

(2009) 01 MP CK 0055
In the Madhya Pradesh High Court

Wakf Imambara Imlipura

APPELLANT

Vs

Smt. Khursheeda Bi and Others

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Waqf Act, 1995 — Section 32, 33, 35, 40, 5

Citation : AIR 2009 MP 238 : (2009) ILR (MP) 2182 : (2009) 5 MPHT 271

Hon'ble Judges : Sushma Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Judgement

1. In the writ petitions common question is involved with respect to interpretation of provision of Section 85 of the Wakf Act, 1995 whether the suit filed by the Wakf for ejectment of the tenant is maintainable before the Civil Court or such a dispute is to be adjudicated by Wakf Tribunal, under the Wakf Act, 1995.

2. It is not in dispute that plaintiff in each of the case is a Wakf and suit has been filed for ejectment of tenant from Wakf property.

3. In WP No. 8313/06 initially Civil Suit No. 30-A/2004 was filed on 13-2-2003 which was dismissed by the Civil Court on the ground that it had no jurisdiction to try the suit. It was triable by Wakf Tribunal, Bhopal under the provision of Wakf Act. 1995. Plaintiff filed civil appeal against the decision rendered. The appeal was decided on 6-10-2005 by the II Addl. Sessions Judge, East Nimar (Khandwa) in which plaint was ordered to be returned for presentation before the Wakf Tribunal. Judgment (P/2) was delivered. Accordingly the Civil Judge returned the plaint on 22-11-2005 for presentation before the Wakf Tribunal, Bhopal. However, the tribunal has held vide order (P/3) dated 7-3-2006 that jurisdiction lie with the Civil Court as such returned the plaint for presentation before the Civil Court. Against the plaint was presented by the plaintiff before the Civil Court. It has been returned for presentation by the Civil Court before the Tribunal vide order (P/1) dt. 3-5-2006. Hence, the instant petition has been preferred. Prayer has been made to decide the question of jurisdiction of Civil

Court/Wakf Tribunal to try the eviction suit between the landlord Wakf and tenant.

4. Facts are similar in WP No. 8296/06 and WP No. 8305/06. The Civil Court has held that it has no jurisdiction. Wakf Tribunal has also held that it has no jurisdiction to try the suit.

5. W.P. No. 1829/08 has been preferred by the tenant Mohd. Iqbal in which order dt/-20-2-2007 passed by the II Civil Judge, Class-I, East Nimar (Khandwa) in Civil Suit No. 106-A/06 has been assailed. The trial Court has held vide order (P/2) dated 20-2-2007 that the Civil Court has the jurisdiction to decide the civil suit. Aggrieved thereby an appeal was preferred. Same has been dismissed as not maintainable vide order dt/- 10-12-2007 by the District Judge East Nimar, Khandwa. Consequently, the writ petition has been preferred.

6. Shri Imtiaz Hussein, learned Counsel appearing on behalf of the petitioner/ Wakf in WP No. 8296/06, WP 8305/06 & WP No. 8313/06 has submitted that the Tribunal as well as Civil Court have held that they do not have the jurisdiction. The plaintiff is not able to seek redressal either before the Civil Court or before the Wakf Tribunal. He has submitted that Section 85 of the Wakf Act, 1985 ousts the jurisdiction of the Civil Court only with respect to the matters which are required by or under the Wakf Act to be determined by the Tribunal. He has submitted that the words dispute, question or other matter relating to any wakf, wakf property should be such which is required by or under the Wakf Act to be determined by the Tribunal. Counsel has placed reliance on the Single Bench decision of this Court in Subhan Shah through Lrs. Ramjan Khan and Others Vs. Madhya Pradesh Wakf Board and Others, and Yashpal Lala Shiv Narain Vs. Allatala Tala Malik Waqf Ajakhan Mus, . He has also referred to other decisions to be referred latter.

7. Shri Vivek Rusia, learned Counsel appearing on behalf of the tenant has also submitted that the Civil Court has the jurisdiction to try the suit on property interpretation of Section 85.

8. Before dilating upon the submissions, we note that the Wakf Act, 1995 has been enacted to bring a new comprehensive Act with respect to Wakf matter incorporating the features of 1954 Act and such provisions of 1954 Act with respect to which near reached consensus after holding wide discussion Wakf Tribunal has been constituted so as to consider matters about Wakf property and Wakf. Wakf Tribunal has been defined in Section 3(q) Tribunal in relation to any area, means the Tribunal constituted under Sub-section (1) of Section 83, having jurisdiction in relation to that area. Section 83 of the Wakf Act, 1995 provides constitution of Tribunal for determination of any dispute, question of other matter relating to a wakf or wakf property. Sub-section (2) of Section 83 provides that any mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application to the Tribunal. Sub-section (3) of Section 83 deals with territorial jurisdiction of the Tribunal. Sub-section (4) of Section 83 provides that every Tribunal shall

consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation. Sub-section (5) of Section 83 provides that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order. Sub-section (7) of Section 83 provides that the decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court. Sub-section (8) of Section 83 provides that the execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908). Sub-section (9) of Section 83 provides that no appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal, provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such, determination or pass such other order as it may think fit.

9. Section 85 deals with the Bar of jurisdiction of Civil Courts: Section 85 reads thus:

85. Bar of jurisdiction of Civil Courts.-- No suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

It is apparent from reading of Section 85 that section is in two parts. First part provides no suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property. Second part provides that other matter which is required by or under this Act to be determined by a Tribunal. The words "other matter" has been used in the first part as well as in the second part. In the first part user of the words "any dispute, question or other matter" is wide enough to cover within its ken the suit for ejectment also filed by Wakf against a tenant. The second part deals with the other matter which is required by or under this Act to be determined by a Tribunal as provided in Sections 6, 7, 32, 33, 35, 40, 51, 52, 54, 64, 67 and 69. We are unable to accept the submission raised by the counsel that we must read the section in such a way that only such other matter which is required by or under this Act to be determined by a Tribunal governs the bar of jurisdiction of Civil Court which other matters are mentioned in the aforesaid Sections 6, 7, 32, 33, 35, 40, 51, 52, 54, 64, 67 and 69 of the Wakf Act, 1955. The Legislative intention is clear from reading of Sections 83 and 85 the Tribunal is deemed to be a Civil Court and exercises similar powers as may be exercised by the Civil

Court under the C.P.C. while trying a suit, execute a decree or order. We cannot confine the bar created by Section 85 with respect to dispute as to title of the Wakf property or with respect possession based on title of the Wakf property as suggested by the learned Counsel. The word "any" qualifies the "dispute" which would include suit for ejectment of a tenant from Wakf premises. In any view of the matter such a suit for ejectment would be covered under the phrase "other matter relating to Wakf property". In our opinion, even if status of the tenant is admitted one Section 85 first part ousts the jurisdiction of Civil Court to entertain such a suit for ejectment to tenant, if it is held that in such a suit personal relationship of landlord and tenant is severed and relief for ejectment is held to be incidental the phrase other matter with respect to Wakf property would cover suit for ejectment from Wakf property. Such a proceeding for ejectment of the tenant to be filed before the Tribunal. Subhan Shah through Lrs. Ramjan Khan and Others Vs. Madhya Pradesh Wakf Board and Others, considering Section 55 of Wakf Act, 1954 which is *pari-materia* to Section 83 of Wakf Act, 1995, it has been held that:

18. In other words, in my opinion, the validity of orders made under the provisions of the Act or any rule or order made thereunder can be challenged by aggrieved persons before the Tribunal for determination of the dispute relating to Wakf. However, the Mutawali of a Wakf, or persons interested in a wakf are competent u/s 55(2) of the Act to approach the (sic) other matters relating to the Wakf. According to me Section 55(2) of the Act confers discretion to aggrieved person to file an application to the Tribunal only in case he is aggrieved by any order made under this Act or any rule or other made thereunder. However, any Mutawali of a Wakf and person interested in a Wakf can file application to the Tribunal for determination of any disputed question or other matters relating to the Wakf. Even in case of persons aggrieved, he can file an application to the Tribunal only in case the order passed under the Act, rule or order made thereunder is in relation to the Wakf Property. In my opinion, in case the power of the Tribunal is confined for determination of only those disputes which are required to be determined under the specific provision of the Act, Rule or Order, it will lead to rendering the provision of Section 55(2) of the Act superfluous. Legislature does not waste words and I do not have any compelling reason to adopt a course of interpretation to render the provisions of Section 55(2) of the Act, superfluous. As I have held earlier both operate in the different field.

19. Learned Counsels for the plaintiffs have further submitted that relief sought for by them in the Civil Courts cannot be adjudicated by the Tribunal and in that view of the matter even if the Tribunal has got the power u/s 5(1) and (2) of the Act the suits and the proceedings cannot be transferred. In the submission of the learned Counsels when the Tribunal is not competent to grant relief sought for In the Civil Court the necessary corollary of the same in their submission shall be that the Tribunal shall have no power. The whole premises on which the learned Counsels have proceeded is unfounded and they totally ignore the provisions of

Section 55(5) of the Act as amended. u/s 55(5) of the Act the Tribunal is deemed to be a Civil Court and has the same power as that of a Civil Court under the Code of Civil Procedure, while trying the suit or executing the decree or order. In view of the aforesaid specific provisions, I do not have slightest hesitation in holding that the relief which can be granted by the Civil Court can also be granted by the Tribunal.

10. In *Subhan Shah v. MP Wakf Board* (supra) single Judge of this Court has also opined that in a suit for grant of permanent injunction restraining the defendants or their agents from dismantling the roof of the shop or cause any damage to it has held that the Tribunal is not competent to hear such a dispute as such relief sought for by the plaintiff cannot be granted by the Tribunal. Relief sought was for permanent injunction restraining the tenant from abolishing the shop. Plaintiff was a tenant in a shop which was wakf property. It was held by this Court that plaintiff was neither Mutwalli or person interested in the wakf and cannot come within the expression "persons aggrieved by any order made under the Act or any rule or order made there under" as provided in Section 83. Thus, cannot file an application before the tribunal for grant of relief sought for in the Civil Suit. Thus, it was held that the Civil Court was right in not transferring the suit in the Tribunal. Facts were different in the aforesaid decision. In the instant suit, the suit is for ejectment and such a suit, in our opinion, would lie before the Tribunal, even as per reasoning given with respect to interpretation of Section 55 of the Act of 1954 in paras 18 and 19 of the report (supra).

11. In *Yashpal Lala Shiv Narain Vs. Allatala Tala Malik Waqf Ajakhan Mus*, a Single Bench of Allahabad High Court has held that in the suit for ejectment of tenant dispute is with respect to determining the tenancy such a suit is not a suit in respect of any dispute, question or other matter relating to any wakf, wakf property In the context in which such words have been used in Section 85 of the Wakf Act, 1995. Following discussion has been made in *Yashpal Lala Shiv Narain v. Allatala Tala Malik Wakf Ajakhan* (supra):

168. A perusal of Section 85 of the Wakf Act, 1995 shows that in case, there is any dispute, question or other matter "relating to any wakf, wakf property or other matter which Is required by or under this Act to be determined by a Tribunal" then no suit or other legal proceeding shall lie in any Civil Court In respect of such dispute, question or matter.

169. As noted above, the present suit is a suit for eviction of the tenant [i.e. petitioner (defendant)] from the disputed shop after determination of the tenancy/lease. Such a suit is not a suit "in respect of any dispute, question or other matter relating to" any wakf or wakf property in the contest in which the said words have been used in Section 85 of the Wakf Act, 1995.

170. Further, analysis of various provisions of the Wakf Act, 1995, particularly, Sections 6, 7, 32, 33, 35, 40, 51, 52, 54, 64, 67, 69 and 83 thereof, shows that such a suit for eviction of the tenant [i.e. petitioner (defendant)] after

determination of the tenancy/lease is also not covered within the purview of the words "other matter which is required by or under this Act to be determined by a Tribunal.

171. In the circumstances, I am of the opinion that the bar created by Section 85 of the Wakf Act, 1995 does not apply in the present case, which pertains to a suit for eviction of the tenant from the disputed shop after determination of the tenancy/lease. As such, in my opinion, the submissions made by the learned Counsel for the petitioner (defendant) in this regard, cannot be accepted.

We are unable to agree with the view propounded by learned Single Judge of the Allahabad High Court as in our opinion, Section 85 is in two parts in the aforesaid decision the second part has been taken to govern even the first part, in our opinion, the words "any dispute, question or other matter" used in the first part of Section 85 would cover the dispute of ejectment between the Wakf and its tenant.

11-A. A Division Bench of Kerala High Court in Aliyathammada Beethathabiyyapura Pookoya Haji Vs. Pattakkal Cheriya Koya and Others, has laid down that:

12. We are therefore, of the considered view that the words any dispute, question or other matters relating to Wakf or Wakf property u/s 85 are wide enough to take in within its sweep not only matters which are specifically conferred on the Tribunal by the various provisions of the Act but also any dispute, question or any other matter relating to any Wakf or Wakf property since those powers have also been conferred on the Tribunal by the Wakf Act itself. On examining the scheme of the Act and various provisions we are of the view that the intention of the legislature is to resolve all disputes by one machinery and forum provided in the Act itself, that is, the Wakf Tribunal and not by the Civil Courts in this State.

15. ...

C.R.P. No. 2315 of 2002

This revision petition is filed u/s 83(q) of the Wakf Act against the judgment in O.S. No. 153 of 2001 granting a decree for eviction on the ground of arrears of rent. Contention was raised that the suit was not maintainable. Plaintiff produced Exts. A1 to 16. A5 is the Wakf Board registration certificate showing registration in respect of the property. The Tribunal held that it has got jurisdiction and granted a decree to the plaintiff to evict the defendant from the schedule property. We are of the view Tribunal is justified in taking the view that it has got jurisdiction since the dispute is regarding a wakf property. In such circumstances we find no illegality, irregularity or impropriety in the order passed by the Tribunal to be interfered with u/s 83 of the Act. The revision petition would stand dismissed.

We agreed with the view taken in Aliyathammada Beethathabiyyapura Pookoya

Haji v. Pattakkal Cheriya Koya and Ors. (supra). In our opinion, besides the matter which are specifically required to be dealt with by the Tribunal under the Wakf Act, Sections 83 and 85 provide that any other matter relating to wakf or wakf property has to be heard and decided by the Tribunal.

12. Another decision which has been relied upon by counsel in Abdul Rahiman Musaliar Vs. Muhammed Sahib, has been overruled by the Division Bench of the Kerala High Court in Aliyathammada Beethathabiyyapura Pookoya Haji Vs. Pattakkal Cheriya Koya and Others, , thus, the reliance placed on the decision is misplaced.

13. In A.M. Ali Akbar and Another Vs. Keelakarai South Street Jamath Masjid Paripalana Committee and Others, the High Court has taken the view that the petition filed by the members of Jamath seeking permanent injunction restraining the opposite parties from interfering with management of Jamath and consequently granting temporary injunction restraining them from holding election cannot be entertained by the Tribunal. Facts and nature of dispute in the instant case are different, hence we refrain ourselves to express opinion as to aforesaid aspect.

14. The words and sections like men do not have their full significance when standing alone. Like men they are better understood by the company they keep, as laid down by the Apex Court in Kehar Singh and Others Vs. State (Delhi Administration), . When we consider the object, scope and intendment of the ouster of jurisdiction of Civil Court we are of the opinion that the Civil Court's jurisdiction is ousted with respect to the matter in question covered by Section 85 and other provision mentioned in aforesaid section.

15. In Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, the Apex Court has laid down that:

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 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 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 associate with actions in Civil Court are prescribed by the said statute or not.

When the scheme of Wakf Act is considered it is clear that there is express ouster of jurisdiction of Civil Court with respect to the matters covered u/s 85 of the Wakf Act, 1995.

16. In Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra

Pradesh, it has been laid down that there has to be express provision for exclusion of the jurisdiction of Civil Court to entertain civil causes. There is express provision in the instant case contained in Section 85 when read with Section 83 and other provisions it is apparent that there is ouster of the jurisdiction of the Civil Court with respect to matters covered under the aforesaid sections.

17. In *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, guiding considerations for determining whether Civil Court jurisdiction is excluded are that wherever a right, not pre-existing in common law is created by a statute and that statute itself provided a machinery for the enforcement of the right both the right and the remedy, having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the Civil Court's jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognized by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Court's jurisdiction, then both the common law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence. In the *Wakf Act, 1995* we find that remedies of Civil Court as well as Tribunal cannot be said to be concurrent in view of the express provision creating bar contained in Section 85 of the Act.

18. In *Darshan Singh and Others Vs. State of Punjab*, the Apex Court emphasized to the interpretation that the language by the Legislature is the true depository of the legislative intent, and that words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself. Applying the aforesaid test we find that Civil Court's jurisdiction is ousted in such matters as instant one.

19. In *Ishwar Singh Bindra and Others Vs. State of U.P.*, it has been laid down that "And" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or". Sometimes to carry out the intention of the legislature it is found necessary to read the conjunctions "or" and "and" one for the other. The word used in Section 85 of *Wakf Act* is "or" and that separates the two parts of Section Second part cannot restrict the operation of first part of Section 85.

20. In *M. Satyanarayana Vs. State of Karnataka and Another*, it has been laid down that a statute cannot be construed merely with reference to grammar. Statute whenever the language permits must be construed reasonably and rationally to give effect to the intention and purpose of the legislature. For giving effect to the intention and purpose of the Legislature the interpretation of ouster of Civil Court jurisdiction is a reasonable consideration as that is expressly provided by the statute.

21. In the circumstances, we hold that Section 85 of the Wakf Act ousts the jurisdiction of Civil Court to try such cases of ejectment of tenant, the Wakf Tribunal shall try such cases. The orders passed by the Civil Court and Wakf Tribunal to the contrary are set aside. The cases be made over/presented to the Wakf Tribunal to be tried in accordance with law.