

(2007) 10 AHC CK 0072

Allahabad High Court

Case No: None

Waqf Allah Tala Malik Alal Aulad

APPELLANT

Vs

Krishna Autar and Others

RESPONDENT

Date of Decision: Oct. 8, 2007**Acts Referred:**

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21
- Waqf Act, 1995 - Section 54(4)

Citation: (2008) 1 AWC 309**Hon'ble Judges:** S.U. Khan, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

S.U. Khan, J.

Heard learned Counsel for the petitioners in both the writ petitions and learned Counsel for the contesting respondent, who has appeared through caveat in both the writ petitions.

2. On 1.3.1935, lease-deed of a big piece of land was executed by Karim Bux, Abdulla and Smt. Muneerunnisa in favour of Bulbul Prasad with permission to make constructions in the form of factory shops, houses, go-downs etc. The lease was granted for 89 years. Under Clause 2 of the lease-deed, it was provided that for 89 years, the lessors or their descendants would not have any right to get vacated leased land from the lessee or their descendants on any ground. Rent amount was fixed at Rs. 75 per month. Thereafter, on 18.8.1936, the lessors executed a waqf-deed in which the leased property was also included.

3. In pursuance of the lease deed, the lessee got constructed several buildings and one building in the form of a hotel consisting about 17 rooms was let out to Sri Shitla Prasad Jain, father of respondents No. 2 to 7 and father-in-law of respondent

No. 8, in the second writ petition. Respondent No. 1, in both the writ petitions, i.e., Sri Krishan Autar Singh, the descendant of lessee under the lease-deed of 1935, who is landlord of the hotel in question, filed release application u/s 21 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972, against Sri S. P. Jain. Release application was allowed and the said order was maintained in Writ Petition No. 7035 of 1995, which was dismissed on 5.7.1999. Thereafter, execution proceedings u/s 23 of the Act were initiated. Respondents No. 2 to 8, descendants of original tenant S. P. Jain in order to avoid their eviction approach the mutawalli. Thereafter, present mutawalli of the waqf gave a notice to Krishna Autar on 29.8.2002 determining the lease. The notice determining the lease is wholly void, as the lease deed was executed before creation of waqf, it is to continue till 2024 and under clause 2 of the lease deed, it was provided that under no circumstance lessee would be liable to eviction. Thereafter, Anil Kumar Jain, petitioner in the second writ petition claimed that the mutawalli of the waqf had granted lease of the hotel in dispute to him after possession of the hotel was surrendered by legal representatives of S. P. Jain to the mutawalli. Objections were filed before Prescribed Authority in execution proceedings. Prescribed Authority, Moradabad rejected the objections through order dated 13.9.2007, which has been challenged through both the writ petitions. The original release application had been registered as P.A. Case No. 38 of 1985 and execution application as P.A. Misc. Case No. 27 of 1999. The Prescribed Authority through impugned order dated 13.9.2007 rejected the impleadment application of petitioners and it was directed that possession should be delivered by police force within the time fixed by said order.

4. As Sri S. P. Jain and after his death in the year, 1997, his heirs contested the release proceedings tooth and nail, hence there was no question of surrender of possession to the mutwalli and execution of fresh lease by mutwalli in favour of petitioner of second writ petition. It is nothing but cock and bull story. Petitioner of the second writ petition, Anil Kumar Jain is nothing but shadow of legal representatives of Sri S. P. Jain or their own man.

5. In any case, there is no allegation that Waqf Board has issued any notice or passed any order u/s 54 of the Waqf Act. A.D.M./ Additional Survey Commissioner, Moradabad has written a letter to the Waqf Board on 13.5.2002 on the application of mutwalli for initiating eviction proceedings u/s 54 of the Waqf Act. Under the Waqf Act, 1995, tenant is not unauthorised or encroacher occupant. For evicting the tenant, proceedings before Civil Court (J.S.C.C.) will have to be taken. Section 54 of the Waqf Act, 1995 says that if there has been any encroachment of any land/building, which is waqf property, then order under the said section may be passed requiring the encroacher to remove the encroachment and deliver possession. Section 54 (4) of the Waqf Act, 1995 is quoted below:

Nothing contained in Sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executing Officer under the sub-section from instituting a

suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutwalli of the waqf or by any other person authorised by him in this behalf.

6. The proviso makes it quite clear that summary proceedings of eviction provided under Sections 54 and 55 are not meant for eviction of lessees, licensees or mortgagees, otherwise there is no reason for depriving such persons from filing suit, while even rank trespasser is entitled to file suit. Under the definition clause of Waqf Act, encroachment has not been defined. Under general meaning of the word encroachment, possession of lessee cannot be described to be encroachment even after determination of lease. In the instant case, the lease-deed, which was executed even before creation of the Waqf clearly provided that for 89 years, i.e., until 2024, lessees would not be liable to eviction on any ground.

7. As far as the theory of surrender of possession by heirs of tenant S. P. Jain to the mutwalli and grant of a fresh lease by mutwalli to the petitioner of the second writ petition is concerned, even if it is assumed to be correct, it will not make any difference. In certain circumstances, a tenant can attorn or deliver possession to a paramount title holder, however, those circumstances do not exist in the instant case. The Supreme Court has discussed this aspect in [Vashu Deo Vs. Bal Kishan](#), of the said authority is quoted below:

12. To constitute eviction by title paramount so as to discharge the obligation of the tenant to put his lessor into possession of the leased premises three conditions must be satisfied : (i) the party evicting must have a good and present title to the property; fit) the tenant must have quitted or directly attorned to the paramount title holder against his will; (iii) either the landlord must be willing or be a consenting party to such direct attornment by his tenant to the paramount title holder or there must be an event, such as a change in law or passing of decree by a competent Court, which would dispense with the need of consent or willingness on the part of the landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly, or, in other words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted. The burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by paramount title holder, lies on the party relying on such defence.

8. In the instant case, the paramount title holder, i.e., mutwalli of the waqf has neither got a decree nor order in his favour. He has got no right to evict the chief tenant, i.e., Krishna Autar. Under the lease-deed of 1935, until 2024, mutwalli has got no right to evict chief tenant, which at present is Krishna Autar.

Accordingly, there is absolutely no error in the impugned order passed by the Prescribed Authority. Both the writ petitions are, therefore, dismissed.