof is important. Under this provision, a Mutawalli who is aggrieved by an order passed under any of the Clauses (d) to (1) of Sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final. Now, if we peruse the provisions of Section 55C, it specifically provides exclusion bar to the jurisdiction of Civil Court in respect of matters to be determined by the Tribunal. Thus, if we read Section 43(4A) and Section 55C together, it is crystal clear that the Act has provided a remedy against the order passed by the Board removing Mutawalli from the office on the grounds mentioned u/s 43, clauses (d) to (1) and in view of Section 55C, if any dispute or question relating to any wakf, wakf property or other matter is required by or under the Act is to be determined by a tribunal, then the suit or other legal proceedings in Civil Court is barred. Thus, in this light, if we peruse the aforesaid principle laid down by the Hon'ble Supreme Court, there does not remain any doubt that there is an express exclusion of the jurisdiction of the Civil Court under the Wakf Act. The claim of the defendant under these circumstances that the Civil Court had no jurisdiction is correct. The Civil Court has got no jurisdiction with respect to any matter, which is required by or under the Act has to be determined by a Tribunal and if u/s 43(4A) an appeal lies against the order of removal to the Tribunal, the Civil Court had no jurisdiction. Both the learned Courts below have accepted it and I do not find that there is any illegality in the approach of the Courts below.

The next contention of the learned counsel for the appellant is that without filing written statement the question of jurisdiction cannot be raised and in this connection reliance has been placed on the aforesaid two authorities. Of course, both the authorities are Division Bench decisions of this Court and it has been held on the facts of those cases that on the question of jurisdiction, if the Court thinks necessary and is required to be done so, it should decide the question by framing preliminary issue after written statement is filed. The case of Naresh Saxena, (1984 WN SN 44) was considered by this Court fn Dilip Singh Vs. Malam Singh and Another, and in that case it was held that objection relating to the jurisdiction/ competence of the Court/to hear the suit can be taken even without filing written statement. While coming to this conclusion the learned Judge made reference to the provisions of Order 7, Rule 10(1), CPC and

observed that whenever any question as to jurisdiction of the Court --territorial or pecuniary -- is raised "at any stage of the suit" it is the bounden duty of the Court to decide the matter to short circuit litigation and protect parties from undue harassment of protracted and expensive litigation. In the present case it is not a case of territorial or pecuniary jurisdiction of the Court, but it is a case relating to inherent lack of jurisdiction of the Court. I may refer to Kiran Singh and Others Vs. Chaman Paswan and Others, . In that case, the Apex Court specifically ruled that (para 6):

"It is a fundamental principle that a decree passed by the Court is without jurisdiction is a nullity and that its invalidity could be set up whenever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings."

It was further held that (para 6) :

"A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of the subject-matter of the action, strike at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."

Thus, if the matter relates to the jurisdiction -- territorial or pecuniary or inherent lack, it strikes at the very authority of the Court to pass any decree. Hence, to my mind, it can be raised at any stage of the suit, as held in aforesaid case of Dilip Singh Vs. Malam Singh and Another, . In both the aforesaid decisions of this Court, relied upon by the learned counsel for the appellant law laid down in Kiran Singh and Others Vs. Chaman Paswan and Others, does not appear to have been taken note of that the defect of jurisdiction strikes at the very authority of the Court to pass any decree, and it can, therefore, be challenged at any stage of the suit. It will serve no purpose if in a case where there is apparent lack of inherent jurisdiction the parties are forced to file written statement and then a preliminary issue is framed and thereafter it is held that the Court had no inherent jurisdiction to try the case. The plaint can be returned at any stage of the suit for presentation to proper Court to which it ought to have been instituted as provided under Order 7, Rule 10, CPC, the words "at any stage of the suit", the underlined words are important. These words also include the stage prior to the filing of the written statement. Thus in view of the law laid down in the aforesaid Kiran Singh and Others Vs. Chaman Paswan and Others, , I am of the view that the question of jurisdiction or lack of inherent jurisdiction can be seen at any stage as it strikes at the very authority of the Court to pass a decree. I, therefore, repel this contention of the learned counsel for the appellant as well.

In the result, the appeal is without any merit and is dismissed, but without any order as to costs as the respondent was not heard.