

(2009) 09 P&H CK 0141

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sohan Lal Pahwa

APPELLANT

Vs

Punjab Wakf Board

RESPONDENT

Date of Decision: Sept. 25, 2009

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: (2010) 159 PLR 109

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This revision-petition is directed against the Judgment/order dated 06.10.2006, rendered by the Tribunal under the Wakf Act, Ludhiana, vide which it decreed the suit of the plaintiff (now respondent) for possession of the property, in dispute, as also for recovery of rent from 01.07.1999 @ Rs. 2700/- per month till the filing of the suit, with interest.

2. The facts, in brief, are that the wakf property measuring 17695 square yards comprising khasra Nos. 160 and 161 min, in the shape of a plot out of total land measuring 80 kanals 19 marlas, situated at village Hambran, Tehsil and District Ludhiana, as fully detailed, in the plaint, was leased out to defendant/revision-petitioner, vide allotment order No. 24/Lease-U/F. No. 1486/95/3198 dated 26.7.1995 w.e.f. 1.7.1995 @ Rs. 2700/- per month. One of the terms of the lease agreement, was that the defendant/revision-petitioner, shall obtain "No Objection Certificate" for construction. It was stated that the purpose of lease was for planting the fruit trees only. A separate rent deed dated 7th August, 1995 was executed by the defendant/revision-petitioner, in favour of the plaintiff/respondent. The defendant/revision-petitioner did not adhere to the terms

and conditions of the allotment order, and the rent note, executed by him. He became defaulter in making payment of the arrears of rent from 1.7.1999. It was further stated that the defendant/revision-petitioner failed to settle the terms of rent afresh, as he had obtained "No Objection Certificate" for the construction of the boundary wall and had constructed the same around the plot, in dispute. It was further stated that since the defendant/revision-petitioner, violated the terms and conditions of the allotment order, and also of the rent note, and, as such, a legal notice dated 26.6.2001 was served upon him, against which, he sent a frivolous reply. It was further stated that the defendant/revision-petitioner was asked many a time, to comply with the terms and conditions of the allotment order, and the rent note, referred to above, and make payment of the outstanding amount, but to no avail. It was further stated that after the service of notice u/s 106 of the Transfer of Property Act, the tenancy of the defendant/revision-petitioner, stood terminated, and his possession over the property, in dispute, became illegal and un-authorized. On the final refusal of the defendant, to hand over the vacant possession of the property, in dispute, as also pay the arrears of rent, left with no alternative, a suit for possession as also for mandatory injunction for payment of the outstanding amount, was filed.

3. The defendant/revision-petitioner, put in appearance, and contested the suit, by way of filing written statement. It was pleaded that the Tribunal constituted under the Wakf Act, had no jurisdiction to entertain and try the suit. It was further pleaded that no legal and valid notice, u/s 106 of the Transfer of Property Act, was served upon him, and, as such, the relationship of landlord and tenant did not come to an end. It was further pleaded that the suit was not maintainable. It was further pleaded that the suit had not been filed by a duly competent person. It was further pleaded that the suit had not been properly valued for the purposes of Court fee. It was admitted that the property, in dispute, was leased out to the defendant, vide allotment letter dated 26.07.1995 at the monthly rent of Rs. 2700/-. It was" also admitted that the terms and conditions of the allotment letter, were accepted by the defendant. It was further admitted that a separate rent note was executed by the defendant, in favour of the plaintiff. It was denied that the defendant did not adhere to the terms and conditions of the allotment order, as also the rent note and became defaulter in making payment of the arrears of rent w.e.f. 1.7.1999. It was stated that the defendant sent rent for the period 1.7.1999 to 30.06.2000, amounting to Rs. 32,400/-, vide cheque No 382458 alongwith letter dated 26.6.1999. Thereafter, he was asked for receipt for the said cheque, but no receipt was issued and the letter dated 27.12.1999 was received, vide which the cheque was returned. It was further stated that the defendant sent another cheque No. 760763 for Rs. 32,400/- on 30.03.2000. It was further stated that again the defendant sent another cheque No. 030859 dated 26.03.2001 for Rs. 32,400/-, as rent for the period 1.4.2001 to 31.3.2002, to the Estate Officer, PWD (Punjab Wakf Board), Ambala Cantt, alongwith letter dated 31.3.2001, but the same was returned without assigning any

reason. It was further stated that the notice dated 26.6.2001, terminating the tenancy was illegal. The remaining averments, contained in the plaint, were denied, being wrong.

4. From the pleadings of the parties, the following issues, were framed, by the Tribunal:

1- Whether the plaintiff is entitled for suit for vacant possession of the Wakf property titled in the head note of the plaint? OPP

2- Whether the plaintiff is entitled for mandatory injunction? OPD

3- Whether this Court has no jurisdiction to try this suit? OPD

4- Whether the suit has not been filed by the competent person? OPD

5- Whether the suit is not maintainable in the present form? OPD

6- Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD

7- Relief.

5. The parties led evidence, in support of their case. The Tribunal, after hearing the Counsel for the parties, and, on going through the evidence and record of the case, came to the conclusion that the defendant was inducted as a tenant in the demised premises; that he violated the terms and conditions of the allotment order as also of the rent note; that the tenancy was validly terminated; that the defendant was liable to vacate the property, in dispute, and pay the arrears of rent. Ultimately, the suit was decreed.

6. Feeling aggrieved, the instant revision-petition, has been filed by the revision-petitioner/defendant.

7. I have heard the Counsel for the parties, and have gone through and perused the record of the case, carefully.

8. The Counsel for the revision-petitioner, submitted that the Wakf Tribunal had no jurisdiction to entertain and try the suit. He further submitted that the Wakf Tribunal could only entertain and try the suit relating to Wakf and the Wakf Property. It was further submitted that the terms and conditions of the allotment order as also the rent note, were not violated by the defendant/revision-petitioner. It was further submitted that he raised boundary wall around the plot, in question, after obtaining "No Objection Certificate". He further submitted that the defendant/revision-petitioner never defaulted in making the payment of rent. He further submitted that the tenancy of the defendant/revision-petitioner was not validly terminated, and, as such, the suit was not maintainable. He further submitted that the suit was filed by the plaintiff/respondent, with malafide intention.

9. On the other hand, the Counsel for the respondent/plaintiff, submitted that the Tribunal constituted under the Wakf Board, was having jurisdiction to entertain and try the suit. He further submitted that the defendant/revision-petitioner violated the terms and conditions of the allotment order as also the rent note. He further submitted that the tenancy of the defendant/revision-petitioner, was legally and validly terminated by issuance of notice, copy whereof is Ex.P-9. He further submitted that the judgment of the Tribunal being legal and valid, was liable to be upheld.

10. After giving my thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, in my considered opinion, the revision petition deserves to be dismissed, for the reasons, to be recorded hereinafter. The defendant/revision-petitioner admitted that he was inducted, as a tenant, in the demised premises, by the Wakf Board. The rate of rent of the demised premises was also admitted. It was also admitted that the allotment order was issued, in favour of the defendant/revision-petitioner and he also executed a separate rent note. The first question that falls for determination, is, as to whether, the Tribunal constituted under the Wakf Act, was having jurisdiction to entertain and try the suit or not? For the purpose of proper determination of the controversy, the provisions of Section 83 and 85 of the Wakf Act are extracted hereunder:

Section 83 of the Wakf Act, 1995 reads as under:

83. Constitution of Tribunals, etc.- (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 wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or whether no such time has been specified, within such time as may be prescribed, to the Tribunal for the termination of any dispute, question or other matter relating to the wakf.

(3) Whether any application under Sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property

to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil Court and shall have the same powers as may be exercised by a civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil Court.

(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the record relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

Section 85 of the Wakf 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, and Wakf property or other matter which is required by or under this Act, be determined by the Tribunal.

11. A plain reading of the provisions of Section 85 of the Act extracted above, clearly goes to reveal that 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, and Wakf property. This is the first limb of Section 85. The second limb of Section 85 is that no

suit or other legal proceedings shall lie in any Civil Court, in respect of any dispute, question or other matter which is required by or under this Act to be determined by the Tribunal. According to Section 83(5) of the Wakf Act, the Tribunal shall be deemed to be a Civil Court. The Wakf Act has conferred powers on the Tribunal to resolve various disputes under the Wakf Act. Sections 6, 7, 32(3), 54(4) of the Act, deal with the matters where the suits can be filed before the Tribunal. Sections 6 and 7 of the Act deal with the dispute, as to whether a particular property is a Wakf, whether it is Shia Wakf or Sunni Wakf. Section 32(22)(d) of the Act enables the Wakf Board to settle schemes of management of a Wakf, and, if any, person who is interested in the Wakf or affected by the settlement or direction may institute a suit before the Tribunal. Section 54 deals with the removal of encroachment from the Wakf property. Any person aggrieved by the order passed by the Chief Executive Officer could institute a suit, before the Tribunal. The Tribunal can also entertain applications. Section 39(21) empowers the Board to make an application to the Tribunal, for the recovery of possession of any building or other place which was being used for religious purposes or institution or for charity before the commencement of the Act, has ceased to be used for that purpose. The second proviso to Section 51(2) also enables the Tribunal to entertain application concerning alienation of Wakf property.

12. From the perusal of the aforesaid provisions as also the other provisions, contained in the Wakf Act, it is evident that considerable powers have been conferred on the Tribunal by entertaining such appeals, applications etc. to resolve various disputes, relating to Wakf and Wakf property. Therefore, when a dispute is raised before the Wakf Tribunal or in a Civil suit, the Tribunal and the Court have to examine whether those disputes fall within the jurisdiction of the Tribunal, by way of suit, appeals or applications. Thus, any dispute, question or other matters relating to Wakf or Wakf property, under the Wakf Act, as well as any dispute, question or other matters relating to the Wakf property are required, to be resolved, by the Tribunal. In this view of the matter, it cannot be said that such like matters are required to be decided by a Civil Court and the Wakf Tribunal has no jurisdiction. The very purpose and intent for setting up the Wakf Tribunals is to provide an expert machinery for the resolution of disputes relating to Wakf and Wakf property, movable or immovable. The Tribunals under the Wakf Act, have been constituted with a view to dispose of the matters/cases expeditiously and disputes relating to the Wakf and Wakf property. If the Tribunal concludes that the disputes like the one, involved in the suit referred to above, are not triable by it, but by the Civil Court, then the very purpose of conferring the powers on it under the Act, would be defeated. The jurisdiction of the Civil Court was completely barred, u/s 85 of the Act. The words "any dispute, question or other matter relating to Wakf or Wakf property" u/s 85 are wide enough to take within its sweep not only the matters, which are specifically triable by the Tribunal under various provisions of the Act, but also any dispute, question or any other matter, relating to any Wakf or Wakf Property. Similar

principle of law, was laid down, in Pookoya Haji v. Cheriya Koya 2003 (4) R.C.R. 474 Kerala High Court (D.B.), M. Bikshapathi v. Government of Andhra Pradesh 2003 (1) R.C.R. 212 Andhra Pradesh High Court (D.B.) and [Jagdish Rai Vs. Manohar Lal and Others,](#) Punjab & Haryana High Court, relied upon by the Counsel for the respondent. No help can be drawn, by the Counsel for the petitioner from Akhtar and Ors. v. Dist. Judge, Mau and Anr. 2006 (2) R.C.R. 488 as the facts thereof are clearly distinguishable, from the facts of the instant case. The Wakf Tribunal had, thus, jurisdiction to entertain and try the suit. The submission of the Counsel for the revision-petitioner, thus, being without merit, must fail, and stands rejected.

13. Ex.D-2 an admitted document, is the letter dated 14.03.2000, which was issued by the Estate Officer, Punjab Wakf Board, Ludhiana, to the defendant/revision-petitioner, wherein, it was, in clear cut terms, mentioned that he had constructed rooms over the property, in dispute, illegally, meaning thereby without obtaining "No Objection Certificate" from the Wakf Board, for raising such construction. Not only this, one of the terms and conditions stipulated in Ex.P-5, copy of the allotment letter, was that when the allottee will demand No Objection Certificate for construction, settlement of rent etc. shall be made afresh. No objection certificate Ex.P-8, dated 26.07.1995, was granted by the Wakf Board, to the defendant for construction of boundary wall, and it was constructed. Thereafter, the defendant was called upon by the Wakf Board vide letters D1 dated 27.12.1999 and Ex.D-3 dated 23.6.2000, for discussion, for settlement of rent etc. afresh, but he did not appear. Thus, there was violation of the terms and conditions of the allotment letter, aforesaid. The trial Court was, thus, right in holding so.

14. The next question that arises for consideration, is, as to whether the tenancy was legally and validly terminated by the plaintiff/respondent or not? Ex.P-9, is a copy of the notice, u/s 106 of the Transfer of Property Act, which is dated 26.06.2001. The said notice was despatched on 27.06.2001, as stated by Rashid Mohd, Estate Officer, Punjab Wakf Board, Ludhiana, who appeared as PW-1. The postal receipt is Ex.P-10 and reply to the notice is Ex.P-11. The suit was filed on 05.01.2002. Thus, a legal and valid notice of 15 days, terminating the tenancy, as envisaged by Section 106 of the Transfer of Property Act, was served upon the defendant/revision-petitioner. After the termination of the tenancy of the defendant/revision-petitioner, he became unauthorized occupant of the demised premises. The Tribunal was, thus, right in holding that after the termination of tenancy, the plaintiff/respondent, became entitled to the vacant possession of the property as also to the arrears of rent from 01.07.1999 @ Rs. 2700/- per month till the filing of the suit, with interest.

15. The judgment/order rendered by the Tribunal, is neither illegal nor suffers from any material irregularity, nor perversity and, therefore, the same does not warrant any interference, of this Court, in its revisional jurisdiction, under Article 227 of the Constitution of India. The submission of the Counsel for the revision-petitioner,

being devoid of merit, must fail, and the same stands rejected.

16. For the reasons recorded above, the revision-petition, being devoid of merit, must fail, and the same is dismissed.