

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

**Civil Revision No.2977 of 2009 (O&M)
Date of Decision:April 04, 2018.**

Shivender Singh Kadan Etc.

.....PETITIONER(s).

VERSUS

Bala etc.

....RESPONDENT(s).

(2)

Civil Revision No.2978 of 2009 (O&M)

Shivender Singh Kadan Etc.

.....PETITIONER(s).

VERSUS

Rishi Pal

....RESPONDENT(s).

(3)

Civil Revision No.2979 of 2009 (O&M)

Shivender Singh Kadan Etc.

.....PETITIONER(s).

VERSUS

Ashok Kumar

....RESPONDENT(s).

(4)

RSA No.2578 of 2009 (O&M)

Shivender Singh Kadan Etc.

.....APPELLANT(s).

VERSUS

Bala etc.

....RESPONDENT(s).

(5)

RSA No.2579 of 2009 (O&M)

Shivender Singh Kadan Etc.

.....APPELLANT(s).

VERSUS

Rishi Pal

....RESPONDENT(s).

(6)

RSA No.3038 of 2009 (O&M)

Shivender Singh Kadan Etc.

.....APPELLANT(s).

VERSUS

Ashok Kumar

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued By: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioners/appellants.

Mr. Parminder Singh, Advocate
for respondents.

SURINDER GUPTA, J.

All the above revision petitions and regular second appeals have been taken up together as a common issue has been raised in these petitions and appeals as to “*Whether there exists relationship of landlord and tenant between petitioner/appellant and respondents*”.

Shakuntla Kadan wife of late Shri Ishwar Singh Kadan filed three separate ejectment petitions under Section 13 of Haryana Urban

Control (of Rent and Eviction) Act, 1973 (later referred to as 'the Rent Act') against different tenants (respondents in revision petitions and appeals) in different shops situated near Meera Said Chowk, G.T. Road, Karnal.

For the sake of convenience, I take the facts and evidence from the ejectment petition filed against tenant Rakam (since deceased, now represented by legal heirs in Rent Case No.3 of 2005 decided on 17.01.2006). As per case of landlord-revision petitioner (since deceased), the demised shop was let out to the respondent at monthly rent of ₹700/- plus house tax. Respondent Rakam is running his tractor workshop business in the shop. The electricity connection in this shop was made available to the respondent by petitioner through meter bearing No.LM 30-1645. She sought ejectment of the respondent on the ground of non-payment of rent from 01.02.1993 onwards. In three separate civil suits filed by her, she claimed arrears of rent.

Respondents contested the petitions filed by landlord Shakuntla Kadan with the plea that there is no relationship of landlord and tenant between the parties. They also denied their liability to pay any rent to the revision petitioner-landlord. They alleged themselves to be tenant under the Punjab Wakf Board and also challenged the jurisdiction of the Rent Controller to entertain and adjudicate upon the present petition(s).

Pleading of the parties led to the framing of following issues:-

- (1) Whether the relationship of landlord and tenant is existing between the petitioner and the respondent? OPP
- (2) If Issue No.1 is proved, whether the petitioner is entitled for a decree for ejectment on the ground of non-payment of rent.
- (3) Whether the petition is not maintainable in the present form? OPR

- (4) Whether the petitioner has got no cause of action to file the petition? OPR
- (5) Whether the petition is bad for non-joinder of necessary party? OPR.
- (6) Relief

After recording evidence, learned Rent Controller, Karnal recorded findings that the premises in question were let out to the respondents by Shakuntla Kadan and there exists relationship of landlord and tenant between the parties. While recording the above finding, the Rent Controller had a look on the evidence produced on record and observed as follows:-

“17. It is now settled law that Rent Controller has no jurisdiction to address dispute to title but he can certainly adjudicate the dispute about relationship. It is also settled law that it is not necessary that there should be documentary evidence to prove the tenancy. Tenancy can be proved by leading oral evidence as well.

18. The most important document relied by the respondent himself is allotment letter Ex.R.8. In this document itself it has been recited that the premises sought to be allotted to the respondent had already been in his possession. The testimony of RW1 Khurshid Ahmad is sufficient to identify that the disputed premises and property allotted to the respondent vide Ex.R.8 are identical. PW2 has proved on records copies of house tax assessment register for the year 1979-80 and so on which are Ex.PA to PD. I am agreed with the learned counsel for the respondent (that) the entries in the house tax assessment register are not conclusive proof of relationship between the parties as tenant-landlord because in this register only the name and address of occupier is mentioned. At the same time, the court cannot

loose the site of the facts that in the column of ownership, the name of the petitioner has been mentioned whereas in the column of occupier name of respondent. Not only this, the disputed premises was assessed to house tax, which was actually paid by the petitioner as admitted by PW9 Harphool Singh. What was the need for the petitioner to pay the house tax of the premises in occupation of the respondent? Answer is not very far away to find out. PW3 Bachan Singh has placed on record bills of electricity account No.LM30/1645 standing in the name of the petitioner and the receipts of payment are Ex.P3/1 to 18. Copy of the billing ledger is Ex.PW3/1. PW5 has deposed that the old meter bearing account No.LM/1645 was disconnected by the department of Electricity Board for non payment of bills. He further deposed that the site plan was prepared by PW6 which was counter-signed by S.D.O. Rajiv Anand where the position of old meter has been clearly depicted and the site plan above said is mark A (Original seen and returned). I do not find any merit in the arguments of learned counsel for the respondent that the testimony of PW4 and PW6 are to be dis-believed because except the site plan mark A PW6 has not prepared any site plan in his entire service tenure. The court has to confine to the evidence on record and not to the general proposition. The fact remains that a site plan was prepared by PW6 at the oral instructions SDO Rajiv Anand, which was counter-signed by SDO himself. Though the site plan is marked document, but the same ought to have been exhibited because the petitioner has not only examined the person who prepared it but also produced the original site plan. Perusal of the site plan shows that new meter was installed at point 'Y' and the old meter was at point 'X'. PW has even stated in cross-examination that the

cannot tell the name of the occupant of the premises where new meter was installed, but he can identify them as were present in the court.

19. Supply of electricity and payment of house tax to the demised premises by the petitioner besides allotment in her favour in the year 1975, all suggestive of the fact that there existed some sort of relationship between the parties.

20. The nut was finally cracked by the petitioner through the testimony of PW7 and PW8. These persons used to collect the rent from the respondent at the rate of Rs.300/- p.m. thereafter Rs.500/- and finally at the rate of Rs.700/- p.m. Their testimony cannot be set aside only on the flimsy ground that these persons at one point of time were in the employment of the petitioner. A person connected with parties to the suit can only depose about the terms of the tenancy. Despite lengthy cross-examination to which these witnesses were put to by the learned counsel for the respondent nothing material came on record in favour of the respondent. PW9 Kirpal Singh has deposed that the tenancy was created through him between the parties and he deposed about the terms and conditions of the tenancy.

21. From the oral as well as documentary evidence the petitioner has prima facie established jural relationship between the parties. Against this respondent has examined two witnesses including himself. The evidence given by the respondent is totally beyond pleading. There is no averment in the written statement how the respondent came into possession of the demised premises. For the sake of arguments even if evidence of respondent is to be accepted, the same is so improbable so as to inspire confidence of a reasonable man. It is highly unexpected and improbable that a person found

dilapidated shop on G.T. Road, got it partially repaired and constructed and started running the business and the original lessee who is paying the house tax would not raise any objection. Not only this, one after another persons kept on coming and by doing the same settled over demises premises. They kept using electricity without making efforts for the person, who made available all these provisions. Even if respondent found a dilapidated shop on G.T. Road one fine morning why he confined himself to only a small portion measuring few sq. yards when he was in a position to occupy much more area.

22. The clinching evidence has come on record in the testimony of RW1. In cross-examination RW1 has admitted report dated 2.04.1996 Ex. PX and report dated 23.06.1995 Ex.PY. In both these documents PWB has itself admitted not only occupation of the respondent, but status. In Ex. PX and PY respondent has been admitted as tenant of the petitioner.”

Not satisfied, the tenant-respondent through his legal heirs preferred appeal which was accepted by the Appellate Authority, Karnal on the ground as follows:-

(i) That provisions of the Rent Act do not apply to the waqf property as per notification dated 07.05.1976 by Govt. of Haryana, as such, petition under Section 13 of the Rent Act is not maintainable.

(ii) Lease of waqf property exceeding three years is void and is of no effect under Section 56 of The Waqf Act, 1995, as such, lease of the property in favour of Shakuntla Kadan by Wakf Board on 01.12.1975 did not subsists beyond that period and the argument of learned counsel for the respondent that Shakuntla Kadan is continuing in possession of the property

till she surrenders possession or is dispossessed in due course of law, was discarded.

(iii) The argument of the learned counsel for the landlord that the respondents are tenant of Smt. Shakuntla Kadan was also rejected in view of the provisions of Section 56 of The Waqf Act with the observation that when lease in favour of Smt. Shakuntla Kadan beyond period of three years itself is void, she cannot be permitted to contend that she has sublet the property to the respondent-tenants.

(iv) She had suppressed the fact that she was lessee under the Wakf Board and property was owned by Wakf Board.

(v) The statements of witnesses examined by the landlord to prove that property was let out to the respondents and the rent was increased from time to time, was discarded on the ground that Shakuntla Kadan was not entitle to receive rent as lease in her favour was void. Being in unauthorized possession of the demised premises, she had no business or right to rent out the property to the tenants and extract money from them.

(vi) The entry in the house tax register showing Shakuntla Kadan as owner and respondents as tenants was also discarded with the plea that Wakf Board is owner of the suit property and the possession of the respondents tenant has been shown over this property without any mention that they are tenants.

(vii) The payment of house tax of the suit property by the landlord was also held not relevant to prove that Shakuntla Kadan had let out the demised premises to respondents-tenant.

Learned Appellate Authority admitted this fact that the tenants-

respondent were in possession of the suit property even before its allotment to them by Wakf Board and rejected the version of the tenants-respondents that they found dilapidated shops on G.T. Road, got it repaired and started their business, as improbable. The above facts were, however, not found favouring the landlord with the observations as follows:-

“This fact, however, is of no advantage to the respondent. It may be that the appellant was inducted into the property by respondent who started extracting money in the grab of rent from him. Lease in favour of respondent being void, she had no authority to let out the property to the appellant and extract money from him.”

Learned counsel for the appellant/revision petitioner has argued that the issue in this case is as to whether demised premises were let out by the Shakuntla Kadan to respondents-tenants. The revision petitioner proved this fact by leading cogent and convincing evidence on record. It is proved on record that demised premises was allotted to Shakuntla Kadan. She was having electric connection in the premises in her name which was being used by respondents-tenants. She had shifted the electric connection from one place to another place in demised premises. From the oral evidence, it is proved that the respondents were inducted as tenant in the shops in dispute and they had been paying the rent to the landlord/revision petitioner/appellant, who has no dispute with the Wakf Board and lease in her favour has not been cancelled or possession of demised premises has been taken from her by Wakf Board. The Appellate Authority has rejected all the plea and evidence of revision petitioner/plaintiff virtually on two grounds that lease in favour of Sahkuntla Kadan for a period of more than

three years was in violation of Section 56 of Waqf Act and secondly, no notice was given to Wakf Board as per provisions of Section 90 of the Waqf Act about this petition. It is admitted that suit property was leased by Wakf Board to Shakuntla Kadan in the year 1975. It is also proved that the respondents were in possession of land prior to its allotment by the Wakf Board in their name in the year 1995. Wakf Board is admitting that Shakuntla Kadan had further let out these premises in violation of the terms of allotment. Entry in the house tax register shows that name of Shakuntla Kadan is recorded in the column of ownership while the names of respondents are recorded in the column of possession and rate of rent is also mentioned. Learned Rent Controller has taken note of entire evidence on record before reaching the conclusion that there exists relationship of landlord and tenant between the parties. The Appellate Authority has committed grave error while observing that the lease in favour of Shakuntla was in violation of provisions of Section 56 of Waqf Act. There is no evidence on record that lease was barred under any provision of Waqf Act. Even otherwise, it is a matter between Shakuntla and Punjab Wakf Board and the respondents, who have taken the shops on rent from Shakuntla, have no authority or right to deny the relationship of landlord and tenant. Learned Rent Controller has given cogent and convincing reasons while reaching the conclusion that the respondents are proved to be tenants in the demised premises and about non-application of the provisions of Section 90 of Waqf Act to this case. Even otherwise, Section 90 Waqf Act is applicable where the suit is relating to title or possession of waqf property. In this case, dispute is with respondents, who are denying relationship of

landlord and tenant between the parties. Neither petitioner(s) nor respondent(s) are denying title of Wakf Board over the suit property. Firstly, in this case, there is no dispute regarding the title of Wakf Board. Both the parties i.e. landlord as well as tenants are claiming under Wakf Board. It is admitted fact that Wakf Board had initially leased the demised premises to Shakuntla Kadan and has never taken possession of the same from her before leasing out the same in favour of respondents. In case, there is any violation of the terms and conditions of the allotment in favour of Shakuntla Kadan, Wakf Board could initiate appropriate proceedings against Shakuntla Kadan to take the possession. It is a case where the tenants are playing smart and instead of paying the rent of demised premises, which were let out to them. They had colluded with officials of Wakf Board and denied the relationship of landlord and tenant between the parties.

Learned counsel for the respondents has argued that the Appellate Authority has rightly observed while taking note of the provisions of Section 56 of the Waqf Act that lease of the demised premises in favour of Shakuntla Kadan was void. Once the lease is void, she loses her status of landlord of respondents qua demised premises, which vests in Wakf Board and has now been allotted to the respondents after cancelling the allotment in favour of Shakuntla. The respondents have denied the relationship of landlord and tenant between the parties which after the cancellation of the allotment in favour of Shakuntla, no more exists. The plaintiff is seeking the possession and arrears of rent of the demised premises but has not complied with the provisions of Section 90 of the Waqf Act, as such, the suit is bad in the eyes of law.

Firstly, I have a look on the scope of Section 90 of the Waqf Act, which requires the Court to give notice to the Wakf Board in the cases specified under Sub Section 1 of Section 90, which reads as follows:-

“90. Notice of suits, etc., by courts.—

(1) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.”

Allahabad High Court in *Yashpal Lala Shiv Narain vs. Allatala Tala Malik Waqf Aja Khan, AIR 2006 Allahabad, 115* distinguished a suit filed for the eviction of tenant/lessee after determination of the tenancy/lease as not being covered within the scope of Section 90(1) of the Waqf Act, 1995. It was observed in para 152, 153 and 162 of the aforesaid judgments as follows:-

“152. Such a Suit for eviction is not a suit or proceeding regarding any dispute in respect of title to a wakf property or regarding any dispute in respect of possession of a wakf property or regarding any dispute in respect of the right of a mutawalli or beneficiary. No dispute of title to a wakf property or possession of a wakf property or the right of a mutawalli or beneficiary is involved in such a Suit for eviction of tenant/lessee after determination of tenancy/lease. The dispute involved in such a Suit for eviction is in regard to eviction of the tenant/lessee from the wakf property in view of the determination of his tenancy/lease.

153. Hence, Section 90, Sub-section (1) of the Wakf Act, 1995 is not applicable to the present case.

162. Hence, even if a suit for eviction of a

tenant/lessee after determination of the tenancy/lease were to be treated as being covered under Sub-section (1) of Section 90 of the Wakf Act, 1995, and the notice to the Wakf Board were necessary, still the decree or order passed in such a suit would continue to remain valid till the Wakf Board applies to the Court for declaration of the decree or order as void. This has to be done by the Waqf Board within one month of its coming to know of such suit or proceeding.”

In case of *Mohammed Iftexhar Uddin Vs. Imdadgha Complex, Sarai Mosque Wakf, 2017 (2) HLT 382 (Law Finder Doc. ID # 910845)*, the fact of requirement of notice as per Section 90 Waqf Act was examined and it was observed as follows:-

“Section 90 (1) requires the Court or Tribunal, in every case relating to title or possession of Wakf property or the right of a Mutawali or beneficiary, to issue notice to the Board. An obligation was imposed under Section 90 (1) upon the Wakf Tribunal or Court. The consequence of non-compliance with the obligation under sub-section (1) is spelt out in sub-section (3). Sub-section (3) merely states that in the absence of a notice under sub-section (1), any decree passed can be declared as void if the Board applies to the Court in this behalf. **Sub-section (3) of Section 90 does not confer a right upon the tenant to come up with a plea that if no notice is issued under Section 90(1), the decree becomes void.** Therefore, it is not for the appellant to say that the failure to issue notice makes the decree void. It is for the Wakf Board to say that. In any case, the object behind Section 90 is to protect Wakf as well as Wakf property.”

In this case, an application was moved before the Rent

Controller under Section 57 and 90 of the Waqf Act, which was dismissed vide order dated 14.01.2002 as the Rent Controller did not deem it appropriate to issue notice to the Wakf Board as in no manner, status of the Wakf Board is going to be effected in the petitions/suits. Taking note of the observations in case of ***Yashpal Lala Shiv Narain Vs. Allatala Tala Malik Waqf Aja Khan Mus*** (supra), I am of the view that the arguments advanced by learned counsel for respondents and the findings of the Appellate Authority that the suit is bad for non-compliance of provisions of Section 90 of the Wakf Act are not tenable in the eyes of law, as such, are rejected and discarded.

Another fact which heavily weighed in the mind of Appellate Authority is the provisions of Section 56 of Waqf Act. The Appellate Authority has demolished the plea of petitioner Shakuntla Kadan that she was lessee of the suit property and had let out the same to respondents on the strength of provisions of Section 56 Waqf Act with observations that lease being beyond the period of three years is void, hence, the appellant/revision petitioner Shakuntla Kadan could not claim any right in the disputed property on the strength of lease in her favour.

The above observation of Appellate Authority are not sustainable in the eyes of law for the reasons; firstly, there is no dispute of lease of demised premises in favour of revision petitioner/appellant Shakuntla Kadan and Wakf Board. Secondly, Shakuntla was admittedly allotted suit property by Wakf Board and after allotment, neither possession has been surrendered by the allottee in favour of Wakf Board nor the Wakf Board has initiated any proceedings against Shakuntla Kadan. Thirdly, the

respondents (their predecessors) have taken possession of the suit property from Sahkuntla and conceded her status as landlord, as such, they are not competent to challenge the authority of the landlord. Fourthly, in case respondents had to take possession from the Wakf Board, they have first to surrender possession in favour of Shakuntla Kadan and then seek allotment of the same from the Wakf Board. This fact is not disputed that the suit property is not an agricultural land. In the letter of Wakf Board, it has been referred as store and plot.

Section 56 of Waqf Act, 1995 after amendment of 2013 reads as follows:-

“56. Restriction on power to grant lease of [Waqf] Property:- (1) A lease for any period exceeding thirty years of any immovable property which is waqf property shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect.

Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of

lease and invite bids in at least one leading national and regional news papers.

(2) A lease for a period of one year but not exceeding thirty years] of immovable property which is waqf property shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease '[.....] or renewal thereof under this section review the terms and conditions on which the lease [.....] is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.

[(4) ”

Section 36A of Wakf Act, 1954 also created a bar of transfer of immovable property of a Wakf by way of lease for a period of exceeding three years in the case of agricultural land, or for a period exceeding one year in the case of non-agricultural land or building, if granted without the previous sanction of the Board. In this case, the lease was allowed in favour of Shakuntla Kadan in the year 1975. It is a matter to be seen by Wakf Board whether the lease in favour of Shakuntla Kadan was allowed with the sanction of the Board or without sanction of the Board. This fact, however, does not fall within the domain of the Rent Controller to decide. Even in

the civil suit, no such evidence has been produced that the lease in favour of appellant-plaintiff was without sanction of the Board. By way of amendment of Wakf Act, 1995 in the year 2013, lease of immovable property for a period exceeding 30 years is void. As per provisions of Section 56 of the Wakf Act, 1995 as amended in the year 2013, it is a matter between Wakf Board or the Government that the approval from the State Government for lease of 30 years has been taken or not. This shows that entire observation of the Appellate Authority that lease in favour of petitioner/appellant Shakuntla Kadan was void, hence, there was no relationship of landlord and tenant etc. are without basis, illegal, perverse and not sustainable in the eyes of law.

Learned counsel for the respondents has argued that ejectment petitions filed by petitioner Sahkuntla Kadan were bad in view of the bar contained in Section 85 of the Waqf Act, 1995, which took away the right of the revision petitioner to file a petition and bars the jurisdiction of the Civil Court.

Section 85 Waqf Act, 1995 is reproduced as follows:-

“85. Bar of jurisdiction of Civil Courts:--No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.”

A perusal of Section 85 Waqf Act shows that it bars the jurisdiction of the Civil Court or any authority established under law in cases where there is any dispute, question or other matter relating to any

Tribunal is involved.

In the ejectment petitions filed by petitioner Sahkuntla Kadan, eviction of the respondents from the demised premises was sought. Such a petition does not relate to the subject matter as described in Section 85 Waqf Act barring the jurisdiction of the Civil Court, revenue Court and any other authority. The Wakf Board is otherwise taking objection that petitioner Shakuntla Kadan had let out the premises in violation of the terms of the lease. By seeking ejectment of such persons, petitioner was only complying with the directions of the Wakf Board. The ejectment petition of the civil suit seeking recovery of arrears of rent filed by petitioner/appellant, as such, are not barred by the provisions of Section 85 Waqf Act.

Appellate Authority has conveniently ignored the settled proposition of law that the tenant has no authority to challenge the status of landlord and overlooked the evidence on record which shows that revision petitioner-appellant was in possession of the demised premises being its allottee and has let out the same to the respondents. Khurshid Ahmed DW1 has stated that demised premises were earlier allotted to one Ishwar Singh and then to Shakuntla wife of Ishwar Singh w.e.f. 01.12.1975 @ ₹37.50p per month. She did not pay the settled amount and was called to Ambala office of Wakf Board. On verification, possession of Ashok Kumar Rishipal and Rakam Singh was found at the spot. The bills of electricity placed on file as Ex.PW3/1 to Ex.PW3/18 show that electric connection in the demised premises is in the name of Shakuntla and she is receiving bills regularly. Even Wakf Board has issued notice to petitioner-appellant that she has let out the premises to other persons without permission of the

Board. Copy of notice dated 22.06.1985 is Ex.R1. Vide letter dated 06.05.1995, she was called to the office of Wakf Board at Ambala Cantt in connection with negotiation regarding rent etc. These letters show that even the Wakf Board has been recognising the lease of the demised premises in favour of petitioner-appellant Shakuntla. The above arguments and the testimony of the witnesses examined in this case show that respondents were put in possession of the demised premises by the revision petitioner and they are liable to pay the rent to their landlord. The bar of jurisdiction is not attracted in this case as the matter in issue is between landlord and tenant and not with the Wakf Board. The observation of learned Rent Controller that the allotment of demised premises in favour of Shakuntla Kadan, supply of electricity by her to the respondents, payment of house tax of the demised premises by her are suggestive of relationship of landlord and tenant between the parties are based on proper appreciation of evidence on record. Kirpal Singh PW9 has stated that tenancy of respondent was created through him and he has deposed about terms and conditions of the tenancy. PW7 and PW8 have stated that they have been collecting rent from the respondents for and on behalf of landlord. Learned Rent Controller has also taken note of the fact that respondents have not come up with any plea as to how, they came in possession of the demised premises. Entry in the assessment register for the year 1979-80 show that demised premises was earlier in possession of Shakuntla Kadan and later on respondents were recorded in possession and the monthly rent paid by them is also mentioned against their name in relevant column.

Learned Rent Controller on the appraisal of evidence has

recorded detailed findings in para 17 onwards (reproduced above) while concluding that the relationship of landlord and tenant between the parties is duly proved. Learned Appellate Authority has set aside the findings recorded above on the ground of non-compliance of provisions of Section 56 and 90 of Waqf Act which as discussed above, are not attracted to the facts of the present case.

As a sequel of my above discussion, I am of the considered opinion that order passed by the Appellate Authority on the issue of relationship of landlord and tenant is perverse and not sustainable, as such, is set aside and that of the Rent Controller is restored.

As the respondents have not tendered the rent, the Rent Controller has rightly ordered their ejectment from the demised premises. Consequently, the judgment and decree passed in the civil suit filed by Shakuntla Kadan claiming arrears of rent is also upheld and the judgment of the first Appellate court is set aside. Consequently, revision petitions bearing CR Nos.2977 of 2009, 2978 of 2009, 2979 of 2009 and regular second appeals bearing RSA Nos.2578 of 2009, 2579 of 2009 and 3038 of 2009 are allowed.

April 04, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***