

(2011) 09 P&H CK 0214
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14000 of 2011

Punjab Wakf Board

APPELLANT

Vs

Financial Commissioner, Co-Operation, Punjab and Others

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11
Waqf Act, 1995 — Section 5(2), 6

Citation : (2012) 2 ILR (P&H) 587

Hon'ble Judges : Satish Kumar Mittal, J; M. Jeyapaul, J

Bench : Division Bench

Advocate : S.K. Jain, for the Appellant; R.S. Athwal, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The Punjab Wakf Board has filed this writ petition under Articles 226/ 227 of the Constitution of India for quashing of the order dated 29.10.1997 passed by the Additional Deputy Commissioner-cum-Collector, Kapurthala, whereby the order of mutation sanctioned in favour of the petitioner by the Assistant Collector Ist Grade, Phagwara, was set aside; as well as the order dated 16.10.2001 passed by the Commissioner, Jalandhar Division, Jalandhar; and the order dated 24.6.2010 passed by the Financial Commissioner, Cooperation, Punjab, whereby the aforesaid order of the Collector was affirmed. In this case, the dispute is about sanction of the mutation pertaining to land measuring 43 kanals 10 marlas situated in village Chak Hakim. According to the Jamabandis from the year 1956-57 to 1977-78, this land was recorded in the ownership of Nagar Panchayat. It is mentioned here that as per the report of the Patwari available on the record, except the land measuring 1 kanal 18 Marias comprising in Khasra No. 634, which has been described as Gair Mumkin Takia, the remaining land has been described in the revenue record as agricultural land in which at present a Government School and a Dispensary are existing. In the year 1971, a notification was issued u/s 5(2) of the Wakf Act, 1954 (Now

Repealed, a new Wakf Act, 1995 has been enacted) declaring the entire land as Takia, a wakf property. On 25.5.1972 the Director, Land Records, Punjab issued the instructions asking the Deputy Commissioner and Revenue Officer to make necessary correction in the revenue record in accordance with the gazette notification declaring the property as Wakf property. Keeping in view the said direction, Assistant Collector IInd Grade (Revenue Officer), without providing an opportunity of hearing to the Gram Panchayat, in whose ownership the land was recorded in the past jamabandis, sanctioned Mutation No. 1280 in favour of the Punjab Wakf Board vide order dated 6.2.1981. When the Gram Panchayat came to know about the sanction of the mutation of the land in question in favour of the Punjab Wakf Board, it represented to the District Collector that the mutation of their land was illegally sanctioned in favour of the Punjab Wakf Board without providing an opportunity of hearing, therefore, the same be reviewed. The District Collector vide his order dated 26.4.1994 allowed the review. The Mutation was restored in favour of the Gram Panchayat. The entry of the said mutation was contested by the Punjab Wakf Board and consequently the same was referred to Assistant Collector Ist Grade for determination of the issue.

2. The Assistant Collector Ist Grade, Phagwara, after hearing the counsel for the parties, sanctioned the mutation in favour of the Punjab Wakf Board on the ground that after the gazette notification dated 11.9.1971 issued by Government of India the land in question is the ownership of the Wakf Board.

3. Feeling aggrieved against the said order, the Gram Panchayat filed an appeal before the Collector. Vide order dated 29.10.1997 the Collector allowed the said appeal and set aside the order of the Assistant Collector Ist Grade sanctioning mutation in favour of the Punjab Wakf Board and ordered that the entries in the jamabandis in respect of the suit land will continue as in the name of Gram Panchayat. The Collector has passed the said order after coming to the conclusion that the land in question has been shown under the ownership of the Gram Panchayat in the jamabandi for the year 1977-78, and the Assistant Collector IInd Grade only on the basis of the notification dated 11.9.1971 issued by the Government of India under the Wakf Act and the directions given by the Director, Land Records, Punjab, could not have sanctioned the mutation in favour of the Punjab Wakf Board. It has been held that when a person is recorded as owner in several successive jamabandis then the revenue Court cannot sanction the mutation and change the ownership on the basis of such notification which is not binding on the Gram Panchayat and which has no force like a Civil Court decree.

4. Feeling aggrieved against the aforesaid order, the Punjab Wakf Board filed an appeal which was dismissed by the Commissioner vide order dated 16.10.2001 and the reasoning given by the Collector was affirmed. The said order was further challenged by the Punjab Wakf Board before the Financial Commissioner. At one point of time the said revision petition was allowed by the Financial Commissioner vide order dated 12.4.2004, but immediately after three days the

Gram Panchayat filed an application on 15.4.2004 for recalling the said order which was passed ex-parte against it without affording an opportunity of hearing. Vide order dated 24.6.2010 the said prayer was allowed and the Financial Commissioner after hearing both the parties dismissed the revision, while making the following observations:-

I have gone through the record of the case and have also taken into consideration the arguments raised by the learned counsel for the parties. The order of the Financial Commissioner dated 12.04.2004, against which the present review application has been filed, has been passed without hearing the Gram Panchayat. While filing this application on 15.04.2004, the learned counsel for the Gram Panchayat has prayed that the exparte be set-aside and the case be decided afresh. According to the order dated 12.04.2004, it has been recorded that vide notification dated 11.09.1971 the ownership of the land is ordered to be recorded in the name of the Wakf Board. The Commissioner in his order dated 16.10.2001 has made clear before passing the order by seeking the report of the Patwari regarding the existing position at the spot. According to the report of the Patwari, in Khasra No. 635, 636 and 633, a government school and a dispensary are in existence. In addition thereto, the remaining land is being utilized for cultivation. According to the revenue record, Khasra No. 634 (1 Kanal-8 Marias) has been shown to be Gair Mumkin Takia and the parties have admitted that besides this 1 Kanal 18 Marlas of land there is no other land in the form of Takia at the spot. This land has been shown to be the ownership of the Gram Panchayat till the year 1977-78. In the order of the Commissioner, it has been recorded that besides this land, some other land of this village has also been declared as Wakf Property vide notification dated 11.09.1971. This land was allotted to the displaced persons of Pakistan. The Wakf Board has not taken any action with regard to the transfer of the land in their name. From the facts narrated in the order of the Commissioner, Jalandhar it is clear that there is no basis for change of ownership of the concerned land measuring 43 Kanals 10 Marias from Gram Panchayat to Wakf Board because according to the revenue record and as per the existing position at the spot the major portion of the land is being used for cultivation. Keeping in view the above circumstances, the application for review is accepted and the order dated 12.04.2004 passed by the Financial Commissioner is set-aside and revision petition No. 19 of 2002 is dismissed and the order of the Commissioner dated 16.10.2001 and the order of the Collector dated 19.10.1997 are upheld. In this case the order was reserved on 28.05.2010 which is being pronounced today on 24.06.2010.

5. Now the Punjab Wakf Board has challenged the said order in this petition.

6. After notice of motion, we have heard the learned counsel for the parties. The factual position, as narrated above, has not been disputed by the learned counsel. The question arises for consideration in this petition is whether on the basis of the notification dated 11.9.1971 issued by the Government of India under the Wakf Act, the revenue authorities can sanction the mutation of

ownership in favour of the Punjab Wakf Board irrespective of the fact that the land in question stand in the name of the Gram Panchayat in successive jamabandis from the year 1956-57 to 1977-78 and specifically in view of the fact that out of 43 kanals 10 marlas of land, only 1 kanal 18 Marias has been recorded as Gair Mumkin Takia in the revenue record. On facts, it has not been disputed that the land in question measuring 43 Kanals 10 Marias is recorded under the ownership of Gram Panchayat in the jamabandis from the year 1956-57 to 1977-78 and except the land measuring 1 kanal 18 Marias comprising in Khasra No. 634, which has been described as Gair Mumkin Takia, the rest of the land is agricultural land and as per the report of the Patwari at present a Government School and a Dispensary are existing on it.

7. The Punjab Wakf Board wanted to get mutation changed in their favour on the basis of the aforesaid notification dated 11.9.1971 issued by the Government of India under the Wakf Act. An application under the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the Land Revenue Act") for sanction of the mutation/change of mutation in favour of a person can be made to the Assistant Collector 1st Grade. Sub section (1) of Section 34 of the Land Revenue Act provides that any person acquiring by inheritance, purchase, mortgage, or otherwise, any right in an estate as a land-owner, assignee of land-revenue or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate. Subsections (2) and (3) provide that the Patwari after verification shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2), and shall also make an entry therein respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which a report should have been made to him. Subsection (4) provides that the Revenue Officer shall from time to time inquire into the correctness of all entries made in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the patwari and entry made in that register and shall in each case make such order as he thinks fit with respect to the entry in the annual record of the right acquired. Sub-section (5) provides such an entry shall be made by the insertion in that record of a description of the right acquired and by the omission from that record of any entry in any record previously prepared which by reason of the acquisition has ceased to be correct.

8. Section 35 of the Land Revenue Act deals about making of that part of the annual record which relates to other persons. It provides that "the acquisition of any interest in land other than a right referred to in subsection (1) of the last foregoing section shall,--

(a) if it is undisputed, be recorded by the patwari in such manner as the Financial Commissioner may by rule in this behalf prescribe; and

(b) if it is disputed, be entered by the patwari in the register of mutations and dealt with in the manner prescribed in sub-sections (4) and (5) of the last

foregoing section.

9. Sub-section (1) of Section 36 of the Land Revenue Act provides that "if during the making, revision or preparation of any record or in the course of any enquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue-officer may of his own motion, or on the application of any party interested but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter." Sub-section (2) further provides that "if in any such dispute the Revenue Officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall by order direct that that person be put in possession thereof, and that an entry in accordance with that order be made in the record or register."

10. Section 37 of the Land Revenue Act further provides restrictions on variations of entries in records. It provides that "entries in records-of-rights or in annual records, except entries made in annual records by patwaris under clause (a) of section 35 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by--(a) making entries in accordance with facts proved or admitted to have occurred; (b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties; (c) making new maps where it is necessary to make them."

11. Clause (b) of Section 37 clearly provides that entries of mutation with regard to ownership are to be made where all the parties interested have agreed with regard to acquisition of interest by a party or the acquisition of interest is supported by a decree or order binding on those parties. The mutation of ownership can be sanctioned on the basis of the registered will or on the basis of the court decree.

12. Section 45 of the Land Revenue Act provides that if any person considers himself aggrieved as to any right of which he is in the possession by any entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under chapter VI of the Specific Relief Act, 1877. According to this Section, if the name of a particular person is recorded in the jamabandi, which is a record-of-rights and the person claimed that the said entry is wrong and actually the aggrieved person is the owner of the land, he has to file a suit for declaration of his right under chapter VI of the Specific Relief Act, 1877. After the decision of the Civil Court on the issue, the parties can approach the revenue authorities for any change to be made in the revenue record. In *Surjit Singh and Others Vs. The State of Haryana and Others*, , it was held that the mutation of ownership cannot be sanctioned in favour of a person on the basis of the direction given by the Deputy Commissioner to the Tehsildar to sanction the mutation of the land in favour of the Gram Panchayat depriving the right of the

proprietors without providing them opportunity of hearing.

13. Now the question for consideration is whether the notification dated 11.9.1971 issued by the Government of India under the Wakf Act is conclusive document of ownership in favour of the Punjab Wakf Board or whether such notification is binding on the 3rd party and whether on the basis of such notification the mutation of ownership is to be sanctioned in favour of Punjab Wakf Board. It is well settled as held by the Supreme Court in *The Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others*, that the list of Wakf properties u/s 5(2) will not bind a stranger who was in possession of the property.

14. A further reference can be made to the decision of the Hon"ble Supreme Court in *Punjab Wakf Board Vs. Gram Panchayat @ Gram Sabha*, , wherein it was held that the notification issued u/s 5(2) of the Wakf act is not binding on third person, to whom no notice was issued by the Government before issuance of the notification, as required in the Explanation added to sub-section (1) of Section 6 of the Wakf Act, by the Central Act, 69 of 1984, and such person is not required to file suit within one year from the date of notification. In the present case also, no material has been produced by the Punjab Wakf Board that before issuing the notification, the Gram Panchayat was issued any notice and provided an opportunity to assert its claim with regard to the disputed property. Therefore, in our opinion, the notification issued in this case is not binding on the Gram Panchayat, who was recorded as owner in possession of the disputed land prior to the issuance of the notification consecutively in different jamabandis. A reference can also be made to a Division Bench decision of this Court in *Punjab Wakf Board Vs. Joint Development Commissioner and Others*, , wherein it has been held that when before issuing the notification issued u/s 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. Thus, in our view, merely on the basis of such notification, the mutation of ownership cannot be sanctioned in favour of the Punjab Wakf Board. However, it is always open for the Punjab Wakf Board to file a suit u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961, to get it declared that the land in dispute does not vest in the Gram Panchayat, rather it is a wakf property, which vests in the Punjab Wakf Board and if its suit is decreed by the Collector, the petitioner can get the mutation sanctioned on the basis of such decree in its favour, but the Assistant Collector on its own or on the application filed by the Punjab Wakf Board cannot enter mutation of ownership in favour of the Punjab Wakf Board only on the basis of such notification. Therefore, the revenue authorities in this case have rightly come to the conclusion that the Assistant Collector 1st Grade has committed grave illegality while sanctioning the mutation of ownership of the land in question in favour of the Punjab Wakf Board merely on the basis of the said notification without there being any decree in its favour with regard to declaration of its ownership on the land in question. In

view of the aforesaid, we do not find any illegality in the impugned orders passed by the authorities below.

Hence, the writ petition is dismissed.