

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**RSA 4395/2017 (O&M)  
Date of decision: 27.11.2017**

Sharif Ahmed and others

.....Appellants

v.

Chandigarh Waqf Board

.....Respondents

**Coram: Hon'ble Mr. Justice Jaswant Singh**

**Present:- Mr. Ashish Bakshi, Advocate for the appellants**

**Jaswant Singh, J. (Oral).**

Defendants/appellants are in second appeal against concurrent findings recorded by both the Courts below whereby plaintiff/respondent-Chandigarh Waqf Board's suit for possession by directing defendants to handover physical and peaceful possession by way of ejectment from shop bearing NO.1289 measuring 110.83 square feet/12.31 square yard situated at Old NAC Road, Manimajra; as also for recovery of Rs.57600/- on account of compensation/damages at the scheduled rate of rent of Rs.1600/- per month w.e.f. 31.12.2004 upto 31.12.2007 alongwith interest till its realization was decreed by the Civil Judge(Junior Division) Chandigarh vide judgment and decree dated 29.1.2016 and findings thereof affirmed in appeal by the Additional District Judge, Chandigarh vide judgment and decree dated 11.5.2017.

Briefly noticed, plaintiff Waqf Board filed the said suit with the

averments that the shop in question, a Waqf Property, as notified vide notification dated 1.3.2006 issued by Chandigarh Administration under Section 5 of the Waqf Act, 1995, was leased out to the defendants for a period of 11 months @ Rs.300/- per month vide allotment order dated 3.3.1993 w.e.f. 1.2.1993 till 31.12.1993 by the Erstwhile Punjab Waqf Board prior to its trifurcation into Haryana Waqf Board, Punjab Waqf Board and Chandigarh Waqf Board. It was further alleged that after the expiry of the said lease period the possession of the defendants over the shop had become unauthorised and unlawful as no fresh lease was created. It was further alleged that defendants paid usage and occupation charges @ Rs.300/- upto 31.3.2004 which amount was to be adjusted against total amount calculated for compensation and damages/mesne profits at the scheduled rate of rent fixed at Rs.1600/- per month for the period from 1.2.1994 till 30.12.1997. Since despite notices defendants neither came forward for renewal of lease nor handed over the possession, the said suit was instituted.

Upon notice, defendants filed written statement alleging that as per terms and conditions of division of erstwhile Punjab Waqf Board vide order dated 25.7.2003, the defendants could not be compelled to execute fresh lease deed in respect of property in dispute and that plaintiff Waqf Board was liable to continue the tenancy on the same terms and conditions as settled by erstwhile Punjab Waqf Board. It was further alleged that non-acceptance of rent by plaintiff and asking defendants to renew the lease was illegal and against terms and conditions of division of Punjab Waqf Board.

On the pleadings of the parties issues were framed. Both sides led evidence in support of their respective pleadings. The Courts below on

the basis of evidence adduced by the parties, decreed the suit, as noticed above. Hence the present appeal.

After hearing learned counsel for the appellants at length and with his able assistance perusing the paperbook carefully, this Court is of the considered view that the instant appeal is liable to be dismissed.

Both the Courts below on the basis of evidence led by the parties have found that the property in question vests in Chandigarh Waqf Board which came into existence vide notification and there was a specific admission on the part of defendant Rafique Ahmed (DW/1) that he was a tenant under Chandigarh Waqf Board and he had been paying rent to it regularly. It was further noticed that application Ex.P-19 given to the plaintiff Board was signed by Rafique Ahmed-DW/1 in which he had admitted that now Chandigarh Waqf Board was the owner of the property in question. Further the defendants had also admitted the relationship of landlord and tenant. It was thus found that though the defendants had denied the ownership of plaintiff-Chandigarh Waqf Board, yet the evidence led by plaintiff and admissions on the part of DW1 proved the fact that the Waqf Board was owner of the property in question and as such defendants were estopped from denying the ownership of the plaintiff Board over the shop by their acts, conduct and acquiescence. Therefore, the argument that mere notification issued under Section 5 of the Wakf Act, 1995 would not vest ownership with the defendant/Chandigarh Waqf Board, does not stand and hence rejected. It was further noticed that defendants had failed to place on record any receipt to show payment of rent upto the date of filing of the suit. DW1 Rafique Ahmed had admitted that the rent was paid only till 2004 @ Rs.300/-. It was also not disputed that the rate of rent was

increased vide resolution Ex.P15. In these circumstances, it has rightly been held that the defendants could not be called as tenant at holding over. Further in view of the failure on the part of defendants to produce any receipt to show payment of rent for the period claimed in the plaint, the Courts below have rightly held that the plaintiff Waqf Board was entitled to recover the claimed amount for the remaining period.

In view of the above, in my opinion, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

27.11.2017  
joshi

(Jaswant Singh)  
Judge

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |