

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL MISCELLANEOUS APPEAL Nos.230 and 236 of 2015

Between:

C.M.A.No.230 of 2015:

Princess Durru Shehvar Technical Education Wakf,
Rep. by its Secretary, Mr. M.Mazharuddin Javeed.

... Appellant/Petitioner and

Mr. Abdul Kareem.

... Respondent/Respondent

C.M.A.No.236 of 2015:

Princess Durru Shehvar Technical Education Wakf,
Rep. by its Secretary, Mr. M.Mazharuddin Javeed.

... Appellant/Petitioner and

Mr. Abdul Kareem.

... Respondent/Respondent

DATE OF JUDGMENT PRONOUNCED: 07-08-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Lordship wish to see the
fair copy of the Judgments? | Yes/No |

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos.230 and 236 of 2015

COMMON JUDGMENT: *(Per Hon'ble Sri Justice A. Shankar Narayana)*

Assailing the orders dated 29.04.2014 in I.A.Nos.172 and 171 of 2013 in O.S.No.822 of 2012 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad, these two Civil Miscellaneous Appeals have been filed by the petitioner-plaintiff.

2. Since the orders under challenge arise out of one and the same suit, i.e., O.S.No.822 of 2012, these two civil miscellaneous appeals are being disposed of by this common order.

3. The request of the petitioner in I.A.No.172 of 2013 has been to grant temporary injunction restraining the respondent from renewing sub-lease deeds in favour of sub-tenants; whereas, his request in I.A.No.171 of 2013 has been to grant temporary injunction restraining the respondent from sub-letting the suit schedule property, comprised of house bearing M.No.4-3-548/1 with a double storied building having plinth area of 13,600 square feet (ground floor) and 14,634 square feet (first floor) in an extent of 5009 square yards situated at Buggulakunta, Hyderabad, within the specified boundaries shown in the petition and plaint schedules.

4. By the aforesaid orders, the Court below refused to grant injunctions, due to which, the petitioner is driven to approach this Court.

5. The facts relevant for the purpose of disposal of these two

appeals are that the petitioner sought the relief for eviction of the respondent and to put the petitioner in possession of the suit schedule property, which comprises of a double storied building with a plinth area of 13,600 square feet in the ground floor and 14,634 square feet in the first floor consisting of 48 rooms, galleries, bathrooms and a covered tin shed of 6000 square feet with drainage sanitary and electrical installations, erected in an extent admeasuring 5009 square yards situated at Buggulakunta, Hyderabad. The petitioner is represented by its Secretary, and according to the petitioner, the schedule mentioned property is wakf property, registered under Section 25 of the Central Wakf Act No.29 of 1954, Regd.No.11, Ward 4, Serial No.2 of 25.5.1976, F.No.21.2.75 IND(C) 819, dated 21.04.1976 and the same is attached to Princess Durru Shehvar Technical Education Wakf. The said property was leased out with the prior permission of the Andhra Pradesh State Wakf Board, originally on 01.05.1994, by execution of agreement of lease. Thereafter, the lease was extended from time to time on 28.10.1996, 28.09.1996 and again, renewed on 06.02.2009 by enhancing rent from Rs.75,000/- to Rs.1,31,857/- for a period of three years. The term of lease expired on 05.02.2012. Since there was breach of conditions of renewed lease deed dated 06.02.2009 as the respondent indulged in raising illegal constructions within the premises and without permission from the petitioner, tenancy termination notice was issued to the respondent on 14.05.2012 requiring the respondent to vacate the premises and hand over possession thereof. Since the respondent did not oblige, the suit is filed seeking eviction, mesne profits and damages, which details, of course, are unnecessary to elaborate at this stage.

6. I.A.Nos.172 and 171 of 2013 were filed during pendency of the suit on 13.11.2013 requesting the aforementioned reliefs.

7. Respondent resisted the requests by filing counter raising

various pleas. While admitting the jural relationship of landlord and tenant between them and even admitting that the property was in the supervision of the Andhra Pradesh State Wakf Board, states that despite advertisements in local newspapers, there were no takers of suit schedule property on lease, as the building was in semi-finished stage, and at the request of the trustees, the respondent took over the project as it was in the nature of Special Purpose Vehicle and invested huge funds to make it habitable and lease it out to sub-tenants and transfer back the premises subject to payment of monthly rentals for a period of 30 years. That has been the specific stand taken by the respondent. To even substantiate that stand, he has set up the plea that the petitioner has admitted that the lease for 30 years in the written statement filed by the petitioner herein in O.S.No.39 of 2003 on the file of the Andhra Pradesh State Wakf Tribunal, City Civil Court, Hyderabad, and extracted paragraph Nos.5, 6, 7, 8, 9 and 10 of the said written statement, which details are unnecessary to refer to in adjudicating the instant controversy. Thus, the respondent sought to reject the requests of the petitioner.

8. No documents were exhibited on either side. The Court below observing that the specific terms of lease were not in dispute and that the petitioner while filing written statement in O.S.No.39 of 2003, has categorically admitted those terms and that it (Court below) perused the said statement and lease agreement, in pursuance of which, the respondent was inducted into possession, and, thus, it accounts for admission on the part of the petitioner herein (I.A.Nos.172 and 171 of 2013) as to the right of the respondent herein to sub-lease the property during subsistence of sub-lease and that it (Court below) has also perused the statement and found it to be true and having found from the record that the respondent invested huge amount to convert the property suitable for occupation by different business

holders, the respondent must have invested money in view of the specific understanding about the sub-lease and further observing that unless the petitioner is successful to explain as to how it is entitled to seek eviction before expiry of the admitted lease by explaining the validity of the alleged quit notice under Section 106 of the Transfer of Property Act, 1882 (for short, 'the TP Act'), held that, since the respondent is entitled to sub-lease the property and to execute renewal of existing leases, *prima facie* case and balance of convenience do not exist in favour of the petitioner, and if injunction is granted, it would cause irreparable loss to the respondent, and thereby, dismissed both the applications.

9. Aggrieved by the aforesaid orders, petitioner preferred the instant appeals with identical grounds stating that the Court below has not properly appreciated the material on record, more particularly, the issuance of quit notice under Section 106 of the TP Act and the term of tenancy determined on 05.02.2012. It is also stated that in case the respondent sub-leases and resorts to renewal of agreement after termination of tenancy, it leads to multiplicity of litigations, due to which, the appellant-petitioner will suffer irreparable loss and injury, and, therefore, sought to set aside the orders under challenge and to grant injunction as prayed for in the interlocutory applications.

10. Respondent filed counter affidavits annexing thereto copy of the renewal lease deed dated 06.02.2009 and copy of the written statement in O.S.No.39 of 2003 on the file of Andhra Pradesh State Wakf Tribunal, City Civil Court at Hyderabad. The pleas taken by the respondent in his counters before the Court below were reiterated in the counter affidavits warranting no advertence.

11. Reply affidavit is filed by the appellant-petitioner re-emphasizing that the commercial difficulties of the respondent, averred

in paragraph Nos.14 and 15 of the counter affidavit, do not create any permanent tenancy right and the tenancy was only for three years and not thirty years.

12. Heard Sri Abdul Muqeeth Qureshi, learned counsel for the appellant, and Sri Kishore Rai, learned counsel for the respondent.

13. The learned counsel for the appellant-petitioner would submit that the lease deed dated 06.02.2009 was renewal lease deed, not only by its caption but also by the contents therein, since it recites specific reference to entering into original lease deed dated 28.10.1996, which was periodically renewed ending with the present renewal lease deed, basing on which, the termination notice was issued under Section 106 of the TP Act, and, thus, it would reflect that the lease was not for 30 years as projected by the respondent, but it was for three years. It is also his submission that the Court below was not right in refusing the injunctions on the mere ground that there has been an admission made in the written statement in O.S.No.39 of 2003. It is also his submission that Section 56 of the Wakf Act, 1995 (for short, 'the Wakf Act'), which provisions govern the field, would prohibit leasing out the property exceeding three years period, and placed reliance on a decision of this Court in ***St. Louis Educational Society, Secunderabad v. Jamia Masjid, Secunderabad and others***^[1], and, therefore, sought to set aside both the orders and grant injunctions as prayed for.

14. *Per contra*, the learned counsel for the respondent would submit that the admission made by the petitioner, as defendant No.3 in O.S.No.39 of 2003, makes it abundantly clear that the understanding was to accord lease for thirty years and that has been the intention of the parties right from the beginning and since the respondent improved the schedule property by making it habitable and more rent fetching,

the Court below was right in refusing to grant injunctions. Thus, he supported the orders under challenge.

15. In view of rival contentions, the common point that arises for consideration in the instant appeals is, whether the orders under challenge are liable to be set aside?

16. It is admitted by the respondent that the schedule mentioned property is wakf property, and, thus, there is no controversy in this respect. It is also admitted by the respondent that originally he was inducted into possession in the year 1996. He referred to in paragraph No.10 of his counter affidavit, that the petitioner concealed the fact that he invested huge amount to make the property into a habitable condition in renovating the premises and converting it into a modern arcade for commercial usage and that in view of the financial constraints involved, both of them had bilaterally agreed that he would be provided lease of the property for a minimum period of thirty years certain.

17. To decide the controversy whether the lease was for three years as contended by the petitioner or thirty years as contended by the respondent, we would like to advert to certain relevant terms and conditions of the lease deed dated 06.02.2009. We find the description of the said deed as RENEWAL LEASE DEED, which was a registered one. It shows that the Andhra Pradesh Wakf Board has granted permission under Section 56-A of the Wakf Act 1995 (56 (1) & (3)) Act 43 of 1994 by the proceedings No.23/H3/J1/MIS/92 dated 28.09.1996, Board Resolution 67/96, dated 21.09.1996; for execution of lease deed dated 06.02.2009 as per clause IV(4) page 9 of the Original Lease Deed dated 28.10.1996 and subsequent Lease Deeds dated 19.01.2000 Regn.No.140/2000, Regn.No.1671/03 dated 06.02.2003 vide No.F37/DCB/dt.96/dt.29.11.2002 BR NO.1170/2003

dt.29.11.2003 and further No.C.F.37/DCB/01/1996, dt.01.05.2008. At page No.3 of the Renewal Lease Deed, it reflects the following:

"..... For a further term of three years commencing from first of NOVEMBER, 2008 and upon the Lease paying an enhance monthly total rent of Rs.1,31,857=00 (Rupees One lakh Thirty one thousand eight hundred fifty seven only) per month. Being the aggregate of Rs.79,114/- (Rupees Seventy nine thousand one hundred fourteen only) per month, for the immovable property described in the schedule premises and Rs.52,742/- (Rupees Fifty two thousand seven hundred forty two only) per month for the amenities provided in the Schedule premises, payable in advance on or before the 10th day of every English Calendar month of Tenancy and subject to the enhancement as given in Annexure."

At page Nos.5 and 6 of the Renewal Lease Deed, condition Nos.4, 5 and 9, which are the obligations cast on lessee, are thus:

"4. The Lessee may sub-lease or assign his interest under this lease for the duration of the term, or terms subject to the conditions that the Lessee alone shall be responsible for payments of the rent to the Lessor.

5. The Lessee may at his own cost and expenses make improvements, alterations or additions to the schedule premises with consent of the Lessor, so long as such alterations, integrity of the building. The Lessee will remove all the temporary improvement at the time of vacating the premises, if any made by the Lessee.

6.

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9. The Lessee shall not be entitled to remove any existing superstructures, installations, electricity and sanitary fittings and other permanent fixtures at the expiry of the Lease and shall also not be entitled to claim any compensation therefore."

At page No.7, likewise, condition No.4, which deals with the Lessor's obligations reads thus:

"The lease (See: lessor) has the option to renew the lease for

further terms at the enhance rent for a minimum of 6% annually and further the Lessee, has the option to renew for further period of periods not exceeding 30 years with a separate lease deed. In all on the same terms and conditions and in such case a fresh lease deed will be executed by both the parties."

The penultimate clause at page No.11 reads thus:

"..... However, it is clearly understood by the Lessee that the Schedule premises is of Princess Durru Shewar Technical Educational Wakf and is under the supervision of A.P.Wakf Board and if any illegal or unlawful activity is carried on at the Schedule premises the Lessor can unilaterally terminate the lease by informing the same to the lessee in writing."

18. A thorough examination of reciprocal obligations, coupled with the contents of the said deed, would, in unambiguous terms, reflect that the period of lease was for three years from the date of its execution, but not for thirty years as contended by the respondent.

19. Since the provisions of Section 56 of the Wakf Act enact restriction on power to grant lease or sub-lease of wakf property exceeding three years, we would like to reproduce the same which is as hereunder:

"(1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period of exceeding one year and not exceeding three years of immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and

conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct."

20. In ***St. Louis Educational Society's*** case (supra 1), this Court, following the earlier decision of this Court in ***Sri Shinde Enterprises, Hyderabad v. Arastu Talimi Trust, Hyderabad***^[2], held that if the property is wakf property, lease cannot be for a term beyond three years in terms of Section 56 of the Wakf Act. Thus, when an express bar is enacted by the provisions of sub-section (1) of Section 56 of the Wakf Act, we are of the view that there is every justification in the requests made by the petitioner for grant of injunctions, one, prohibiting renewal of the sub-lease by the respondent and the other, prohibiting him from sub-letting the petition schedule property during pendency of the suit. Therefore, we have no hesitation in holding that the petitioner is successful in proving the *prima facie* title, balance of convenience lying in his favour and irreparable loss, in case, his requests for granting injunctions are refused. Thus, the orders under challenge passed by the Court below suffer from legal infirmity warranting interference of this Court.

21. Therefore, both the orders under challenge are set aside and I.A. Nos.172 and 171 of 2013 in O.S. No.822 of 2012 are allowed granting injunctions as prayed for by the petitioner. Since the suit relates to the year 2012, we direct the Court below to dispose of the suit, as expeditiously as possible, preferably, within a period of six (6) months from the date of receipt of this order.

22. With the directions as above, both the Civil Miscellaneous Appeals are allowed. We, thus, make no order as to costs.

23. As a sequel, miscellaneous applications, if any pending in these appeals, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

Date: 07.08.2015

NOTE:

Mark a copy of this order to the Court concerned

B/O

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[\[1\]](#) 2012(4) ALD 615

[\[2\]](#) 2005(2) ALD 239