

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

CRP(WAKF).No. 92 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN OA 3/2014 of WAKF TRIBUNAL, KOZHIKODE
DATED 31-12-2014**

REVISION PETITIONER/APPELLANT/RESPONDENT:

**P.E.SARJITH, AGED 38 YEARS,
S/O.SANADANAN, NADAKKAL HOUSE, EDAKKAD AMSOM
PUTHIYANGADI DESOM, KOZHIKODE (SHOP NO. K.P.10/259-M
MANNUR VALAVU, P.O.MANNUR).**

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS/RESPONDENTS/PETITIONER:

- 1. MISBAHUL HUDA EDUCATIONAL TRUST
P.O.CHALIYAM, KOZHIKODE, REPRESENTED BY ITS SECRETARY
P.K.ABDUL MAJEED, RAHMATH MANZIL, P.O.CHALIYAM
KOZHIKODE-673 301.**
- 2. THE CHIEF EXECUTIVE OFFICER
KERALA STATE WAKF BOARD, OFFICE OF THE WAKF BOARD
V.I.P.ROAD, ERNAKULAM, COCHIN - 682 017.**
- 3. KERALA STATE WAKF BOARD
OFFICE OF THE WAKF BOARD, V.I.P. ROAD, ERNAKULAM
PIN - 682 017.**

R2 & R3 BY SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD

**THIS CRP (WAKF ACT) HAVING COME UP FOR ADMISSION ON 04-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

C.R.P.(Wakf).No.92 of 2015

Dated this the 04th day of March, 2015

ORDER

P.N.Ravindran, J.

The petitioner, who is occupying a shop room in a building belonging to the first respondent trust, has filed this civil revision petition challenging the order passed by the Wakf Tribunal, Kozhikode in O.A.No.3 of 2014 on 31.12.2014, whereby the Wakf Tribunal confirmed the order passed by the Chief Executive Officer of the Kerala State Wakf Board on 29.5.2014. The brief facts of the case are as follows:-

2. The first respondent is a trust registered with the Kerala State Wakf Board. The Secretary of the trust filed an application before the Chief Executive Officer of the Wakf Board contending that the petitioner is unauthorisedly occupying a shop room in a building owned by the trust. It was alleged in the said complaint that a license agreement had been entered between the parties for a period of 11 months from 01.04.2011, that a lawyer notice dated 16.1.2012 had been issued to the petitioner terminating the license arrangement with effect from 29.2.2012 and demanding vacant possession of the building from that date, but the petitioner did not surrender vacant possession. The applicant had along

with the petition produced the license agreement, the termination notice and the reply notice sent by the petitioner. Upon receipt of the complaint, the Chief Executive Officer conducted a preliminary enquiry and issued notice to the petitioner. The petitioner entered appearance and filed a counter contending that he was doing business in the said shop room prior to the purchase of the property by the trust, that he is ready to pay enhanced rent and that the business being carried on by him in the shop room is his only means of livelihood. The Chief Executive Officer considered the rival contentions and held that as the license agreement has been terminated, the petitioner is unauthorisedly occupying the shop room owned by the trust and therefore he is liable to be evicted. The Chief Executive Officer accordingly issued an order dated 29.5.2014 directing the petitioner to remove the encroachment from the wakf property on or before 30.6.2014, failing which he was cautioned that the necessary application would be made to the Wakf Tribunal, Kozhikode for execution of that order.

3. Aggrieved thereby, the petitioner filed an application before the Wakf Tribunal, Kozhikode under section 83(2) of the Wakf Act, 1995. Before the Wakf Tribunal the petitioner contended that the finding entered by the Chief Executive Officer of the Kerala State Wakf Board that he has no right to hold the property cannot be sustained. The Wakf Tribunal

considered the rival contentions and held that as the petitioner was in possession of the premises before the Wakf Act, 1995 was amended by Act 27 of 2013, the law applicable is the Wakf Act, 1995 as it stood prior to the amendment. However, applying rule 2(ha) of Kerala Wakf Rules, 1996, the Wakf Tribunal held that a person, who is in occupation of wakf property after the authority for such occupation has been determined is an encroacher who is liable to be evicted under the Act. The application was accordingly dismissed. Hence this civil revision petition.

4. We heard Sri.C.P.Mohammed Nias, learned counsel for the revision petitioner and Sri.K.Shibili Naha, learned standing counsel for the Kerala State Wakf Board. Sri.C.P.Mohammed Nias, learned counsel for the revision petitioner contended that, as the petition for an order under section 54 of the Act was filed before the Wakf Act, 1995 was amended by Act 27 of 2013, the definition of the term "encroacher" occurring in the Act could not have been relied upon. It was contended that in the absence of a definition of the term encroacher in the Act, the ordinary dictionary meaning of the term encroacher has to be adopted and as the petitioner came into possession lawfully it cannot be said that he is an encroacher in the true sense of the term. The learned counsel also contended that, in such circumstances, as the petitioner is not an encroacher, he is not liable to be evicted. Alternatively, the learned

counsel contended that even if section 54 of the Wakf Act, 1995 as amended applies, the Chief Executive Officer could not have directed the petitioner to surrender possession of the wakf property, but could have only filed a suit seeking the petitioner's eviction before the civil court and not before the Wakf Tribunal and therefore for that reason also, the impugned order is liable to be set aside.

5. Per contra, Sri.K.Shibili Naha, learned standing counsel for the Kerala State Wakf Board contended that rule 2(ha) of the Kerala Wakf Rules 1996, defines the term encroacher, that on the terms of the said definition, any person, who is continuing in possession of wakf property after the authority for such occupation has been determined can be said to be an encroacher of wakf property and therefore, the Wakf Tribunal was perfectly right in dismissing the application. The learned counsel contended that it is only in the absence of a definition in the Act or the rules framed thereunder that the ordinary dictionary meaning can be resorted to, that the Kerala Wakf Rules, 1996 was amended in the year 2005 by incorporating the definition of the term encroacher in relation to wakf property, that going by the said definition the occupation of the shop room after the authority for such occupation has ceased amounts to encroachment by the petitioner and therefore, no exception can be taken to the order passed by the Chief Executive Officer. Sri.K.Shibili Naha,

learned standing counsel for the Kerala State Wakf Board also submitted that the mere fact that the Chief Executive Officer has directed the petitioner to surrender possession of the premises, will not vitiate the order passed by him or the Wakf Tribunal for the reason that if the petitioner does not comply with the order, he can be evicted pursuant to the order only on an application being filed before the Wakf Tribunal, by the Chief Executive Officer of the Board.

6. We have considered the submissions made at the Bar by the learned counsel on either side. We have also gone through the pleadings and the materials on record. The orders passed by the Chief Executive Officer and the Wakf Tribunal disclose that the petitioner was in possession of the wakf property under a tenancy arrangement even before it became a wakf property. However, after the first respondent trust purchased the property, he entered into a license arrangement on 01.04.2011 for a period of 11 months. Before the term of the said license arrangement expired, the first respondent caused a lawyer notice dated 16.1.2012 to be issued to the petitioner, terminating the license arrangement with effect from 29.2.2012 and demanding vacant possession of the building on 29.2.2012. These facts are not in dispute. The only contention raised by the petitioner before the Chief Executive Officer was that he is ready to pay enhanced rent and that the business

being carried on by him in the shop room is his only means of livelihood. The Chief Executive Officer considered the rival submissions and held that as the shop room is wakf property and the occupation of the wakf property by the petitioner comes under the definition of encroacher as defined in section 3(ee) of the Wakf Act, 1995 he is liable to be evicted. Section 3(ee) of the Wakf Act, 1995 defines the term encroacher thus:-

"(ee) 'encroacher' means any person or institution, public or private, occupying wakf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board."

7. The said definition was inserted in the Wakf Act, 1995 by Act 27 of 2013 with effect from 20.09.2013. Even before the Wakf Act, 1995 was amended by Act 27 of 2013, the State of Kerala had amended the Kerala Wakf Rules, 1996 by incorporating Rule 2(ha) therein. Rule 2(ha) of the Kerala Wakf Rules, 1996 reads thus:-

"(ha) 'encroachment' in relation to any wakf premises means occupation by any person of the Wakf premises without authority for such occupation and includes the continuance in occupation by any person of the wakf premises after the authority whether by way of grant or has been determined for any reason whatsoever, and includes any construction, alteration or addition carried out to the building without the authority."

8. Rule 2(ha) quoted above defines the term 'encroachment' in relation to any wakf premises to mean occupation by any person of the

wakf premises without authority for such occupation. It also includes the continuance in occupation by any person of the wakf premises after the authority for such occupation has been determined for any reason whatsoever. It is not in dispute that the petitioner had entered into a license arrangement with the first respondent trust on 1.4.2011. As per the terms of the license arrangement he continued in occupation of the premises which he was formerly occupying as a tenant, as a licensee. The license arrangement was for a period of 11 months, which expired on 29.2.2012. The license arrangement was terminated by the first respondent who had caused a lawyer notice dated 16.1.2012 to be issued. These facts are not in dispute. It is thus evident that the continued occupation of the premises by the petitioner after 29.2.2012 amounts to an encroachment as defined in rule 2(ha) of the Kerala Wakf Rules. In such circumstances, we find no merit or force in the contention of the petitioner that as the Wakf Act, 1995 did not contain a definition of the term encroacher before it was amended by Act 27 of 2013, the ordinary dictionary meaning of the term encroacher alone should have been looked into. Consequently we hold that no exception can be taken to the finding entered by the Chief Executive Officer of the Kerala State Wakf Board and by the Wakf Tribunal to the effect that the occupation of the petitioner after the authority for such occupation, viz the license arrangement was

terminated, amounts to encroachment in respect of wakf property.

9. The only other question that remains to be considered is whether the Chief Executive Officer of the Kerala State Wakf Board could have called upon the petitioner to surrender possession of the wakf property. On the terms of section 54 of the Wakf Act, 1995 as it stood on the date the petition was filed by the Secretary of the first respondent trust before the Chief Executive Officer of the Kerala State Wakf Board, the Chief Executive Officer could have after considering the objections if any filed before him required the encroacher to remove the encroachment from wakf property and deliver possession of the building to the Mutawalli concerned or the Board. The person aggrieved thereby had the right to institute a suit before the Wakf Tribunal to establish his right, title or interest in the land, building, space or other property. The right to institute such a suit was however not available to a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the Mutawalli of the Wakf or by any person authorised by him in that behalf. Under section 54 of the Act as amended by Act 27 of 2013, the Chief Executive Officer of the Kerala State Wakf Board cannot by himself order eviction. He can only issue notice to the encroacher and after considering the objections if any submitted by the encroacher, apply to the Wakf Tribunal for the grant of

an order of eviction for removing such encroachment and delivery of possession of the land, building, space or other property encroached upon by the Mutawalli of the Wakf. In the instant case, the Chief Executive Officer of the Kerala State Wakf Board issued orders on 29.5.2014 after the Act was amended. By that order, he directed the petitioner to remove the encroachment from the wakf property on or before 30.6.2014, failing which he was cautioned that the necessary application would be made before the Wakf Tribunal, Kozhikode. On the terms of section 54 of the Wakf Act, 1995 as it stands after the amendment by Act 27 of 2013, the Chief Executive Officer of the Kerala State Wakf Board could not have issued an order directing the encroacher to vacate the premises. The effect of the order passed by the Chief Executive Officer of the Kerala State Wakf Board is that if the petitioner does not vacate the premises it will be open to him to move the Wakf Tribunal for an order directing the petitioner to vacate the wakf property. We therefore find no merit or force in the contention of the petitioner that the Chief Executive Officer of the Kerala State Wakf Board could have only filed a suit before the civil court seeking the petitioner's eviction.

For the reasons stated above, we hold that there is no merit in the instant civil revision petition. It fails and is accordingly dismissed with the observation that the petitioner shall be evicted only after complying with

the procedure prescribed in sub-section (4) of section 54 of the Wakf Act, 1995.

Sd/-

P.N.RAVINDRAN, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj