

CASE NO.:
Appeal (civil) 1 of 2005

PETITIONER:
Abdul Rais and Ors.

RESPONDENT:
Madhya Pradesh Wakf Board and Ors.

DATE OF JUDGMENT: 03/01/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Civil) No. 19794/2003)

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench, holding that the petition filed by the appellants before the Madhya Pradesh State Wakf Tribunal, Bhopal (in short the 'Tribunal') was barred by time.

Factual position sans unnecessary details is as follows:

On 27.12.1996, appellants filed an application before the Tribunal seeking a declaration that the suit property specified in official gazette (Wakf List) dated 13.9.1985 is in fact not a wakf property, but the said property exclusively belongs to the appellants. In essence, they sought for a declaration that they were 'Bhumiswami' of the suit property which consisted of agricultural lands. Hence, the declaration is bad in law and not binding. The Madhya Pradesh Wakf Board (in short 'the Wakf Board') resisted the claim made, taking the stand that the applicants had no title. In any event, the application was hopelessly barred by time. It was their stand that the suit was not filed within one year from the date of publication in the official gazette as contemplated under Section 6 of the Wakf Act, 1954 (in short the 'Act') which was in force at the relevant time. Subsequently, the Wakf Act, 1995 has been enacted. The Tribunal allowed the application over-ruling the objections raised by the Wakf Board and held that the application was within time and the applicants had proved their title on facts and consequentially were entitled to the declaration as sought for. It was, therefore, held that the declaration made in the official gazette to the effect that the suit property was wakf property is bad and the applicants were the 'Bhumiswami' of the suit land.

Questioning correctness of the order the Wakf Board filed a revision in terms of proviso to Section 83(a) of the Wakf Act, 1995. At the time of hearing revision application none was present on behalf of the Wakf Board. Learned Single Judge held that limitation to file a suit to seek declaration as to whether a particular property was Wakf's property or not is one year and it begins from the date of publication

of the list of wakf's properties. Reference was made to Section 6 of the Act in this context. The said judgment is the subject matter of challenge in this appeal.

In support of the appeal, learned counsel for the appellants submitted that the High Court has fallen into grave error by holding that the application made by the appellants before the Tribunal was barred by time, as Section 6 had no application to the facts of the present case. The learned Single Judge found as a matter of fact that no notice was given to the appellants before the promulgation of the notification. As soon as the appellants came to know of the notification, they filed an application before the Tribunal. In any event, when the application was based on title, Section 6 had no application.

In response, learned counsel for the Wakf Board supported the judgment of the High Court and submitted that the position in law is very clear and Section 6 of the Act has clear application.

Chapter II of the Act refers to the preliminary survey of Wakfs and Section 5 deals with the publication of the list of Wakfs. Section 5 reads as follows:

"5. Publication 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."

Section 6 deals with disputes regarding wakfs. Sub-section (1) of Section 6 reads as follows:

"6. Disputes regarding wakfs. - (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, 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 ;"

No doubt as contended by the Wakf Board, the first proviso to sub-section (1) of Section 6 as extracted below requires that a civil suit shall be filed within one year from the date of the publication of the notification issued under sub-section (2) of Section 5.

The first proviso to sub-section (1) of Section 6 reads as follows:

"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:"

The operative words in sub-section (1) of Section 6 of the Act are "the Board or the Mutawalli of the Wakf or any person interested therein". As observed by this Court in *Punjab Wakf Board v. Gram Panchayat @ Gram Sabha* (2000 (2) SCC 121) the requirement to file a civil suit within one year of the notification under the Act as mentioned in the first proviso to Section 6 (1) of the Act is in

connection with any dispute between the Wakf Board on the one hand and the mutawalli of the wakf on the other or any person interested therein. The expression "therein" was interpreted by this Court in Sayyed Ali v. A.P. Wakf Board (1998 (2) SCC 642). It was held that the expression "therein" means "interested" in the wakf as distinct from interested in the property i.e. a third party. In fact, in paragraph 33 of Board of Muslim Wakfs, Rajasthan v. Radha Kishan and Ors. (1979 (2) SCC 468), a three-Judge Bench of this Court observed as follows:

"33- The answer to these questions must turn on the true meaning and construction of the word 'therein' in the expression 'any person interested therein' appearing in sub-section (1) of Section 6. In order to understand the meaning of the word 'therein' in our view, it is necessary to refer to the preceding words 'the Board or the Mutawalli of the wakf'. The word 'therein' must necessarily refer to the 'wakf' which immediately precedes it. It cannot refer to the 'wakf property'. Sub-section (1) of Section 6 enumerates the persons who can file suits and also the questions in respect of which such suits can be filed. In enumerating the persons who are empowered to file suits under this provision, only the Board, the mutawalli of the wakf, and 'any person interested therein' thereby necessarily meaning any person interested in the wakf, are listed. It should be borne in mind that the Act deals with wakfs, its institutions and its properties. It would, therefore, be logical and reasonable to infer that its provisions empower only those who are interested in the wakfs, to institute suits."

For coming to the aforesaid conclusion this Court relied on an earlier decision in Siraj-ul-Haq Khan v. Sunni Central Board of Wakf U.P. (AIR 1959 SC 198).

The position in law as indicated by this Court in the aforesaid cases does not appear to have been kept in view by the High Court. The effect of the relief sought for in the suit and the effect of the decisions of this Court referred to above were required to be kept in view. As noted above, none was present on behalf of the Wakf Board at the time of hearing of the revision application by the High Court.

In the aforesaid background, we think it appropriate to remit the matter to the High Court for a fresh consideration keeping in view the decisions in Punjab Wakf Board's case (supra), Radha Kishan's case (supra) and Siraj-ul-Khan's case (supra) and the factual position as indicated and the reliefs sought for in the suit. We make it clear that we have not expressed any opinion on the merits of the case.

The appeal is disposed of accordingly with no order as to costs.