
(2015) 02 MP CK 0070

In the Madhya Pradesh High Court

Case No : Civil Revision Nos. 114, 115 and 116 of 2013

Nisar shah

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Waqf Act, 1995 — Section 4, 5, 5(2), 6, 7

Citation : (2015) 02 MP CK 0070

Hon'ble Judges : J.K. Jain, J.

Bench : Single Bench

Final Decision : Disposed off

Judgement

Jarat Kumar Jain, J.—Regard being had to the similar controversy involved in these cases, they have been heard analogously together with the consent of the parties and a common order is being passed in the matter. Facts of Civil Revision No. 114/2013 are narrated as under:-

2. The present revision has been filed under Section 83(9) of the Wakf Act, 1995 arising out of the order dated 6.3.2013 passed by the Madhya Pradesh State Wakf Tribunal, Bhopal in Case No. 13/2011 (Mohd. Nisar Shah Vs. M.P. Wakf Board and another).

3. Learned counsel for the parties have fairly stated before this Court that the question involved in the present revision is squarely covered by the decision of the Single Bench of this Court passed on 5.3.2014 in Civil Revision No. 92/13. The order dated 5.3.2014 reads as under:-

The present revision has been filed under Section 83(9) of Wakf Act 1995 arising out of an order dated 8.2.2013 passed by the M.P. State Wakf Tribunal, Bhopal.

Facts of the case reveal that the present applicant preferred an application under Section 83(2) of the Act of 1995 stating that he is the Bhumiswami of agricultural land bearing Khasra No. 290 area 5.69 acres situated at Gram

Takipura, Tehsil Depalpur District Indore and the same was granted to his grandfather Kallan Shah in "Mafi" by the then ruler and the land was mutated in the name of the applicant's grand-father Kallan Shah. It has further been stated that since time immemorial, name of the family member of the present applicant was mutated in the revenue record and without issuing any notice of any kind to the present applicant, the property in question was registered as Wakf property on 25th August, 1989. It has further been stated that an application was preferred under Section 83(2) of the Act of 1995, as a notice was issued on 25th May, 2010 for auctioning the property in question. The applicant left no other choice filed a civil suit before the Wakf Tribunal. A reply was filed in the matter by the M.P. Wakf Board and the M.P. State Wakf Tribunal, Bhopal has passed an order dismissing the suit of the present applicant. The order passed by the Tribunal reveals that the Tribunal placing reliance upon Section 6 of the Act of 1995 has dismissed the suit.

Learned counsel for the applicant has drawn the attention of this Court towards the Explanation to Section 6 of the Act of 1995 and his contention is that the applicant, who was interested in the property in question, should have been granted a proper opportunity to represent his case by a notice to be served upon him and the same has not been done while registering a wakf.

On the other hand, learned counsel appearing for the Wakf Board has argued before this Court that Section 4 and 5 provides for a procedure for registering a wakf and it is not the M.P. Wakf Board, which is required to issue a notice to the person who is having interest in the property, on the contrary it is the Collector, who is required to issue a notice in the matter. A categorical question was raised by this Court to the learned counsel appearing for the Wakf Board i.e. "whether any notice was issued to the petitioner or not at any point of time. Learned counsel has categorically stated it is not the Wakf Board, which is required to issue notice and it is the Collector, who is required to issue notice under Sections 4 and 5 of the Act of 1995 and no notice was issued.

This court has carefully scanned the entire records received from the Tribunal and there is no notice of any kind issued by the Collector at any point of time or by the M.P. Wakf Board to the applicant while surveying the Wakf by publishing the list of Wakf. Section 6 of the Act of 1995 reads as under:-

6. Disputes regarding works.-(1) 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.

The aforesaid statutory provisions of law has been considered by the Apex Court in the case of Punjab Wakf Board Vs. Gram Panchayat @ Gram Sabha, and Paragraphs 21, 22, 23, 24, 25 and 26 of the said judgment reads as under:

21. In the present case before us, therefore, the dispute not being one between the wakf and Mutawalli or the persons claiming under him, but with a stranger (the Panchayat) the decision in Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, cannot be applied. Thus the said decision is clearly distinguishable and is not applicable to the facts before us. On the other hand, the present case before us is clearly covered by the decision of the three Judge Bench of this Court in Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, , for the reasons given above.

22. We therefore, hold that the first proviso to clause (1) of Section 6 referred to above would not come in the way of the Assistant Collector and the Collector to decide, in the dispute raised by a third party like the Panchayat, whether the property is a modern Wakf or not.

23. Learned counsel for the appellant also referred to the Explanation added below to sub-section (1) of Section 6 of the Wakf Act; 1954, by the Central Act, 69 of 1984. The Explanation reads as follows:-

Explanation:

For the purpose of this section and Section 6-A, the expression "any Person interested therein", occurring in sub-section (1) of this Section and in sub-section (I) of Section 6-A, shall, in relation to any property specified as Wakf property in a list of Wakfs published, under sub-section (2) of Section 5, after the commencement of the Wakf (Amendment) Act, 1984, 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.

24. Obviously, the intention of Parliament was to say that if a suit was not filed within one year, the Notification would be binding not only on those interested in the trust but even strangers, claiming interest in the property in question, provided they were given notice in the inquiry under Section 4 preceding the Notification under Section 5(2).

25. In this connection, we have to point out that the Government of India has not issued any date for commencement of the Explanation in Section 6 of the

Wakf Act quoted above. Even if it is assumed that the Explanation can be invoked, there is no material before us to show that any notice was issued to the Gram Panchayat before the issuance of the Notification, as required by the Explanation. If no notice was issued as required by the Notification, the Notification would not come in the way of a Civil Court to decide the question if raised between the Wakf and a third party, even if such a suit was filed beyond one year from the date of the Notification. Thus, once the Assistant Collector and the Collector had jurisdiction to decide, their decision became final and Section 13 of the Panchayat Act barred the Civil Suit filed by the Wakf Board.

26. We, therefore, hold this point in favour of the respondent that the present suit by the Wakf Board was barred under Section 13 of the Punjab Village Common Lands (Regulations) Act, 1961. Point 1 held in favour of respondent.

This Court keeping in view the judgment delivered by the Apex Court and the Explanation to Section 6 of the Act of 1995, as there is no notice on record nor certainly any notice was filed before the Tribunal, is of the considered opinion that the Wakf Tribunal has erred in law and in fact in dismissing the suit of the applicant only on the ground that the suit was filed after a lapse of 20 years from the publication of list of Wakf. Thus, the impugned order dismissing the suit has been certainly passed in contravention to the Explanation provided to Section 6 of the Act of 1995 and has to pave the path of extinction. Resultantly, the present civil revision is allowed. The impugned order dated 8.2.13 is set aside. The matter is remanded back to the Madhya Pradesh State Wakf Tribunal for deciding the matter afresh on merits. It is needless to mention that the Tribunal shall frame a categorical issue whether a notice was issued and served to the applicant or not during the course of relevant enquiry under Section 4 of the Act of 1995 while deciding the suit. In the present case, there was an interim order granted on 14th July, 2010 by the Wakf Tribunal in respect of the suit in question and therefore, the interim order granted by the Tribunal dated 14th July, 2010 will continue till the suit is finally decided. Parties are directed to appear before the Wakf Tribunal on 28th April, 2014.

4. The facts of the present case reveals that the present applicant has preferred an application under Section 83(2) of the Act, 1995 stating that he is Bhumiswami of the agricultural land bearing Khasra No. 271 area 9.81 acres situated at Gram Katkoda, Tehsil Depalpur, District Indore. The same was granted to his forefather Arab Shah in Mafi by the then Ruler, on the basis of which the land was first mutated in the name of the applicant's forefather and thereafter in the name of the applicant since time immemorial. It has further been stated that the respondent-Wakf Board has registered the property as a Wakf property almost after expiry of 30 years from the enforcement of the Wakf Act, 1954.

5. This court has already decided the issue in question by passing a detailed order in Civil Revision No. 92/13 and therefore, in view of the order passed by this Court in the aforesaid Civil Revision, the present revision is allowed. The

impugned order dated 06.03.2013 is set aside. The matter is remanded back to the Madhya Pradesh State Wakf Tribunal for deciding the matter afresh on merits. It is needless to mention that the Tribunal shall frame a categorical issue whether a notice was issued and served to the petitioner or not during the course of relevant enquiry under Section 4 of the Act of 1995 while deciding the suit. In the present case, there was an interim order granted by the Wakf Tribunal in respect of the suit in question and therefore, the interim order granted by the Tribunal will continue till the suit is finally decided. Parties are directed to appear before the Wakf Tribunal on 23rd March, 2015.

6. Record, if any, be immediately returned back to the Wakf Tribunal.

7. The other connected civil revision are also disposed of with the similar directions. Let a copy of this order be retained in the file of connected civil revisions.

8. No order as to costs.