

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

Date of Decision: 06.05.2015

+ RC Rev. 494/2013 & CM No.20488/2013

RAJESH JAIN Petitioner

Through: Mr. S.K. Bhaduri, Adv. with
Petitioner in person.

versus

QAZI SHAMIM AHMED & ORS. Respondents

Through: Mr. Harpreet Singh & Mr. Rajesh Gupta,
Advs.

+ RC Rev. 13/2014 & CM Nos.378-379/2014 & 14129/2014

VINOD KUMAR PATHAK Petitioner

Through: Mr. Yogesh Malhotra, Adv.

versus

QAZI SHAMIM AHMED & ORS. Respondents

Through: Mr. Harpreet Singh & Mr. Rajesh Gupta,
Advs.

+ RC.REV. 49/2014

SUBHASH CHAND GERA Petitioner

Through: Mr. J K Bhola, Advocate

versus

QAZI SHAMIM AHMED & ORS Respondents

Through: Mr. Harpreet Singh, Mr. Rajesh Gupta &
Mr. S P Gupta, Advocates

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. These petitions under the proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958 (for short '*Act*'), impugn three separate orders dated 27.09.2013 (for short '*impugned orders*'), whereby the learned Additional Rent Controller (for short '*ARC*') dismissed the petitioners' applications for leave to defend.
2. For brevity, RC. REVS. 13/2014, 49/2014 and 494/2013 shall hereinafter be referred to as P1, P2 and P3 respectively. P1 concerns two shops bearing Nos. 260/A-5 and 260/A-6; P2 concerns two shops bearing Nos. 260/A-1 and 260/A-2; and P3 concerns three shops bearing Nos. 260/1, 260/2 and 260/3. The said shops form a part of properties bearing Nos. 260 & 260A, Hauz Rani, Malviya Nagar, New Delhi (for short '*property*') and shall collectively be referred to as *tenanted premises*. The respondents (landlords) in all these petitions are the same; the disputes pertain to the same property; and the issues for consideration in these cases are also the same. Accordingly, these petitions are disposed off by a common order.

3. The facts in brief are that the respondents are the children of Qazi Sajjad Hussain and Smt. Rabia Begum. Qazi Sajjad Hussain was the erstwhile owner of the property. By a registered sale deed dated 05.02.1971, Qazi Sajjad Hussain transferred 125 sq. yards, i.e., property bearing No.260A in favour of his wife, Smt. Rabia Begum. Both Smt. Rabia Begum and Qazi Sajjad Hussain passed away in the years 1985 and 1990 respectively. They had also executed Wills dated 10.02.1979 and 26.03.1979. As per the Will dated 10.02.1979, the property was to constitute a *Wakf-alal-aulad* after the death of Qazi Sajjad Hussain. Respondent No.1 is the *Mutawalli* of the property. The respondents had sought eviction of the petitioners from the tenanted premises for *bona fide* need under Section 14(1)(e) of the Act.

Impugned order

4. A few preliminary issues arose for consideration before the learned ARC. The petitioners had contended that the eviction petitions were not maintainable under Section 14(1)(e) of the Act as the tenanted premises were let out for commercial purposes and were in the nature of commercial tenancy. However, the said

argument was rejected by the learned ARC since the said issue had been crystallized by the Supreme Court in *Satyawati Sharma v. Union of India*.¹

5. Apart from the above, in P1, the petitioner had contended that he along with his wife and son were doing a business by the name of M/s. Pathak Electric Co. In P2, the petitioner had contended that he was doing a business known as S. K. Properties in of the shops and in the other shop, his brother Mr. Anil Gera was doing a business known as M/s. Gera Glass Works. In P3, the petitioner had contended that his was a partnership firm consisting of other partners as well. In effect, the petitioners had argued that the eviction petitions were bad for non-joinder of necessary parties as others, as aforesaid had not been impleaded. However, in P1, the ARC noticed that according to the license deed dated 01.10.1975, the petitioner was the only the tenant. In P2 too, it was noticed that according to the license deed dated 01.06.1979, the petitioner was the only tenant. In P3, it was noticed that according to the rent deed dated 15.10.1973, the petitioner was the only tenant and the partnership firm, as contended was not. Therefore, it was held

¹ (2008) 5 SCC 287

that simply because the petitioners had claimed the involvement/presence of other persons in the tenanted premises, it would not necessitate their impleadment in the eviction petitions.

6. As mandated under Section 14(1)(e) of the Act, three issues arose for consideration before the learned ARC, namely ownership, *bona fide* need and availability of reasonably suitable accommodation.
7. Apropos the issue of ownership and *landlord-tenant* relationship, the petitioners had contended that respondent No.1 is merely a *Mutawalli* who could administer the property and had to act as per the terms of the will; as per paragraph 11 thereof, none of the heirs of Qazi Sajjad Hussain would have any proprietary title or interest in the Wakf property, therefore, the respondents were not the owners of the tenanted premises. However, the petitioners had not disputed the license deeds, rent deed and Wills as aforesaid. On the other hand, the respondents had contended that the petitioners had filed a Civil Suit bearing No. 207/2012 wherein they had admitted themselves to be the tenants in the tenanted premises and Qazi Shamim Ahmed, respondent No.1 to be the owner thereof. They had also relied upon the Will dated

10.02.1979 and the proceedings of a meeting of the beneficiaries of the *Wakf-alal-aulad* dated 01.01.1991 to contend that they were the owners of the tenanted premises. The learned ARC noted that admittedly, the respondents were the children of Qazi Sajjad Hussain and Smt. Rabia Begum; the license deeds and rent deed as aforesaid were admitted by the petitioners; according to paragraph 1 of the plaint in the aforesaid suit, the petitioners had admitted respondent No.1 to be the owner of the tenanted premises. The learned ARC was of the view that the concept of ownership under Section 14(1)(e) of the Act had to be seen from a limited perspective; the landlord need not prove absolute ownership as required under the Transfer of Property Act; the landlord should only be more than a tenant; and *landlord-tenant* relationship had been duly admitted in the present case. Accordingly, the learned ARC held that the respondents were indeed, the owners of the tenanted premises.

8. With regard to whether the respondents were successful in establishing their *bona fide* need for the tenanted premises, the learned ARC held in the affirmative. In P1, it was the respondents' case that the tenanted premises were required for

respondent No.5, who along with his two sons namely Tazim Ahmed and Mohd. Faris wanted to start a travel agency. The respondents had also intended to settle respondent No.4 in a part of the tenanted premises for selling religious and other books. The fact that respondent No.5 had retired from Embassy of Saudi Arabia and that he had two sons was not in dispute. However, the petitioners sought to contend that Tazim Ahmed was earning more than Rs.50,000/- a month and that respondent No.5 was teaching Saudi language (*sic*) and was earning Rs.30-40,000/- a month. The learned ARC noted that the petitioners had failed to provide details regarding respondent No. 5 teaching Saudi language (*sic*); the respondents' case was not that Tazim Ahmed was not earning but that he was working in a Call Centre, earning Rs.20-23,000 per month and was finding it difficult to travel to Gurgaon for the same; the leave to defend application was silent apropos the other son namely Mohd. Faris, aged 21 years, who was stated to be pursuing a course in Tourism from IGNOU. In the circumstances, the learned ARC held that the need of the tenanted premises for respondent No. 4, respondent No. 5 and his two sons cannot be stated to be whimsical. It was noted that the

respondents had averred that respondent No.5 intends to utilize his experience and his son's Tourism education, which would be an added advantage to the proposed business of a travel agency.

9. In P2, it was the respondents' case that the tenanted premises were required for respondent No.2 for starting a business of Air Conditioning and Refrigeration. It was not in dispute that he had retired from AIIMS as Foreman (Air Conditioning Plant). There was nothing in the leave to defend application which would suggest that he was in occupation of any other commercial premises or in pursuit of any other business activity. It was the respondents' case that since he had retired from service and had to proceed to Dubai for employment, the tenanted premises were required as aforesaid. The learned ARC rejected the petitioner's argument that respondent No.2's son was settled in Dubai and was earning more than Rs. 1 lac a month. It was held that the need of a person to settle himself post retirement cannot be stated to be a mere desire.

10. In P3, it was the respondents' case that the tenanted premises were required for respondent No.1, who along with his son Kaleem Ahmed intended to open a shop of readymade garments.

It was not disputed that respondent No.1 was a retired person. It was the further the respondents' case that Kaleem Ahmed was employed in an export house, earning a meager sum of Rs. 10,000. Since May, 2012, he was stated to be unemployed. In support of this contention, the respondents had placed on record, a letter issued by Novel Export which stated that Kaleem Ahmed was employed in that organization from February, 2005 to April, 2012. Accordingly, the petitioner's contention that Kaleem Ahmed was still working there was rejected. In view of the aforesaid, the learned ARC held that the respondents were successful in establishing *bona fide* need for the tenanted premises.

11. Apropos the issue of availability of reasonably suitable accommodation, it was argued by the petitioners that the respondents were in possession of Shop No.260/A3; the respondents had vacant space available in the rear portion of the property, where shops could be constructed; the first floor of the property could be used for satisfying their need. However, the respondents, *inter alia*, had argued that Shop No. 260/A3 was being used for storage purposes and that they intended to merge it

with the adjacent shop bearing No. 260/A4 to satisfy their need after getting other tenants evicted by due process of law. The learned ARC found merit in the said submission. It was held that the petitioners could not force the respondents to construct shops in the rear portion so as to not get them evicted. The photographs placed on record by the respondents were relied upon to hold that the first floor of the property was in a dilapidated condition, under repair and was residential in nature. The respondents had claimed to be residents thereof. Since the respondents had sought eviction for commercial purposes, it was contended by them and so held by the learned ARC that the ground floor would be more appropriate than the first floor. Accordingly, it was held that the respondents were successful in establishing that they had no other reasonably suitable accommodation.

Contentions

12. The learned counsel for the petitioners, *inter alia*, submit that the respondents are not the owners of the tenanted premises, which is a sine qua non under Section 14(1)(e) of the Act, therefore, the eviction petitions were not maintainable; that the respondents

have misled the ARC by relying upon *Mohammad Qamar Shah Khan v. Mohammad Salamat Ali Khan*² since it has been overruled by a Full Bench in *Moattar Raza. v. Joint Director of Consolidation*³. It is also submitted that respondent No.1's son is earning a sum of Rs. 50,000 a month and frequently visits foreign countries which could be proved by leading evidence; the respondents had not stated that they had demolished several parts of the property; the respondents have entered into some arrangement to sell the property; the respondents are well settled; vide order dated 10.10.2012, respondent No.1 was directed not to dispossess the petitioners of the property without following due process of law. It is also submitted that shop No. 260/A-3 was vacated sometime ago, however, no activity was being carried on therein; MCD has declared the street to be a commercial one, hence, the proposed businesses could be carried out on the first and second floors too; the respondents have admitted that the rear portion is available with them; the need of the respondents got satisfied when shop nos. 3 and 4 in the property got vacated; the

² AIR 1933 All 407

³ AIR 1970 All 509

respondents have not been using the same; after the eviction orders was passed on 27/9/2013, the respondents got another shop vacated which has been lying vacant; the respondents have a property in Dwarka, Delhi which has been let out. It is also submitted that Qazi Irshad Hussain, the other *Mutawalli* was not impleaded in the eviction petitions.

13.Mr. Malhotra, the learned counsel for one of the petitioners argued that any action seeking eviction of a tenant from the Wakf property required the sanction of the Wakf Board concerned since the *Mutawalli* works under the supervision of the Wakf Board and does not have an independent right apropos the Wakf property. He relies upon Section 32 of the Wakf Act and also traverses the duties of *Mutawalli* as stipulated in Sections 50 & 51 of the Wakf Act, 1995. He further submits that institution of the eviction petitions were not sanctioned by the Wakf Board, therefore, they were not maintainable. He relies upon the judgment in ***Thakur Mohd. Ismail vs. Thakur Sabir Ali & Ors.***, AIR 1962 SC 1722, in particular paragraph 10 thereof which reads as under:-

*“10. But we are of opinion that the contention that a wakf-
alal- aulad is some thing which is entirely outside the
purview of the Act, even though it may deal with property*

governed by the Act cannot be accepted. A wakf-alal-aulad must by its very nature be some kind of transfer of property by the person making the wakf. Previous to Act VI of 1913, the Privy Council had held in *Abul Fata Mahomed Ishak v. Russomoy Dhur Chowdry* (1) that "under Mahomedan law a perpetual family settlement expressly made as wakf is not legal merely because there is an ultimate but illusory gift to the poor" It was because of this judgment by which wakf-alal-aulad as known to Mahomedan law were declared illegal that Act VI of 1913 was passed by which such wakfs became legal. Obviously, therefore, when such wakfs become legal there was a transfer of the property covered by the wakf and the transfer was in favour in of God Almighty in whom thereafter the property subject to wakf become vested. This following from the theory of Mahomedan law under which wakfs created for purposes which are considered by that law to be religious and charitable result in the transfer of ownership of wakf property in perpetuity to God Almighty. Further the transfer being without consideration can only amount to a gift. Therefore, wakfs-alal-aulad which have become valid after Act VI of 1913 must be held to be gifts of property to God Almighty for certain purposes and are clearly transfers within the meaning of that term in s. 2 of the Act. Incidentally we may, add that the use of the words "inter vivos" in the definition of the word "transfer" merely emphasises that the transfer must be one effective during the lifetime of the transferor as contrasted with a transfer by will which takes effect on the death of the transferor. Whenever therefore a transfer takes place by a wakf-alal-aulad and the property included in the deed is governed by the provisions of the Act we have to go to the provisions contained in the Act with respect to the power of the talukdar to make such transfer. The transfer would only be valid if it is within the powers conferred on the talukdar."

14. In support of their contentions, the learned counsel for the petitioners, *inter alia*, rely upon a number of judgments.⁴ They place strong reliance upon the following paragraphs in *Moattar Raza (supra)*:

18. Wakf, under the Act, means the permanent dedication by a person professing Muslim faith of any property for any purpose recognised by the Mohammedan Law as religious, pious or charitable. Having defined wakf, the Act further provides that it shall be lawful for any person professing Muslim faith to create a wakf, which in all other respects is in accordance with the provisions of Muslim law, for purposes, including the maintenance and support wholly or partially of his family, children or descendants; provided always, however, that the ultimate benefit is expressly or impliedly reserved for the poor or for any other purpose recognised by the Muslim Law as religious, pious or charitable purpose of a permanent character. The Act further lays down that no such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf. There is nothing in this Act from which it can be spelled out that in the case of a wakf-alal-aulad the wakf property does not vest in the God Almighty or the wakf itself, but vests in the mutwalli or mutwallis. It may here be again mentioned that the consensus of judicial opinion is that the legal status and position

⁴ Syed Thajuddin v. Syed Mohideen, CRP (NPD) No. 569/2008 (Madras); Mohd. Illyas v. Nooruddin, (2011) 184 DLT 590; Harcharan Singh v. Neeraj Sahu, (2012) 190 DLT 625; Inderjeet Kaur v. Nirpal Singh, (2001) 1 SCC 706; Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301; M.P. Wakf Board v. Subhan Shah (Dead) By LRs & Ors., (2006) 10 SCC 696

of a mutwalli under a wakf under the Musalman Law is that of a Manager or Superintendent. Unless so provided in the deed of wakf, a mutwalli, although charged with the duty and obligation of managing the wakf property, can have no beneficial interest even in the income of the wakf. , Under the Mohammedan Law, a wakif can even appoint a non-Mohammedan to be the mutwalli of the wakf property, who can possibly have no beneficial interest in the income thereof except by way of remuneration, if so provided in the wakf deed. It is, therefore, not possible to accept the argument that merely because. In a wakf-alal-aulad, beneficial interest has been made solely enjoyable by the family members and descendants of the wakif, they have any inherent right or can as of right claim to be entitled to manage the wakf property. The right of management is derived under the deed of wakf itself or under the relevant law or usage, as the case may be, but this right of management or mutwalliship is not necessarily dependent on or co-existent with any benefit conferred on the mutwalli. A mutwalli may have the exclusive right or management of the wakf property; without having any beneficial interest therein. Conversely, a beneficiary having an exclusive beneficial interest, for the time being, may have no right of management at all Therefore, there does not appear to exist any legal basis for holding that in the case of a wakf-alal-aulad the wakf property vests in the mutwalli and not in God Almighty.

21. From what has been stated above, It necessarily follows that in every case of a wakf, whether public, or private, the wakf property vests in God Almighty or in the wakf itself as an institution or a foundation eo nomine and not in the Mutwalli or the beneficiary. Here, a sentence from the judgment of Mr. Ammer

Ali, J. In Vidya Varuti's case (supra) may be aptly quoted:--

"Religious institutions, known under different names, are regarded as possessing the same 'juristic' capacity and gifts are made to them eo nomine."

Such being the legal position no amount of cultivation by the Mutwalli or even the beneficiary could make the wakf land so cultivated the personal Khudkasht of the Mutwalli or the beneficiary under the tenancy laws obtaining prior to the coming into force of the U.P. Zamindari Abolition and Land Reforms Act (U.P. Act 1 of 1951). Therefore, by virtue of personal cultivation of wakf land no Mutwalli, even if he was also a beneficiary, could have personally acquired Bhumidari rights under Section [18\(1\)\(a\)](#) of the aforesaid Act, the material part of which runs thus:--

Section [18\(1\)](#)--Subject to the provisions of Sections [10](#), [15](#), [16](#) and [17](#) all lands-

(a) in possession of or held or deemed to be held by an intermediary as Sir, Khudkasht or an intermediary's grove; on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such Intermediary who shall subject to the provisions of this Act be entitled to take or retain possession as it bhumidhar thereof."

As such, It follows that as a result of cultivating waqf land personally, the co-mutwalli concerned, who was also a beneficiary, did neither become the sole bhumidhar of the land nor co-bhumidhar with the other comutwalli. Bhumidhari rights, if at all, could have only accrued in favour of God or the waqf as a result of actual cultivation of waqf land by a Mutwalli."

15. In response, the learned counsel for the respondents has sought to sustain the impugned orders. It is contended that no triable issues were raised by the petitioners which would have warranted the grant of leave to defend the eviction petitions. It is submitted that there is a clear admission that the tenanted premises were let out by the respondents; the petitioners have accepted the Wakf through the *Mutawalli* as the landlord, therefore, the eviction petitions were maintainable; the details of the family members of the eviction petitioners and their *bona fide* requirement in the absence of an alternate suitable accommodation has also been duly spelt out in the eviction petition. It is submitted that there is no error in the findings of the learned ARC which would warrant any reversal of the same in this petition. It is also submitted that respondent No.4 is aged 63 years and is engaged in a small time business of selling Arabic and religious books at a small stall outside his rented property at Lal Kuan, Delhi; he is a widower earning Rs.5,000 to Rs.7,000/- per month; similarly, respondent No.5 is aged about 59 years and retired as a Translator from Royal Embassy of Saudi Arabia; his family comprises wife, two sons and a married daughter; the elder son was working in a Call

Centre, earning about Rs.20,000/- per month and the younger one is studying and they propose to start a Travel Agency from the tenanted premises.

Analysis

16. At the outset, this Court is conscious of the limited jurisdiction conferred upon by the proviso to Section 25B(8) of the Act. In exercise thereof, this Court would not act as an Appellate Court but would only see if the Rent Controller has committed any jurisdictional error and whether the impugned order has been passed on the basis of the material on record.⁵ In view of the aforesaid jurisdictional parameters, this Court would now proceed to examine if the petitioners disclosed such facts in the leave to defend applications which would have disentitled the respondents from obtaining an eviction order.

17. **Ownership:** It is well settled that for the purpose of Section 14(1)(e) of the Act, the landlord is not required to prove absolute ownership as required under the Transfer of Property Act. He is

⁵ Ramesh Chand v. Uganti Devi, (2009) 157 DLT 450; See also Mohan Lal v. Ram Chopra, AIR 1982 Del 405 and Chaman Prakash Puri v. Ishwar Dass Rajput, (1995) Supp (4) SCC 445

only required to show that he is more than a tenant.⁶ Admittedly, the petitioners had not disputed *landlord-tenant* relationship; they had also not disputed the license deeds and rent deed as aforesaid; furthermore, in a suit instituted by the petitioners, they had acknowledged respondent No.1 to be the owner of the tenanted premises. It is also not in dispute that the respondents are the children of Qazi Sajjad Hussain and Smt. Rabia Begum.

18. This Court is not called upon to comment upon the powers of the Wakf Board and how Wakfs are to be administered under the Wakf Act or how a *Mutawalli* is to manage the affairs of the Wakf and how he is removed in default of his duties. What is to be seen in an eviction petition is whether the relationship of landlord-tenant is established between the parties and whether the landlord is the owner of the tenanted premises. Insofar as it has been so admitted by the petitioners themselves in a suit filed by them, this issue stands settled and the eviction petitions were indeed maintainable. Reference to Sections 32, 50, 54, 64, 47, 69 & 83 of the Wakf Act dealing with the eviction of a tenant would not be applicable to the present case. Furthermore, amendments to

⁶ Rajender Kumar Sharma & Ors. v. Leela Wati & Ors., 155 (2008) DLT 383

the Wakf Act came into effect in the year 2013 whereas the eviction petitions were filed in December, 2012. In any case, neither the Wakf Act nor the administrative control of the authorities appointed/constituted under said Act would be applicable in the present case, i.e., in case of private wakfs (*wakf-alal-aulad*). Reliance in this regard can be placed upon a Division Bench judgment of the Calcutta High Court in *Anis Fatma Begum v. Board of Wakf*⁷, wherein Justice Altamas Kabir, as he then was, held as under:

“But as indicated hereinbefore, it appears to have been the intention of the legislature to exclude private wakfs from the ambit of the 1995 Act and the administrative control of the authorities appointed by statute under the Act except to the extent indicated hereinabove.”

Reliance by the learned counsel for the petitioners on the dicta of the Supreme Court in *M.P. Wakf Board v. Subhan Shah (Dead) By LRs & Ors.*, (2006) 10 SCC 696 is misplaced since the case did not deal with the Delhi Rent Control Act.

19. In *Nisar Ahmed v. Agyapal Singh*,⁸ relying upon other judgments of various High Courts,⁹ this Court held that a *Mutawalli* could

⁷ AIR 2004 Cal 91

⁸ RC. REV. 377/2011, decided on 11th February, 2015

sue for eviction of the tenant under Section 14(1)(e) of the Act.

Relevant portions of the said judgment are reproduced as under:

“From the aforesaid legal position, what emerges is that a Mutawalli can sue for eviction of a tenant in discharge of his obligations and right to administer and maintain a Wakf property under his/her charge. The Mutawalli can seek eviction of a tenant for himself as well as for other beneficiaries of the Wakf. All the more so, when the Mutawalli is a defined beneficiary under the terms of the Wakf. The Delhi Rent Control Act makes no difference between tenants of Wakf and non-Wakf properties. Under Section 14 (1) (e) of the DRC Act, for the purposes of ownership, all that has to be seen is that the landlord is more than the tenant. It is settled law that the landlord is not required to prove absolute title as required under the Transfer of Property Act..... As aforesaid, the tenant has no right to question the use of the tenanted premises by the Mutawalli. A tenant would have no right to scrutinise or inquire into or suggest or direct as to how the Mutawalli should run the Wakf. Admittedly, the tenant has been paying rent to the landlord/petitioner. Once it is so admitted, then Section 116 of the Evidence Act would come into operation and the tenant/respondent would be estopped from challenging the title of the landlord/petitioner. By the creation of a Wakf, the property vests in the Almighty. The dedication is for any purpose recognised by Muslim Law as pious, religious or charitable and as per the Wakf Amendment Act, 2013. A wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided “when the line of

⁹ Shujauddin Mohammed Kaiser v. Kolkata Municipal Corporation, (2012) 1 Cal LT 331; Badagara Jumayath Palli Dharas Committee v. P. Ummeerkutty Haji, AIR 2002 Ker 56; A.S. Abdul Khader Waft for Deeni Talim v. Saber Miah, AIR 2003 AP 528

succession fails, the income of the wakf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law.” The latter situation is yet to arrive in the present case. It is for the Mutawalli to determine the best user and optimum utilisation of the Wakf properties. The Wakf was created for the aulad (children/successors) of the Wakif/Settler. It was surely not created for the perpetual benefit of a tenant, who may be or had been inducted in the Wakf property. The Mutawalli is also a beneficiary under the Wakf and he surely can move an eviction petition. Although the property vests in the Almighty, it has to be managed so as to optimise the use and usufruct from the Wakf property for the benefit of the beneficiaries contemplated in the Wakf Deed. If the Mutawalli cannot sue for eviction of a tenant for the benefit of the Wakf or the beneficiaries of the Wakf, it would tantamount to a permanent tenancy being created in favour of the tenant by a deeming fiction that the property vests in the Almighty and nobody can seek eviction of the said tenant. Surely, this could not have been nor was it so contemplated by the Wakif who inducted the tenant in the tenanted premises. For temporal purposes, the Mutawalli has to exercise managerial and administrative rights in the Wakf property as has been held in Shuja Mohammed Kaiser (supra). Furthermore, the Wakf Deed in the present case stipulates that the Mutawalli can seek eviction of the tenant.”

20. In the circumstances, this Court is of the view that the respondents are indeed, the owners of the tenanted premises. On a perusal of the Will dated 10.2.1979, this Court finds that respondent No.1 who is the *Mutawalli*, has been specifically empowered to sue and participate in legal proceedings for the

benefit of the Wakf. For the tenant to contend that since the Wakf property vests in God Almighty, a Mutawalli cannot sue for eviction of a tenant from the Wakf property is both preposterous and untenable. Although it is true that the beneficiaries of the Wakf cannot claim any title in the Wakf property and cannot alienate the same except by due procedure, but the Wakf property is necessarily to be used for the benefit of the beneficiaries. For achieving this objective, the settlor of the *Wakf-alal-aulad* was conscious enough to appoint a *Mutawalli* to administer the Wakf property. It was contended on behalf of the petitioners that *Mohammad Qamar (supra)* could not have been relied upon by the learned ARC since it has been overruled in *Moattar Raza (supra)*. However, it is evident from the impugned orders that the learned ARC's conclusion was not wholly based upon *Mohammad Qamar (supra)*. The ARC had merely perused the same which was sought to be relied upon by the respondents. The reliance on *Moattar Raza (supra)* would also not help the case of the petitioners since it is distinguishable on facts. Although *Moattar Raza (supra)* did hold that a Wakf property vests in God Almighty but as discussed hereinabove, the concept of ownership under Section 14(1)(e) of the Act has to be seen

from a limited perspective. Accordingly, this Court finds no infirmity with the conclusion arrived at by the learned ARC apropos the issue of ownership.

21. **Bona fide need**: In P1, the case set up in the leave to defend was that respondent No.5 was teaching Arabic and earning Rs. 30-40,000 a month; his son was earning Rs.50,000 a month. In P2, the only case set up by the petitioners was that respondent No.2's son was working in Dubai and earning more than Rs. 1 lac a month. In P3, the only case set up was that respondent No.1's son Kaleem Ahmed was working, hence, the tenanted premises were not required by the respondents. However, these remained merely bald averments unsupported by any other material. The case set up by the respondents has been set out in paragraphs 8, 9 and 10 of this order. The petitioners had not adduced any material on record to substantiate their case made in the leave to defend application. In the circumstances, there was no need for the learned ARC to not believe the case of the respondents. This Court is of the view that the case of the petitioners that respondent No.2's son is working in Dubai and earning Rs. 1 lac/per month would not stand as an impediment for the respondents to seek the

tenanted premises for *bona fide* need. The petitioners' contention that respondent No.1's son is earning Rs.50,000/- a month and visits foreign countries frequently is also a bald assertion which would not entitle them leave to defend the eviction petitions. Earnings and foreign visits cannot be any impediment in seeking eviction of a tenant in case of a *bona fide* need of the tenanted premises by the landlord. Life does not come to a standstill and its enjoyment cannot be mortgaged to the prosecution of an eviction petition. *Bona fide* need for tenanted premises can arise with due passage of time or even overnight due to sudden change in circumstances. All that the landlord would then need to show is that he has no other reasonably suitable accommodation to satisfy his need.

22. Accordingly, this Court finds that the respondents were successful in establishing *bona fide* need for the tenanted premises.

23. **Availability of reasonably suitable accommodation:** The case set up by the petitioners was that the respondents are in possession of Shop No. 260/A3. However, the respondents contended that the same was being used for storage purposes and that they intended to merge it with the adjacent shop bearing No. 260/A4. The

petitioners also sought to contend that the respondents had space available in the rear portion of the property where shops could be constructed and that there was space available on the first floor. However, the respondents contended that the first floor was in a dilapidated condition and that it was residential in nature. They had also annexed photographs to support their contention. In the circumstances, this Court is of the view that the learned ARC has correctly held that the petitioners cannot force the respondents to construct shops so as to not evict the petitioners. Since eviction was sought for commercial purposes, it was rightly held that ground floor of the property would be more suitable. It was contended before this Court that MCD has declared the street to be a commercial one, hence, business could be carried out on the first and second floors too. However, this Court is of the view that there is no material on record substantiating the said submission. In the absence thereof, the said submission needs to be rejected. The submission that the respondents are in possession of a property in Dwarka, Delhi is also unsupported by any material. The further contention that the respondents have admitted that the rear portion in the property is available with them is also

inconsequential since it is not in dispute that the said portion is empty and bereft of any building or structure. Accordingly, this Court finds no infirmity apropos this issue too.

24. The other contention that Qazi Irshad Hussain was not impleaded in the eviction petitions is also inconsequential since it is settled law that one of the co-owners (co-*Mutawallis*) can sue for eviction.

25. From the pleadings and conclusion arrived at by the learned ARC, it is evident that the eviction petitions were maintainable because of the existence of landlord-tenant relationship and ownership apropos the tenanted premises vesting with the respondents. The *bona fide* requirement also was established. Besides the tenanted premises, the respondents did not have any other commercial property to satisfy their need. The tenants' contention that the Wakf could construct new shops to meet the requirements of the eviction petitioners/beneficiaries of the Wakf is untenable, since a tenant cannot dictate to the landlord as to how he should manage his affairs so as not to result in the eviction of the tenant¹⁰. For the purposes of eviction under Section 14(1)(e) of the Act, all that

¹⁰ Anil Jain v. Bhagwan Shankar Khanna, RCR 133/2014 decided on 30.7.2014.

is to be seen is that the eviction petitioner/landlord is the owner; he needs the tenanted premises for himself or anyone dependent on him; and he or such person has no other reasonably suitable accommodation.

26. In view of the aforesaid discussion, this Court is of the view that the petitioners had failed to raise any triable issues warranting the grant of leave to defend the eviction petitions. In the circumstances, eviction orders necessarily had to follow. Accordingly, these petitions, devoid of any merit, are dismissed. Costs of Rs.50,000/- are imposed on each of the three petitioners to be paid to the respondents in four (4) weeks from this order. All pending applications also stand disposed off.

MAY 06, 2015
vmk

NAJMI WAZIRI, J.