

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1107 OF 2007

[ARISING OUT OF SLP (CIVIL) NO.15630 OF 2005]

SARDAR KHAN & ORS.

Appellants

VERSUS

SYED NAJMUL HASAN (SETH) & ORS.

Respondents

O R D E R

Leave granted.

Heard learned counsel for the parties.

This appeal is directed against the order passed by learned Single

Judge of the High Court of Rajasthan, Jaipur Bench, dated 23.5.2005

whereby the learned Single Judge had set aside the judgment and decree

passed by the Addl. District & Session Judge-VI, Jaipur in Civil Suit

No.29/95 (271/76) dated 23.1.1996 and held that parties shall approach

the Wakf Tribunal for further relief in the matter.

The brief facts which are necessary for the disposal of the Appeal

are that a suit being Civil Suit No.29/95 (271/76) was filed by the Plaintiffs (Respondents-herein) in the Court of Addl.District & Session Judge-VI, Jaipur, which was dismissed.

Aggrieved by the aforesaid judgment dismissing the suit, an appeal was filed by the Plaintiffs (Respondents-herein) before the High Court taking the plea that by virtue of Section 85 of The Wakf Act, 1995 (hereinafter referred to as "The Act"), the Civil Court ceased to have any jurisdiction in the matter, and therefore, the judgment and decree passed by the Addl. District Judge, Jaipur was without jurisdiction.

In this connection the learned Single Judge, relying upon a decision of the learned Single Judge of the same High Court in the case of Syed Inamul Haq Shah v. State of Rajasthan, reported in AIR 2001 Rajasthan 19, allowed the appeal and set aside the order of the Addl. District Judge, Jaipur and directed the parties to appear before Wakf Tribunal.

Aggrieved against this order, the Defendants (Appellants-herein) have come in appeal by way of special leave petition.

Learned counsel for the Appellants has invited our attention to

sub-section (5) of Section 7 and submitted that the attention of the

learned Single Judge was not invited to sub-section (5) of Section 7 of The

Wakf Act, 1995. It was submitted that learned Single Judge decided the

matter on the basis of Section 85 of the Act de hors sub-section (5)
of

Section 7 of the Act. Section 85 of the Act reads as under:

"85. Bar of jurisdiction of Civil Courts. - No suit or other legal proceeding 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".

Learned counsel further submitted that the learned Single Judge has

wrongly relied upon the judgment in Syed Inamul Haq Shah's case

(supra) and set aside the judgment and decree passed by the Addl. District

Judge, Jaipur, because in this case also learned Single Judge did not

consider sub-section (5) of Section 7 and decided the matter solely on the

basis of Section 85 of the Act. Hence, the impugned decision given by

learned Single Judge is not correct and not in accordance with Section 7

(5) read with Section 85 of the Act.

Learned counsel for the Respondents has supported the aforesaid

judgment.

It is relevant to mention here that the Wakf Act, 1995 came into

force with effect from 1.1.1996. Section 6 of the Wakf Act, 1995 relates

to the disputes regarding wakfs property. Section 6 of the Act reads as

under:

"6. Disputes regarding wakfs. - (1) If any question arises whether a particular property specified as wakf property in the list of wakfs 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 Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation. - For the purposes of this section and section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

(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.

(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 any rules made thereunder.

(4) The list of wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section(1)."

From a perusal of the afore-quoted Section, there is no ambiguity that the

intention was that from 1.1.1996 no suit or other legal proceedings

relating to the wakf property shall be instituted in any Civil Court.

At the same time sub-section (5) of Section 7 also lays down that

it will not affect any pending suit or appeal. Section 7 states the powers

of the Tribunal to determine disputes regarding wakfs. Section 7 of the

Act reads as under:-

"7. Power of Tribunal to determine disputes regarding wakfs. - (1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that -

(a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any Court, Tribunal or other authority by reason only of the

pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) the Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of Section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be."

In exercise of power under Section 83 of the Act, the Wakf

Tribunal was constituted on 23.2.1997.

By virtue of sub-section (5) of Section 7, it clearly transpires that the

Tribunal shall not have jurisdiction to determine any matter which is the

subject-matter of any suit or proceeding instituted or commenced in a

Civil Court under sub-section (1) of Section 6, before the commencement

of this Act, i.e., if any suit has been instituted in any Civil Court prior to

coming into force of The Wakf Act, 1995, then the Tribunal will have no

jurisdiction to decide such matter and it will be continued and concluded

as if Act has not come into force.

Now coming to the facts of the present case, it is an admitted fact

that suit was filed on 19.12.1976 before Addl. District Judge, Jaipur and

arguments were heard and judgment was reserved on 16.12.1995 and the

judgment was delivered on 23.1.1996 against which the appeal was filed

before the High Court on 1.3.1996. Therefore, from these facts it is clear

that the suit was pending since 19.12.1976, i.e., prior to the

commencement of the Act, i.e., 1.1.1996. Therefore, by virtue of sub-

section (5) of Section 7, the Tribunal will have no jurisdiction to decide

the suit or the appeal arising from that suit. In the present case,
the

appeal which was filed by the Respondents (herein) arises out of the

Judgment and decree passed by the Addl. District Judge, Jaipur on

23.1.1996 in a suit filed filed on 19.12.1976. Therefore, the appeal

which was filed before the High Court against the judgment and decree

passed on 23.1.1996 by the Addl. District Judge, Jaipur, will not be governed by this Act. By sub-section (5) of Section 7, a special provision has been made that on pending suit or proceeding or appeal or review or revision, the Act will not be applicable. In the case of Syed Inamul Haq Shah (supra), the learned Single Judge only considered the effect of Section 85 but did not examine the effect of sub-section (5) of Section 7 and, on the basis of Section 85, it was held that all the proceedings which were pending before the Civil Court, the Civil Court will have no jurisdiction. With great respect, perhaps the attention of the learned Single Judge was not drawn to sub-section (5) of Section 7 which specifically provides an exception that this will not be applicable to the pending suits, appeals and revisions. It has purpose behind it that when Act was made prospective, how can it operate retrospectively, therefore, all pending matters were taken out from purview of this Act.

On a conjoint reading of sub-section (5) of Section 7 and Section 85, the result would be that the Act will not be applicable to the pending suits or proceedings or appeals or revisions which have commenced prior to 1.1.1996, i.e., coming into force of the Wakf Act, 1995. Therefore, the

view taken by the learned Single Judge was not correct in the case of Syed

Inamul Haq Shah (supra). Hence, in view of the above discussion, we are

of the view that the learned Single Judge has gone wrong in relying on

the decision rendered by the Single Judge in the case of Syed Inamul Haq

Shah (supra). Consequently, the impugned order passed by the learned

Single Judge is set aside and the matter is remitted back to the High

Court for deciding the appeal in accordance with law, expeditiously.

The appeal stands disposed of accordingly.

There will be no order as to costs.

.....J.

(A.K. Mathur)

.....J.

(Tarun Chatterjee)

New Delhi;

February 28, 2007.

ITEM NO.4

COURT NO.9

SECTION XV

[NMD Case]

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15630/2005

(From the judgement and order dated 23/05/2005 in SBFRA No. 64/1996 of
The

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR)

SARDAR KHAN & ORS.

Petitioner(s)

VERSUS

SYED NAJMUL HASAN (SETH) & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and with prayer for interi
m relief and

office report)

(For final disposal)

Date: 28/02/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner(s)

Mr. H.L. Tikku, Sr. Adv.

Mr. Santosh Paul, Adv.

Mr. Kavin Mohan, Adv.

Mr. M.J. Paul, Adv.

Mr. C.K. Sasi, Adv.

For Respondent(s)

Mr. Sushil Kumar Jain, Adv.

Mr. Puneet Jain, Adv.

Mr. Christi Jain, Adv.

Mr. H.D. Thanvi, Adv.

Mr. Sarad Singhania, Adv.

Ms. Pratibha Jain, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

There will be no order as to costs.

(K.K. Chawla)

(Radha R. Bhatia)

Court Master

Court Master

[Signed reportable order is placed on the file]