



131

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-3152-CII-2025 in/and
CR-782-2025 (O&M)
Date of decision: 10.07.2025

Jai Singh

...Petitioner

Versus

Haryana Wakf Board

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashwani Bhardwaj, Advocate and
Ms. Shaveta Sanghi, Advocate and
Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Prateek Mahajan, Advocate and
Ms. Saloni Sharma, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

CM-3152-CII-2025

1. This is an application filed for restoration of the case and recalling of order dated 06.02.2025.
2. For the reasons stated in the application which is duly supported by an affidavit, the present application is allowed and order dated 06.02.2025 is recalled and the main case is restored to its original number and is taken up on Board today itself for final disposal.

Main case

1. This is a revision petition filed under Article 227 of the



Constitution of India for setting aside the judgment and decree dated 07.11.2024 passed by the Wakf Tribunal, Hisar Division, Hisar (hereinafter to be referred as “the Wakf Tribunal”) presided over by the Additional District Judge, Hisar, whereby the petitioner was directed to hand over the vacant possession of the suit property within a period of two months from the date of the judgment to the plaintiff (present respondent).

ARGUMENTS ON BEHALF OF THE PETITIONER:-

2. Learned counsel for the petitioner has argued that in the present case, there is no notice issued under Section 54 of the Waqf Act, 1995 (hereinafter to be referred as “the 1995 Act”) prior to the institution of the suit for possession and since the same has not been done thus, the entire proceedings including judgment of the Wakf Tribunal deserves to be set aside. In support of his arguments, learned counsel for the petitioner has referred to Section 3(ee) of the 1995 Act wherein the term “encroacher” has been defined and it has been stated that same also includes a person whose tenancy/lease/licence has expired or has been terminated. Section 3(ee) of the 1995 Act, which has been highlighted by learned counsel for the petitioner, is reproduced hereinbelow:-

“[3(ee) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board.”

3. On the basis of the above provision, it has been argued that the petitioner would also come within the definition of “encroacher” as after the expiry of the lease, it is the case of the respondent Board that the petitioner



continued in possession. Learned counsel for the petitioner has further referred to Section 54 of the 1995 Act which deals with “Removal of encroachment from Wakf Property” and has highlighted Section 54(1) to state that prior to the institution of the suit, it was necessary for the respondent Board to have served a notice to the present petitioner specifying the particulars of the encroachment and calling him to show cause. It is submitted that said notice has not been issued and the same was mandatory and thus, the entire subsequent proceedings would be illegal and liable to be rejected.

ARGUMENTS ON BEHALF OF THE RESPONDENT BOARD:-

4. Learned counsel for the respondent, on the other hand, has opposed the present revision petition and has submitted that the revision petition deserves to be dismissed outrightly since it has been proved that the plea raised by the petitioner of his not being a lessee and Wakf Board not being the owner was a false plea and was contrary to his own admissions made as DW1. It is further submitted that no objection with respect to non-issuance of notice under Section 54 of the 1995 Act has either been raised in the written statement or even in the grounds of appeal, nor any such specific argument with respect to Section 54 of the 1995 Act has been raised even before the Wakf Tribunal and the petitioner cannot be permitted to raise the said plea for the first time before this Court, which is examining the case under its revisional power under Section 83(9) of the 1995 Act. Learned counsel for the respondent, in support of his arguments, has relied upon the judgment passed by the Coordinate Bench of this Court in case titled as **“Bhajan Singh and others Vs. Punjab Wakf Board and another”**, reported



as (2019)1 RCR (Civil) 370 in support of the said plea. It is further highlighted that in the said case, it was additionally observed that since the suit had been pending for several years thus, the defendants therein had sufficient notice of the stand taken by the plaintiff therein and thus, the arguments raised by the defendants therein that there was no notice served prior to the institution of the case was rejected. It is argued that the petitioner has not shown any prejudice caused to him, inasmuch as, full opportunity had been given to the petitioner to lead his evidence both oral as well as documentary.

5. Learned counsel for the respondent, while referring to Section 54 of the 1995 Act has submitted that the term used therein is “removal of encroachment” whereas the present petitioner is in illegal possession of the land measuring 34 kanals, after expiry of the lease deed. It is submitted that Section 54(1) read with Section 54(3) of the 1995 Act would primarily apply in case where the encroachment has been made and it is required to ascertain as to whether the said encroachment is on wakf property or not and once it is prima facie found, after carrying out the necessary enquiry i.e., by virtue of demarcation etc., that encroachment is there, then, further proceedings would be initiated by the Wakf Board. It is submitted that in the present case, as has been found by the Wakf Tribunal, land measuring 34 kanals is admittedly owned by the Wakf Board and the present petitioner was admittedly in possession of the same as lessee and thereafter, the lease had not been extended and the petitioner became unauthorized occupant, against whom suit for possession would be maintainable. It is submitted that these facts have been admitted by DW1 in his cross-examination and has also not



been disputed before this Court and thus, the question of there being any inquiry in order to ascertain as to whether there is any encroachment or not would not arise.

ANALYSIS AND FINDINGS:-

6. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the judgment of the Wakf Tribunal is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

7. The respondent-Haryana Wakf Board had filed a suit with the following prayer:-

“Suit for possession against the defendant directing him to hand over the vacant possession of the land measuring 34K-00M, comprised in Khewat No.613//559 Khatoni No. 811 and Khasra No. 98//15/2,16,17,24,25 as per Jamabandi for the year of 2013-2014, situated at village Durjanpur, Tehsil & District Hisar, to the plaintiff, which the plaintiff board is owner, the lease period has expired on 15th June, 2011 and since then the defendant is in illegal possession of the suit land and suit for recovery of arrears of lease money for the period of year 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 @ Rs.20,000/- per annum in totaling Rs.1,00,000/- along with interest @ 24% per annum and further directed the defendant to make the payment of mesne profit for the illegal use and occupation of the suit land at the rate of Rs.1,50,000/- per annum from the date of illegal possession of suit land, alongwith interest @ 24% per annum, from 15 June 2011 till the date of actual handing over the vacant possession of the suit land and making the payment to the plaintiff; on the basis of



oral and documentary evidence of all kinds.”

8. It was the case of the plaintiff/respondent/Board that the plaintiff-Board was owner of the suit land as per the jamabandi for the year 2013-14 and the said property had also been declared as Wakf property as per Gazette Notification dated 17.10.1970 and that the plaintiff-Board had leased out the said land to the present petitioner-Jai Singh vide lease deed dated 15.11.1989 and the same was extended upto 2010-11. It was further the case of the plaintiff/present respondent/Wakf Board that *Qabuliyatnama* dated 19.04.2011 was also executed by the petitioner and the petitioner had agreed that he would hand over the vacant possession of the suit land after expiry of the lease/patta period on 15.06.2011. It was averred that the petitioner has breached the terms and conditions of the said *Qabuliyatnama* dated 19.04.2011 and the lease was never extended after 15.06.2011 and the petitioner was in unauthorized possession of the same and thus, was required to pay the mesne profits also.

9. The petitioner had filed written statement opposing the said suit in which several objections were raised by the petitioner including the objections that the plaintiff/present respondent/Board had no locus standi to file the suit and that the suit was not maintainable. It was further denied in the written statement that the suit land was vested in the plaintiff and that suit land was owned by the plaintiff or was declared as wakf property. The petitioner-defendant also denied that the land was ever leased out to the present petitioner.

10. A perusal of the above written statement would show that no plea with respect to there being no notice issued either under Section 54 of



the 1995 Act or under Section 106 of the Transfer of Property Act, 1882, was raised.

11. On 10.05.2017, the Wakf Tribunal had framed the following issues:-

“1. Whether the plaintiff (HWB) is entitled to the decree of vacant possession of the suit land as mentioned in the head note of the plaint on account of expiry of lease period as prayed for? OPP

2. If issue No. 1 is proved, whether the plaintiff (HWB) is entitled to recover arrears of lease money for the period from 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 @ Rs.20,000/- per annum alongwith interest as prayed for?OPP.

3. Whether the plaintiff (HWB) is also entitled to recover mesne profit to the tune of Rs.1.50 lacs per annum for illegal use and occupation of the suit land from the date of illegal possession along with the interest from 15 June, 2011 till the date of handing over of actual possession? OPP.

4. Whether the plaintiff has no locus standi and no cause of action to file the present suit?OPD.

5. Whether the suit is not maintainable?OPD.

6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD.

7. Whether the suit of plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD.

8. Whether the Civil court has no jurisdiction to try and entertain the present suit?OPD.

9. Relief.”

12. Due opportunity was given to both the parties to lead their entire evidence, both documentary as well as oral. The Wakf Tribunal found that the respondent-Board was owner of the property in question and for the



said purpose, reference had been made to Gazette Notification Ex.P3 and jamabandi for the year 2013-14 Ex.P2 which proved that the property was wakf property. It was further found that the present petitioner as well as his father were lessee in the property and for the said purpose, reference was made to the lease deed Ex.P4 (hindi translation Ex.P5) as well as *Qabuliyat nama* Ex.P6 and that the defendant was to leave the possession over the allotted land on 15.06.2011. Further reference had also been made to the admissions made by the petitioner as DW1 in which he had admitted that the suit land was owned by the plaintiff-Board and that he had been paying lease money regularly but had not paid the lease money from 2011. The suit was also held to be maintainable. After considering all the aspects, the Wakf Tribunal had granted the following relief.

*“27. As a sequel to findings recorded by this Tribunal on issues no.1 to 8, the suit of the plaintiff is hereby decreed with no order as to costs and the defendant is directed to hand over the vacant possession of the suit property within two months from the date of this judgment to the plaintiff. Plaintiff is also held entitled to recover mesne profits @ Rs.40,000/- per annum from 15.06.2011 till the date of handing over of the vacant possession to the plaintiff. Plaintiff is also held entitled to interest @6% per annum on the mesne profits till the date of its realization. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.
Announced in open Court.”*

13. The aspect with respect to Haryana Wakf Board being owner of the property and the petitioner being lessee till 15.06.2011 and also the fact that the Wakf Tribunal had jurisdiction to decide the dispute and findings



thereon have not been disputed before this Court. Moreover, this Court has considered the findings of the Tribunal on the said aspects and finds that the same are in accordance with law and deserve to be upheld. The ownership of the Haryana Wakf Board is proved from the Gazette Notification Ex.P3 as well as jamabandi for the year 2013-14 Ex.P2. The fact that earlier father of the petitioner was lessee and subsequently, the petitioner was lessee is proved from the lease deed Ex.P4 (hindi translation Ex.P5), *Qabuliyat nama* Ex.P6 as also admissions made by DW1 in his cross-examination wherein he had specifically admitted that the suit land is owned by the respondent Board and that he had been paying lease money till 2011 and thereafter he had stopped paying the lease money.

14. With respect to the sole argument raised before this Court on the aspect of non-issuance of notice under Section 54 of the 1995 Act, it would be relevant to note that no objection with respect to non-issuance of the said notice under Section 54 of the 1995 Act had been taken in the written statement. No specific plea with respect to non-issuance of notice under Section 54 of the 1995 Act has even been mentioned in the present revision petition. A perusal of the impugned judgment would also show that no specific plea with respect to non-issuance of notice under Section 54 of the 1995 Act has even been raised before the Wakf Tribunal, although arguments with respect to non-issuance of notice under Section 106 of the Transfer of Property Act, 1882 had been raised. Once no objection in the written statement had been raised and no issue with respect to same had been framed by the Wakf Tribunal and no argument of alleged non-issuance of notice under Section 54 of the 1995 Act had been raised before the Wakf



Tribunal, then, the petitioner is estopped from raising the said plea for setting aside the entire proceedings including judgment of the Wakf Tribunal, for the first time before this Court in the revision petition.

15. The Coordinate bench of this Court in ***Bhajan Singh's case*** (Supra) had rejected the arguments raised by the defendants therein of non-issuance of notice by observing that no specific objection was taken by the defendants therein in the written statement nor any issue was framed and thus, the defendants therein could not be permitted to raise the said plea before the High Court. It was further observed that the suit in the said case had been pending for several years and thus, the defendants therein had sufficient notice of the stand taken by the plaintiffs therein and thus, service of notice of the plaint was found to be sufficient notice. Relevant portion of the said judgment is reproduced hereinbelow:-

“In any case, the present suit is pending for the last 15 years having been instituted in the year 2003, the defendants had sufficient notice of the stand taken by the plaintiff. Service of the notice of the plaint, is found to be sufficient notice.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment”

16. Even, in the present case, the suit was instituted in the year 2017 and was decided in the year 2024 and thus, was pending for more than seven years and the petitioner had full notice of the stand taken by the plaintiff/respondent Board in their plaint and notice of the plaint is found to be sufficient notice.



17. An SLP against the said judgment i.e. Special Leave to Appeal No.7162 of 2019 was also dismissed, although six months time was granted to vacate the suit premises. The order passed in said SLP is reproduced hereinbelow:-

“We are not inclined to interfere in the matter. The Special Leave Petition is dismissed. Pending application(s), if any, stand disposed of.

The petitioner is running a Saw Mill from the year 1969 in land admeasuring 833 sq yards, 144 sq yards and area of one kanal. As prayed for, six months' time is granted to vacate the suit premises subject to filing usual undertaking in the Registry of this Court within two weeks from today, stating that the respondent shall not create any third party rights, will clear all the rent/dues/occupational charges in the meanwhile and will peacefully vacate the suit premises within a period of six months positively.

(B.Parvathi)
Court Master

(Kailash Chander)
Assistant Registrar”

18. Apart from the above, even assuming that the said notice was required to be issued, there is nothing to show that any prejudice has been caused to the petitioner on account of non-issuance of the said notice. Due opportunity was given to the petitioner to file written statement and also to adduce both oral and documentary evidence which fact could not be disputed before this Court. Moreover, the plea raised in the written statement by the petitioner of there being no lease and the Wakf Board not being owner of the land in question has been found to be false by the Wakf Tribunal after taking into consideration the documents and the admissions made by DW1 in his cross-examination. In the said circumstances, sole plea



raised by the petitioner with respect to alleged violation of Section 54 of the 1995 Act cannot be made the basis for setting aside the entire proceedings and the judgment dated 07.11.2024, which has been passed in accordance with law.

19. Keeping in view the abovesaid facts and circumstances, the impugned judgment dated 07.11.2024 is in accordance with law and deserves to be upheld and is accordingly, upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

20. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

10.07.2025

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**