



2024:JKLHC-JMU:600

Sr. No. 06

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- OWP No. 21/2004

- 1. Baldev Singh, S/o S. Sant Singh, Age 39 years,
R/o Village Kotli Shah Daula, Tehsil R.S. Pura,
District Jammu.**
- 2. Rajinder Jeet Singh, S/o S. Sukhdev Singh, Age 22 years,
R/o Village Kadiyal, Tehsil R. S. Pura,
District Jammu.**

....Petitioners

Through: Mr. R. P. Sapolia, Advocate for P-1.
Mr. V. R. Wazir, Sr. Advocate with
Mr. Neeraj Magotra, Advocate for P-2.

Vs

- 1. State of Jammu & Kashmir through
Secretary to Government Auqaf Affairs Department,
Jammu.**
- 2. Special Officer, Auqaf, J&K, Jammu.**
- 3. Administrator for Wakafs, Jammu.**
- 4. Deputy Commissioner, Jammu.**
- 5. Tehsildar Settlement, R. S. Pura, Jammu.**
- 6. Behari Lal, S/o Shri Narain Dass,
R/o Village Thikirian, Tehsil R. S. Pura, District Jammu.**

..... Respondents

Through: Mrs. Monika Kohli, Sr. AAG for R- 1, 4 & 5.
Mr. Bhanu Jasrotia, GA for R-2.
Mr. Ajaz Lone, Advocate for R-3.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
05.03.2024

(Oral)

01. The petitioners in the instant petition, filed under Article 226 of the Constitution, have implored for the following reliefs:-



“Issue of writ of certiorari quashing SRO 95 dated 19.03.1981 to the extent of land measuring 2 kanals 3 marlas under Khasra No. 172 old (new, after settlement Khasra No. 265) in Village Thikiran, Tehsil R. S. Pura, having been wrongly notified as Wakaf Property; and for appropriate writ, order or direction, to quash reports of Respondents No. 2 & 3 and order of Tehsildar Settlement dated 01.07.2003 along with endorsement made by Patwari in pursuance of the same in the Revenue record on 02.07.2003.”

02. The facts under the shade and cover of which the aforesaid reliefs have been prayed are that the respondent 6 herein, namely, Behari Lal being a refugee of 1947 had been allotted an evacuee land measuring 2 kanals 3 marlas covered under Survey No. 172 (old), 265 (new) situated at Village Thikiran, Tehsil R.S. Pura pursuant to Govt. Order No. 578/C of 1954 followed by attestation of Mutation No. 13 dated 29.02.2000 conferring occupancy rights on him pursuant to Section 3-A of the J&K Agrarian Reforms Act, 1976 (for short **“the Act of 1976”**)

03. It is being stated that the petitioners herein purchased the occupancy rights of the said land measuring 2 kanals 3 marlas from the said respondent 6 herein vide sale-deed dated 06.04.2000, whereupon Mutation No. 14 dated 10.04.2000 came to be attested in their favour (hereinafter for short **“the land in question”**).

04. It is being next stated that in the 1st week of October, 2003, the petitioners came to know that an endorsement had been made



in the relevant revenue records being girdawari register of Rabi/Kharif 2003 pursuant to the order of Tehsildar/ respondent 5 herein dated 01.07.2003 to the effect that the land in question stands notified as Wakaf property vide SRO-95 dated 19.03.1981, under the provisions of Wakafs Act, 1978 (for short "***the Act of 1978***") whereupon the petitioners obtained said girdawari and consequently moved an application before the Tehsildar/respondent 5 herein for obtaining a copy of said order dated 01.07.2003 referred in the girdawari, followed by similar applications filed before the respondents 2 & 3 herein which, however, were not furnished to the petitioners, though the petitioners obtained a copy of said SRO-95, without any annexures in order to know about the position of the land in question.

05. It is being further stated that the land in question neither has not been notified under law in the SRO-95 nor was the said position reflected in the relevant revenue records till July, 2003.

06. The petitioners, thus, have maintained the instant petition, *inter-alia*, on the grounds that SRO-95 is illegal and without any jurisdiction qua the land in question and that no enquiry whatsoever have had been made under Section 4 of the Act of 1978 nor a report of Special Officer have had been made in respect of the land in question or else decision taken by the said Special Officer *qua* the land in question and that even the consultation by the Govt.



in the matter did not exist on the record pertaining to the land in question, as the land in question have had been allotted to a displaced person who under the provisions of Section 3-A of the Act of 1976 acquired possessory rights thereof and consequently sold the same to the petitioners and that the petitioners do not have any efficacious remedy available in the matter except to file the instant petition.

07. Objections to the petition have been filed by the respondent 3, wherein, it is being stated that the land in question is a notified land under the Act of 1978 and infact used to be taken by the petitioner 1 – Baldev Singh and his father Sant Singh from Kharief 1994 upto Rabi 1997 from the answering respondent on auctions.

08. It is being further stated in the objections that the then Patwari & Tehsildar wrongly and deliberately converted the land in question into evacuee land and attested false mutations in the name of the petitioner 1 – Baldev Singh who used to be a bidder in the auction of the said land conducted by the answering respondent.

09. It is being also stated that as per the Missal-Haqiyat of the year 1970 Bikrami, the land in question is recorded as Gair Mumkin Kabristan and being a Wakaf property, the land in question could not have been sold or any mutation attested thereof and as per the



said Missal-Haqiyat of the year 1993-94 A.D., the land in question carrying Survey No. 172 came to be allotted new Survey No. 265.

10. It is being further stated that upon notifying the said land in question as a Wakaf property in terms of SRO-95, the same stands published in the Govt. Gazette and the land in question being a Wakaf property, the provisions of the Act of 1976 were not applicable to the same.

Heard learned counsel for the parties and perused the record.

11. Perusal of the record of proceeding of the case reveal that the instant petition has been admitted on 07.10.2005, whereafter the counsel for the petitioners on 15.10.2015 came to be provided an opportunity to file rejoinder to the reply filed by the respondent 3, as record reveals that the respondent 3 alone has filed reply to the petition, whereas the rest of the respondents have chosen not file the same.

However, the appearing counsel for the respondent 2 – Mr. Bhanu Jasrotia, GA and appearing counsel for the respondents 1, 4 & 5 – Mrs. Monika Kohli, Sr. AAG during the hearing of the instant petition adopted the stand taken by the respondent 3 in opposition to the petition.



It is also significant and pertinent to note here that Mrs. Kohli counsel for the respondent 1 has produced the record pertaining to the land in question being SRO-95 along with its annexures in compliance to order dated 19.09.2023.

12. The core issue raised by the petitioners in the instant petition pertains to the notifying of the land in question as a Wakaf property in terms of SRO-95 which land according to the petitioners has been the agrarian land having been allotted to respondent 6 herein being a displaced person in terms of Govt. Order No. 578/C of 1954 followed by attestation of Mutation No. 13 dated 29.02.2000 and thereafter having vested unto them upon execution of a sale-deed dated 06.04.2000 by the said respondent 6 in their favour and followed by attestation of Mutation No. 14 dated 10.04.2000 thereof in favour of the petitioners. Thus, according to the petitioners herein the land in question, could not have been declared as a Wakaf property.

13. Before proceeding to address to the aforesaid pleas/issues raised by the petitioners herein, a reference to the relevant provisions of the Act of 1978 becomes imperative hereunder:-

14. The Act of 1978 came to be enacted on 09.05.1978 providing for better administration and supervision of the Wakafs in the erstwhile State of J&K.

**“Section 3 defines *inter-alia* a Wakaf as follows:-**

- (d) “Wakaf” means the permanent dedication by a person professing Islam of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or charitable and includes-
- (i) a Wakaf by user such as Masjid, Idgah, Dargah, Khankah, Maqbara, Graveyard, Grave, Rauza, Mausoleum, Takia, Sarai, Yatim Khana, Madrasa and Shafakhana; and
- (ii) a Wakaf-ul-Aulad –
- (a) for the maintenance and support, wholly or partially of his family, children or decedents; or
- (b) for the maintenance of the Wakaf or for the payments of his debts out of the rents and profits of the property dedicated;
- Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Muslim law as a religious, pious or charitable purpose of a permanent character;
- (iii) a grant, endowment or dedication of any property movable or immovable, made by the Government or any person or ruler for any of the aforesaid purposes.

Section 4 provides for Preliminary survey of Wakafs as under:-

- (1) The Government may, by notification in the Government Gazette, appoint one or more special officers, as may be necessary, for the purpose of making a survey of Wakafs in any area in which this Act is in force.
- (2) Such appointment may be terminated by the Government at any time for reasons to be recorded.
- (3) The Special Officer shall, after making such inquiry as he may consider necessary, submit his report to the Government containing the following particulars in respect of Wakafs, namely:-
- (a) the number of Wakafs in the area;
- (b) the nature and object of each Wakafs;



- (c) the gross income of the property comprised in each Wakafs;
- (d) the amount of land revenue cesses, rates and taxes payable in respect of such property;
- (e) the expenses incurred in the realization of the income and the pay or other remuneration of the Mutawalli of each Wakaf; and
- (f) such other particulars relating to each Wakaf as may be prescribed.

(4) The Special Officer in making such inquiries shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, Samvat 1977 (Act X of Svt. 1977) in respect of the following matters, namely:-

- (a) summoning and examining witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commissions for the examination of witnesses and accounts;
- (e) making any local inspection or local investigation; and
- (f) any other matter which may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular Wakaf is a wakaf within the meaning of this Act and there are clear indications in the deed of wakaf as to its nature, the dispute shall be decided on the basis of such deed.

Section 5 provides for the decision of the Special Officer as under :-

- (1) The decision of the Special Officer whether a particular property is or is not Wakaf property shall, subject to any order made by the Government on appeal, be final.
- (2) Any person aggrieved by an order of the Special Officer may prefer an appeal to the Government within 60 days from the date of the order and there shall be no further appeal.
- (3) Notwithstanding anything contained in any law for the time being in force and save as otherwise provided in this Act,



no Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by Special Officer.

Section 6 provides for the publication of the list of the Wakafs as under:-

(1) On receipt of a report under sub-section(3) of section 4, the Government shall after consulting the concerned committee publish the list of Wakafs in the Government Gazette.

(2) The list of Wakafs published under sub-section (1) shall, unless it is modified in pursuance of a decision of the Government in appeal, be final and conclusive.”

A bare perusal of the aforesaid provisions would reveal that a property is to be declared as a Wakaf property after the Govt. had received a report of inquiry in this regard from the Special Officer appointed under Section 4 of the Act of 1978, which report of the Special Officer under section 5 of the Act of 1978 is the final decision thereon providing for a remedy of appeal against thereto the said decision before the Govt. within 60 days from the date of the order and under Section 6 of the Act of 1978, the Govt. is to publish the list of the Wakafs in the Govt. Gazette.

15. Keeping in mind the aforesaid provisions of the Act of 1978 and reverting back to the case in hand, the perusal of the record produced by the counsel for the respondent 1 pertaining to SRO-95 demonstrates that the same stands issued under and in terms of Section 6 of the Act of 1978 by the Govt. after having received a report under Section 4 of the Act, inasmuch as, also providing for



the publication of the list of Wakafs contained therein. The annexures appended to SRO-95 supra details out the details of the properties declared as Wakaf properties reflecting therein the land in question figuring at Sr. No. 292. Further perusal of the record reveals that the notifying of the land in question as a Wakaf property also stands entered into the revenue records being a Girdawari and Jama Bandi.

16. Having regard to the aforesaid position qua the nature of land having been declared as a Wakaf in terms of SRO-95 under and in terms of the provisions of the Act of 1978, the provisions of said Act of 1978 in-extenso can be said to have become applicable to the land in question. That being so, the transfer of the land -Wakaf property in terms of Section 52 of the Act has been forbidden, which in question being now a Section 52 is reproduced hereunder:-

“52. Transfer of Wakaf property –

(1) Save as otherwise provided in this Act, no transfer of any immovable property of Wakaf by way of sale, gift or mortgage shall be made or shall be valid.

(1-a) No transfer of any immovable property by way of exchange shall be valid without the previous permission in writing of the Government.

(2) Any Wakaf property such as agriculture lands, orchards, ahatas, houses, shops, vacant plots, Hujaras, apartments attached to Khankahs and Sarais, may be leased out by the Board with the previous approval of the Government, upto 40 years subject to such conditions including those relating to transfer of lease hold rights, as the Government may, in each individual case, impose.



(3) The Board may transfer in the form of simple mortgage any immovable property of Wakaf other than a Wakaf by user as defined in sub-clause (i) of clause (d) of section 3 in favour of any Bank having an office for transacting the business of banking in the State, for securing loans, subject to the condition that in any suit based on such mortgage, the mortgaged property shall be sold only to a permanent resident of the State.”

17. The petitioners admittedly claim to have purchased the land in question from the respondent 6 herein pursuant to the sale-deed executed under and in terms of the provisions of Section 3-A the Act of 1976, which section provides as under:-

“3-A. Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, displaced persons cultivating evacuees’ lands personally shall in respect thereof be deemed to be occupancy tenants and recorded as such . They shall be liable to pay rent equal to the amount of land revenue and cesses assessed thereon :

Provided that such displaced persons shall have right to transfer their right of occupancy/tenancy by sale, mortgage or gift subject to the provisions of the Alienation of Land Act, and the provisions of section 60 of the J&K Tenancy Act, Samvat, 1980 shall not apply to such transfer.”

A bare perusal of the aforesaid section 3-A though reveals that the transfer of the occupancy rights under the Agrarian Reforms Act, 1976 by sale mortgage or gift are permissible, yet the said sale could not have been effected qua the land in question by the respondent 6 herein in favour of the petitioners herein in view of the provisions Section 52 supra of the Act of 1978, more so, in presence of the provisions of Section 54 of the Act of 1978, which



provides that the provisions of the Act of 1978 and of the rules and orders made thereunder shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law, thus, clarifying it in explicit terms that the Act of 1978 shall prevail over all other laws for the time being in force, including herein in the instant case the Agrarian Reforms Act of 1976.

18. Having regard to the aforesaid position of law, inasmuch as, the facts and circumstances of the case, the only inescapable conclusion that could be drawn qua the land in question that the same being a Wakaf having been notified vide SRO-95 under and in terms of the provisions of the Act of 1978 render the sale of said Wakaf by the respondent 6 herein in favour of the petitioners herein in terms of sale-deed dated 06.04.2000 legally insignificant, ineffective and inoperative and the challenge thrown by the petitioners herein in the instant petition to SRO-95 dated 19.03.1981 pales into insignificance, more so, in view of the fact that no ground much less a legal has been urged thereof in this regard, whereunder such a SRO could be challenged.

19. This Court otherwise also is not inclined to exercise discretion in the matter in view of an un-rebutted plea raised by the respondent 3 in the reply filed to the petition that the petitioner 1-



Baldev Singh as also his father knew the fact that the land in question is a Wakaf and that the petitioner 1 and his father infact have had been taking over the land in question on auction basis for its utilization, which contention of the respondent 3 herein has been supported by placing on record various auction notices as well as the auction receipts bearing the signatures of the petitioner 1 and his father. The petitioner 1 indisputably has withheld, concealed and suppressed this information in the petition, so much so, has not even rebutted the same by filing any rejoinder thereto despite having been granted opportunity by this Court. A reference herein in this regard is made to the judgment of the Apex Court in case titled as **“M/s Prestige Lights Ltd. Vs State Bank of India”** reported in **2007 (8) SCC 449**, wherein at para 35 following has been observed:-

“34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

20. Viewed thus, what has been observed, considered and analyzed hereinabove, the petition entails dismissal. Accordingly,



the petition is ***dismissed*** along with all connected applications and interim direction(s) vacated.

(JAVED IQBAL WANI)
JUDGE

JAMMU
05.03.2024
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Whether the order is speaking : **Yes**

Whether the order is reportable: **Yes**

