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SYED ZAINUL ABEDEEN

v.

THE RAJASTHAN BOARD OF MUSLIM WAKF

(Civil Appeal No. 7130 of 2010)

B

AUGUST 30, 2019

[N. V. RAMANA AND AJAY RASTOGI, JJ.]

Waqf Act, 1954:

- ss.4, 5(2) and 6 proviso - Suit u/s. 6 seeking declaration that*
- C *the subject property was not Waqf-Al-Allah, but Waqf-Alal-Aulad - Suit was filed beyond statutory period of one year - Courts below held that suit was barred by limitation and hence not maintainable - Appeal to Supreme Court - Held: Suit was undisputedly preferred beyond statutory period of limitation - Once the property is*
 - D *registered as Waqf-Al-Allah the dispute regarding nature of Waqf is open to be examined only within the four corners of s.6 and hence the limitation period as provided in proviso to s.6 would be applicable - Limitation will not be guided by s.113 of Limitation Act - Limitation Act, 1963 - s.113.*
 - E *s.56 - Applicability of - To the proceedings under Chapter II - Held: s.56 deals with the judicial proceedings under Chapter VII - It has no application to the proceedings under Chapter II.*

Dismissing the appeal, the Court

- F HELD: 1.1** *It is not disputed that after affording opportunity of hearing to the respective parties including the appellant/plaintiff, a finding has been recorded by the Survey Commissioner of Wakfs in its report dated 2nd January, 1965 holding the subject property with attached lands, shops, buildings and other premises as "Wakf-Al-Allah" and according to the*
- G *report, the subject property was included in the list of wakfs and published in the Official Gazette in terms of sub-section (2) of Section 5 of the Act, 1954 dated 2nd December, 1965 and the suit for declaration was instituted before the Court of competent jurisdiction under Section 6 of Act, 1954 on 17th January, 1967. The suit was preferred beyond a statutory period of limitation*

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of one year and this statement of fact has not been disputed by the appellant also in his pleadings. A concurrent finding of fact has been recorded by all the three Courts and there is no manifest error in the finding of fact recorded by the Courts below which needs interference. [Paras 14, 15 and 19] [1011-B-D; 1014-F]

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1.2 The Parliament, in its wisdom, considered it appropriate to attach finality to the list of wakfs published in the Gazette added a proviso to Section 6 which has been couched in the negative words that no suit shall be entertained after the expiry of one year from the date of publication of the list of wakfs under sub-section (2) of Section 5 of Act, 1954. [Para 17] [1014-C-D]

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1.3 Once the property, after the survey, has been registered in the list of wakfs as Wakf-Al-Allah on the basis of the finding recorded by the Survey Commissioner in its report, the dispute regarding the nature of wakfs registered is open to be examined only within the four corners of Section 6 of Act, 1954. The plea of the appellant that subject property being Wakf-Alal-Aulad, Section 6 has been erroneously referred to and the limitation has to be guided by Section 113 of the Limitation Act, is without substance. [Para 20] [1014-H; 1015-A]

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2. Section 56 of the Act, 1954 is dealing with the judicial proceedings under Chapter VII and if any person is aggrieved by any action/inaction of the Board, other than the one which has been specified under Chapter II, it has to serve a legal notice and on expiry of two months, suit could be instituted against the Board and it is not open for the appellant to invoke Section 56 of the Act, 1954 in support of his defence which, in the instant case, has no application. [Para 21] [1015-C-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7130 of 2010.

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From the Judgment and Order dated 02.03.2009 of the High Court of Judicature for Rajasthan at Jaipur Bench in S.B. Civil Second Appeal No. 51 of 1989.

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S. Wasim A.Qadri, Sr. Adv., Zaid Ali Subzposh, Tamim Qadri, Saeed Qadri, Lakshmi Raman Singh, Advs. for the Appellant.

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A Raj Kishore Choudhary, M. Z. Chaudhary, Aftab Ali Khan, Shakeel Ahmed, Nakul Chaudhary, Arvind Kumar Kanya, Ali Safeer Farooqi, Syed Imtiyaz Ali, Advs. for the Respondent.

The Judgment of the Court was delivered by

RASTOGI, J.

B 1. The instant appeal is directed against the concurrent finding of all the three Courts below on the issue that the suit filed by the appellant/plaintiff under Section 6 of the Wakf Act, 1954(hereinafter being referred to as the "Act, 1954") was barred by limitation and not maintainable.

C 2. The appellant/plaintiff filed a suit under Section 6 of the Act, 1954 seeking the following declarations:-

"(i) A declaration may be issued to the effect that the property Mandarja Madnumber 14 as mentioned in the suit is not Wakf Allah and the same is Wakf Alal Aulad.

D (ii) Hukum Imtanai consequential be issued against the defendant with the direction that the defendant shall not treat the property Mundarja Madnumber as Wakf Allah and the defendant will register the aforesaid property except Mosque and Mazar as Wakf Alal Aulad and if it has been registered wrongly the same be corrected.

E (iii) The defendant be directed to the cost of the suit.

(iv) Such further or further(s) orders as may be in the interest of justice."

F 3. It is not disputed that the subject property in question is a registered wakf under the Act, 1954.

G 4. The Act, 1954 was enacted for better administration and supervision of wakf and Chapter II provides the procedure to be followed for survey of wakfs. Sub-section(4) of Section 4 of the Act, 1954 postulates that the Survey Commissioner while making any inquiry, have the same powers as are vested in the civil Court under the Code of Civil Procedure, 1908 and Survey Commissioner has to submit his report to the State Government under sub-Section(3) of Section 4 of the Act. In the instant case, inquiry was conducted by the Survey Commissioner under sub-section (4) of Section 4 of the Act, 1954

regarding Dargah Moulana Ziauddin Sahib with attached lands, properties, shops, buildings and other premises and after holding inquiry in reference to the subject property in question and taking note of the rival claims and the evidence of the respective parties which came on record, in its inquiry dated 2nd January, 1965 (Annexure - R1) held as under:-

"On a careful consideration of the entire evidence on record specifically the statement of Shri Faqrudin Shah I am satisfied that Dargah Moulana Ziauddin Sahib with attached lands, properties, shops, buildings and other premises is a wakf - Al-Allah property and accordingly

Order

that the above properties be entered as wakf Al-Allah in survey record."

5. To be noticed at this stage, the survey conducted by the Commissioner Wakfs under the Act, 1954 holding the subject property as a Wakf-Al-Allah in its report dated 2nd January, 1965 was not the subject matter of challenge in the suit filed at the instance of the appellant/plaintiff.

6. On the basis of the survey report, the subject property in question was included in the list of wakfs and was published in the Official Gazette as provided under sub-section (2) of Section 5 of the Act, 1954 dated 2nd December, 1965.

7. The appellant/plaintiff, being aggrieved by the declaration of the subject property as published in the Official Gazette in terms of sub-section (2) of Section 5 of the Act, 1954 dated 2nd December, 1965 filed Suit no. 23 of 1967 for declaration before the Munsif, West Jaipur City on 17th January, 1967.

8. After the notice came to be served, the respondent/defendant raised a preliminary objection that the suit filed by the appellant/plaintiff is beyond the period of limitation of one year as provided under 1st proviso to Section 6 of the Act, 1954 and accordingly was not maintainable.

9. The defence of the appellant throughout and also before this Court is that the subject property in question has been erroneously declared as Wakf-Al-Allah. But according to the evidence on record,

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- A the subject property in question is a "Wakf-Alal-Aulad" and according to him, the restriction of period of one year under proviso to Section 6 of Act, 1954 may not apply in the case of a declaration being claimed by the appellant in the suit preferred under the Act, 1954 and the period of limitation has to be determined in terms of Article 113 of the Limitation Act to be preferred within a period of three years.
- B 10. In alternative, further submission made is that there is a restriction that suit shall be instituted against the Wakf Board after expiry of two months' prior notice as envisaged under Section 56 of the Act, 1954 and in the instant case, notice was served on 4th November, 1966 and taking note of two months of the statutory period of notice, the
- C suit preferred by the appellant on 17th January, 1967 would be within a period of limitation of one year and this, according to him, is an apparent error being committed by all the Courts below and High Court has also failed to examine the submission made in the right earnest. Accordingly, it has been prayed that the judgments of the Courts below be quashed
- D and set aside and the suit preferred by the appellant be treated to be within a period of limitation and the civil Court be directed to examine the grievance raised by the appellant on merits.
- E 11. Per contra, learned counsel for the respondent, on the other hand, while supporting the finding of all the three Courts submits that the suit was filed by the appellant under Section 6 of the Act, 1954 after the expiry of the statutory period of limitation and Article 113 of the Limitation Act has no application in the instant case. All the three Courts have recorded a finding of fact that the suit was not filed within the statutory period of one year as envisaged under proviso to Section 6 of the Act, 1954, at least at this stage, the appellant cannot be
- F permitted to raise a plea which was never raised at any stage and this being a concurrent finding of fact unless being held to be perverse or not sustainable in law ordinarily is not open to be interfered by this Court.
- G 12. Learned counsel further submits that Section 56 of the Act, 1954 has no application, and after the properties are registered as wakf properties and publication of the list of wakfs in the official gazette, in terms of sub-section (2) of Section 5 of Act, 1954, an inbuilt mechanism has been provided under Section 6 of the Act, 1954 to institute a suit in a civil Court of competent jurisdiction within a statutory period of one year from the date of publication of list of wakfs in the Official Gazette under sub-section (2) of Section 5 of the Act, 1954 and no other remedy
- H is permissible under the law.

13. We have heard learned counsel for the parties and with their assistance perused the material available on record. A

14. It is not disputed that after affording opportunity of hearing to the respective parties including the appellant/plaintiff, a finding has been recorded by the Survey Commissioner of Wakfs in its report dated 2nd January, 1965 holding the subject property with attached lands, shops, buildings and other premises as "Wakf-Al-Allah" and according to the report, the subject property was included in the list of wakfs and published in the Official Gazette in terms of sub-section (2) of Section 5 of the Act, 1954 dated 2nd December, 1965 and the suit for declaration was instituted before the Court of competent jurisdiction under Section 6 of Act, 1954 on 17th January, 1967. B

15. Indisputedly, from the date of publication of the subject property in the Gazette under sub-section (2) of Section 5 of the Act, 1954, the suit was preferred beyond a statutory period of limitation of one year and this statement of fact has not been disputed by the appellant also in his pleadings. C

16. The extract of the relevant provisions of the Act, 1954 is reproduced hereunder:- D

"4. Preliminary survey of wakfs.

(3) The [Survey Commissioner] shall, after making such inquiry as he may consider necessary, submit his report [in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof,] to the State Government containing the following particulars, namely: - E

- (a) the number of wakfs [in the State, or as the case may be, any part thereof], showing the Shia wakfs and Sunni wakfs separately; F
- (b) the nature and objects of each wakf;
- (c) the gross income of the property comprised in each wakf; G
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of such property;
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and H

- A (f) such other particulars relating to each wakf as may be prescribed.
- (4) The [Survey Commissioner] shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: -
- B (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- C (d) issuing commissions for the examination of any witness or accounts;
- (e) making any local inspection or local investigation;
- (f) any other matter which may be prescribed.
- D 5. Publications of list of wakfs-(1) On receipt of a report under sub-section (3) of Section 4, the State Government shall forward a copy of the same to the Board.
- (2) The Board shall examine the report forwarded to it under sub-section (1) and publish, in the Official Gazette, a list of wakfs [in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter,] to which the report relates, and] containing such particulars as may be prescribed.
- E 6. Disputes regarding wakfs-
- F (1) If any question arises [whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of Section 5 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 civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:
- G Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5:
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[Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil court within the period of one year from such commencement.] A

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit. B

(3) The [Survey Commissioner] shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder. C

(4) The list of wakfs published under sub-section (2) of Section 5 shall, unless it is modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive. D

[(5) On and from the commencement of the Wakf (Amendment) Act, 1984 in a State, no suit or other legal proceeding shall be instituted or commenced in a civil court in that State in relation to any question referred to in sub-section (1).] E

CHAPTER VII Judicial Proceedings

56. Notice of suits by parties against the Board-No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left." F

17. The conjoint reading of the provisions of which a reference has been made clearly envisage that the survey is to be made of wakfs by the State Government through its authorised Officer, i.e., Survey Commissioner under sub-section (4) of Section 4 of the Act who could make an inquiry with the same powers as are vested in a civil Court G

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- A under the Code of Civil Procedure, 1908, and may submit its report under sub-section (3) of Section 4 of Act, 1954 to the State Government. On receipt of the report under sub-section (3) of Section 4, the State Government will forward a copy of the same to the Board who may examine the report and publish it in the Official Gazette in
- B the list of wakfs under sub-section (2) of Section 5 of the Act, 1954 and any disputes regarding wakfs, to be more specific, regarding the properties which are specified as wakf properties in the list of wakfs published in the Official Gazette under sub-section (2) of Section 5 by any person aggrieved may be challenged by way of a suit in a Court of competent jurisdiction under Section 6 of the Act and the Parliament, in its wisdom, consider it appropriate to attach finality to the list of wakfs published in the Gazette added a proviso to Section 6 which has been couched in the negative words that no suit shall be entertained after the expiry of one year from the date of publication of the list of wakfs under sub-section (2) of Section 5 of Act, 1954.
- D 18. In the instant case, list of wakfs property was published in the Gazette on 2nd December, 1965 and on its publication, a presumption has to be drawn that it is known to the general public and the suit for declaration was filed by the appellant under Section 6 of the Act, 1954 which is evident from para 19 of the amended plaint on 17th January, 1967:-

"That the suit is fit under the provision of Section 6 of Wakf Act and within the period of limitation under the provisions of 113 Limitation Act."
- F 19. Indubitably, the suit was preferred beyond the period of limitation and a concurrent finding of fact has been recorded by all the three Courts and we find no manifest error in the finding of fact recorded by the Courts below which needs our interference.
- G 20. So far as the submission made by the appellant regarding the subject property in question that it was Wakf-Alal-Aulad and not Wakf-Al-Allah, and for seeking such a declaration, period of one year of limitation may not apply, is without substance for the reason that once the property after the survey has been registered in the list of wakfs as Wakf-Al-Allah on the basis of the finding recorded by the Survey
- H Commissioner in its report dated 2nd January, 1965, the dispute

regarding the nature of wakfs registered is open to be examined only within the four corners of Section 6 of Act, 1954 and the plea of the appellant that Section 6 has been erroneously referred to and the limitation has to be guided by Section 113 of the Limitation Act, in our considered view, is without substance and deserves rejection.

21. The further submission made by learned counsel for the appellant taking assistance of Section 56 of the Act, 1954, in our considered view, is of no substance for the reason that Chapter II deals with the survey of wakf and its resolution after the list of wakfs has been published in the Official Gazette under sub-section (2) of Section 5 of the Act 1954 in accordance with Section 6 of the Act, 1954 to be instituted within the period of limitation prescribed therein, to be examined by the civil Court. At the same time, so far as Section 56 of the Act, 1954 is concerned, it is dealing with the judicial proceedings under Chapter VII and if any person is aggrieved by any action/inaction of the Board, other than the one which has been specified under Chapter II, it has to serve a legal notice and on expiry of two months, suit could be instituted against the Board and it is not open for the appellant to invoke Section 56 of the Act, 1954 in support of his defence which, in the instant case, has no application.

22. We find no error in the orders passed by the Courts below which calls for our interference.

23. Consequently, the appeal is without substance and accordingly dismissed.

24. Pending application(s), if any, stand disposed of.

Kalpana K. Tripathy

Appeal dismissed.