IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-15419-1995
Reserved on : 20.07.2026
Pronounced on : 14.10.2026
Uploaded on : 14.10.2026

Whether only operative part of the judgment is pronounced? *No*
Whether full judgment is pronounced? *Yes*

Punjab Wakf Board, Ambala Cantt. ..... Petitioner

versus

Haryana State through the Joint Secretary and anr. .... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

*****

Present: Mr. Sandeep Punchhi, Advocate
for the petitioner.

Mr. Pankaj Mulwani, Sr. DAG, Haryana.

Mr. Ashok Verma, Advocate
for LR of respondent No.2.

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PANKAJ JAIN, J.

1. Challenge is to the order dated 29.06.1994 (P-5) passed by Settlement Commissioner, Haryana, whereby revision petition filed by the petitioner under Rule 11 of the State Rules for the disposal of the Package Deal Properties, challenging order dated 05.12.1985 (P-4/T) passed by Naib Tehsildar (Sales), Sirsa and that dated 26.02.1986 (P-4/T) passed by Settlement Officer (Sales), Ambala has been dismissed.

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2. As per the case of the petitioner, property in question was recorded as ‘Gair Mumkin Kabristan’ in possession of Ahle-Islam owned by Gram Panchayat in jamabandi for the year 1925-26 till 1946-47. Admittedly, the property was declared as evacuee property and vested in custodian.

3. The petitioner claims that vide notification dated 17.10.1970 (P-1/A) issued under Section 5(2) of the Central Government Waqf Act, 1995 read with Rule 4 of the Punjab Waqf Rules 1954, the property in question was notified as waqf property after proper survey. The petitioner claims that the notification issued under Section 5(2) of the Act is final and conclusive proof of the property being a waqf property. Rehabilitation Authorities without affording any opportunity of hearing to the petitioner, partitioned the land comprised in khasra No.176 measuring 50 kanal 04 marlas and sanctioned mutation of part of the land measuring 40 kanal 11 marlas comprised in khasra No.176/1 and recorded the same to be vested in Custodian Department. Mutation bearing No.1356 sanctioned on 05.07.1984 has been placed on record as Annexure P-2. Respondent No.2 moved an application for purchasing land measuring 40 kanal 11 marlas on the Government reserve price. The application has been allowed vide order dated 05.11.1982 by Tehsildar (Sales) as Annexure P-3. Settlement Officer (Sales) vide order dated 26.02.1986 approved the transfer.

4. The order of transfer was assailed by the petitioner before Settlement Commissioner by filing petition under Rule 11 of the State Rules for disposal of the Package Deal Properties. The revision petition has been dismissed vide impugned order dated 29.06.1994 (P-5) holding

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that the petitioner failed to prove that the property is a waqf property for the reason neither there is any proof of dedication nor before issuing notification under Section 5(2) of the Act, any notice was served upon Rehabilitation Department.

5. Counsel for the petitioner has assailed the findings recorded by the Settlement Commissioner, contending that the land in dispute was recorded prior to 1946-47 as ‘Gair Mumkin Kabristan’ in possession of Ahle-Islam. Even in jamabandi for the year 1959-60, the entire land has been shown as ‘Gair Mumkin Kabristan’ and is under the ownership of Gram Panchayat.

6. Counsel for the petitioner submits that there is a presumption of truth attached to record of rights. Thus, entries in jamabandi since 1925 being in favour of the petitioner, dedication of property be presumed. He further submits that notification has been issued under Section 5(2) of the Act, the land stands declared as ‘waqf property’. The notification is final and binding upon the parties.

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. The main plank of the argument raised by counsel for the petitioner is based upon notification issued under Section 5(2) of the Waqf Act, 1995. As per the scheme of Waqf Act, prior to issuance of notification under Section 5, Section 4 prescribes survey of waqf properties. Section 4(3) of the Act details out the requirements at the time of submission of report by Survey Commissioner appointed under Section 4 of the Act by notification in the official gazette. Section 4(4) of the Act empowers Survey Commissioner to conduct survey. Section

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4(5) clothes him with the same powers as vested in the Civil Court under Code of Civil Procedure, 1908 for making inquiry. Report having civil consequences of divesting and investing title in immovable property, enquiry needs to be conducted complying with principles of natural justice. Report needs to be based on cogent evidence. The report of Survey Commissioner is required to be backed by sustainable reasons. Section 4(6) empowers the State Governments to direct the Survey Commissioner to make subsequent survey by notification in the Official Gazette. The list published under Section 5(2) is only one of the relevant considerations while deciding mutations makes it evident that the legislator never intended that the list shall be conclusive. It only has presumption that too when backed by proper inquiry. Reference can be made to ratio of law laid down by Division Bench of this Court in the case of ***Punjab Wakf Board vs. Natha Singh, 1987 SCC OnLine P&H 806***, wherein the Division Bench observed as under:-

> "xxxx xxxx *xxxx*
>
> *10. The judgment of the High Court of Rajasthan in Radhakishan and another case (supra), was later affirmed by the Supreme Court in. The Board of Muslim Wakf Rajasthan v. Radha Kishan and others, A.I.R. 1979 Supreme Court 289, where it was held that the list of properties declared to be Wakf properties in the notification published under Section 5(2) of the Act would not bind a stranger who is in possession of the property, merely because he happens to be a person affected by the publication of the list of Wakfs. The Court went on to observe as under:—*
>
> > *"It follows that where a stranger who is a non-Muslim and is in possession of a certain property, his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub*

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> *section (2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises".*
>
> *11. The law thus having been settled by the highest Court of the Land, no scope survives for any different view holding the field. This being so, we are with respect constrained to hold that the judgment of this Court in Avtar Singh's case (supra) does not lay down correct law, whereby it was held that by virtue of Section 6 of the Act, the list of Wakf properties published in the notification under Section 5(2) of the Act, becomes final and conclusive and is to be treated as Wakf property without any further evidence or proof. It deserves mention here that in this case, neither the earlier judgment of R.N. Mittal, J. in Punjab Wakf Board's case (supra), nor that of the Supreme Court in The Board of Muslim Wakf Rajasthan's case (supra), was cited or noticed, therefore but for this omission, we have no doubt that Avtar Singh's case (supra), would have been decided differently.*
>
> *xxxx xxxx xxxx"*

9. Same was the view of Single Bench of this Court in Dev Raj and others vs. Teja Singh and others, 2004(2) PLR 709 observing as under:-

> *"xxxx xxxx xxxx*
>
> *7. The dispute is regarding ownership of Khasra No. 134 which the defendants are claiming to have vested in the Punjab Wakf Board by virtue of a notification. There is no evidence on behalf of the defendants that there was any dedication so as to vest such property in the Wakf Board. The first appellate Court had found that it is very difficult for the Wakf Board to produce evidence of original dedication of this property by a person professing Islam faith for a religious and charitable purpose. The said finding of vesting of property in the Wakf Board merely on the basis of the notification Exhibit D-1 is contrary to law as mentioned above and cannot be sustained when there is no evidence of dedication in favour of the Wakf Board. Consequently, finding of the first appellate Court on Issue N0.6-A is set aside. Thus, in respect of question No. 2, it is held that the notification is not conclusive proof of ownership of Wakf Board.*

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xxxx xxxx xxxx"

10. Same view was taken by another Bench of this Court in ***Punjab Wakf Board and another vs. Kashmir Singh and others, 2012(4) PLR 793*** observing as under:-

"xxxx xxxx xxxx

10. In addition to the aforesaid, defendant No. 1 Wakf Board is also not proved to be owner of the suit land. Merely on the basis of notification Ex. D-1, issued under the 1954 Act, it cannot be said that defendant No. 1 has become owner of the suit land. There is practically no other evidence to depict Wakf nature of the suit land. The aforesaid notification is not conclusive to prove that the suit land is Wakf property. On the contrary, it is proved that the suit land is not Wakf property. Admittedly, the suit land is being cultivated and is being used for agricultural purposes. Consequently, it cannot be said that the suit land is graveyard or Wakf property, as mentioned in the aforesaid notification. It is also the case of defendants themselves that they had leased out the suit land to one Sewa Singh for agricultural purposes, although Wakf Board has failed to prove the same. However, the fact remains that even according to the defendants' pleadings, the suit land is being used for agricultural purposes. Consequently, it is not Wakf property. Even otherwise, land measuring 20 kanals i.e. 21/2 acres situated in a Village could not be said to be graveyard. Moreover, in a judgment passed by this Court in the case of Punjab Wakf Board, Jalandhar v. Nagar Panchayat, Shahkot, District Jalandhar,1 (2011-1) 161 PLR 405, it has been laid down that notification issued under Section 5(2) of the 1954 Act, declaring the property as Wakf property, is not binding on the person recorded to be owner thereof in the revenue record. There has to be evidence either that the suit property was ever dedicated to any Wakf or that the suit property had become Wakf property by long user. In the instant case, there is no such evidence. Consequently, merely on the basis of notification Ex. D-1, it cannot be said that the Wakf Board is owner of the suit land. On the contrary, the said notification has no effect on the ownership of the plaintiffs or their predecessors-in-interest over the suit land."

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11. There is no evidence of use of land as Kabristan. Privy Council in ***Ballabh Das vs. Nur Mohammad, AIR 1936 Privy Council 83*** observed as under:-

> *"If the plaintiffs had to make out dedication entirely by direct evidence of burials being made in the ground, and without any record such as the Khasra of 1868, to help them, they would undoubtedly have to prove a number of instances adequate in character, number and extent to justify the inference that the plot of land in suit was a cemetery…."*

12. Wherever, the plea is being raised of the property being a 'waqf by user', the party alleging the same to be waqf property has to show that it was once used for religious purpose. Thus, the petitioner either needs to prove that the property was dedicated for pious cause or there has to be some evidence of its use as kabristan.

13. Notification issued under Section 5(2) of the Act is binding when the dispute is *inter se* between Board of Waqf and persons interested in waqf and not a stranger in possession of property declared as waqf.

14. The petitioner never challenged declaration of property in question as evacuee property, nor has challenged subsequent mutation whereby 40 kanal 04 marlas was mutated in favour of the custodian.

15. Supreme Court in Punjab '***Wakf Board, Ambala Cantt. vs. Capt. Mohar Singh and others'*** reported as ***1975 AIR Supreme Court 1891*** while dealing with somewhat similar circumstances observed as under:-

> "10. Exhibit P-2 is a notification dated 27th February, 1961 issued by the Home Secretary. The notification states that in exercise of the powers conferred by Section 55(2) of the Act, the Governor of Punjab is pleased to direct that the powers under Section 11(1) in respect of Muslim evacuee properties in

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trust for public of a religious or charitable nature in the Punjab State, exercisable by the Government of Punjab shall be exercisable by the Board of Wakfs established under Section 9 of the Muslim Wakfs Act, 1954. There is no intrinsic evidence in Exhibit P-2 to indicate that the property in suit is wakf property. The exercise of powers by the Board under the Muslim Wakfs Act in respect of Muslim evacuee properties in trust does not establish and identify the property in suit to be wakf property.

11. Exhibit P-3 is relied upon by the appellant to show that the property is wakf. The word "Idgah" appears in Exhibit P-3. The appellant contends that the property is, therefore, proved to be "Idgah". Exhibit P-3 is described as "Rent Demand and Collection Register". Rule 33 of the Administration of Evacuee Property (Central) Rules, 1950 speaks of record of property to be maintained in Form No. 10. Exhibit P-3 is neither in Form No. 10 nor is it under Rule 33. Form No. 10 has a specific column 5 which speaks of designation of property by name, if any, and type of building for instance residential bungalow, shop, cinema, theatre, mosque, factory, etc. Exhibit P-3 is not of the type contemplated by Rule 33. The suit property cannot become wakf property by the mere use of the word "Idgah" in Exhibit P-3.

12. The appellant relied on the decision in ***Mazhar Husain v. Rao Bahadur Adiya AIR 1948 PC 42, (1948) 1 MLJ 259*** in support of the proposition that where there is no evidence that a person ever executed a wakſnama and no direct evidence of any oral dedication by him is available the proper inference from the history of the matter, the dealings with the parties in dispute, the litigation that has affected it and the admissions and assertions made by the predecessors in title of the persons who dispute the wakf can be made about the valid creation of a wakf attaching to the properties.

13. The concurrent findings in the present case are these. There is no evidence that the property in question was used as wakf property. There is no dedication of the property to be wakf property. There is no evidence that the property was determined to be wakf property by the Custodian.”

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16. In view of ratio laid down by Larger Bench of Supreme Court, the petitioner was required to prove that the property is a waqf by leading cogent evidence.

17. In the absence of any perversity in findings recorded by authorities, this Court finds no reason to interfere in a well reasoned order passed by the Settlement Commissioner (Sales), Ambala.

18. Finding no merits in the present writ petition, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

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Whether speaking/reasoned : Yes

Whether Reportable : No

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