
(2011) 12 P&H CK 0222
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10595 of 2009

Sakrudin

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 13, 2, 2(1), 4
Waqf Act, 1954 — Section 5(2)
Waqf Act, 1995 — Article 6(1)

Citation : (2012) 166 PLR 39

Hon'ble Judges : Satish Kumar Mittal, J;Paramjeet Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—Petitioner Sakrudin has filed the instant writ petition under Articles 226/227 of the Constitution of India for quashing the order dated 9.11.2006 (Annexure P-11), passed by the Collector, Nawanshahr, whereby on an application filed by Gram Panchayat, Village Nangal Jattan, Tehsil and District Shaheed Bhagat Singh Nagar (Nawanshahr) (respondent No. 4 herein) u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Village Common Lands Act"), the petitioner was ordered to be evicted from the land in dispute; as well as the order dated 27.2.2009 (Annexure P-12), passed by the Commissioner, whereby the appeal filed by the petitioner u/s 7(2) of the Village Common Lands Act against the said order has been dismissed. In this case, the dispute is about a portion of the land, which has been shown as ABCD in the site plan attached with the application of the Gram Panchayat. The said land is part of Khasra No. 37 measuring 16 Kanals 6 Marias situated in village Nangal Jattan. According to the respondent-Gram Panchayat, the said land has been recorded in the revenue record as shamilat deh and thus vests in the Gram Panchayat. It was alleged that the aforesaid portion of Khasra No. 37 was illegally occupied by the petitioner for the last two years, on which he raised

certain construction.

2. In the reply to the application, the petitioner took the stand that the disputed land does not belong to the Gram Panchayat. According to him, the land belongs to the Punjab Wakf Board, therefore, the Gram Panchayat has no legal right to get him evicted from the said land. According to the petitioner, though the disputed land is recorded as Gair Mumkin Kabristan, but being a Muslim, he has right to use the land, therefore, his possession on the land cannot be said to be illegal.

3. The Collector, after providing opportunity to the parties to lead evidence and hearing them, while coming to the conclusion that the land in dispute, which has been recorded in the revenue record as shamilat deh, vests in the Gram Panchayat and possession of the petitioner on the portion of the said land is illegal and unauthorised, ordered the eviction of the petitioner. The said order has been upheld in appeal by the Commissioner.

4. We have heard learned counsel for the parties and perused the impugned orders, passed by the authorities below.

5. In the revenue record, i.e. jamabandis for the year 1973-74, 1978-79, 1981-82, 1983-84 and other jamabandis upto the year 2003-04, in the column of ownership Khasra No. 37 has been recorded in the name of shamilat deh. In the column of possession, Maqbooza Ahley Islam has been recorded, and in column No. 8, Gair Mumkin Kabristan has been recorded. Undisputedly, the Punjab Wakf Board never claimed this property as wakf property and did not file any title suit either before the Collector under the Village Common Lands Act or before the Wakf Tribunal, established under the Wakf Act of 1995. Admittedly, the petitioner is neither claiming ownership on the disputed land nor he claims himself to be lessee of the Punjab Wakf Board. His only contention is that he is in possession of the part of Khasra No. 37 and he can only be dispossessed by its true owner. According to him, the Punjab Wakf Board is the true owner and not the Gram Panchayat. Therefore, on the application filed by the Gram Panchayat u/s 7 of the Act, he could not have been ordered to be evicted from the disputed land.

6. During the course of arguments, while referring to the jamabandi for the year 1973-74 (Annexure P-1), learned counsel for the petitioner submitted that on the basis of a notification issued u/s 5(2) of the Wakf Act, 1954 (now repealed and a new Wakf Act, 1995 has been enacted), mutation was sanctioned in favour of the Punjab Wakf Board. But it is undisputed fact that the alleged mutation was never given effect and in the subsequent jamabandis till date, the land in question has been shown as sham lat deh, though as Maqbooza Ahley Islam/Kabristan. As per Section 2(g)(1) of the Village Common Lands Act, if the land in the revenue record has been described as shamilat deh, such land vests in the Gram Panchayat. Even if the shamilat deh is being used as Kabristan, which is a common purpose, it vests in the Gram Panchayat. Therefore, the Collector as

well as the Commissioner, while relying upon the entries in the revenue record, have held that the land in question is shamilat deh, therefore, it vests in the Gram Panchayat, and the petitioner has illegally encroached upon part of the same, without any right.

7. Merely because in the column of possession in the revenue record, the land in dispute has been described as Maqbooza Ahley Islam Kabristan, the contention of the petitioner that the Punjab Wakf Board is the owner of the disputed land, prima facie cannot be accepted. The Punjab Wakf Board never claimed this property as wakf property. The petitioner, who is neither owner of the land nor lessee of the Punjab Wakf Board, has no locus standi to say that the Punjab Wakf Board is the owner of this land and not the Gram Panchayat. That is why, the Collector, while deciding the application of the Gram Panchayat, under proviso to Section 7 of the Village Common Lands Act did not direct the petitioner to file title suit u/s 11. The first proviso to Section 7 provides that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim u/s 11 and till the question is so determined, the application shall remain pending. In this case, in reply to the application filed by the Gram Panchayat u/s 7 of the Village Common Lands Act, though the petitioner has stated that the land vests in the Punjab Wakf Board, but it was not his case that he is either owner of the land in dispute or lessee of the Punjab Wakf Board. In our opinion, under first proviso to Section 7, the person who is in illegal possession of the disputed land, can raise the question of title claiming himself to be owner of the same or his lessor to be owner thereof, but he cannot raise the question of title to the effect that a third party is the owner of such land. We are coming to this conclusion on the basis of the wording used in the first proviso, i.e. "on which the Collector shall direct the person who has raised such question to submit his claim u/s 11." The words "his claim" under this proviso relate to the claim of "his ownership" and not the claim of the ownership of a third person. Keeping in view this fact, the petitioner was not directed to file title suit, because he has no locus to raise the issue of title of a third person.

8. Though before both the authorities below under the Village Common Lands Act, the Punjab Wakf Board was not the party, but while issuing notice of motion, the Punjab Wakf Board has been impleaded as respondent No. 5 in this petition. In the written statement, filed by the respondent Board, it has claimed itself to be owner of the land in dispute. However, it has been stated that the petitioner has encroached upon the said land without any authority from the respondent Board. It has not been disputed that in the revenue record, the disputed land has been described as shamilat deh in the column of ownership and Maqbooza Ahley Islam/Gair Mumkin Kabristan in the column of possession. However, it has not been disputed that the Punjab Wakf Board never filed any title suit, claiming this land, before the Wakf Tribunal.

9. Now, the question arising for consideration is : Whether the land described in the revenue record as shamilat deh in the column of ownership and Maqbooza Ahley Islam/Kabristan in the column of possession and cultivation, vests in the Gram Panchayat, in view of Section 2(g) of the Village Common Lands Act. In CWP No. 19962 of 2009, titled as Punjab Wakf Board v. Gram Panchayat, Dakha and others,¹ where in the column of ownership, the property in dispute was recorded in the name of the Gram Panchayat and in the column of possession/cultivation, Mazbooza Ahley Islam/Kabristan was mentioned, this question was considered by this Court, and while holding that the Collector under the Village Common Lands Act has the jurisdiction to decide the question as to whether such land vests in the Gram Panchayat or not and not the Wakf Tribunal, established under the Wakf Act of 1995, it was observed as under :

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 Kabristan/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 Kabristan/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 Kabristan, 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 Kabristan 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 u/s 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 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 Kabristan. The Hon"ble Supreme Court in Punjab Wakf Board Vs. Gram Panchayat @ Gram Sabha, 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 u/s 4 preceding the notification u/s 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 v. 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 Kabristan, 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 v. 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 Kabristan, 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 u/s 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 u/s 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 and others, 1985 P.L.J. 463, 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 u/s 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.

10. Thus, in view of the aforesaid decision, only the Collector under the Village Common Lands Act has the jurisdiction to determine the issue as to whether the land in dispute vests in the Gram Panchayat or not, and the said question can be raised by the Punjab Wakf Board by filing the title suit u/s 11 of the Village Common Lands Act. The petitioner, who neither claims himself to be owner of the land in dispute nor claims to be lessee of the Punjab Wakf Board, cannot raise the question of title. His possession is totally illegal and unauthorised. In view of Section 2(g)(1) of the Village Common Lands Act, all shamilat deh lands vest in the Gram Panchayat. The Collector as well as the Commissioner, after coming to the conclusion that the land in dispute being shamilat deh vests in the Gram Panchayat, have ordered eviction of the petitioner from portion of the land in question. We do not find any illegality in the orders, passed by both the

authorities below.

11. So far as claim of the Punjab Wakf Board to the effect that the land in dispute is the wakf property, is concerned, counsel for respondent No. 5-Punjab Wakf Board states that the Board will file petition before the Collector u/s II of the Village Common Lands Act, as it is only the Collector, who has the jurisdiction to decide this question. In view of this stand, taken by the Punjab Wakf Board, it will be open for the Board to file the title suit u/s 11 of the Village Common Lands Act. If any such title suit is filed by the Punjab Wakf Board, the same will be considered and decided in accordance with law, without being influenced by any observation made in this order. So far as the petitioner is concerned, he has no legal right to raise the question of title and to remain in possession of the land in dispute, because his possession is totally illegal and unauthorised. In view of the above, we do not find any merit in this petition and it is, hereby, dismissed with liberty to the Punjab Wakf Board to file title suit against the Gram Panchayat.