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

+ **RC.REV. 496/2017**

ASHOK KUMAR KOHLI

..... Petitioner

Through: Mr. Amiet Andlay and Mr. Javed
Subhan, Advs.

Versus

MOHD OMAR FARIDI

..... Respondent

Through: Mr. Anil Panwar and Mr. Mudassar
Jahan, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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31.10.2017

Caveat No.934/2017

1. The counsel for the respondent/caveator appears.
2. The caveat stands discharged.

CM No.39141/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

RC.REV. 496/2017 & CMs No.39140/2017 (for stay), 39142/2017 (for condonation of 35 days delay in re-filing) & 39215/2017 (for condonation of 113 days delay in filing)

5. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 2nd February, 2017 in RC No.5835/2016 of the Court of Rent Controller, New Delhi District, Patiala House Courts, New Delhi) of dismissal of the application filed by the

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petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from shop No.2 (private) in property bearing No.1564, Opposite Marina Hotel, Connaught Place, New Delhi.

6. The counsel for the petitioner has been heard.

7. The only argument of the counsel for the petitioner is that though the petitioner is a tenant in the aforesaid shop and has been paying rent thereof to the respondent but the petitioner was paying the rent to the respondent in the capacity of the Mutawalli appointed by the Delhi Waqf Board (DWB) and though the respondent as Mutawalli is entitled to file the petition for eviction against a tenant in the property but for the requirement of the DWB and not for his own requirement as has been done.

8. In support of the contention that the property is of the DWB, attention is drawn to page 218 of the paper book being a letter dated 10th August, 2016 of Sh. J.R. Aryan (Retd.), District & Sessions Judge to the Vice-Chairman of Delhi Development Authority (DDA) informing of his appointment as a one man committee vide orders in Writ Petition No.2901/2014 of this Court. The said letter in paragraph 1 thereof *inter alia* states as under:

“This is to bring to your kind notice that in the matter of 123 denotified Waqf Properties challenged by Indraprastha Vishwa Hindu Parishad and others by a Writ Petition (C) No.2901/2014, the Hon’ble High Court of Delhi disposed of that writ petition with the observation that all stake holders/affected parties be given a personal hearing and then Govt. of India shall take a decision on the subject.”

9. The counsel for the petitioner has also drawn attention to page 219 of the paper book being the draft of a public notice in pursuance to the letter aforesaid and relevant para whereof is as under:

“PUBLIC NOTICE
On the Issue of
De-notification of 123 Waqf Properties
from Acquisition

Whereas vide Notification No.S.O.661 (E) dated 5.3.2014, 123 Waqf Properties (61 Land & Development Office and 62 Delhi Development Authority) were de-notified and allowed the title to revert to the Delhi Waqf Board or Mutawallis.

Whereas the said notification No.S.O.661 (E) dated 5/3/2014 was challenged by Indraprastha Vishwa Hindu Parishad and others through a Writ Petition (C) No.2901/2014.

Whereas the Hon’ble High Court of Delhi by order dated 20/8/2014 disposed of that Writ Petition with the observation that Union of India shall take appropriate decision after giving an opportunity of hearing to all stake holders, in particular Delhi Waqf Board.”

10. Attention is also drawn to the list of 123 de-notified Waqf Properties at pages 220 to 223 of the paper book and in which property No.73/1, Dargah & Mosque Abdul Saleem opposite Naraina Hotel near Lady Harding Hospital is mentioned.

11. Though the shop with respect to which the petition for eviction is filed is numbered as private shop No.2 in property No.1564 and not as property No.73/1, but even otherwise, if it were to be believed that the subject shop is subject matter of the aforesaid documents, I have enquired from the counsel for the petitioner, whether not the meaning to be ascribed to the expression

“De-notified Waqf Properties” would be that the property is not Waqf property.

12. The counsel for the petitioner has referred to the words “....de-notified and allowed the title to revert to the Delhi Waqf Board or Mutawallis” in the Public Notice aforesaid and has contended that the same suggests that property No.1564 is Waqf property.

13. Ordinarily, if the properties were for the first time being notified as Waqf properties, the words “Notified as Waqf Properties” and not as “De-notified as Waqf Properties” would be used but I may mention that the Public Notice, on the words wherein reliance is being placed, is only a draft Public Notice annexed to the letter dated 10th August, 2016 and on the basis thereof it cannot be said that the Public Notice was issued in the same form. No copy of the Public Notice, if any, issued has been filed.

14. I have further enquired from the counsel for the petitioner, whether any other person has approached the petitioner claiming ownership, title or landlordship or asking any other rights in the property.

15. The answer is in the negative.

16. The counsel for the petitioner also does not have any rent receipt issued by the respondent, to whom admittedly rent was paid, to show receipts having been issued by respondent in the capacity of Mutawalli of the property.

17. Moreover, it is the case of the counsel for the respondent and the counsel for the petitioner has fairly agreed, that the shop is not being used by the petitioner for any purpose whatsoever and is lying locked.

18. This Court, in this proceeding is not adjudicating the claim if any of DWB or of any other person to the property and if it is found that any other person has a claim with respect thereto against the respondent, such person would be entitled thereto and would have benefit also of this order of eviction.

19. There is thus no merit in the petition.

20. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 31, 2017

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