

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 28.03.2012*

+ **CM (M) No. 48/2002**

SYED AMIR ALI Petitioner
Through Mr. Arvind Kumar Sharma, Adv.

versus

ANJUMAN E HAIDERI & ANR. Respondents
Through Ms. Tasneem Ahmadi, Adv

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The impugned judgment is dated 10.01.2002. This was a judgment passed by the Rent Control Tribunal (RCT) which had endorsed the findings of the Additional Rent Controller (ARC) dated 11.12.2001; eviction petition filed by Anjuman E Haideri (hereinafter referred to as the 'landlord') against Yusuf Agha (hereinafter referred to as the 'tenant') had been decreed. This was an eviction petition filed under Section 14 (1)(b), (d) & (h) of the Delhi Rent Control Act (DRCA).

2. Record shows that the landlord claims himself to be the owner of

property bearing No. Bala Khan (Naqqar Khana) Main gate, Dargah Shaha Mardan Ali Ganj, New Delhi; two rooms with open courtyard on the first floor (Bala Khana) was let out to the tenant w.e.f. 01.10.1973 on the basis of rent note for residential purpose at a monthly rent of Rs.80/- excluding electricity and water charges. The tenant had sub-let these premises in favour of respondent No. 1 (Syed Amir Ali) without the permission in writing or oral by the landlord; respondent No. 2 was taking illegal rent from respondent No. 1; the sub-tenant is now in complete control of the suit premises as the original tenant had shifted out and he has been allotted a residence at property bearing No. 45, Park End, Vikas Marg, Delhi.

3. The tenant had not contested the proceedings; he had filed a written statement but thereafter he had been proceeded ex-parte. The sub-tenant had alone contested the proceedings. His application seeking impleadment had been dismissed on 23.11.1998. A revision petition was filed before the High Court; the High Court vide order dated 26.11.1999 remanded the matter back to the ARC impleading the sub-tenant as respondent No. 2. It was thereafter that the written statement was filed and the matter was contested by him; submission being that he was the

tenant in his own right and he was not a sub-tenant. Contention being that he was paying Rs.80/- per month as rent.

4. Oral and documentary evidence was led by the respective parties. One witness was examined on behalf of the landlord and correspondingly one witness on behalf of the tenant. On the basis of oral and documentary evidence, the ARC had decreed the eviction petition filed under Section 14 (1)(b), (d) & (h) of the DRCA. This finding was endorsed by the RCT.

5. Counsel for the petitioner has drawn attention of this Court to the first order passed by this Court which was on 01.2.2002; the petition had been dismissed in limine after considering the record as also the averments made in this petition. On a subsequent application seeking review of this judgment, on 26.2.2002 the review had been permitted of the judgment dated 01.2.2002 on the premise that the suit property was a wakf property but this had not been considered in the order dated 01.2.2002; accordingly the order dated 01.2.2002 had been reviewed.

6. Record shows that in the entire eviction petition there has been no mention that this suit property is a wakf property. Before the trial court no objection was raised also by the tenant/respondent to the effect that

this was a wakf property; nothing precluded him from doing so but record shows that it was never the defence of the respondent that this is a wakf property or for this reason, there is a bar of the jurisdiction of the civil court as is the vehement argument now urged before this Court. While reviewing the judgment dated 01.2.2002, the court had noted that this is a wakf property. This Court shall now proceed on the assumption that admittedly the suit property is a wakf property.

7. Even if this is a wakf property, there is no ouster of the jurisdiction of the civil court. This had been held by a bench of the Supreme Court in AIR 2010 Supreme Court 2897 Ramesh Gobindram Vs. Sugra Humayun Mirza; this was an eviction petition which had been filed before the Wakf Tribunal. The Wakf Tribunal had passed an eviction order in favour of the Wakf Board; the submission of the tenant that the jurisdiction did not vest with the Tribunal but the remedy was to file a civil suit had been rejected. This order of the Tribunal had been endorsed by the High Court. The Apex Court in this judgment of Ramesh Gobindram (supra) had dismissed the finding returned by the Tribunal as also by the High Court; it had noted that an eviction suit filed by the Mutawalli of the wakf holding himself to be landlord of the

suit property would be an eviction suit which should have been filed before the Civil Court. The Wakf Tribunal could not have assumed jurisdiction; the four corners of the jurisdiction of the Tribunal are contained within the parameters of Section 6 of Wakf Act 1995. The Apex Court had accordingly advised the Wakf Board to take appropriate civil action before the competent civil court to redress his grievance in accordance with law.

8. Thus in view of the ratio of the aforementioned judgment holding that an eviction suit for seeking eviction of the tenant from the wakf property is to be filed in the civil court only, there is no bar of jurisdiction as is contended by the petitioner/tenant in terms of Section 85 of the Wakf Act.

9. The present suit had been filed by Anjuman E Haideri & Anr. claiming himself to be the Secretary of Anjuman E Haideri /Society which is a registered society (Ex.PW-1/2) was the resolution authorizing him to file the aforementioned suit proceedings. It was never the defence of the tenant in the written statement that he was not authorized to file the suit for any reason.

10. Learned counsel for the parties do not dispute the factum that a

jurisdictional error can be corrected by a superior court even if the objection has not been raised in the court below. This has been held by the Apex Court in JT 1989 (Supp.) Sc 329 titled as Sushil Kumar Mehta vs. Gobind Ram Bohra; the ratio being that a decree passed by a court without jurisdiction is a nullity and its validity could set up wherever it is sought to be enforced or acted upon i.e. even at the stage of execution or in collateral proceedings. The vehement submission of the learned counsel for the petitioner that since this is a wakf property and the Wakf Board alone being authorized to look after the interest in the wakf property, a suit could have been filed only by the Wakf Board or any person authorized or delegated by the Board to do so. Respondent has contended that the plaintiff in this case was the Muttawali of the wakf property and was duly authorized to file the suit. This has been disputed by the petitioner. This issue could not be gone into by the Trial Court as this was never a pleading of the parties; the petitioner in the eviction petition had never pleaded that it is a wakf property or that he is a Muttawali of the suit property. So also the defendant; it was never his case that the petitioner was authorized to file the suit as he was not the muttawali or was not delegated with any authority by the Board to do so.

11. Be that as it may, it has now been agreed that the matter be remanded back to the Trial Court to decide only this issue which inter alia will now read as follows:-

“Whether the plaintiff was authorized to file the eviction petition of the aforementioned wakf property and if so in what capacity?”

12. Needless to state that to answer this issue the parties will be permitted to go through the legal process including the right to amend their pleadings as also to adduce evidence in lieu thereof. The Trial Court shall however confine itself only on the aforementioned issue. The matter being old, the Trial Court shall also endeavour to dispose the case as early as possible and preferably within an outer limit of 8 months from today.

13. Parties to appear before the Rent Control Tribunal (RCT) Patiala House on 11.04.2012 for the said purpose who shall assign the case to the concerned court.

14. With these directions, this petition is disposed of.

MARCH 28, 2012/rb

INDERMEET KAUR, J