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

+ **CM(M) 748/2017**

ZULFIQAR AHMED

..... Petitioner

Through: Mr. Sumit Kumar and Ms. Monika,
Advs.

Versus

MOHD HAJI YUNUS & ORS

..... Respondents

Through: Mr. Wajeeh Shafiq and Mr. Dhairay
Kapoor, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.07.2017**

CM No.25631/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order (dated 6th June, 2017 of the Waqf Tribunal, New Delhi District in Execution No.5309/2016) directing the Sub Divisional Magistrate (SDM) concerned to get the premises vacated and to file the report on or before 25th July, 2017.

4. Ms. Monika, Advocate for the petitioner has been heard. Mr. Sumit Kumar, also Advocate for petitioner, has also been heard in vernacular.

5. The counsel for the respondent No.3 Delhi Waqf Board also appears on advance notice and has been heard.

6. What emerges is that the Managing Committee of Daragah Masjid and Qabristan Kangal Shah has applied to the Tribunal for execution of an

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eviction order dated 27th November, 2009 under Section 54 of the Waqf Act, 1995 against the petitioner.

7. The Waqf Tribunal in the impugned order has declined adjournment sought by the counsel for the petitioner and directed the SDM as aforesaid.

8. On behalf of the petitioner, it is argued (i) that though execution was pending before the Waqf Tribunal from much before 4th May, 2017 but was being adjourned from time to time owing to the Presiding Officer having not been notified as the Waqf Tribunal; (ii) that the Presiding Officer of the Waqf Tribunal was not authorised to act as the Waqf Tribunal till the Notification dated 4th May, 2017; (iii) that the petitioner has not had any opportunity to present his case; (iv) that the counsel for the petitioner could not appear before the Waqf Tribunal on 6th June, 2017 owing to Ramadan; (v) that before 6th June, 2017, the counsel for the petitioner had raised objection to the execution and vide order dated 4th May, 2017 the Waqf Tribunal adjourned the matter for arguments to 6th June, 2017; (vi) however on 6th June, 2017, without hearing arguments, a direction for eviction of the petitioner has been issued.

9. The counsel for the respondent No.3 states that though the order dated 4th May, 2017 records that the case was pending at the stage of arguments on the objections filed by the petitioner herein but in fact the petitioner herein had not filed any objection to the execution, as has been observed in the order dated 6th June, 2017.

10. The counsels for the petitioner also agree that no objection in writing to the execution has been filed.

11. The Counsel for the respondent No.3 has further handed over in the Court a copy of the order dated 29th May, 2017 of the Division Bench of this Court in W.P.(C) No.6275/2015 in which a direction has been issued for execution of all the pending eviction orders. The counsel for the respondent No.3 states that the remedy of the petitioner against the order of his eviction was under Section 54(4) of the Waqf Act and which the petitioner has not availed of. He thus states that there is no error in the learned Tribunal directing the SDM concerned to get the premises vacated.

12. The gravamen of the case is that though the matter on 4th May, 2017 was adjourned to 6th June, 2017 for arguments but adjournment for addressing arguments was not given and execution of the order of eviction directed.

13. The petitioner having not filed any objections to the execution petition and also having not availed of the remedy under Section 54(4) of the Waqf Act, I am unable to understand as to what was there for the Tribunal to hear arguments on and no error can be found in the order of the Tribunal of proceeding with the order of eviction. It cannot be lost sight of that the order of eviction itself is now nearly eight years old, being of 27th November, 2009, and considering that the petitioner in the order of eviction has been found to be an encroacher, no ground for interference with the order is made out.

14. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2017/‘bs’..