

CASE NO.:  
Appeal (civil) 1107 of 2007

PETITIONER:  
Sardar Khan and Ors.

RESPONDENT:  
Syed Najmul Hasan (Seth) and Ors.

DATE OF JUDGMENT: 28/02/2007

BENCH:  
A.K. Mathur & Tarun Chatterjee

JUDGMENT:  
JUDGMENT

The Order of the Court was delivered

1. Leave granted.
2. Heard learned counsel for the parties.
3. 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.
4. 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.
5. 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.
6. 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 Hag 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.
7. Aggrieved against this order, the Defendants (Appellants-herein) have come in appeal by way of special leave petition.
8. 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 Hag 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.

9. Learned counsel for the Respondents has supported the aforesaid judgment.

10. 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 dispute 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.

11. At the same time sub-section (5) of Section 7 also lays down that it will not effect 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 dispute 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 in 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.

12. 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.

13. 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 received on 16.12.1995 and the judgment was delivered on 23.12.1996 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 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 Hag 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.

14. 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 Hag 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 Hag 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.

15. The appeal stands disposed of accordingly.

16. There will be no order as to costs.