

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 01.07.2025
Pronounced on: 11.07.2025

**CR No.31/2024
CM No.7089/2024
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**J&K BOARD FOR MUSLIM SPECIFIED
WAKFS & SPECIFIED WAKF PROPERTY**

... PETITIONER(S)

Through: - Mr. Ruaani Ahmad Baba, Advocate.

Vs.

**SOURA SHOPKEEPERS WELFARE
ASSOCIATION**

...RESPONDENT(S)

Through: - None.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners, through the medium of present revision petition, have challenged order dated 0211.2024 passed by learned Civil Judge Senior Division (Chief Judicial Magistrate), Srinagar (hereinafter referred to as "the trial court"), whereby the application under Order 7 Rule 11 of CPC filed by the petitioners/defendants has been dismissed.

2) It seems that the respondent/plaintiff has filed a suit for declaration and injunction against the petitioners/defendants before the learned trial court. In the suit, the

plaintiff Association claimed that its members are tenants/ lessees/shopkeepers of the petitioners/defendants in respect of various shops situated in Wakf Complex, Soura, Srinagar. According to the members of the plaintiff Association, the Wakf Complex, Soura, Srinagar, has been constructed under the Self Finance Scheme and they have deposited huge amount of money with the defendants for the purpose of construction of the complex.

3) It has been submitted by the plaintiff Association that in the year 2005, the shops/rooms were allotted to the members of the Association and the rent in respect of the same was fixed which was to be increased by 15% initially after five years and subsequently after the expiry of three financial years. It has been alleged that the defendants have taken a decision on 21st July, 2022 for revision of rates of rent with effect from 01.04.2018 by enhancing the rent by 120%.

4) The members of the plaintiff Association have sought a declaration that the aforesaid decision be declared as null and void with a mandatory injunction commanding the defendants to accept the rent of the plaintiffs in accordance with terms of the lease deed executed between the parties, with a permanent injunction that the defendants should be

restrained from evicting the members of the plaintiff Association from the demised shops/rooms.

5) It seems that the defendants/petitioners filed an application under Order 7 Rule 11 of CPC before the learned trial court seeking rejection of the plaint. It was contended by the defendants in their application that in view of the provisions contained in Section 85 of the Waqf Act, 1995, jurisdiction of the Civil court to entertain a suit of the present nature is expressly barred.

6) The aforesaid application was contested by the plaintiff on the ground that no Tribunal under Waqf Act, 1995 has been constituted in the Union Territory of Jammu and Kashmir and, as such, the statutory forum is not available for the plaintiff to redress its grievance.

7) The learned trial court, after hearing the parties and after analysing the pleadings, came to the conclusion that even though there is a specific bar to file a suit before the Civil Court in respect of the subject matter of the suit under Section 85 of the Waqf Act, 1995, yet, because no Tribunal under the Waqf Act has been constituted in the Union Territory of J&K, as such, the plaintiff cannot be left remediless and on this basis, the application of the petitioners/defendants came to be dismissed and the suit has been held to be maintainable.

8) The petitioners have challenged the impugned order passed by the learned trial court on the grounds that there is an express bar contained in Section 85 of the Waqf Act, which precludes civil courts from entertaining any suit or proceeding concerning Waqf properties. Therefore, there is no scope for the civil courts to entertain suits in respect of the Waqf properties under any circumstances whatsoever. It has been contended that the maxim '*ubi jus ibi remedium*' applies only to a case where there is no express bar to jurisdiction of the civil court and merely because the Waqf Tribunal has not been constituted, the bar to filing of a civil suit as contained in Section 85 of the Waqf Act cannot be negated.

9) Despite service, nobody appeared on behalf of the respondent/plaintiff, as such, the case has been considered in exparte.

10) I have heard learned counsel for the petitioner and perused record of the case including the trial court record.

11) There is no dispute to the fact that the subject matter of the suit pending before the learned trial court is waqf property. The plaintiff, by way of the suit filed before the learned trial court, is challenging the action of the petitioners regarding enhancement of the rentals. The first

question that needs to be addressed is as to whether the subject matter of the suit can be adjudicated upon by the machinery provided under the Waqf Act. Section 83 of the Waqf Act provides for constitution of Tribunals. Sub-section (1) of Section 83, which is relevant to the context, is reproduced as under:

“(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.”

12) From a perusal of the aforesaid provision, it is clear that a Tribunal constituted by the State Government has jurisdiction to determine any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property.

13) Admittedly, the plaintiff in the suit is challenging the decision of the petitioners/defendants to enhance the rent in respect of the demised property which is waqf property. Therefore, the matter, which is sought to be adjudicated upon before the trial court is cognizable by a Tribunal constituted under Section 83 of the Waqf Act.

14) The other provision which is required to be taken note of is Section 85 of the Waqf Act, 1995. The same reads as under:

“85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.”

15) From a perusal of the aforesaid provision, it is clear that the matters, which are required to be determined by the Tribunal under the Waqf Act, cannot be gone into in a civil suit by a civil court or by a revenue court or any other authority. There is an express bar regarding jurisdiction of the civil courts to entertain such kind of matters. In normal circumstances, the suit filed by the respondent/ plaintiff against the petitioners/defendants is barred in view of express interdiction contained in Section 85 of the Waqf Act. But the question that arises for determination is as to whether, in the absence of a Tribunal for determination of disputes cognizable by the Tribunal, the civil court can entertain the suit of present nature.

16) Section 9 of the Code of Civil Procedure provides that courts shall have jurisdiction to try all suits of civil nature excepting the suits, the cognizance of which is either expressly or impliedly barred. Thus, jurisdiction of a civil

court to entertain a suit of civil nature is wide and it is only in cases where a suit is either expressly or impliedly barred that a civil court would refuse to entertain a suit of civil nature.

17) A Constitution Bench of the Supreme Court has, in the case of **Dhulabhai and others vs. State of Madhya Pradesh and anr.** AIR 1969 SC 78, after analysing the legal position with regard to scope of the civil court to entertain a suit in the light of Section 9 of the Civil Procedure Code, laid down the following principles:

1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in

Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional. or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for. the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

18) From a perusal of the aforesaid principles laid down by the Supreme Court, particularly the principle mentioned at para (2) above, it is clear that where there is an express bar to jurisdiction of a court, an examination of the scheme of the particular Act to find the adequacy or sufficiency of the remedies provided is a relevant factor, though it may not be decisive to sustain the jurisdiction of the Civil Court. However, in a case where exclusion is pleaded as a matter

of necessary implication, such consideration is very important and the same would become decisive. From this it can be deduced that even in a case where there is an express bar for exercising jurisdiction by the Civil Courts, the consideration as to the scheme of the statute in question and the adequacy and or sufficiency of the remedy provided for it is permissible in law.

19) Coming to the facts of the present case, it is not in dispute that there is an express bar to the jurisdiction of the Civil Court to entertain a suit relating to a matter which can be adjudicated by a Tribunal constituted under Section 83 of the Waqf Act. Section 85 of the Waqf Act contains an express bar to the jurisdiction of the Civil Court in such cases. It is not in dispute that the Government of Union Territory of Jammu and Kashmir has not constituted any Tribunal in terms of Section 83 of the Waqf Act. The bar to jurisdiction of the Civil Court under Section 85 of the Act would come into play if a matter or a dispute relating to waqf property which is required to be determined by the Tribunal is brought before it. So, the constitution of a Tribunal in terms of Section 83 of the Waqf Act is a pre-condition for invoking the provisions contained in Section 85 of Waqf Act. If no Tribunal has been constituted under Section 83 of the Act, there would be no forum to determine

a dispute or question relating to waqf property or any other matter required to be determined by the Tribunal.

20) Thus, when we examine the scheme of the Waqf Act, particularly the provisions contained in Section 83 and 85 of the said Act in the light of the fact that the Tribunal under Section 83 of the Act has not been constituted as yet, it can be safely stated that a litigant agitating a dispute or question relating to any waqf property does not have any remedy, much less an efficacious remedy for redressal of his grievance. In these circumstances, the bar to the jurisdiction of the Civil Courts as contained in Section 85 of the Waqf Act would not come into play.

21) Learned counsel for the petitioners has contended that this Court has, in the case of **Inhabitants of Nowpora and others vs. Chief Executive Officer and others**, 2007 (1) JKJ 346, held that in case of a dispute, to which Waqf Act applies, the Civil Court lacks jurisdiction to try the suit. Reliance has also been placed upon a judgment of this Court in the case of **Traders Association Ziyarat Baba Reshi Tangmar vs. UT of J&K & Others** (WP(C) No.2361/2022 decided on 29.02.2024.

22) So far as the judgment in **Inhabitants of Nowpora & Ors's** case (supra) is concerned, the same was delivered

when the provisions of the Jammu and Kashmir Specified Wakafs and Specified Wakaf Properties (Management and Regulation) Act, 2004, were in operation and at the relevant time, the Tribunal under the said Act was functional. Therefore, the ratio laid down in the said case would not be attracted to the facts of the present case.

23) So far as the judgment in **Traders Association Ziyarat Baba Reshi's** case (supra) is concerned, in the said case, this Court has decided the question about the maintainability of a writ petition against the Board of Auqaf. The Court, after observing that functions of the Board of Auqaf entering into lease agreements with private individuals in respect of the waqf properties is more of a commercial/contractual nature rather than a public function, held that the Board of Auqaf does not fall within the definition of the term 'State' contained in Article 12 of the Constitution of India, hence not amenable to writ jurisdiction of the High Court in such matters. The question whether a Civil Court would have jurisdiction to entertain a dispute cognizable by a Tribunal even in a case where the Tribunal has not been constituted was not an issue for determination before this Court in the aforesaid case. Therefore, the ratio laid down in the said case would also not be applicable to the facts of the present case.

24) For what has been discussed hereinbefore, it cannot be stated that the learned trial court, while holding the suit against the petitioners/defendants maintainable and while declining their application under Order 7 Rule 11 of CPC, has committed any illegality or that it has acted with material irregularity which would warrant interference from this Court. Therefore, there is no ground or reason for this Court to exercise its revisional jurisdiction in respect of the impugned order.

25) For the foregoing reasons, the petition lacks merit and is dismissed accordingly along with connected CM(s). Interim direction, if any, shall stand vacated.

26) It is, however, provided that if during the pendency of the suit, the Tribunal under Section 83 of the Waqf Act, 1995, is constituted by the Government of Union Territory of Jammu and Kashmir, the learned trial court shall transfer the suit to the said Tribunal.

(Sanjay Dhar)
Judge

Srinagar,
11.07.2025
"Bhat Altaf-Secy"

Whether the order is reportable: **Yes/No**