

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

RSA No.825 of 2013 (O&M)
Date of decision : 07.12.2018

Bhajan Singh and others

...Appellants

Versus

Punjab Wakf Board and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. R.K. Chhibbar, Sr. Advocate with
Mr. Ateevraj Sandhu, Advocate and
Mr. Shikhar Sarin, Advocate for the appellants.

Mr. G.N. Malik, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court granting a decree for possession in favour of Punjab Waqf Board while reversing the judgment and decree passed by the trial Court.

There is no dispute that the property in dispute is owned by Punjab Waqf Board. Although, the plaintiff-Punjab Waqf Board had claimed that the defendants had taken unauthorized possession and, therefore, they are encroachers, however, both the Courts have found that the defendants were inducted into possession as a lessee. However, their

lease has not been renewed. The First Appellate Court has further found that as per the Notification issued by the Government of Punjab dated 19.05.1979, the provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the Act of 1949”) are not applicable to the tenants under the Punjab Waqf Board. This aspect is also not being disputed by the learned Senior counsel who has appeared for the appellants. In other words, the lessee under the Punjab Waqf Board have no protection under Act of 1949.

Learned Senior Counsel appearing on behalf of the appellants has submitted that the plaintiff having come to the Court with factually incorrect assertions, therefore, suit should have been dismissed outrightly. He has relied upon a judgment passed by Hon'ble the Supreme Court in the case of **S.P. Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs and others, (1994) 1 SCC 1**. He has further submitted that once the tenant has been permitted to raise permanent construction over the land leased, therefore, the lease has become perpetual and no suit for possession was maintainable. He has further submitted that before filing the suit, no notice has been issued terminating the lease and, therefore, the suit is not maintainable. In this regard, he has referred to the provisions of Sections 105, 106, 116 of the Transfer of Property Act, 1882.

On the other hand, learned counsel for the respondent-Waqf Board has submitted that as per the lease, it is apparent that the lease was given only for 11 months and Section 56 of the Waqf Act, 1955 puts a restriction on the power of the Waqf Board to lease out the property for a longer period. He further submitted that admittedly the lease has not been

renewed and, therefore, the defendants-appellants have no right to stay on the property. He further submitted that no doubt, the plaintiff-Waqf Board had come with the assertions that the defendants have encroached upon whereas it has been found that the property was in fact leased, however, the suit filed by the Waqf Board which has been constituted under the Waqf Act for better administration of waqf property should not be dismissed, to which it is entitled to, for this omission. He further submitted that the provisions of Sections 105 and 106 of the Transfer of Property Act have not been extended to the State of Punjab and hence, not applicable. In fact, the provisions of Chapter V of the Act have not been extended. Hence, he submitted that the notice terminating the tenancy was not necessary. He further drew the attention of the Court to the written statement filed by the defendants wherein no objection in this regard has been taken. He further submitted that the suit is pending for the last 15 years and the notice of the plaint is sufficient notice to the defendants.

This Court has carefully gone through the judgment passed by Hon'ble the Supreme Court in the case of S.P. Chengalvaraya Naidu (Dead) by LRs (Supra). The aforesaid judgment, in substance, lays down that if the judgment has been obtained by playing fraud with the Court, the Court can treat the same as nullity and validity thereof can be gone into even in collateral proceedings. While discussing this aspect, the Court no doubt has observed that a litigant who approaches the Court with unclean hands can be thrown out, however, such observations made by Hon'ble the Supreme Court cannot be considered to be ratio decidendi particularly when the Court was examining the effect of the judgment/order obtained by a party by

playing fraud with the Court. Still further, the Waqf Board has been constituted in order to manage the properties which are waqfs. In such circumstances, the mere wrong assertions made in the plaint cannot be used to decline the relief to the plaintiff.

As regards second argument that the defendants have raised some permanent construction, it may be noticed that as per the evidence which has come on record, a saw mill has been installed. As per the lease deed which is styled as an allotment order, the property has been leased out for the business purposes. The defendants have not led any evidence to prove that such building was constructed after seeking permission from the Waqf Board. In such circumstances, the lessee, whose lease has expired cannot claim that he is entitled to remain in possession for all times to come. The defendants would be entitled to remove their structure and machinery.

Next argument of the learned counsel is with reference to no notice having been sent before filing the suit terminating the lease deed. It may be noted that as per the Waqf Act, 1995 on expiry of lease period, the tenancy/lease comes to an end and a person become encroacher. Section 3 (ee) is extracted as under:-

“encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutaqalli or the Board.”

On the reading of the aforesaid, it is apparent that the defendants became encroacher as they have not led any evidence to prove

that the lease which was granted to them initially for a period of 11 months is being renewed regularly. Once the defendants are encroachers, no prior notice before filing of the suit is required. Still further, the defendants did not take such objection in their written statement. Now, the defendants cannot be permitted to take up this plea particularly when no issue on this aspect of the matter was framed.

In any case, the present suit is pending for the last 15 years having been instituted in the year 2003, the defendants had sufficient notice of the stand taken by the plaintiff. Service of the notice of the plaint, is found to be sufficient notice.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

07.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No