

(1993) 10 P&H CK 0142
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 11461 of 1992

Tara Singh and Another

APPELLANT

Vs

Financial Commissioner (Appeals) and Others

RESPONDENT

Date of Decision : 19-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Waqf Act, 1954 — Section 5(2)

Citation : (1994) 106 PLR 155

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Balbir Singh Wasu and Jasdeep Singh Wasu, for the Appellant; G.S. Bhatia, for Respdt. No. 3, Charu Tuli, AAG for Respdt. 1 and 2, A.S. Cheema and Vivek Suri, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—This order will dispose of Civil Writ Petition Nos. 11461 and 14377 of 1991. The former petition is at the instance of Tara Singh and Anr. lessees of the Punjab Wakf Board and the latter is by the Punjab Wakf Board itself. The impugned orders are the same in the two petitions.

2. The case as set up is that the land in dispute was donated by the erstwhile ruler of the State of Kapurthala as muafi land to the Muslim Institution in 1944 B.K. According to the petitioners, it became Wakf Property and vested in the Punjab Wakf Board in view of notification published in the Gazette of India dated September 11, 1971, Annexure P-I. petitioners in CWP 11461 of 1991 are lessees on the land in dispute under the Wakf Board and claim their possession for a pretty long time. This land, however happened to be allotted to respondents 4 and 5 in the year 1983 by the Tehsildar (Sales) cum-Managing Officer by treating it to be acquired evacuee property belonging to the Central Government under the provisions of Displaced Person (C&R) ACT, 1954 (for short "the Act"). Lessess filed appeal against the order allotting the land to respondents 4 and 5

before the Settlement Commissioner, who vide order dated January 29, 1986 accepted the same and remanded the case to the Managing Officer, Kapurthala. On remand, the Tehsildar-cum-Managing Officer, Kapurthala by order dated September 4, 1986, copy Annexure P-3, concluded that muafi in question was "Muafi Za-Qiam Kham Gah" i.e. till the existence of Khangahand that it was not a personal muafi. The Managing Officer consequently cancelled the allotment. Appeal against this order was dismissed by the Settlement Commissioner by order dated January 15, 1987. Aggrieved by this order, respondents 4 and 5 filed revision u/s 24 of the Act. This revision was dismissed by the Chief Settlement Commissioner (by order dated May 18, 1987, Annexure P-4. Respondents 4 and 5 thereafter filed a petition u/s 33 of the Act before the Financial Commissioner (Appeals), Punjab exercising the delegated powers of the Central Government. This revision petition was accepted by the learned Financial Commissioner by order dated March 21, 1991, Annexure P-5 holding that the muafi to Khangah was personal muafi and after the migration of Muslims to Pakistan the property reverted back to the Government and it ceased to be the wakf property. It is this order which is under challenge in these petitions.

3. Civil Writ Petition No. 11461 of 1991 was contested by respondents 4 and 5 by filing a written statement. The State, however, put in appearance and supported the order. Respondents who are the allottees of the Rehabilitation Department asserted that the land in dispute was evacuee property and allotment thereof was correctly made in their favour. Notification dated September 11, 1971 was stated to be illegal and incorrect and the disputed land was never a wakf property as defined in Section 2(1) of the Wakf Act and the Wakf Board could not acquire it being evacuee property. On these averments the order Annexure P-5 is sought to be justified.

4. After hearing learned counsel for the parties and going through the record, I am of the view that this petition deserves to succeed. Learned Financial Commissioner while holding that muafi to Khangah was personal muafi and after migration of Muslims to Pakistan, the property reverted back to the Government and it ceased to be the wakf property, has not given even a single reason in support of this conclusion. The contentions raised before the learned Financial Commissioner (Appeals) by the learned counsel for the wakf Board and the counsel for respondents 2 and 3, now writ petitioners, were not even remotely met while holding as above. As against this, learned counsel for the parties examined the entire revenue record and noticed that muafi as originally granted, was continued in the settlement which took place in the year 1983 B.K. and while preparing Misal Haqiat during consolidation, the land was shown as given to Khangah. Not only this, it was further noticed that in the jamabandi for the year 1967-68, muafi of this land was in favour of khangah in the column of ownership with entry in the remarks column about the history of muafi. This finding has neither been set aside nor found to be wrong by the learned Financial Commissioner. In fact, as noticed above, revision was accepted by observing that muafi to Khangah was personal. There is no basis for holding that the muafi was

personal. In other words, such observation/finding is based on no evidence. Entries regarding muafi appearing in the Jamabandi for the year 1967-68 was omitted from the Jamabandi for the years 1972-73 and 1977-78. There is again no basis for doing so. In fact, the mistake committed by the authorities, while preparing Jamabandi for the years 1972-73 and 1977-78 was corrected through a Fard Bader sanctioned by the Revenue Officer on June 15, 1983. Thus, the allotment of land in favour of respondents 4 and 5 by the Rehabilitation authorities was totally illegal. The land allotted, in the circumstances could not be said to be available for allotment under the Act.

5. It also deserves notice that muafi in the present case was to the Khangarh and was not a personal muafi. The existence of Khangarh was not disputed. No order has been brought on record withdrawing the muafi as was the situation in the case of land of village Magsoodpur. Even the Financial Commissioner has noticed that the muafi was to khangarh but immediately hastened to add that it was personal muafi. No basis is available on record to show that muafi was personal.

6. Notification, Annexure P-1 was issued under the provisions of Section 5(2) of Wakf Act, 1954 read with Rule 4 of the Punjab Wakf Rules, 1954 whereby the land in question was notified as wakf property. The effect of such a notification was considered by this Court in *Avtar Singh v. The Commissioner, Jullundur Division and Ors.* 1984 P.L.J. 244 wherein it was held that u/s 6(4), the list of wakfs published u/s 5(2) of the Wakf Act is final and conclusive unless it is modified in pursuance of a decision of the civil Court. This notification is thus final, the proceedings in the Civil Court having not been taken. Moreover, as noticed in *Avtar Singh's case (supra)*, the notification is published after following the procedure as contemplated by Section 4 of the Wakf Act. In *Board of Muslim Wakfs Vs. Smt. Hadi Begum and others*, , it was held that civil suit was maintainable to challenge the list published u/s 5(2) of the Wakf Act and the scope of challenge to the said list in proceedings under Article 226 of the Constitution of India is confined to cases where the order of the wakfs Commissioner u/s 4 of the wakf Act suffers from want of jurisdiction as the notification itself is based thereon. There is no "challenge either to the notification u/s 5(2) of the Wakf Act or to the order of the Wakfs Commissioner in this case. The contention of the learned counsel for the private respondents that the notification is void and a void notification need not be challenged, cannot be accepted when nothing has been brought on the record to show it as such and especially on the face of the decision of this Court in *Avtar Singh's case (Supra)*.

7. *Punjab Wakf Board v. Mohan Singh* 1982 P.L.J. 343 and *Prithipal Singh v. Punjab Wakf Board* (1977)79 P.L.R. : 1977 P.L.J. 271 relied upon by Mr. Cheema, learned counsel for the private respondents do not help him and are distinguishable on facts. In *Mohan Singh's case (Supra)*, a suit was filed raising a dispute whether the property was wakf property or not. On this situation, it was stated that a notification u/s 5(2) of the Wakf Act would not bind third parties

and it is for the wakf Board to prove that the property was either dedicated or was used for religious and charitable purpose. This is not the situation in the present case as no suit had been filed challenging the notification, Annexure P-1. In Prithipal Singh's case (Supra), notification u/s 5(2) of the Wakf Act had not been issued and the dispute had arisen out of a suit filed by the wakf Board for perpetual injunction to restrain the defendants from taking possession. Conclusive nature of the notification u/s 5(2) of the Wakf Act was not at all in question in the said case.

8. In view of the above, discussion and following the view taken in Avtar Singh's case (supra), it has to be held that the property in dispute is wakf property and was not available for allotment under the Displaced persons (C&R) Act, 1954. As a consequence of the above, these writ petitions are allowed and orders Annexures P-2 and P-5 are quashed. The parties are, however, left to bear their own costs.