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

% *Date of Decision: 02nd June, 2023*

+ C.R.P. 156/2023

MATLOOB AHMAD

..... Petitioner

Through: Mr. Arvind Kumar and
Mr. Ankit Kumar Vats, Advocates

versus

KAMAL KISHORE AND ANR.

..... Respondents

Through: Mr. Wajeeh Shafiq, Standing
Counsel, Delhi Waqf Board, with Ms.
Ramsha Shan, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 31367/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 31368/2023 (condonation of delay)

3. For the reasons stated in the application, the same is allowed.
4. Delay of 107 days in filing the revision petition is condoned.
5. Application stands disposed of.

C.R.P. 156/2023 & C.M. APPL. 31366/2023 (stay)

6. Present revision petition has been filed by the Petitioner laying a challenge to an order dated 18.10.2022 passed by the Trial Court rejecting the application filed by the Petitioner under Order VII Rule 11(d) CPC. Petitioner herein is the Defendant before the Trial Court



and Respondent No. 1 is the Plaintiff and parties are referred to by their litigating status before the Trial Court hereinafter.

7. It is the case of the Defendant that the property in question bearing Shop No. 168, Plot No. 62/6, Khasra No. 479, situated in Takia Gappar Shah, Village Chandrawal, Shahdara, Delhi (hereinafter referred to as the 'Suit Property') is in possession of the Defendant as a tenant under the Waqf Board against whom notice dated 09.03.2006 was issued for paying the arrears of rent or to vacate the suit property. The property is a Waqf property as defined under the Waqf Act, 1995 (hereinafter referred to as the 'Act 1995') and has been used as a Muslim Graveyard from time immemorial. Suit property was declared and notified as Waqf property in the Gazette in Part-IV at page 1284-85 published on 31.12.1970. Defendant further avers that in order to safeguard his interest in the shop, he paid the arrears of rent to the Waqf Board and is continuing to do so for which he has rent receipts issued by the Board.

8. The genesis of the application under Order VII Rule 11(d) CPC filed by the Defendant for rejection of plaint lies in the legal argument that Section 85 of the Act 1995 bars the jurisdiction of Civil Court with respect to any dispute pertaining to Waqf property.

9. Facts to the extent relevant for deciding the present revision petition and as averred in the present petition are that grandfather of the Plaintiff namely Sh. Lakhi Ram instituted a suit against the Defendant in 1987 for dissolution of partnership, rendition of account and possession of the suit property and vide order dated 21.10.1986 the Trial Court observed that Defendant was a tenant of Sh. Lakhi Ram. Another proceeding was instituted by Sh. Lakhi Ram against the



Defendant under Section 15(1) of the Delhi Rent Control Act, 1958 being E-56/87 and in the said proceeding in the order dated 16.05.1988, according to the Defendant, the Court rendered a finding that Defendant was a tenant and order of payment of rent was passed against him.

10. Sh. Lakhi Ram during his lifetime in the year 1999, filed another suit being Suit No. 08/1999 for possession against one Shuja-ul-Haq relating to an adjacent shop of the suit property and the latter in turn filed a suit against Sh. Lakhi Ram and few others being Suit No. 65/1999. In 1998, Defendant's grandfather passed away leaving behind three sons and four daughters. On 18.01.2003, a common judgment was passed by the Trial Court whereby suit filed by Sh. Lakhi Ram being Suit No. 08/1999 was dismissed holding that the suit property belonged to the Delhi Waqf Board. Pursuant thereto, Defendant received notice from the Board on 09.03.2006 seeking payment of arrears of rent, which was replied to by the Defendant.

11. On 14.12.2018, Plaintiff filed an eviction petition under Section 14(1) read with Section 14(2) of the Delhi Rent Control Act, 1958 in which written statement was filed by the Defendant. The Board filed an application under Order I Rule 10 CPC read with Section 92 of Act 1995 for impleadment. Defendant filed an application under Order VII Rule 11(d) CPC for rejection of plaint, which was dismissed by the impugned order.

12. The prime ground taken by the Defendant in the application for rejection of plaint was that the suit property is a Waqf property and therefore by virtue of Section 85 of Act 1995, Civil Court does not have the jurisdiction to entertain the suit. Trial Court rejected the



application on the ground that Defendant has described the suit property in his own terms which does not match with the suit property mentioned in the plaint and moreover, the defence in the written statement cannot be taken into account while adjudicating an application under Order VII Rule 11 CPC. The other reason for rejection of the application was that the application filed by the Waqf Board for impleadment was dismissed on 28.03.2022 and the application by the Defendant filed after the dismissal of the impleadment application was not *bonafide*.

13. Issue notice.

14. Counsel, as above, accepts notice on behalf of Respondent No. 2.

15. It is a settled proposition of law that while adjudicating an application under Order VII Rule 11 CPC, the Court is only required to examine the plaint and the documents filed therewith and it is not open to take into account the defence set up in the written statement. However, what was sought to be raised by the Defendant in the application under Order VII Rule 11(d) CPC was a legal issue which concerns the jurisdiction of the Civil Court to entertain the eviction petition. Perusal of the impugned order shows that the Trial Court has taken note of the contention in para 1 of the order but has not dealt with the same, save and except, stating that there is a difference in the suit properties mentioned in the plaint and the application, respectively and that this is a matter of trial.

16. Defendant specifically argues that Section 6 of Act 1995 provides that if any question arises as to the status of a property being a Waqf property, the Waqf Board or any person interested therein may



institute a suit in a Tribunal for decision of the question and the decision of the Tribunal in respect of such matter shall be final. Under Section 7 of Act 1995, only the Waqf Tribunal has jurisdiction to determine such disputes. It was also urged that Section 85 of Act 1995 clearly excludes jurisdiction of Civil Courts in respect of any dispute, question or other matter relating to any Waqf property. Sections 6 and 7 of Act 1995 along with Section 85 are extracted hereunder, for ready reference:-

“6. Disputes regarding [auqaf].—(1) If any question arises whether a particular property specified as [waqf] property in the list of [auqaf] is [waqf] property or not or whether a [waqf] specified in such list is a Shia [waqf] or Sunni [waqf], the Board or the mutawalli of the [waqf] or [any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of [auqaf]:

[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

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(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any [waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of [auqaf] shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive. (5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).



7. Power of Tribunal to determine disputes regarding [auqaf].—(1) If, after the commencement of this Act, [any question or dispute] arises, whether a particular property specified as [waqf] property in a list of [auqaf] is [waqf] property or not, or whether a [waqf] specified in such list is a Shia [waqf] or a Sunni [waqf], the Board or the mutawalli of the [waqf], [or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

(a) in the case of the list of [auqaf] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of [auqaf]; and

(b) in the case of the list of [auqaf] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any [waqf] shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of [auqaf] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

[(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such



unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector: Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]

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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.”

17. Reading of the aforesaid provisions makes it clear that in respect of any dispute pertaining to a Waqf property, the Waqf Tribunal will have the jurisdiction and pass appropriate orders. Section 85 of Act 1995 provides a clear bar on the Civil Court to entertain matters relating to disputes where the Waqf Tribunal has the jurisdiction. The Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali (D) thr. L.Rs., (2020) 7 SCC 366***, has clearly ruled in the context of an application under Order VII Rule 11 CPC that law cannot permit clever drafting which creates an illusion of a cause of action and where the suit is wholly vexatious the litigation should be nipped in the bud at the earliest stage. In my view, this law would apply with a greater vigour to a case as the present one where the objection is raised by the Defendant to the very jurisdiction of the Civil Court to entertain the eviction petition in view of the legal bar under Section 85 of Act 1995 and thus the Trial Court, ought to have decided this issue at the outset instead of leaving it to be decided after completion of trial.

18. Learned counsel for the Waqf Board in fact supports the plea of Defendant with regard to the jurisdiction of the Civil Court and also



submits that no doubt, the application for impleadment by the Waqf Board has been dismissed by the Trial Court but steps are being taken to challenge the said order and therefore the matter needs to be remanded for a fresh consideration of the issue by the Trial Court.

19. Accordingly, the revision petition is allowed and the matter is remanded back to the Trial Court for reconsideration of the application under Order VII Rule 11(d) CPC with respect to the plea of bar of jurisdiction under Section 85 of Act 1995.

20. It is made clear that this Court has not expressed any opinion on the merits of the case and the Trial Court shall decide the application on its own merits and in accordance with law.

21. Revision petition stands disposed of along with pending application.

JUNE 02, 2023/kks/shivam

JYOTI SINGH, J