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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 3rd May, 2018

+ CM(M) 250/2015

AKBAR ALI (DECEASED) THRU. LRS. Petitioner

**Through: Mr. Som Dutta Sharma, Advocate
with Mr. Gaurav Bharadwaj, Adv.**

versus

DELHI WAKF BOARD & ANR Respondents

**Through: Mr. Wajeeh Shafiq, Standing Counsel
for Delhi Waqf Board with
Mr. Dhairay Kapoor, Adv. for R-1.
Mr. Zahid Hanief, Adv. for
Mr. Naushad Ahmed Khan, ASC for
GNCTD/R-2.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner (since deceased) approached this court by the present petition invoking Article 227 of the Constitution of India to bring a challenge to the order dated 26.09.2014 passed by the additional district judge (ADJ)-02, New Delhi, presiding over Delhi Wakf Tribunal whereby his application under Section 5 of the Limitation Act, 1963 and petition under Section 83(2) of the Wakf Act, 1995 presented on 01.02.2013 were dismissed. The dispute relates to premises described as T-18, Ward No.8, Shamsi Talab, near Lal Masjid, Mehrauli, New Delhi, statedly forming part of Khasra No.1151/3, Lal Dora, Old Abadi of Village Mehrauli. The petitioner

would describe it to be his residence for over 42 years (as the time of filing of the petition at hand), this preceded by its occupation for residence by his father it being “*ancestral in nature*”. The first respondent (Delhi Wakf Board), on the other hand, claims the subject premises to be a wakf property.

2. As indicated above, the original petitioner Akbar Ali has died on 04.07.2016 and the petition is prosecuted by his legal representatives who stand substituted in his place.

3. It is necessary to trace *albeit* briefly, the history of the litigation, as may be culled out from the pleadings and documents filed by the petitioner on record.

4. It is the case of the petitioner that Delhi Development Authority (DDA) had at one point of time claimed to be the owner of the lands on which the subject-premises is situate and had ordered demolition issuing some communication to such effect on 15.02.2001 whereby the eviction, amongst others, of the petitioner was directed. The petitioner, along with other similarly placed persons, is stated to have challenged the said action of DDA under Delhi Development Act, 1957 by statutory appeal (No.74/80/MCD/2001) before the appellate tribunal, MCD (“AT-MCD”). It is stated that the AT-MCD, by order dated 25.08.2003, had granted interim protection by ordering *status quo* and had asked the petitioner and other appellants to approach the competent authority, *i.e.* Lieutenant Governor (LG) of Delhi. Reference is made to another appeal (No.94/04) filed before AT-MCD which statedly granted the order of maintenance of *status quo* on

20.02.2004. It has further been the case of the petitioner that DDA had preferred an appeal (No.139/2004) before the LG of Delhi which appeal was dismissed and the matter remanded back by order dated 28.09.2005 with direction to DDA to issue fresh notices and give opportunity for objections to be filed.

5. It is petitioner's own case that on 06.07.2005, the Chief Executive Officer of Delhi Wakf Board (the first respondent) issued an order in exercise of his power under Section 54(1) of the Wakf Act, 1995 regarding the status of the subject premises being a wakf property and the petitioner having unauthorizedly occupied a part of the same, he being an encroacher. The Chief Executive Officer of Delhi Wakf Board directed the petitioner, by the said order dated 06.07.2005, to vacate the subject premises within fifteen days of the service clarifying that in the event of refusal or failure to do so, he would be liable to be evicted as per the provisions of Section 54 of Wakf Act, 1995.

6. It is further an undisputed case of the petitioner that the order dated 06.07.2005 of the Chief Executive Officer of Delhi Wakf Board had been made over to the Sub-Divisional Magistrate (SDM) of Hauz Khas area, within the jurisdiction of which the subject-premises falls for further action and the said SDM, by order dated 19.08.2005, had noted failure on the part of the petitioner to comply with the order of the Chief Executive Officer within the stipulated period. The SDM, in exercise of his jurisdiction under Section 55 of Wakf Act, 1995, directed the petitioner to remove the encroachment and vacate the

subject-premises within fifteen days of the service of the said order and in case of failure be liable to be evicted, if need be *“by the use of such force as to be necessary”*.

7. It appears, in the wake of the afore mentioned orders of the Chief Executive Officer of the Delhi Wakf Board and of SDM, the petitioner instituted a civil suit (OS No.183/2005) in the court of civil judge, Delhi. The said suit was held to be not maintainable in view of the bar to the jurisdiction of the civil court under Section 85 of the Wakf Act, 1995. The plaint was rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC). The order was not challenged.

8. The petitioner, thereafter, filed another suit (Case No.9/2005) on 19.09.2005 seeking reliefs in the nature of permanent/mandatory injunction to restrain Delhi Wakf Board and the SDM, Hauz Khas from dispossessing him from the subject-premises *“till the disposal of right and entitlement in the property”*. The said case was presented before the Delhi Wakf Tribunal, not by the petitioner but in his name through one Nazir Ahmed son of Basir Khan, claiming himself to be his attorney. The Wakf Tribunal noted in the proceedings recorded on 02.09.2006 that no special or general power of attorney executed by the petitioner had been submitted and the person claiming to be the attorney, present in the court, had submitted that no attorney had actually been executed in his favour till the said date. The Wakf Tribunal, thus, dismissed the suit of the petitioner, holding it to be not maintainable, by order dated 02.09.2006.

9. The petitioner later moved an application for review before the tribunal, *inter alia*, stating that the case had been filed with his consent and that subsequent to its dismissal he had executed a special power of attorney in favour of the said attorney Nazir Ahmed. The Wakf Tribunal, however, was not impressed and dismissed the review application by order dated 17.04.2007, observing that the case had not been “*validly instituted*”.

10. The above orders of the Wakf Tribunal were challenged before this court by CM(M) No.1116/2007. A learned single judge disposed of the said petition as “*not pressed*” by order dated 04.01.2008, recording the submissions of the counsel for the petitioner for leave to be granted to him to withdraw the said petition for the reason he (the petitioner) intended to file another application before the learned trial judge, placing on record the fact of execution of the original power of attorney under authorization whereof the case had been filed and pointing out that the same had been misplaced and on proof of same being misplaced further power of attorney to be brought on record rectifying the act of filing the case.

11. Concededly, the petitioner did not approach the Wakf Tribunal nor filed any such application as had been indicated in the proceedings recorded on 04.01.2008 in CM(M) No.1116/2007. In fact, he did not pursue the matter thereafter till he approached the Delhi Wakf Tribunal again on 31.01.2013 by a fresh petition under Section 83(2) of the Wakf Act, 1995 along with application under Section 5 of the

Limitation Act, 1963 for condonation of delay, in which context the impugned order was passed.

12. It may be added here that by the aforesaid fresh petition challenge was brought to the eviction order dated 06.07.2005 (wrongly referred to as order dated 08.07.2005) of Chief Executive Officer of the Wakf Board and order dated 19.08.2005 of the SDM, the prayer being for the said orders to be “*set aside*”.

13. It is noted that the presiding officer of the Wakf Tribunal declined to entertain the fresh petition under Section 83(2) of the Wakf Act, 1995 holding that the same had been filed belatedly, and observing that the application under Section 5 of the Limitation Act, 1963 would not lie.

14. Having heard the learned counsel on both sides and having gone through the record, this court finds no merit in the petition at hand.

15. It is not disputed that in terms of the statutory provisions contained in the Wakf Act, 1995 as in force at the relevant point of time (*i.e.*, prior to the amendment by Act 27 of 2013), the Chief Executive Officer of the Delhi Wakf Board had the jurisdiction and power to pass an order of eviction in the nature of the one issued by him on 06.07.2005 in the present case. It is also fairly conceded by the learned counsel for the petitioner that such an order issued by the Chief Executive Officer of the Delhi Wakf Board required to be executed through the SDM who had the necessary jurisdiction under Section 55 of the Wakf Act, 1995 to issue an order in the nature passed on 19.08.2005 and in case of failure of compliance with the

directions in the said order, to enforce eviction. It is further fairly conceded that such an order of the Chief Executive Officer of Delhi Wakf Board, as passed under Section 54(3), could be challenged by a suit by the person thereby aggrieved so as to “*establish*” that he had “*right, title or interest*” in the subject-premises in terms of Section 54(4), as it is stood prior to the amendment of 2013, the proviso to the said clause inhibiting such suit to be instituted by a person who had been inducted as a lessee, licensee or mortgagee by the *mutawalli* of the Wakf or by any person authorized by such *mutawalli*.

16. The suit (09/2005) which had been instituted by the petitioner before the Wakf Tribunal, though styled as a suit for injunction, was essentially the suit in the nature of appropriate remedy conceived by the then provision contained in Section 54(4) i.e. prior to its amendment of 2013. The petitioner, however, had failed to give due authorization to the person through whom he wanted to prosecute the said remedy describing him as his attorney. He took the liberty, as noted above, to make the amends, by proceedings recorded on 04.01.2008 in CM(M) 1116/2007, but failed to follow it up by any application before the tribunal. Thus, the proceedings in the aforesaid civil suit brought before the Delhi Wakf Tribunal in July, 2005 questioning the validity of action of Chief Executive Officer, and of the SDM, through orders dated 06.07.2005 and 19.08.2005 came to an end.

17. The petition under Section 83(2) of the Wakf Act, 1995 was filed on 01.02.2013, brought in eight years after the impugned orders

were passed by the Chief Executive Officer of Delhi Wakf Board and SDM respectively. The relief claimed primarily was in the nature of declaration that the said orders dated 06.07.2005 and 19.08.2005 were bad in law. The petition was accompanied, as noted above, by application under Section 5 of the Limitation Act, 1963. The learned counsel for the petitioner fairly conceded at the hearing that said provision of law (Section 5 of the Limitation Act, 1963) would have no application to such proceedings, it neither being an appeal nor an application under Order XXI CPC. His argument, on the other hand, is that there is no limitation, prescribed for bringing a petition under Section 83 (2) of the Wakf Act, 1995. This argument is based on the submission that this legislation (Wakf Act, 1995) specifies the period of limitation, wherever so required and since there is no limitation indicated in the law, or the rules made thereunder, vis-à-vis an order under Section 54(3) or Section 55, a petition by a person aggrieved by the said order of the Chief Executive Officer or of the SDM may be instituted at any point of time.

18. This court having examined the above submissions of the counsel for the petitioner is not persuaded to accept it. The fact that there is no prescription as to the period of limitation with reference to the grievance respecting orders under Section 54(3), or Section 55, does not mean the general law of limitation would not apply. As pointed out, the expression "*application*" is defined by Section 2 of the Limitation Act, 1963 to include "*a petition*". Article 137 in the schedule appended to the Limitation Act, 1963 specifies the period of limitation of three years from the date the right to apply accrues in

case of any application for which no period of limitation is provided in the preceding entries in the said schedule. Thus, the petition under Section 83(2) of the Wakf Act, 1995 could not have been brought – this assuming it was the appropriate remedy, vis-à-vis an order under Section 54(3) passed prior to the amendment of the Wakf Act, 1995 in 2013, - eight years after the impugned orders were passed.

19. This, court, therefore, does not find any error or infirmity in the view taken by the court below.

20. The petition is dismissed.

R.K.GAUBA, J.

MAY 03, 2018

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