

Telangana State Waqf Board vs Mohamed Muzafer on 3 August, 2021

Author: A.S. Bopanna

Bench: A.S. Bopanna, Hemant Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 4522 OF 2021
(Arising out of SLP (CIVIL) No.28786 of 2015)**

Telangana State Wakf Board & Anr.Appellant(s)

Versus

Mohamed Muzafer Respondent(s)

JUDGMENT

A.S. Bopanna,J.

1. The appellant No.1 is the Andhra Pradesh State Wakf Board, while the appellant No.2 is the Mutawalli of the registered Wakf institution which is known as Graveyard Mir Rahmat Ali Shah. The said Wakf institution is stated to have been registered under Muntakhab bearing No. 998 dated 24.02.1953 and later entered in the book of endowment showing an extent of 666 sq. yards. The Muntakhab was amended by the Wakf Board in its resolution dated 21.04.1988 to the extent of correcting the land of the Wakf institution as 998.66 sq. yards and the same was published in the gazette notification dated 29.12.1988. The wakf institution/graveyard is situated near Tek Masjid, Nampally, Hyderabad.

2. The father of appellant No.2, Late Mir Dawood Ali was the Mutawalli appointed by the Wakf Board, whose name is recorded in the gazette referred to above. The appellant averred that during the lifetime of the father of appellant No.2, the father of the respondent, namely, Late M.A Qayyum had obtained on rent the premises bearing Municipal No. 57420/2 measuring 90.16 sq. yards belonging to the Wakf institution. The father of the respondent was running a firewood stall which he later converted into a hotel and has been running the hotel business in the name and style "Hotel

Najran".

3. The case of the appellant was that the father of the respondent was paying rent in respect of the property and was being enhanced from time to time. The respondent, after he became a major continued the tenancy of his father in respect of the said premises and the monthly rent at the time of filing the suit was Rs.1,500/- excluding electrical and water charges. The respondent is stated to have succeeded to the tenancy in the year 1995 and the rent was being paid to the Wakf Board since the institution at that point was under

direct management of the Board in view of the death of the original Mutawalli i.e., the father of appellant No.2. Subsequent thereto the appellant No.2, as the successor was appointed as the Mutawalli in place of his father vide the proceedings dated 04.07.2005 which was published in the gazette on 04.08.2005. The appellant No.2 intimated this fact to all the tenants of the property belonging to the Wakf institution through a letter dated 14.11.2005, whereafter the rent was being paid to him directly. In respect of the premises in the occupation of respondent the rent was not being paid regularly, which accumulated to Rs.24,500/- Despite repeated requests the respondent had not paid the arrears from the month of November 2005 for a period of 7 months which amounted to Rs.10,500/- The respondent therefore was due to pay the total amount which was due and unpaid.

4. The appellant further averred that while the Wakf institution was under the direct management of the Wakf Board, the respondent had encroached upon 40 sq. yards site of the graveyard on the western side of the tenanted premises, constructed road thereon and started running a firewood stall. The appellant No.2 noticed the same when he assumed charge on 04.07.2005. Though the appellant No.2 requested the respondent to pay damages for the use and the illegal occupation and vacate both the properties, namely the tenanted as well as the encroached portion, the respondent did not vacate. In that background, the appellant No.2 got issued the legal notice dated 23.05.2006 terminating the tenancy of the tenanted portion with effect from 01.07.2006 and demanded to remove the encroachment. The respondent on receipt of the notice made payment of Rs.4,500/- as part of the arrears of rent through a money order and also a sum of Rs.4,500/- was paid directly to the appellant No.2 towards the rent for the months of August, September and October, 2005. The respondent however got issued reply notice dated 12.06.2006 wherein he denied that the tenanted portion and the alleged encroached portion referred to was Wakf property and that his father had taken it on rent. Further, all claims made by the appellants were also denied.

5. In the above backdrop, the appellants were constrained to file a suit bearing O.S. No.126/2006 before the Andhra Pradesh State Wakf Tribunal, Hyderabad seeking eviction of the respondent from the property belonging to the Wakf institution. The tenanted portion referred to above was delineated as Schedule 'A' in the plaint while the encroached portion was shown as Schedule 'B'. The respondent who was arrayed as defendant in the suit had appeared and filed his written statement wherein inter alia he had contended that the suit property is not a Wakf property and that the exhibit filed by the appellants dated 30.10.1994 pertaining to the graveyard is of an extent of 667.8 sq.yards. It was further contended that the gazette notification clearly established that this

graveyard is not having any non-agricultural lands such as mulgies and houses etc. He further claimed that the property bearing No. 57420/2 stood in the name of his father. The gazette notification dated 29.12.1988 mentioning the extent as 998.66 sq.yards was disputed and contended that the same does not exist. Further, the case put forth by the appellants herein as plaintiff in the suit was disputed in toto.

6. The Wakf tribunal on taking note of the rival contentions had framed the following issues for consideration: □“1. Whether the land covered by H. No.57420/2, situated at Nampally Hyderabad is part of notified Wakf Graveyard?

2. Whether there is a relationship of land lord and tenant between the parties.

3. Whether the plaintiff is entitled to evict the defendant as prayed for?

4. Whether the plaintiff is entitled to arrears of rent, mesne profits as prayed for?

5. To what relief?” The parties accordingly tendered evidence before the Wakf tribunal so as to discharge the burden cast on them.

7. The appellant No.2 examined himself as PW.1. Though, witness Mr. Mohd. Yousuf Qureshi was examined as PW.2, he was not tendered for cross-examination and therefore his chief examination was eschewed. The appellants also relied upon the documents which were marked as Exhibits A1 to A24. The respondent examined himself as DW.1 and also examined a witness Mr. Mohd. Abdul Aziz as DW2 and relied upon the documents at Exhibits B1 to B40. The Wakf tribunal after taking note of the rival contentions and the evidence tendered, held the issues in favour of the appellants and decreed the suit holding the suit schedule properties to be the property belonging to the Wakf institution and directed the respondent to vacate the suit schedule properties. The judgment to that effect was rendered by the Wakf tribunal on 12.10.2012.

8. The respondent claiming to be aggrieved by the said judgment, preferred a Revision Petition under Section 83 of the Wakf Act before the High Court of Judicature at Hyderabad in Civil Revision Petition No.1331/2013. The High Court while advertizing to the rival contentions has allowed the Revision Petition and set aside the judgment passed by the Wakf tribunal. The High Court passed the said order on 02.06.2014. It has referred to the decision of this Court in the case of Ramesh Gobindram vs. Sugra Humayun Mirza Wakf (2010) 8 SCC 726; has accordingly held that the suit was not maintainable before the Wakf tribunal and has allowed the parties to avail their remedy as per law. The appellants, therefore, claiming to be aggrieved by the said judgment are before this Court in this appeal.

9. We have heard Ms Akriti Chaubey, learned counsel for the appellants and Mr. Raavi Venkata Yogesh, learned counsel for the respondent and perused the appeal papers as also the written submissions submitted by the respective learned advocates.

10. As noted from the fact situation narrated above, the appellant had contended that the suit schedule properties are Wakf properties and had claimed that the respondent is a tenant in respect of Schedule 'A' property and that he had encroached the Schedule 'B' property which also belongs to Wakf institution. The respondent had contended that the suit properties are not Wakf properties. From the issues framed by the Wakf tribunal, it is noticed that the consideration which was required at the outset was to conclude whether the land covered by H No.5□420/2 situated at Namapally, Hyderabad is a part of the notified Wakf Graveyard. Similarly, the status of Schedule 'B' property which was alleged to be encroached by the respondent was also to be determined, if it was also part of Wakf property. It is in that regard, the tribunal having noted the contentions has analysed the same with reference to the evidence. What was highlighted by the respondent is that the gazette notification indicated only 668 sq. yards and as such the suit schedule properties do not form part of the same. In that regard, though the appellants relied on the notification dated 29.12.1988 to contend that the extent of the land belonging to the Wakf institution is 998.66 sq. yards the respondent disputed the existence of such notification.

11. The Wakf tribunal, apart from referring to the said documents had also taken note of the fact that an earlier suit in O.S. No. 186 of 1982 had been instituted by the appellant No.1 herein against the father of the respondent. The judgment passed therein was marked as Exhibit A13 in the present suit. The tribunal having noted the same and the nature of the contentions put forth had in that regard taken into consideration the written statement filed by the father as at Exhibit A15, as also the panchnama dated 1.09.2005 at Exhibit A17. In that light, the Wakf tribunal had noted that when the respondent herein had claimed to have succeeded to the property of his father and in respect of same property when the father had taken a particular stand in the suit filed against him, the respondent would be estopped from putting forth any other contention, keeping in view, the provision contained in Section 116 of the Evidence Act.

12. In addition, the tribunal had also taken into consideration the fact that the brother of the respondent had filed a writ petition bearing No. W.P. 26338 of 2007 challenging the gazette dated 29.12.1988 wherein the extent of the property belonging to the Wakf institution is shown as 998.66 sq. yards. The contents of the gazette was extracted and noted by the tribunal, wherein it was indicated that the amendment to Muntakhab No.998 in file No.2195/2/1350 fasli was notified in Andhra Pradesh gazette dated 29.12.1988. Thus, as per the amended Muntakhab the open land measuring 998.66 sq. yards and the premises bearing MCH numbers 5□429, 5□420/1, 5□420/2 and 5□420/3 are Wakf properties. Therefore, based on the said conclusion and the finding rendered on other aspects by the tribunal, the tribunal had at the outset arrived at the conclusion that the property in question is Wakf property. In that regard to disbelieve the documents relied on by the respondent at Exhibits B1 to B37 namely the receipts and the claim that the slum certificate is issued, the tribunal has noted the corrections made therein which is visible to the naked eye and as such did not accept the same.

13. Insofar as the Schedule 'B' property, the tribunal had taken into consideration the notice at Exhibit A7 which was issued by the appellants. In order to arrive at the conclusion that the said property also forms a part of the Wakf property which is the Graveyard, the tribunal had referred to Exhibit A16, i.e., plan which was made in the year 1985 by the Wakf Board. From the said plan, the

tribunal had noticed that the Schedule ‘A’ and ‘B’ properties form a part of the Wakf properties which was also depicted in the photographs which was marked as Exhibit A22. It is in that light, the Wakf tribunal had arrived at the conclusion that the relief prayed for in the suit is liable to be granted and the suit was decreed in favour of the appellants herein.

14. The High Court on the other hand, before holding that the suit ought not to have been instituted before the Wakf tribunal in view of the judgment rendered by this Court in the case of Ramesh Gobindram (*supra*) has in fact attempted reappreciation of the evidence which was tendered before the tribunal. Reference is made to the Entry at Serial No.1698 and the indication of the Wakf institution known as Graveyard Rehmat Ali Sahab, area noted as 667.8 sq. yards at Cross road, Masjid Nampally. It was concluded that the same does not tally. The gazette notification dated 29.12.1988 was mentioned, wherein the extent is indicated as 998.66 sq. yards but the same was disbelieved. At the outset it is necessary to indicate that the consideration by the High Court ought not to have been in the nature of reappreciating the evidence which is permissible in an appeal. In a Revision Petition the scope of consideration is limited and the judgment/order under challenge can be interfered only in the event of there being perversity seen on the face of the order and if the conclusion reached cannot be acceptable to any reasonable person. In the instant case, on the factual aspects as noted, the tribunal had referred to the evidence including the manner in which the extent of the Wakf property was rectified and indicated as 998.66 sq. yards and also had taken into consideration the first round of litigation between the State Wakf Board and the father of the respondent wherein the conclusion reached was that the property in question is Wakf property. Therefore, such finding of fact which had been recorded by the tribunal based on evidence available on record could not have been lightly interfered with by the High Court.

15. In that regard it would be appropriate to refer to the decision of this Court in Kiran Devi versus Bihar State Sunni Wakf Board and Others 2021 SCC Online SC 280 which was authored by one of us (Justice Hemant Gupta) wherein the scope of jurisdiction to be exercised under Section 83 of Wakf Act is crystallised as follows: □“20. Therefore, when a petition is filed against an order of the Wakf Tribunal before the High Court, the High Court exercises the jurisdiction under Article 227 of the Constitution of India.

Therefore, it is wholly immaterial that the petition was titled as a writ petition. It may be noticed that in certain High Courts, petition under Article 227 is titled as writ petition, in certain other High Courts as revision petition and in certain others as a miscellaneous petition. However, keeping in view the nature of the order passed, more particularly in the light of proviso to sub□section (9) of Section 83 of the Act, the High Court exercised jurisdiction only under the Act. The jurisdiction of the High Court is restricted to only examine the correctness, legality or propriety of the findings recorded by the Wakf Tribunal. The High Court in exercise of the jurisdiction conferred under proviso to sub□section (9) of Section 83 of the Act does not act as the appellate court.”

16. Be that as it may, having noticed the manner of consideration made by the High Court with regard to the merit not being justified, it would also be necessary for us to consider as to whether the proceedings before the Wakf tribunal would be sustainable in the teeth of the observations made by the High Court with reference to the decision in Ramesh Gobindram (*supra*) which resulted in the

High Court setting aside the order passed by the tribunal. We have carefully perused the said decision. The consideration made therein was in the background of the provisions as contained in Sections 6, 7, 83 and 85 of the Wakf Act 1995. No doubt it is a case where the question arose as to whether suit for eviction from the Wakf properties could be instituted before the Wakf tribunal. However, what is necessary to be noted is that, the question for consideration has been delineated in paragraph 2 of the order which clearly indicates that what was required to be answered therein was as to whether the suit for eviction of tenants in respect of the items of property which are admittedly Wakf properties could be filed before the Wakf tribunal. After having taken into consideration Sections 6 and 7 of the Act, this Court was of the view that the tribunal would have the jurisdiction to decide such of those disputes arising thereunder and in respect of eviction of tenants from what is admittedly a Wakf property should be filed in the Civil Court as jurisdiction under Section 9 of the Civil Procedure Code is expansive. It is accordingly held, since what is to be decided by the tribunal are the disputes which arise under Section 6 and 7, the bar as contemplated under Section 85 to file a suit in the Civil Court does not apply. The said decision was rendered in a circumstance where the property was admittedly Wakf property, whereas in the instant case it is not an admitted case since the respondent had taken a specific contention that the properties in question are not Wakf properties.

17. The learned counsel for the respondent has however, referred to the decision of this Court in the case of Faseela M. vs. Munnerul Islam Madrasa Committee and Another (2014)16 SCC 38 to point out that in a similar consideration made by another Bench of this Court relating to the jurisdiction of Wakf tribunal, this Court has held that even in a case where it is disputed by the defendant that the property is not a Wakf property and if it is a case seeking eviction of the tenant, the suit is required to be filed before the civil court and jurisdiction of the Wakf tribunal cannot be invoked.

18. The learned counsel for the appellants has on the other hand drawn our attention to the other decisions of this Court on the same issue. In the case of Board of Wakf, West Bengal and Another vs Anis Fatma Begum and Another (2010) 14 SCC 588 and in the case of Haryana Wakf Board versus Mahesh Kumar (2014) 16 SCC 45 this Court has held that the question as to whether a property is Wakf property or otherwise is exclusively determinable by the Wakf tribunal after enactment of the Wakf Act. The decision in the case of Punjab Wakf Board vs Sham Singh Harike (2019) 4 SCC 698 is also referred by the learned counsel for the appellant to contend that in order to determine as to whether there is a bar on the jurisdiction to the civil court in relation to the provision contained in Wakf Act, one is to ask the question as to whether the issue raised in the suit or proceeding concerned is required to be decided under the Wakf Act, 1995 by the tribunal under any provision or not and if the answer to that question is in the affirmative the bar of jurisdiction of the civil court would operate.

19. Having noted the various decisions rendered by this Court which are all by a quorum consisting of two judges it would also be apposite for us to take note of the decision in the case of Kiran Devi (*supra*) rendered by a quorum of three Hon'ble Judges. The said case also related to a suit instituted by the tenant in respect of the suit premises seeking declaration to that effect and to continue in the suit premises as tenant on payment of monthly rent. In the said case, the suit in question was filed by the plaintiff before the competent civil court but the defendants, namely the Wakf Board had

contended that the issue is to be decided by Wakf tribunal. They filed application and sought transfer of the suit to the Wakf tribunal which was accordingly ordered by the civil court and was also upheld by the High Court in Revision. Subsequently, having succeed on merits before the Wakf tribunal, had failed in the writ petition wherein the claim of plaintiff was upheld. The Wakf Board at that point raised the contention that the tribunal did not have the jurisdiction in the appeal filed before this Court by placing reliance on Ramesh Gobindram (supra). This Court in the facts arising therein had held that the judgment passed by the Wakf tribunal in the circumstance cannot be held as without jurisdiction. The said case is one more circumstance to indicate that the facts and circumstance in each case will have to be taken note in the background of the legal frame work contained in the Wakf Act to determine jurisdiction.

20. In that light, in the present facts it is to be noted that the appellants at the first instance had got issued a notice dated 23.05.2006 to the respondent terminating the tenancy relating to the suit 'A' schedule property. A further notice was issued in respect of the suit 'B' schedule property requiring the respondent to vacate the encroached portion. The respondent, by his reply notice dated 12.06.2006 denied that the property in question was a Wakf property. In the said circumstance, the instant case cannot be deemed as an admitted case of the property being Wakf property as in the reply notice itself the respondent had disputed the same. It is in that circumstance the appellants being of the impression that the first issue to be established is that the property in question is the Wakf property, which could be considered by the tribunal, had filed the suit before the Wakf tribunal. The respondent having appeared, filed the written statement and inter alia had contended as follows: □“3. This defendant submits that with regard to the averments made in para 1 of the plaint and the documents annexed clearly shows that the suit property is not a Wakf Property. The Gazette filed by the Plaintiffs dated 30.10.1984 pertains to the so called graveyard is of an extent of 667.8 sq. yards. The said Gazette notification clearly establish that this Graveyard is not having any non agricultural land such as mulgees and houses etc. on the other hand as evident from the Municipal records, electricity and water works department record, that the premises bearing No.5□ 7□420/2 stands in the name of the father of this defendant. This defendant further submits that there is no such Gazette notification dated 21.12.1999 and the extent mentioned 998.66 sq. yards is not supported by any documentary evidence. The 2 gazette notifications filed by the Plaintiffs are self□contradictory. The so called grave yard is endowed with any property more over there will not be any attached properties for the burial grounds as there will be no developmental activities or maintenance like the other wakf institutions namely the dargah masjid or ashurkhana as much the averments made in Para 1 of the plaint is wholly contrary to the Gazette itself. The plaintiffs are put to strict proof of the same.”

21. Apart from the contention put forth by the respondent what is also to be taken note is that the High Court has made detailed reference to the contention put forth by the respondent regarding the gazette notification relating to the property as claimed by the appellants and the discrepancy as pointed out by the respondent by claiming that the extent mentioned is 667.8 sq. yards and not 998.66 sq. yards as contended by the appellants. The inclusion of the property in the gazette dated 29.12.1988 which was disputed by the respondent was also taken into consideration. In that light, through the discussion and conclusion reached by the High Court in paras 12 and 13 (b) of the order while adverting to the contention of encroachment of 40 sq. yards which was described in Schedule

'B' to the suit it has indicated that there is no evidence of required standard as to how the extent of Wakf property had increased from 667.8 sq. yards to 998.66 sq. yards and by mere recital in the gazette notification under Exhibit A2 and the resurvey report, the Muntakhab and the amended Muntakhab would not be sufficient to decide the suit since the tenant had denied the case of the plaintiffs that the 'B' schedule property is a Wakf property. The High Court has further held that the aspect as to whether the 'B' schedule property is a Wakf property or not cannot be decided without affording an opportunity to the tenant to question the correctness of the contents of the gazette notification by following the procedure established by law.

22. The very observations made by the High Court, in our view would indicate that the suit was maintainable before the Wakf tribunal in the facts and circumstances of the instant case. This is so for the reason that the High Court notices that the grievance put forth by the respondent to contend that the property is not Wakf property is by disputing the extent as shown in the gazette notification as 998.66 sq. yards since according to the respondent the actual extent is 667.8 sq. yards and therefore the land in occupation by the respondent is beyond that extent. Therefore, in fact the contention put forth by the tenant is with reference to the gazette notification and to contend that the extent of property in occupation is not within the extent as shown in the gazette notification or otherwise. The dispute in effect is to question the extent of land beyond 667.8 sq. yards being included to be the property of the Wakf Institution which is included in the list and as such whether that extent in the list is Wakf property. That will be a question which falls under Section 7 of the Waqf Act. The very observation of the High Court indicating that an opportunity is to be afforded to the respondent to question the correctness of the contents of the gazette notification by following the procedure established by law is to allow the respondent to invoke the provisions of Section 6 and 7 of the Wakf Act and seek appropriate orders.

23. When that is the position, it will have to be noted that in the instant case, though the legal remedy had not been availed by the respondent within the time frame as provided under Section 6 of the Act, the issue had fallen for consideration before the Wakf tribunal in view of the defence put forth by the respondent and the Wakf tribunal had rendered its finding on that aspect based on the evidence placed before it. Since the gazette notification had been questioned to indicate that the property which is in the occupation of the respondent was not a part of the notified Wakf property, the same applied both to the suit Schedule 'A' as well as Schedule 'B' properties. In such circumstance, the Wakf tribunal had the jurisdiction to determine that question which had been framed as an issue in this suit. Further as already noted, on the facts evolving in the instant case, the tribunal had relied upon the evidence available and had arrived at the conclusion that the property in question is Wakf property and had accordingly decreed the suit.

24. In that view, we are of the opinion that the judgment dated 12.10.2012 passed by the Wakf tribunal in O.S. No. 126/2006 was rendered in a suit which was maintainable before the Wakf tribunal and it had the jurisdiction to do so. Insofar as the nature of the consideration made, we notice that the evidence available on record has been analysed in its correct perspective and an appropriate conclusion has been reached by the Wakf tribunal. On the other hand, as already noted the High Court has not adhered to the well-established norm of limited scope available in a Revision Petition. Further the conclusion reached by the High Court to hold that the suit was not

maintainable before the tribunal is also not justified. The order dated 02.06.2014 passed by the High Court, therefore, cannot be sustained.

25. For all the aforesaid reasons, we pass the following order:

- i) The order dated 02.06.2014 passed by the High Court of Judicature at Hyderabad in Civil Revision Petition No.1331/2013 is set aside.
- ii) The judgment dated 12.10.2012 passed by the Andhra Pradesh State Wakf Tribunal Hyderabad in O.S. No. 126/2006 is restored.
- iii) The respondent is granted three months' time to vacate and handover vacant possession of the suit schedule 'A' and 'B' properties subject to payment of rent, including arrears.
- iv) The appeal is accordingly allowed with no order as to costs.
- v) Pending application, if any, shall stand disposed of.

.....J. (HEMANT GUPTA)J. (A.S. BOPANNA) New Delhi, August 03, 2021