

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11-03-2016

Pronounced on : 17-03-2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.3207 of 2015 & M.P.No.1 of 2015

M.Loganathan

... Petitioner

vs.

Nawab Fazeelathunnissa Begum
Sahiba Mosque and Endowment (Wakf)
Represented by its President/
Managing Committee
Mr.Md.Nayeemur Rahman
No.746/419, Anna Salai
Nandanam, Chennai 600 035

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order of the I Assistant Judge, City Civil Court (Wakf Tribunal), Chennai dated 28.04.2015 made in I.A.No.5336 of 2015 in O.S.No.1946 of 2015.

For Petitioner : Mr.S.Sadasharam

For Respondent : Mr.N.A.Nissar Ahmed

ORDER

The plaintiff in O.S.No.1946/2015 pending on the file of the learned First Assistant Judge, City Civil Court (Wakf Tribunal), Chennai is the petitioner herein. The defendant (wakf) in the said suit is the respondent herein. The above said suit was filed by the petitioner herein for : (1) a declaration that the lease agreement dated 05.05.1999 registered as Document No.856/1999 on the file of the Sub Registrar, T.Nagar and the terms and

conditions contained therein with respect to the suit property are binding on the respondent herein/defendant; (2) a declaration that the demand and termination notices dated 28.11.2014, 15.01.2015 and 23.02.2015 issued by the respondent herein/defendant are illegal, invalid and void; and (3) a permanent injunction restraining the respondent herein/defendant from interfering with petitioner's/plaintiff's peaceful possession, occupation and enjoyment of the suit property.

2. Admittedly, the suit property is a wakf property owned by the defendant (wakf) and the petitioner/plaintiff claims right under a registered lease deed dated 05.05.1999. The revision petitioner herein/plaintiff filed an application in I.A.No.5336/2015 under Order XXXIX Rules 1 and 2 of CPC praying for an interim injunction along with the plaint.

3. The respondent (wakf)/defendant (wakf), on entering appearance in the suit, resisted the said application contending that the suit itself was not maintainable and hence the injunction sought for could not be granted. After hearing both sides, the learned trial Judge, by order dated 28.04.2015, negatived the claim of interim injunction and dismissed I.A.No.5336/2015 in O.S.No.1946/2015 pending on the file of the First Assistant Judge, City Civil Court (Wakf Tribunal), Chennai. Questioning the legality of the said order, the revision petitioner Ms.Amthul Azeez Fathima/plaintiff in the said suit has brought-forth this Civil Revision Petition No.3207 of 2015 invoking the power of superintendence of this court under Article 227 of the Constitution of India.

4. Notice before admission was given and the respondent (wakf) has entered appearance through a counsel. The learned counsel for the petitioner

and the learned counsel for the respondent in the revision submitted that arguments on merit could be heard and an order on merit in the civil revision petition could be passed at the time of admission itself. Accordingly, the arguments advanced by Mr.Sadasharam, learned counsel for the petitioner/plaintiff and by Mr.N.A.Nissar Ahmed, learned counsel for the respondent/defendant (wakf) were heard. Certified copy of the impugned order of the trial court, copies of the pleadings made before the trial court produced and copies of all other documents produced in the form of typed set of papers were perused and this court paid its anxious consideration to the above said arguments and the documents.

5. Admittedly, the suit property belongs to the respondent (wakf). The revision petitioner/plaintiff claims to be lessee in respect of the suit property, namely a land measuring 3360 sq.ft. bearing Plot No.20, Door No.477, Anna Salai, Chennai - 35 within specified boundary, by virtue of a registered lease deed dated 05.05.1999 registered on the file of Sub Registrar, T.Nagar, as document No.856/1999 executed by the then Executive Trustee of the respondent (wakf) in favour of the petitioner herein/plaintiff for a period of 50 years which shall end on the 31st day of December, 2046, for a monthly rent of Rs.400/- only.

6. It is the contention of the petitioner/plaintiff that the said lease was granted in recognition of the earlier lease granted in favour of one Abdul Halim Khan under a registered Lease Deed dated 19.10.1963 bearing document No.3199 of 1963 on the file of SRO, T.Nagar, Chennai and he in turn transferred his leasehold right in favour of P.Murugan, the father of the petitioner herein under a Deed of Transfer of Lease dated 05.02.1968 bearing

document No.703 of 1963. It is further submitted that pursuant to the transfer of lease, the father of the petitioner herein was in possession, put up a superstructure and that the father of the petitioner herein requested the respondent herein/defendant to transfer the leasehold rights to and in favour of his son, namely the revision petitioner herein/plaintiff for a period of 25 years. After the death of the petitioner's father, the revision petitioner herein/plaintiff sought for extension of lease. The petitioner's/plaintiff's application for extension of the lease for 99 years was considered and the Executive Trustee consented for extending the lease only for a period of 50 years in pursuance of an order of permission granted by the Subordinate Judge, Chengalpattu in I.A.No.36/1997 in O.S.No.63/1940. It is pertinent to note that the said lease deed came to be executed after the Wakf Act, 1995 came into force.

7. Tamil Nadu Wakf Board constituted under the Act, coming across the fact that the properties of the respondent (wakf)/defendant had been given on long lease for meagre amounts as rents, the Wakf Board superseded Mutawallis/Board of Trustees by appointing a Management Committee. The Management Committee found that the registered Lease Deed dated 05.05.1999 for a period of 50 years was invalid and void by virtue of Section 56 of the Wakf Act, 1995. Hence, the defendant, through the Management Committee was directed by the Wakf Board to enhance the rent to make the rent collectable for the suit property in consonance with the Wakf Properties Lease Rules. Accordingly, the respondent called upon the revision petitioner to surrender possession as the Lease Agreement dated 05.05.1999 was void and ineffective. The petitioner was also informed that he would be liable to pay damages for use and occupation, and the property would easily fetch a

monthly rent of more than 50,000/- rupees. The notices to vacate and hand over vacant plot came to be issued on 28.11.2014, 15.01.2015 and 23.02.2015. Thereafter, the petitioner volunteered to send a sum of Rs.3,128/- towards rent for the months December 2014 to March 2015 with a letter dated 20.03.2015 by way of a demand draft dated 20.03.2015.

8. Under the said circumstances alone, the petitioner herein/plaintiff chose to file the above said suit for a declaration that the suit lease agreement dated 05.05.1999 bearing Document No.856/1999 is binding on the respondent herein/defendant, with a further declaration that the above said notices dated 28.11.2014, 15.01.2015 and 23.02.2015 are illegal, invalid and void and also for a permanent injunction not to disturb petitioner's possession and enjoyment of the suit property.

9. It is the contention of the learned counsel for the petitioner that since the suit wakf was governed by a Scheme framed by the Court and the Lease Deed was executed after obtaining permission from the Scheme Court in terms of the scheme decree, the lease deed executed in favour of the petitioner herein/plaintiff cannot be questioned by the respondent/defendant (wakf) and that Section 56 of the Wakf Act, 1995 will not have application to the suit lease. It is the further contention of the learned counsel for the petitioner that the suit lease should be construed to be a continuation of the lease created in favour of his father much before the Wakf Act, 1995 came into force and that hence the respondent/defendant (wakf) cannot rely on Section 56 to contend that the lease is invalid. In this regard, learned counsel for the petitioner drew the attention of the court to the recital found in the lease deed dated 05.05.1999 relied on by the petitioner/plaintiff which refers to the earlier lease

created in favour of the father of the petitioner.

10. Per contra, it is the contention of Mr.N.A.Nissar Ahmed, learned counsel for the respondent, that the lease that had been created in favour of the father of the petitioner came to an end on the expiry of the lease period; that thereafter, since no fresh lease deed was executed, he continued to be a lessee holding over; that such lease by sufferance would be construed only as a lease from month to month or year to year depending upon the nature and depending upon the purpose for which it was created and that hence the lease deed dated 05.05.1999 relied on by the petitioner cannot be termed as a recognition of the petitioner as the lessee in respect of the suit property in his capacity as the legal representative of his father.

11. This court paid its anxious consideration to the above said submissions made on both sides.

12. A perusal of the copy of the lease deed dated 05.05.1999 included in the typed set of papers filed by the petitioner shows that originally, the suit property was leased out in favour of one Abdul Halim Khan under a registered Lease Deed dated 19.10.1963 bearing document No.3199 of 1963 on the file of SRO, T.Nagar, Chennai and he in turn transferred his leasehold right in favour of P.Murugan, the father of the petitioner herein under a Deed of Transfer of Lease dated 05.02.1968 bearing document No.703 of 1968. It is further submitted that pursuant to the transfer of lease, the father of the petitioner herein was in possession, put up a superstructure and that the father of the petitioner herein requested the respondent herein/defendant to transfer the leasehold rights to and in favour of his son, namely the revision

petitioner herein/plaintiff for a period of 25 years. The lease period expired by the end of 1988. Thereafter no renewal lease deed was obtained. The original lessee did not apply for a fresh lease or renewal of the lease and he passed away. Only thereafter, that too after the Wakf Act, 1995 came into force, the petitioner chose to apply for grant of lease for 99 years. The then Trust Board, through the Executive Trustee, granted lease for a period of 50 years from 01.01.1997. Such lease deed came to be executed on 05.05.1999 long after the Wakf Act, 1995 came into force. Of course the respondent/defendant (wakf) was governed by a Scheme Decree passed by the Sub Court, Chengalpattu in O.S.No.63/1940 and a petition in I.A.No.36/1997 came to be filed in the said court for the grant of permission to enter into such a lease and the Sub Court, Chengalpattu also chose to grant such permission by order dated 04.02.1997 with a condition that the lease deed should provide increase of rent once in five years.

13. It is the contention of the learned counsel for the petitioner that since the lease was granted with the permission of the Scheme Court, it is saved from the mischief of Section 56 of the Wakf Act, 1995, as no fresh scheme either modifying or replacing the scheme framed by the Sub Court, Chengalpattu was settled by the Wakf Board. It is hard to accept the said proposition to be sustainable. First of all, Section 56 of the Wakf Act, 1995 provides a clear mandate that a lease created without the permission of the Board for more than one year and up to a period of three years shall not be valid and it shall be void if it is created without the previous sanction of the Wakf Board. Sub clause (2) makes it clear that any lease created for more than three years is void and illegal. It is true that Section 32 confers powers on the Wakf Board to settle the claims of the management of the Wakf which will

include framing of a scheme. All schemes framed by the courts shall be deemed to be Schemes framed under the Wakf Act, 1995 and it shall be void to the extent of its inconsistency with the specific provisions of the Act.

14. Section 56 of the Wakf Act, 1995 contemplates grant of a lease for more than one year up to three years only with the permission of the Wakf Board. The mere fact that a Scheme Decree had been passed prior to the Act coming into force, does not take away the requirement of getting the prior sanction of the Wakf Board for grant of lease for more than one year and up to three years. Sub clause (2) of Section 56 of the Wakf Act, 1995 makes it clear that any lease created with or without the previous sanction of the Wakf Board shall be void, if the lease period exceeds three years. The Wakf Act, 1995 came into force with effect from 01.01.1996. The lease deed relied on by the petitioner/plaintiff is one dated 05.05.1999. The permission obtained from the Scheme Court shall be ineffective, because of the mandatory provision found in Section 56. After the Wakf Act, 1995 came into force, the then Mutawalli (Managing Trustee) chose to grant the lease, after obtaining permission from the Scheme Court and without approaching the Wakf Board, for 50 years, which is totally against the mandate provided under Section 56 of the Wakf Act, 1995. Therefore, prima facie the contention of the respondent that there is no valid lease in favour of the petitioner/plaintiff is sustainable. Under the said circumstances alone, the Tamil Nadu Wakf Board chose to supersede the then Mutawallis (Board of Trustees) by a new Management Committee. The new Management Committee, as per the directions of the Wakf Board, considering the meagre amount for which the land in Anna Salai, Chennai had been leased out and taking note of the fact that the lease deed itself was invalid, chose to issue the notices dated 28.11.2014, 15.01.2015 and 23.02.2015 calling upon

the petitioner/plaintiff to vacate and hand over vacant possession of the plot. After receipt of the said notices directing the petitioner to vacate and hand over vacant possession, the petitioner chose to send a sum of Rs.3,128/- by way of a demand draft along with a letter dated 20.03.2015 towards the rent for December 2014 to March 2015 year in an attempt to continue to be a tenant in respect of the suit land paying such meagre amounts.

15. Sensing the intention of the petitioner revealed by such an act, the respondent/defendant informed the petitioner as to how the lease deed was null and void and called upon the petitioner/plaintiff to vacate and deliver vacant possession forthwith. Informing further that the fair rent in the market shall be not less than Rs.50,000/- per month, it was also indicated that the petitioner would be liable to pay damages for use and occupation at such a rate. The same provided provocation for the petitioner to file the suit for the above said reliefs and interlocutory application for interim injunction pending disposal of the suit.

16. The learned trial Judge (Wakf Tribunal), on proper appreciation of facts and law came to the conclusion that the petitioner/plaintiff did not have the *prima facie* case; that the balance of convenience also did not lie in favour of the petitioner/plaintiff and on the other hand it did lie in favour of the respondent/defendant and that hence the petitioner/plaintiff was not entitled to the relief of interim injunction as sought for. In an interlocutory application for interim injunction the court shall consider the *prima facie* nature of the case of the person seeking interim injunction and also weigh the balance of convenience of both the parties by assessing the expected impact on

the rights of the parties in case of grant of interim injunction and in case of non-granting of such injunction.

17. As pointed out supra, the lease deed being one executed in violation of the statutory provision found in Section 56 of the Wakf Act, 1995, the petitioner/plaintiff does not have a *prima facie* case. Considering the balance of convenience also the respondent being a Wakf, whose interest is to be protected by the court, the grant of injunction in favour of the petitioner will work hardship on the respondent (wakf) in a greater degree than the impact of the order on the petitioner in case injunction is refused. The balance of convenience also lies in favour of the respondent (wakf)/defendant and not in favour of the petitioner/plaintiff. The learned judge of the court below (Wakf Tribunal) has not committed any error or illegality or wrong exercise of discretion in dismissing the application for interim injunction, warranting interference by this court in exercise of its power of superintendence under Article 227 of the Constitution of India. There is no merit in the revision and the same deserves to be dismissed.

In the result, the revision fails and the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently the connected miscellaneous petition is closed.

17-03-2016

Index : Yes/No
Internet : Yes/No
asr

To
I Assistant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.3207 of 2015
and
M.P.No.1 of 2015

Dated : 17-03-2016