

THE HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1516 of 2017

ORDER:

The Civil Revision Petition under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Rent Control Act') is filed by the tenant/appellant questioning the order dated 14.02.2017 in R.A.No.243 of 2014 passed by the Chief Judge, City Small Causes Court, Hyderabad, confirming the order dated 24.09.2014 in R.C.No.83 of 2013 passed by the III-Additional Rent Controller, Hyderabad, ordering eviction of the tenant from the schedule premises.

The 1st respondent herein was the petitioner and the petitioner herein was the respondent/tenant before the Rent Controller in R.C.No.83 of 2013. The 2nd respondent herein was impleaded in the appeal on the ground that the property is a wakf property.

The parties will be hereafter referred as arrayed in the present revision petition i.e., as the petitioner and the 1st and 2nd respondents for convenience sake.

The 1st respondent filed R.C.No.83 of 2013 before the III Additional Rent Controller, Hyderabad, under Section 10 (2) (i) and 10 (3) (a) (iii) (a) of the Rent Control Act, for eviction of the petitioner from the premises bearing door No.17-4-17 in an extent of 142 sq. yards situated near Pathar Ka Makan, outside Yakutpura, Hyderabad. The 1st respondent alleged that he is the owner of the schedule property and let out the same to the petitioner on monthly rent of Rs.3,000/-and the petitioner paid rent regularly, but committed default from January, 2012 onwards and the total amount due by the date of filing the petition was Rs.36,000/-. The 1st

respondent got issued a demand notice to the petitioner demanding arrears of rent or to vacate the petition schedule premises. The petitioner, having received the notice, neither paid arrears of rent nor vacated the schedule premises. The petitioner also became due an amount of Rs.22,000/- towards electricity and water consumption charges. Finally, the 1st respondent demanded the petitioner to vacate the premises by the end of October, 2012 without seeking any extension to vacate the premises.

The 1st respondent also contended that he also sought eviction of the petitioner on the ground that the petition schedule property is required for his personal and bona fide occupation of members of his joint family, as his children were grown up, the present premises is not sufficient to accommodate all the members of his family, therefore, he requires the premises for his bona fide occupation.

The petitioner filed counter denying material allegations, while admitting the jural relationship of the landlord and tenant between the 1st respondent and himself. He also contended that the property originally belongs to the Wakf Board i.e., the 2nd respondent and there is no jural relationship of landlord and tenant between the 1st respondent and himself and there was no subsisting lease as on the date of filing of the petition and prayed to dismiss the petition.

During enquiry before the Rent Controller, the 1st respondent was examined as PW.1 and marked Exs.P1 to P5. On behalf of the petitioner, the petitioner himself was examined as RW.1 and marked Exs.R1 to R13.

Upon hearing argument of both the counsel, the petition was allowed by the Rent Controller ordering eviction of the petitioner from the schedule premises within two months from the date of passing the order.

The Rent Controller found all the points in favour of the 1st respondent, while holding that the petitioner committed willful default in payment of rent from January, 2012 to January, 2013 and the requirement of the schedule premises by the 1st respondent is bona fide and genuine while answering point Nos.3 and 4. The Rent Controller also formulated a point regarding denial of title and answered the same in favour of the 1st respondent against the petitioner/tenant.

Aggrieved by the order of the Rent Controller, the petitioner herein preferred an appeal before the Chief Judge, City Small Causes Court, Hyderabad, on the ground that originally the property is the wakf property and the Rent Controller has no jurisdiction in view of exclusion of jurisdiction under Section 85 of the Wakf Act, but the Rent Controller did not consider the objection in proper perspective and committed error in ordering eviction of the petitioner from the schedule premises.

Upon hearing argument of both the counsel, the appellate Court declined to interfere with the fact findings recorded by the Rent Controller and confirmed the order passed by the Rent Controller in R.C.No.83 of 2013 dated 24.09.2014.

Assailing the order in appeal in R.A.No.243 of 2014 dated 14.02.2017, the petitioner preferred this revision under Section 22 of the Rent Control Act. The main ground urged before this Court in the grounds of revision is that the property was notified as registered wakf property vide Gazette dated 16.03.1989 and, thereby, the jurisdiction of Rent Controller is ousted and, in such a case, the denial of title of the 1st respondent is bona fide, but the Rent Controller and the Appellate Court, on erroneous appreciation of law, allowed the petition and the same was confirmed in the appeal and the findings recorded by both the Courts

below are contrary to law laid down by the Apex Court and prayed to set aside the same. It is also contended that the default pleaded by the 1st respondent is not proved and when there is no jural relationship of landlord and tenant between the 1st respondent and the petitioner, the provisions of Rent Control Act have no application and, thereby, the 1st respondent is disentitled for eviction of the petitioner from the schedule premises and, apart from that, the default allegedly committed by the petitioner is not willful or deliberate, but both the Rent Controller and the appellate Court, on erroneous appreciation of fact and law, ordered eviction and the same is liable to be set aside.

During hearing, Sri Vijay Pissay, learned counsel for the petitioner, mainly concentrated on jurisdictional aspect while contending that in view of bar under Section 85 of the Wakf Act, the Rent Controller ceased to have jurisdiction over the property, as the property is notified wakf. In support of his contention, the counsel for the petitioner placed reliance on judgments of the Apex Court and this Court. He relied on the judgments in Lal Shah Baba Dargah Trust v. Magnum Developers and others¹, Jumma Mosque Committee, Chittor v. A.V. Abdul Sammad², A. Shyam Sunder v. Building-Mosque Wakf³ and Md. Ahmed Ali and others v. Alastu Talimi Trust, Hyderabad and another⁴.

On the strength of the principles laid down in the above four judgments, the learned counsel for the petitioner contended that when there is a specific ouster of the jurisdiction in view of the special law i.e., Wakf Act, the Rent Controller ceased to have jurisdiction over the subject

¹ AIR 2016 SC 381

² 1990 (1) ALT 436

³ 1986 (2) APLJ 44

⁴ 2004 (1) ALD 99

matter of the property and, if it was found that denial of title of the 1st respondent is bona fide, the Rent Controller is bound to reject the application, but committed serious error in allowing the R.C and the appellate Court also erroneously confirmed the order of the Rent Controller.

On the other hand, Sri Ali Farooque, learned counsel for the 1st respondent, would contend that the relationship of landlord and tenant is admitted by the petitioner in the counter and the petitioner paid rent for some time, therefore, the petitioner is incompetent to deny the title of the 1st respondent in view of the bar under Section 116 of the Indian Evidence Act, apart from that, when the denial of title is mala fide, it is a ground to order eviction of the tenant and, thereby, the petitioner is liable to be evicted. The learned counsel also would draw the attention of this Court to the definition of the words 'landlord', 'tenant' and 'building' to contend that when the 1st respondent is claiming to be the owner and entitled to collection of rents and, accordingly, collected rents for some time, he is deemed to be the landlord within the definition of the word 'landlord' under Section 2 (vi) of the Rent Control Act and explanation thereto and, therefore, the orders of both the Courts below are free from any legal infirmities warranting interference of this Court while exercising limited jurisdiction and prayed to confirm the orders under challenge.

Considering rival contentions and the material available on record including both the oral and documentary evidence, the points that arise for consideration are as follows:

- 1) Whether the Rent Controller is competent to order eviction of the petitioner in view of the bar under Section 85 of the Wakf Act?

- 2) Whether the denial of title of the 1st respondent by the petitioner, having admitted the relationship of landlord and tenant, is bona fide and, if so, whether the tenant is liable to be evicted on the ground of mala fide denial of title?
- 3) Whether the petitioner/tenant committed willful default in payment of rent since January, 2012 @ Rs.3,000/- per month, if so liable for eviction?

POINT Nos.1 and 2:-

Since the learned counsel for the petitioner totally limited his argument to the jurisdiction of the Rent Controller in ordering eviction of the tenant under the provisions of the Rent Control Act, this Court need not disturb the fact findings recorded by the Rent Controller and affirmed by the appellate Court on the ground of willful default and bona fide requirement, since the issue involved in this matter is the jurisdictional issue.

According to Section (1) of the Rent Control Act, the provisions of the Act shall apply to Hyderabad, Secunderabad, Visakhapatnam, Vijayawada and to all Municipal Corporation and Municipalities in the State of Andhra Pradesh, except sub-section (2) of Section 3, but Section 32 of the Rent Control Act exempts certain buildings from application of provisions of the Act. According to Section 32 of the Rent Control Act, the provisions of this Act shall not apply,-

“(a) to any building belonging to the State Government or the Central Government or Contonment Board or any local authority;

(b) to any building constructed or substantially renovated, either before or after the commencement of this Act for a period of fifteen years from the date of completion of such construction or substantial renovation.

Explanation 1 :- A building may be said to be substantially renovated if not less than seventy five per cent of the premises

is built new in accordance with the criteria prescribed for determining the extent of renovation.

Explanation II :- Date of completion of construction shall be the date of completion as intimated to the concerned authority or of assessment of property tax, whichever is earlier, and where the premises have been constructed in stages the date on which the initial building was completed and an intimation thereof was sent to the concerned authority or was assessed to property tax, whichever is earlier.

In the instant case, it is the contention of the learned counsel for the petitioner that the subject property is a wakf property notified vide Gazette dated 16.03.1989 and, thereby, it is exempted from application of the provisions of the Rent Control Act in view of Section 85 of the Wakf Act.

It is an admitted fact that the petitioner herein obtained schedule premises on lease from the 1st respondent on payment of rent of Rs.3,000/- per month to the 1st respondent by the petitioner. In view of this specific contention, it is apposite to advert to the counter filed by the petitioner before the Rent Controller and the oral evidence of RW.1. At paragraph 3 of the counter in RC.No.83 of 2013, the petitioner herein admitted as follows:

“the contention of the petition para 2 petitioner has misrepresent to him, stating owner of the Wakf property, later same to hire for Rs.3000/- and also received advanced amount twenty thousand and played fraud with him. Hence there is no relationship with LandLord and Tenant and this Hon’ble Court is not having jurisdiction, entertain the petition same liable to dismiss with cost.”

At the same time, in paragraph 6 of the counter, the petitioner contended that the 1st respondent never issued rent receipts and, taking

advantage of the same, he filed the petition before the Rent Controller. In paragraph 7 also, he made a categorical admission as follows:

“the contention of the petition para No.6 respondent already spent huge amount on suit schedule property and advance received by the petitioner and respondent not due any amount, respondent never promised to vacate suit schedule property, respondent denying allegation he never dues Electrical Bills and Water bill concern petitioner taken Bill amount with rents but intently and willfully not paid.”

In view of the extracted portions of the counter filed by the petitioner in R.C.No.83 of 2013, though not conveying proper meaning, the petitioner admitted that there is subsisting relationship of landlord and tenant while contending that the 1st respondent misrepresented that he is the owner of the property and received advance and never issued any rent receipts acknowledging receipt of the rent.

Turning to the evidence, the 1st respondent, in his examination as PW.1, has reiterated what he contended in the petition about the relationship of landlord and tenant and letting out the subject premises on lease @Rs.3,000/- per month, having purchased the same under registered sale deed bearing document No.2321/ 1990 dated 29.11.1990. In the cross-examination of PW.1, nothing was elicited by the counsel for the petitioner to disprove the existing jural relationship of landlord and tenant. In the evidence of the petitioner as RW.1 before the Rent Controller, as usual, he reiterated the allegations made in the counter. In paragraph 3 of the affidavit filed under Order 18 Rule 4 of C.P.C, it is contended by the petitioner, that the 1st respondent misrepresented him that he is the owner of the property and let out the premises on monthly rent of Rs.3,000/- and

received advance amount of Rs.20,000/- and played fraud on him. In paragraph 4 of the affidavit, the petitioner herein admitted as follows:

“That it is submitted that I am paying rent every month without any due before the filing the suit and till now and receipt of the rent submitted to the Hon’ble Court and I have spent huge amount for the repairs of house. Petitioner promised that which amount spent on repairs on house will be deuct from rent, but he did not do so. Petitioner himself due water charges before I have occupied house, I submit that petitioner made oral agreement of lease deed, further petitioner said that rent of house include water charges. I submit that all allegations made against me false with respect to the suit schedule property.”

Smilarly, in para 6, it stated as follows:

“That it is submitted that I have not due any rent with respect of house. I further submit that petitioner having advance amount and petitioner have to return all amounts which I have spent on house for repairs as the petitioner promised with me. I submit that it is absolutely false that I have due one year rent it is fabricated, petitioner never given the rent receipt and taking same advantages, I am senior citizen I have never threaten to petitioner and his family its absolutely false and fabricated.”

(extracted relevant paras)

In the cross-examination of the petitioner as RW.1, at paragraphs 1 and 2, he categorically admitted the subsisting oral tenancy between him and the 1st respondent. He also admitted that prior to obtaining the schedule premises on lease, he was residing in a rented house. While admitting that at the time of inception of the tenancy, the monthly rent was Rs.2,100/-, he denied the alleged default during pendency of the petition and stated that there was no fixed date for payment of rent. He also further admitted that he paid rent for the month of March, 2014, but did not file any document in proof of such payment. These categorical admissions of RW.1 are suffice to conclude that there was subsisting jural

relationship of landlord and tenant between the 1st respondent and himself.

The word 'landlord' is defined under Section 2 (vi) of the Rent Control Act, which reads as follows:

“ 'landlord' means the owner of a building and includes a person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another person or on behalf of himself and others or as an agent, trustee, executor administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.”

The explanation to the aforesaid Section clarifies that the tenant who sub-lets a building shall be deemed to be a landlord within the meaning of the Act in relation to the sub-tenant. The 1st respondent allegedly purchased the schedule property under registered sale deed bearing document No.2321 of 1990 dated 29.11.1990, which is marked as Ex.P1 before the Rent Controller, and even in Ex.P2 – office copy of the legal notice, he asserted that he is the owner of the schedule property bearing door No.17-4-17 in an extent of 142 sq. yards and a copy of the sale deed is also placed on record, but he admitted in the cross-examination that there is a dispute pending before the Wakf Tribunal, a suit is filed questioning the title of the 1st respondent. Even if the 1st respondent's title is in dispute till the judgment is pronounced by the Wakf Tribunal, the title of the 1st respondent holds good. As the petitioner admitted oral tenancy agreement between himself and the 1st respondent on initial rent of Rs.2,100/- per month and thereby enhancement and payment of rent, he is incompetent to deny the title of the 1st respondent on the ground that it is a notified wakf property. Even if a person, who is

having no title over the property in occupation, lets out the property, he would fall within the definition of the word 'landlord'. Therefore, irrespective of the dispute regarding the nature of the property and the title of the 1st respondent, the petitioner/tenant paid rent to the 1st respondent initially @ Rs.2,100/- per month and later @ Rs.3,000/- per month and also paid advance of Rs.25,000/- to the 1st respondent, but his contention was that the 1st respondent misrepresented the facts and claimed ownership over the wakf property. The petitioner/tenant, who admittedly entered into a tenancy agreement with the 1st respondent, cannot now contend that the 1st respondent has no title to the property on the ground that a suit is pending before the Wakf Tribunal and deny the title of the landlord in view of the bar under Section 116 of the Evidence Act i.e., estoppel. Since Section 116 of the Evidence Act enables the tenant to sub-lease, if the agreement so provides or with the approval of the landlord, when the property was let out and the tenant, having admitted his tenancy, is ousted from denying title of the landlord, in such an event, it is a ground to order eviction of the tenant in occupation.

Learned counsel for the petitioner would mainly contend that the property is a notified wakf property under G.O., dated 16.03.1989, thereby, in view of Section 85 of the Wakf Act, no civil court including the Rent Controller, except the Wakf Tribunal, will have jurisdiction either to evict a tenant or to decide any question of title of the notified Wakf property. He placed reliance on the judgment of the Apex Court in Lal Shah Baba Dargah Trust (1 supra) in support of his contention. The Apex Court highlighted the importance of 2013 Amendment to the Wakf Act. The Wakf Act, 1995 (which repealed and replaced the Wakf (Amendment) Act, 1984) came into force on 01.01.1996. The Act provides for the better

administration of auqaf and for matters connected therewith or incidental thereto. However, over the years of the working of the Act, there has been a widespread feeling that the Act has not proved effective enough in improving the administration of auqaf. The Prime Minister's High Level Committee for Preparation of Report on Social, Economic and Educational Status of the Muslim Community of India (also known as Sachar Committee) in its Report submitted to the Prime Minister on 17-11-2006 considered the aforementioned issue and suggested certain amendments to the Act relating to women's representation, review of the composition of the Central Wakf Council and the State Wakf Boards, a stringent and more effective approach to countering encroachments of Waqf properties and other matters. The Committee stressed the need for setting up of a National Waqf Development Corporation and State Waqf Development Corporations so as to facilitate proper utilization of valuable waqf properties for the objectives intended. The Committee recommended that the Act should be amended so that the State Waqf Boards become effective and are empowered to properly deal with the removal of encroachments of waqf properties. It also recommended to amend the Act so that the Waqf Tribunal will be manned by a full time Presiding Officer appointed exclusively for waqf properties. The Joint Parliamentary Committee on Waqf in its Third Report presented to the Rajya Sabha on the 4th March, 2008 made recommendations for a wide range of amendments relating to time bound survey of waqf properties, prevention and removal of encroachments, making the Central Waqf Council a more effective and meaningful body, provisions for development of waqf properties, etc. In its Ninth Report presented to the Rajya Sabha on the 23rd October, 2008, the Joint Parliamentary Committee reconsidered certain issues. The recommendations of the Joint Parliamentary Committee on Waqf were

considered by the Central Waqf Council. The various issues and the need for amendments to the Act have also been considered in consultation with other stakeholders such as the All India Muslim Personal Law Board, representatives of the State Governments and the Chairman and the Chief Executive Officers of State Waqf Boards. With the aforesaid object, to give effective implementation of the provisions of the original Act, necessary provisions have been substituted in the original Act. Clause 40 of the Bill sought to amend Section 83 of the Act relating to constitution of the Tribunal with a view to expand the composition of a tribunal. Clause 41 of the Bill sought to amend Section 85 of the Act dealing with bar of jurisdiction of civil courts so as to bar the jurisdiction of the revenue courts and any other authorities besides civil courts in respect of disputes, question or other matters relating to Waqf. Waqf properties or other matters required to be determined by the Tribunal. Even by the 2013 amendment in Section 85 of the Act, the Act also ousted the jurisdiction of the revenue court or any other authorities along with the civil court. Meaning thereby the legislatures wanted to make sure that no authorities apart from the Tribunal constituted under Section 83 of the Act shall determine any dispute, question or other matter relating to a waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property under this Act.

In view of the law laid down by the Apex Court in the above judgment, after amendment to Section 85 of the Wakf Act, the jurisdiction of all the courts, except conferring jurisdiction on the Wakf Tribunal, is ousted from determining any questions relating to wakf property, and even eviction of a tenant or determination of rights and objections of the lessor

and the lessee of such property under the Act, shall be by a Wakf Tribunal, but not by any other Court.

Even this Court also in Jumma Mosque Committee (2 supra), based on the judgment of the Madras High Court in Mangamma vs. Paidayya⁵, concluded that the Commissioner appointed and considered the Mosque as a wakf property and included it in the list and the Wakf Board, having agreed with the Commissioner, has registered the plaintiff – mosque as an endowed property in accordance with the Muslim Wakf Act No.29 of 1954, and this omission to look into and consider the effect of the very important and material document on the question whether the plaintiff – mosque is a wakf or not for purposes of deciding the question of jurisdiction, vitiates the judgment. But, the facts of the case are totally relating to a dispute regarding whether the subject property is a wakf property or not. However, this judgment is of little assistance to the petitioner.

In a later judgment of this Court in Muzafar Ali and others v. District Collector and others⁶, a Division Bench of this Court dealt with the ambit of Section 85 of the Wakf Act and the dispute as to the jurisdiction of the civil Courts. The Division Bench of this Court is of the view that the civil Courts have no jurisdiction to decide any matters within the ambit of Section 85, except the Wakf Tribunal constituted under Section 83 of the Wakf Act. When there is a conflict of claims in regard to the property in question and the contention is based on that the property is notified as wakf property, in such a case, only the Wakf Tribunal is vested with the jurisdiction, but not any other court including the civil court. There is no dispute about the law declared by this Court or the Apex Court in the two

⁵ AIR 1941 Madras 393

⁶2005 (1) ALD 750 (DB)

judgments referred supra. But, a direct question relating to eviction of a tenant under the provisions of the Rent Control Act came up for consideration in a judgment of this Court in A.Shyam Sunder (3 supra), wherein, a Single Judge of this Court held that when the tenant pleaded that the civil court has no jurisdiction to try the suit as the ejectment founded upon the commission of nuisance can be agitated before the Rent Controller under the Rent Control Act and G.O.Ms.No.575/ 11 dated 12.05.1981 exempting the buildings belonging to the Muslim religious and charitable institutions from the provisions of the Rent Control Act cannot be availed of. To say that the exemption cannot be given in a situation when the landlord can avail the remedy under the Rent Control Act is to negate the object and the purpose of exemption and blot out Section 26 G.O.Ms.No.933 of 1971 lifts the obligation of Muslim religious and charitable endowments from seeking the remedy before the forum under the Rent Control Act and enables such institutions to avail remedy under common law without reference to the provisions of Rent Control Act. The mere circumstance of setting out a reason for eviction and in the instant case, on the ground of commission of nuisance, which is also one of the reasons for eviction under Section 10 of the Rent Control Act, does not necessitate the landlord to revert to Rent Control Act. Similarly, another Single Judge of this Court in Md. Ahmed Ali and others v. Alastu Talimi Trust, Hyderabad and others (1 supra) held that in the light of G.O.Ms.No.380 dated 16.03.1970 passed by the Government, the dispute as to whether a property is a notified wakf is vested on the Wakf Tribunal constituted under the Wakf Act and, when the building is exempted from provisions of the Rent Control Act, the Rent Controller has no jurisdiction.

The cumulative effect of the law declared by this Court and the Apex Court is that since the jurisdiction of civil court and Rent Controller is ousted by virtue of Section 85 of the Wakf Act as amended by Wakf (Amendment) Act of 2013, the Rent Controller cannot order eviction of a tenant deciding the dispute as to eviction of a tenant in occupation of a notified wakf property.

The undisputed legal position referred supra is that if the property belongs to wakf and the same is let out to any tenant and a dispute arises regarding the relationship of landlord and tenant, the civil court is incompetent to entertain such dispute and pass an order for eviction of the tenant in occupation of wakf property and the Wakf Tribunal constituted under Section 83 of the Wakf Act alone is competent to decide such disputes and order eviction of tenant in occupation of the wakf property by virtue of amended Section 85 of the Wakf Act. The Tribunal is competent to exercise such jurisdiction when the relationship of landlord and tenant is between the wakf property or Wakf Board and the person in possession of the property, but when the dispute is between two individuals regarding tenancy, the Wakf Tribunal will have no jurisdiction and the Rent Controller alone is competent to decide such dispute and order eviction subject to establishing any of the grounds under Sections 10, 11, 12 and 13 of the Rent Control Act.

An identical question came up before this Court in Mohd. Shafi v. Hafeez Mohammed (Died) by Lrs.⁷ and the Single Judge of this Court, while deciding revision filed under Section 22 of the Rent Control Act against the order passed by the trial Court and confirmed by appellate Court for eviction of a tenant on the ground of willful default in payment of

⁷ 2008 (2) Andh LD 49

rents and subletting, has taken note of the fact that the relationship of landlord and tenant was disputed for the first time in revision on the ground that the property originally belongs to the wakf and a suit for partition is pending before the civil court, held that the suit property is not a wakf property of the Board and the question of jurisdiction of civil court raised which is still to be adjudicated, would in no way disentitle the landlord from evicting tenant; the tenant who was paying rent to landlord cannot dispute title of his landlord; denial of title was mala fide and howsoever defective title of landlord may be, the tenant cannot deny the same and liable to be evicted. The facts of the judgment are identical to the facts of the present case for the reason that in the present case, the petitioner herein, having admitted his induction as tenant under oral tenancy initially on monthly rent of Rs.2,100/- and later enhanced to Rs.3,000/- per month and paid advance of Rs.25,000/- returnable at the time of vacating, is not entitled to dispute or deny the title of the 1st respondent, howsoever it is defective, as he is estopped to raise such contention in view of bar under Section 116 of the Evidence Act. Similarly, in another judgment of this Court in Suresh Kumar v. Mohd. Dastagiri, this Court, while considering identical facts in a petition filed under Section 10 (2) (i) and (iv) of the Rent Control Act for eviction of a tenant, observed that the plea of the tenant was that the premises are owned by Wakf Board and the respondent was only Mutawalli of Wakf, but the record discloses that the petitioner was inducted into possession of premises, as tenant by respondent through rental deed, to which both were parties and no reference to Wakf Board in said rental deed was made and once the relationship between parties was covered by rental deed, it is not at all open to petitioner to deny title of respondent; and moreover, in a suit filed by petitioner against Wakf Board, on receiving notice from it, the

petitioner not only pleaded that respondent is absolute owner of premises, but also that Board has no right or authority vis-à-vis the same. In such a case, the jurisdiction of the Rent Controller is not ousted and denial of title is mala fide and ordered eviction of the tenant from the premises, which is the subject matter of the eviction petition.

The counsel for the 1st respondent, while contending that mala fide denial of title is a ground to order eviction and, even on that ground, the tenant is liable to be evicted, would draw the attention of this Court to a judgment in *Sri Ram Pasricha v. Jagannath and others*⁸, wherein, a Full Bench of the Apex Court held that it is only the landlord who can terminate the tenancy and institute the suit for eviction; the tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act; the tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy; and under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant. If this principle is applied to the present facts of the case, there is a tenant and landlord relationship between the petitioner and the 1st respondent in view of the categorical admission made in the petition, but when eviction petition is filed after serving registered notice on the petitioner, the petitioner has set up a plea for the first time that the property was notified as wakf property, having admitted payment of rent and advance. In view of the definition of the word 'landlord' under Section 2 (vi) of the Rent Control Act, the 1st respondent is the landlord, and the petitioner is the tenant as defined under Section 2 (ix), which means any person by whom or on whose account rent is payable for a building and includes the surviving spouse or any son or daughter, of a

⁸ AIR 1976 Supreme Court 2335

deceased tenant who had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building, by its tenant or a person to whom the collection of rents or fees in a public, market, cart-stand or slaughter-house or of rents for shops has been framed out or leased by a local authority. Thus, the petitioner falls within the definition of the word 'tenant', as he paid rent initially @ Rs.2,100/- per month and later enhanced it to Rs.3,000/- per month and paid advance of Rs.25,000/- . Therefore, denial of the title of the 1st respondent by the petitioner is mala fide and it is a ground to order eviction of the petitioner herein. Similarly, in Subhash Chandra v. Mohammad Sharif and others⁹, the Supreme Court is of the view that the tenant is disentitled to deny the title of the landlord in view of Section 116 of the Evidence Act, having admitted his induction as a tenant by virtue of contract of tenancy, and the tenant in such a case can attack the derivative title of the transferee-plaintiff but not on the ground that the transferor-landlord who had initially inducted him in possession did not have the right to do so. Further, since the impediment in the way of a tenant to challenge the right of the landlord is confined to the stage when the tenancy commenced, he is not forbidden to plead that subsequently the landlord lost this right. These exceptions, however, do not relieve the tenant of his duty to respect the title of the original landlord at the time of the beginning of the tenancy. To the same effect, in another judgment in Bansraj Laltaprasad Mishra v. Stanley Parker Jones¹⁰, the Supreme Court considered the scope of principle of estoppel of licensee of person in possession and his

⁹ AIR 1990 Supreme Court 636

¹⁰ AIR 2006 Supreme Court 3569

competency to deny the title. Similarly, in *Adhar Malik and others v. Kanhoo and others*¹¹, the Courts consistently held that when the tenant once admitted his induction as tenant in premises, he is incompetent to deny the title of the person who inducted him. But, in the other judgment in *Rita Lal v. Raj Kumar Singh*¹², the Apex Court is the view that the tenant would not be entitled to leave to defend on the ground that in a petition filed for eviction, while admitting that the tenant having been inducted by the landlord so long as he remains in possession, cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 of the Evidence Act.

In view of the law declared by the Apex Court consistently, the tenant, having been admitted his induction as a tenant in the premises, is estopped or debarred from denying title of the landlord. In the present case, the petitioner admitted about his induction as a tenant initially on monthly rent of Rs.2,100/- and subsequent enhancement to Rs.3,000/- per month, payment of rent without obtaining any rent receipts and payment of advance amount of Rs.25,000/- and now denied the title of the 1st respondent on the ground that the schedule property is a notified wakf property. When both the petitioner and the 1st respondent fall within the definition of the words 'tenant' under Section 2 (ix) and 'landlord' under Section 2 (vi) of the Rent Control Act, denial of title of the 1st respondent is mala fide. On this ground alone, the petitioner is liable to be evicted.

Though Sri Vijay Pissay, learned counsel for the petitioner, contended that when the property is notified wakf property, the jurisdiction of the Rent Controller or civil court is ousted and, thereby, the

¹¹ AIR 1972 Orissa 134

¹² AIR 2002 Supreme Court 3341

order passed by the Rent Controller, which is confirmed by the appellate court, is illegal, this contention can be sustained only when there is relationship of landlord and tenant between the Wakf Board or wakf and the petitioner herein. In such a case, the Tribunal alone is competent to order eviction of the tenant. But, in case of tenancy between the two private individuals, the Wakf Board cannot decide the dispute of eviction of a tenant from the premises, though it is notified as wakf property. For instance, when a person has occupied the wakf property long back and continued in possession and let out part of it to a tenant in occupation, still the relationship between the tenant in occupation and the person who occupied the property of the wakf is tenant and landlord and the jurisdiction of the Rent Controller is not ousted. Therefore, the contention of the counsel for the petitioner holds no substance warranting interference of this Court to set aside the order impugned in this revision filed under Section 22 of the Rent Control Act.

Accordingly, point No.1 is answered in favour of the 1st respondent against the petitioner.

POINT No.3:- The trial Court and the appellate Court recorded fact finding that the petitioner committed willful default in payment of rent for the period from January, 2012 to January, 2013 based on evidence available on record. Even in the evidence of RW.1, the petitioner admitted that he did not pay rent for the said period, except for the month of March, 2014. But, no document is placed on record to substantiate payment of rent for the said month by the tenant. Therefore, the concurrent fact findings recorded by the Courts below cannot be disturbed while exercising power of revision under Section 22 of the Rent Control Act, since this Court, while exercising jurisdiction under Section 22 of the

Rent Control Act, is competent to decide only propriety, regularity or legality of the order and mostly confined to the question of law, except where the concurrent fact findings recorded by both the Courts below are not based on any evidence or manifestly perverse or apparently erroneous. Here, I find no such manifest perversity or apparent error in the concurrent fact findings recorded by both the courts below regarding willful default. Therefore, the concurrent fact findings recorded by both the Courts below are upheld holding that the petitioner has committed willful default in payment of rent since he did not pay rent even after receiving original of Ex.P2 notice and acknowledged by him under Ex.P3 – postal acknowledgement and issuing reply denying the title of the 1st respondent without payment of arrears of rent. Hence, the fact findings recorded by the trial Court are upheld with regard to the willful default.

Accordingly, point No.2 is answered in favour of the 1st respondent against the petitioner.

In view of my aforementioned discussion and findings recorded on point Nos.1 and 2, the denial of title of the 1st respondent by the petitioner is mala fide and the petitioner committed willful default in payment of rent from January, 2012 to January, 2013 and consequently, he is liable to be evicted from the schedule premises. However, the dispute between the 1st and the 2nd respondents cannot be decided in this revision and the findings recorded herein will have no bearing on the pending litigation between the 1st respondent and the 2nd respondent before the Wakf Tribunal with regard to the title of the property. Consequently, the revision is liable to be dismissed as it is devoid of merits.

In the result, the revision petition is dismissed confirming the order passed by the Rent Controller in R.C.No.83 of 2012 and affirmed by the appellate Court in R.A.No.243 of 2014. No order as to costs.

Miscellaneous applications, if any pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

07.09.2017
v v

After pronouncement of order, learned counsel for the petitioner requested to grant reasonable time for vacating the premises. Hence, in view of the request made by learned counsel for the petitioner, three (3) months' time is granted from today to vacate the premises and deliver the vacant possession, subject to payment of arrears of rent, if any, during the extended period.

M. SATYANARAYANA MURTHY, J

07.09.2017
pn

