IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.12.2018

\+ **W.P.(C) 12377/2005 & CM Nos. 9109/2005, 9572/2005, 25066/2016**

KULJIT SINGH & ORS. ..... Petitioners

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondents

AND

\+ **W.P.(C) 3518/2011**

M.B. KHAN ..... Petitioner

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondents

\+ **W.P.(C) 6797/2008 & CM Nos. 13103/2008 & 25078/2016**

JOYCE BENJAMIN & ORS ..... Petitioners

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondents

AND

\+ **W.P.(C) 6905/2014 & CM Nos. 16279/2014 & 25065/2016**

SUBHASH CHANDRA KHURANA & ORS. ..... Petitioners

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioners	: Mr Rajiv Kumar Ghawana and Mr Puneet Sharma.
For the Respondents	: Mr Satyakam, ASC with Mr Mohit Kumar Bafna. Mr Naushad Ahmed Khan, ASC (Civil) with Mr Zahid Hanief.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioners are all occupants of residential quarters located in Tibbia College Compound, Karol Bagh, New Delhi. They have filed the present petitions, essentially, impugning the action of the respondent (Government of NCT of Delhi) in seeking to evict them from the residential premises occupied by them.

2. The petitioners in W.P. (C) 12377/2005 (15 in number) impugn a notice dated 26.07.2005 issued by respondent no.3 (Executive Officer/Registrar, Ayurvedic & Unani Tibbia College and its Allied Institutions) directing the petitioners and other occupants to immediately vacate the residential quarters in order that the same can be demolished. The petitioners have placed on record one such notice dated 26.07.2005 issued to the occupant of the residential quarter no. 28, Block-C-2.

3. The petitioners in W.P. (C) 6797/2005 (49 in number) impugn the notices issued by respondent no.2 in exercise of the powers under Delhi Tibbia College (Take Over) Rules, 2006 (hereafter 'the 2006 Rules') whereby they have been called upon to hand over the possession of the property in their possession and have further been cautioned that failure to do so would invite prosecution under Section 11 of the Tibbia College (Take Over) Act, 1997 (hereafter 'the 1997 Act').

4. The petitioner in W.P. (C) 3518/2011 impugns a notice dated 11.12.2010 issued by the Estate Officer, A & U Tibbia College, whereby he was advised to vacate the residential quarter allotted to him by the erstwhile Tibbia College Board and hand over the vacant possession to the concerned authorities. The said notice has been issued, *inter alia*, on the ground that the buildings inhabited by the petitioner are dangerous and unfit for human inhabitation. The petitioner has also been called upon to deposit a sum of ₹32,19,869/- as damage charges and water charges up to 31.12.2010.

5. The petitioners in W. P. (C) 6905/2014 (99 in number) impugn the action of the respondents in demolishing the toilets/latrines used by them and also challenge the proposed action to demolish the residential premises/quarters occupied by the petitioners therein. The petitioners claim that respondents have no right, title, control or authority in law in respect of the residential premises/quarters/flats possession and occupation of the petitioners.

6. The petitioners in all these petitions claim that they/their predecessors in interest have been in settled possession of the dwelling units occupied by them since past several decades and, therefore, cannot be evicted. The petitioners claim that the properties occupied by them do not vest with the Government of NCT of Delhi and, therefore, the Government of NCT of Delhi has no right to initiate any action in respect of the said dwelling units. The petitioners further claim that, by virtue of Section 366 of the Delhi Municipal Corporation Act, 1957, the jurisdiction to decide whether a building is dangerous rests with the concerned Municipal Corporation (in this case the North Municipal Corporation of Delhi). And, therefore, the petitioners cannot be called upon to vacate their residential units for the said reason by Government of NCT of Delhi.

Factual Background

7. In the year 1903, one Hakeem Mohammed Ajmal Khan established pharmaceutical institute known as 'Hindustani Dawakhana'. Subsequently, in the year 1911, he along with the others formed a society known as "Anjuman-i-Tibbia" which was registered under the Societies Registration Act, 1860. In the year 1915, the name of the said society was changed to "Board of Trustees of Ayurvedic and Unani Tibbia College" (hereafter 'the Society'). The main objects of the Society were as under:-

> "(a) to establish colleges for the purpose of imparting higher education in the Unani and Ayurvedic systems of medicine to the inhabitants of India;

(b) to improve the indigenous systems of medicine on scientific lines and of that purpose to establish one or more pharmaceutical institutes (dawakhana); and

(c) to have medical books complied and translated and to adopt means which might enhance the popularity of those systems and add to the information of the people in general on hygienic etc.

8. The Medical college named as Tibbia College was established by the Society. The said College was established over a piece of land measuring approximately 33.50 acres which was taken on lease by the Society from the Secretary of the State (for India). The Society, thereafter, constructed the building of the college, hostel, administrative buildings, etc.

9. Mr Hakeem Mohammed Ajmal Khan expired in the year 1927. Till the year 1948, the affairs of the Society were managed without any significant issues. However, thereafter, disputes arose between different factions of the members of the Society with respect of the control of the Board and College and also for possession of Hindustani Dawakhana. Several criminal as well as civil proceedings were initiated in different courts.

10. In the year 1952, the Delhi State Legislature enacted the Tibbia College Act, 1952 (hereafter referred to as 'the 1952 Act'). The said Act provided for the dissolution of the Society and the takeover of the entire management and control of the Ayurvedic and Unani Tibbia College. In terms of Section 3 (1) of the 1952 Act, the management

and control of the Tibbia College stood vested in a board referred to as the "Tibbia College Board" (the Board).

11. The validity of the 1952 Act was challenged before the Supreme Court on the ground that it was beyond the legislative competence of the Delhi State Legislature and was further violative of Article 14, 19 and 31 of the Constitution of India. The Supreme Court rejected the said challenge and, by a decision rendered in ***The Board of Trustees, Ayurvedic and Unani Tibia College Delhi v. The State of Delhi and Ors: 1962 SC 458,*** upheld the constitutional validity of 1952 Act.

12. Thereafter, in the year 1978-79, respondent no. 2 (Director of the Tibbia College) initiated proceedings to evict the occupants from the residential quarters under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Estate Officer passed an order for evicting the occupants. Aggrieved by the same, the occupants of the residential units in question, preferred an appeal before the Court of the Additional District Judge. The Court allowed the said appeals.

13. The Administrator, Ayurvedic and Unani Tibbia College filed writ petitions impugning the orders of the Ld. ADJ allowing the appeals preferred by the occupants.

14. In the year 1997, the Legislative Assembly of National Capital Territory of Delhi enacted the Delhi Tibbia College (Take Over) Act, 1997 (hereafter 'the 1997 Act'). The said Act came into force with

effect from 01.05.1998. In terms of Section 3 of the 1997 Act, the management of the Ayurvedic and Unani Tibbia College, Delhi and all allied units stood transferred and vested absolutely with the Government. Section 2 (e) of the 1997 Act defines the term 'Government' to mean the Lieutenant Governor of the National Capital Territory of Delhi. Thus, with the 1997 Act coming into force, the management of the Tibbia College vested with the Lieutenant Governor.

15. The validity of the 1997 Act was challenged before a Division Bench of this Court in ***Mahboob Alam Khan v Union of India & Ors.***: ***C.W. 5736/2002***, *inter alia*, on the ground that it violated Article 31 of the Constitution of India. The Division bench of this Court rejected the said challenge. The said petition was disposed of by a judgment dated 16.09.2002. The Division Bench of this Court held that the provisions of 1997 Act, for all intents and purport, would merely an extension of 1952 Act whereby the management of the college, which had vested with the Board in terms of the 1952 Act, now vested with the Government. It is relevant to note that the petitioner before the Division Bench in C.W. 5736/2002 was a great grand-son of Hakeem Mohammed Ajmal Khan who was the founder of the Charitable Trust. The Division Bench of this Court had held that he had no *locus standi* to maintain the present petition, as the properties of the Tibbia College could be utilized only for the purposes for which the Society was initially constituted and for

purposes analogous thereto. The Court held that in any event, the petitioner had no interest in the properties belonging to the Society.

16. The batch of writ petitions [W.P.(C) 3388/1982 captioned ***Admn, Ayurvedic and Unani Tibia College v. HKS Malik and Ors***. and other connected matters] were dismissed by this Court by a common judgement dated 30.09.2003. In terms of the said decision, a Coordinate bench of this Court quashed the entire proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Court held that the property of the Tibbia College did not belong to Government of NCT of Delhi.

17. In July 2005, the petitioners made a representation to respondent no.2 requesting to undertake the repair work of the residential premises. The said request of the petitioners was denied. Thereafter, respondent no.3 issued eviction notice dated 26.07.2005 to the petitioners to vacate the quarters as the same had been declared dangerous and unfit for human inhabitation.

18. Aggrieved by the impugned notices, the petitioners filed a writ petition (being W.P.(C) 12377-91/2005) before this Court. This Court, by an order dated 29.07.2005, passed an interim order restraining the respondents from dispossessing the residents from the said Block and also dispossessing the premises in question.

19. Thereafter, respondent no.1 issued a notification dated 13.07.2006 framing Delhi Tibbia College (Take Over) Rules, 2006 (hereafter 'the 2006 Rules') in respect of the properties in question. In

terms of the 2006 Rules, the Director of Ayurvedic & Unani Tibbia College, *inter alia*, is given power to disclose the details of the properties in question so that the occupants get a sixty days clear notice to vacate the possession and handover the said properties to the Director of respondent no.2 or any other officer authorised by him.

20. Aggrieved, the occupants filed a writ petition (being W.P.(C) 6797/2008) impugning the aforesaid notification. By an order dated 18.09.2008, this Court granted interim protection to the petitioners directing the respondents not to take any coercive action against the petitioners.

21. Thereafter, respondent no.2 (Director, Ayurvedic and Unani Tibia College) further issued an eviction notice dated 11.12.2010 to the petitioners in W.P.(C) 3518/2011, calling upon them to vacate the premises within twenty days. Consequently, the said petitioners preferred the aforesaid writ petition before this Court, impugning the eviction notice dated 11.12.2010.

22. On 22.09.2014, the respondents demolished the toilets and latrines constructed by the some of the occupants at the back of their residential premises allotted to them. According to the said occupants, the said demolition action was taken by the respondents on oral instructions. Aggrieved by the aforesaid, the said occupants preferred a writ petition being W.P.(C) 6905/2014 before this Court.

Reasoning and Discussion

23. The residential quarters occupied by the petitioners are, plainly, included as part of the properties of Tibbia College. The petitioners contend that the properties in question occupied by them do not belong to the Govt. of NCT of Delhi and therefore, the respondents have not authority to initiate proceedings for eviction of the petitioners. Whilst, there is a controversy in this regard, it cannot be disputed that the properties in question are included as a part of the properties of Tibbia College.

24. Indisputably, these properties were deemed to be vested with the Governing body of the Society prior to the 1952 Act coming into force. As explained by the Supreme Court in ***The Board of Trustees, Ayurvedic and Unani Tibia College Delhi v. The State of Delhi and Ors.*** (*supra*), the said body was not a Corporation.

25. By virtue of Section 9 of the 1952 Act, the Society was dissolved. Section 9 of the 1952 Act is set out below:

> "**Section 9 : Dissolution and transfer of property of the Board of Trustees of the Ayurvedic and Unani Tibbia College, Delhi**
>
> (1) As from the appointed day, the Board of Trustees of the Ayurvedic and Unani Tibbi College, Delhi, a society registered under the provisions of the Registration of Societies Act, 1860 (21 of 1860), on the 12th day of August, 1911, by the name Anjuman-i-Tibbia whose purpose, constitution and name was amended on 25th November, 1915, shall stand dissolved and all property, movable and immovable, and all rights, powers and privileges of the said society which immediately before the appointed day

belonged to or were vested in the said society shall vest in the Board and shall be applied for the purposes for which the Board is constituted.

(2) As from the appointed day all debts and liabilities of the said society shall stand transferred and attached to the Board and thereafter be discharged and satisfied by the Board.

(3) Any will deed or other document whether made or executed before or after the commencement of this Act, which contains any bequests, gifts, or trust in favour of the said society shall, as from the appointed day, be construed as if the Board were therein named instead of the said Society."

It is relevant to state that in terms of Section 2(a) of the 1952 Act, the term 'Board' was defined to mean the 'Tibbia College Board'.

26. In terms of Section 3 of the 1952 Act, the entire Management of the Ayurvedic and Unani Tibbia College vested with the Board (Tibbia College Board). By virtue of Section 3(2) of the 1952 Act, Tibbia College Board was a body corporate having perpetual succession and a common seal. The said Board could sue and be sued in its own name.

27. Section 3 of the 1952 Act is set out below:

"Section 3 : Incorporation

(1) With effect from such date as the Chief Commissioner may, by notification in the Official Gazette, appoint hereinafter referred to in this Act as "the appointed day" the entire management and control of the Ayurvedic and Unani Tibbia College, Delhi,

now vested in the Board of Trustees of the Ayurvedic and Unani Tibbi College, Delhi, shall be vested in a Board to be called "the Tibbia College Board".

(2) The Board shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued."

28. Section 7 of the 1952 enacted the powers and duties of the Board. Section 7 of the 1952 Act is set out below:-

"**Section 7 : Powers of the Board**

The Board shall exercise the following powers and perform the following duties, namely -

(a) to maintain the Ayurvedic and Unani Tibbia College Delhi, with a view to impart higher education to menand women in the Ayurvedic and Unani Systems of Medicine and to promote and conduct research in thesame;

(b) to maintain and improve the Hindustani DawaKhana and Rasayanshala;

(c) To provide for studies to enable incorporation, where necessary, of the principle of the modern system of medicine and surgery in order to help the scheme of studies for the Ayurvedic and Unani Systems according to the exigencies of time;

(d) to help produce and publish books in order to facilitate the carrying out of the objects specified in the clauses (a) to (c);

(e) to receive gifts, donations or benefactions from Government and to receive bequests, donations, and transfer of movable immovable properties from trustees, donors or transferors, as the case may be;

(f) to deal with any property belonging to or vested in the Board in such manner as the Board may deem fit for advancing the objects specified in clauses (a) to (d);

(g) to do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects specified in clauses (a) to (d)."

29. A plain reading of the provisions of 1952 Act clearly indicate that the properties of the erstwhile Board of Trustees vested with the Board of Tibbia College as constituted under the provisions of the 1952 Act. The contention that the properties in question continued to belong with the Society and only the management of the same was with the Board of Tibbia College constituted in terms of Section 4 of the 1952 Act, is unmerited.

30. It would be relevant to refer to the decision of the Constitution Bench of the Supreme Court in ***The Board of Trustees, Ayurvedic and Unani Tibia College Delhi v. The State of Delhi and Ors.*** (*supra*). In that case, the petitioner had challenged the constitutional

validity of the 1952 Act. It was their case that the 1952 Act is beyond the legislative competence of the Legislative Assembly of NCT of Delhi. The said contention rested on the premise that the legislative power to enact the 1952 Act could not be traced to Entry 32 of List II of the Seventh Schedule of the Constitution of India and the said Entry excluded the Co-operative Societies in List I of the Seventh Schedule.

31. It would be relevant to refer to Entry 32 of List II and Entries 43 and 44 of List I of the Seventh Schedule for understanding the aforesaid contention. The said entries are set out below:-

> "32. In corporation, regulation and winding up of corporations, other than those specified in List I. and universities, unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
>
> xxxx xxxx xxxx
>
> 43. Incorporation, regulation and winding up of corporations, including banking, insurance and financial corporations but not including co-operative societies.
>
> 44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities."

32. Justice S.K. Das, speaking for the majority, rejected the aforesaid contention. In his opinion, the Society was not a corporation entity and, therefore, legislation in that regard was not excluded from the purview of Entry 32 of List II.

33. The Court held as under:-

"….A society registered under the Societies Registration Act may have characteristics which are analogous to some of the characteristics of a corporation; yet it is not incorporated and remains an unincorporated society. As soon as it is held that it is an unincorporated society, it must come under the second Part of entry 32 of List II."

34. The 1952 Act vested the entire management and control of the Ayurvedic & Unani Tibbia College with the 'Tibbia College Board'. In terms of Section 3(2) of the 1952 Act, the Tibbia College Board was a body corporate having perpetual succession. The Court held that it was "a corporation in the full sense of the term"; nonetheless, the 1952 Act will fall within the scope of Entry 32 of List II because the 1952 Act had confined the powers and duties of the Board of Tibbia College to the State of Delhi Only. Justice S.K. Das summarized the conclusion in this regard in the following words:-

"(1) On registration under the Societies Registration Act, the old Board did not become a corporation is the sense of being incorporated within the meaning entry 44 of List I; it remained and hoodwinked to be an unincorporated society though under the several provisions of the Societies Registration Act, 1860 it had certain privileges, some of the privileges being analogous to those of corporation;

(2) the impugned legislation while creating the new Board has given it a corporate statue, but has confined its powers and duties to the college, pharmaceutical institute and laboratory in Delhi and while giving the new Board rights, powers and privileges of the old Board has limited them to such purposes for which the new Board is constituted;

(3) the impugned legislation therefore, falls under entry 32 of List II; so far as the dissolution of the old Board is concerned, under the second part of the entry and so far as incorporation of the new Board is concerned, under its first part.

35. Justice Mudholkar penned a separate concurring opinion. According to him, the Delhi State Legislative Assembly had the legislative competence to enact the 1952 Act as the pith and substance of the legislation was covered under the subject, "Trust and Trustees" and "Charities and Charitable institutions". It, thus, fell within the scope of Entries 10 and 28 of List III of the Seventh Schedule. The said Entries are reproduced below:-

"Entry 10 : Trust and Trustees.

Entry 28: "Charities and charitable institutions, charitable and religious endowments and religious legislatures".

36. The petitioners therein had also challenged the validity of 1952 Act as being violative of Article 31 of the Constitution of India. In this regard, the Supreme Court held as under:-

"38. As to Article 31 of the Constitution it seems clear to us that cl. (2) of the said Article as it stood at the relevant time has no application. The impugned legislation does not relate to nor does it provide for, compulsory acquisition of property for a public purpose. The impugned legislation provided for the transfer of the management of the Ayurvedic and Unani Tibbi College, Delhi, from the old Board to a new Board and for that purpose the old Board was dissolved and a new Board was created with certain rights, powers and privileges to be applied for the exercise of powers and performance of duties as laid down in 5. 7 of the Act. Such legislation does not fall under Article 31(2) and cannot be judged by the tests laid down there in."

37. It is apparent from the above that the Court held that the 1952 Act provided for the transfer of Management of the Tibbia College from the old Board (the Society) to the new Board (Board of the Tibbia College). It did not amount to acquisition of the property for the public purpose. However, a plain reading of the judgment does indicates that the court recognized that the property of the Tibbia College, which vested with the Society (an unincorporated entity) prior to the 1952 Act coming into force, now vested with the Board of Tibbia College constituted in terms of the 1952 Act. The Board of Tibbia College replaced the Society for all intents and purposes. Clearly, this did not amount of any acquisition of the property for public purpose but a substitution of Society with an incorporated Board for holding and managing the affairs of the College and the properties.

38. In view of the above, the contention that the Society was the owner of the property and only the management vested with the Board of Tibbia College, is unmerited. As explained, the Society was an association of persons and the properties of Tibbia College were held by the unincorporated association although registered under the Societies Registration Act, 1860.

39. The Society stood dissolved by virtue of Section 9 of the 1952 Act, and the question of the properties continuing to vest with the Society does not arise.

40. The 1997 Act further provided for the transfer of the Management of College to the 'Government' (which expression, by virtue of Section 2(e) of the 1997 Act, is defined to mean the Lt. Governor of the National Capital Territory of Delhi).

41. In ***Mahboob Alam Khan v Union of India &Ors.***(*supra*), the Division Bench of this Court had explained that the 1997 Act was an extension of the 1952 Act inasmuch as the Management of the College, that vested with the Board of the Tibia College by virtue of the 1952 Act, now – by virtue of the 1997 Act – vested with the Government.

42. Section 3 of the 1997 Act reads as under:-

> "**3. Ownership of the College to vest in Government**. – On and from the appointed day, the Management of the College shall stand transferred to, and shall vest absolutely in the Government."

43. Section 4 of the 1997 Act expressly provided that the expression "College" referred to in Section 3 of the Act would include all assets, rights, leasehold power, authorities and privileges and all immovable and movable property. Section 4 of the 1997 Act is relevant and is set out below:-

> **"4.General effect of vesting.–** (1) The College, referred to in Section 3 shall be deemed to include all assets, rights, freeholds, powers, authorities and privileges and all property movable and immovable, including lands, buildings, stores instruments, equipment, cash balances, cash on hand, .. funds, investments and book debts and all

other rights and interests in or arising out of such property as are immediately before the enforcement of this Act, in the ownership, possession, power or control of the Board of the Tibbia College, whether within or outside the National Capital Territory of Delhi and all books or account, registers and all other documents of whatever nature relating thereto.

(2) All property as aforesaid which has vested in the Government under Section 3 shall, by force or such vesting, be free and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances, affecting it and any attachment, injunction or decree or order of any Court restricting the use of such property in any manner shall be deemed to have been withdrawn."

(3) Ever liability of the Board in respect of any period prior to the appointed day shall be the liability of and shall be enforceable against the Government.

(4) No liability of the Board for the contravention, before the appointed day, of any provision of the law for the time being in force shall be enforceable against the Government.

(5) Pending legal case— If, on the appointed day, any suit, appeal or other proceedings, of whatever nature, in relation to any property which has vested in the Government under Section 3, instituted or preferred by or against the Board is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the taking over of the management of College or of any anything contained in this Act but the suit, appeal or other proceeding may be pursued, prosecuted or enforced by or against the Government.

(6) The Government may issue such directions (including directions as to initiating, defending or continuing any legal proceedings before any Court, Tribunal or other authority) to the Head of the College by whatever designation he may be called, as to powers of the Board or the College, and duties as the Government may deem desirable and fit."

44. Much reliance was placed by the petitioners on the decision of a Coordinate Bench of this Court rendered in a batch of 22 petitions, ***Admn. Ayurvedic and Unani Tibbia College v. H.K.S. Malik and Ors.: W.P.(C) 3388/1982 rendered on 30.09.2003***, in support of their contention that the property occupied by them did not vest with the Government and continued to vest with the Society.

45. The said decision must be read in the context in which it was rendered. The question that fell for consideration of this Court in that case was whether the premises situated in the Tibbia College compound, which were occupied by the petitioners, were public premises within the meaning of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, during the transient period when the Board of Tibbia College was superseded. The Court held that provisions of Section 13 of the 1952 Act only provided for the temporary transfer of Management of the Ayurvedic & Unani Tibbia College. The was superseded by the Lt. Governor by a notification dated 28.04.1977 and the Management vested with the Administrator. The Court had held that the same did not amount to the Government becoming an owner of the properties in question during that period of supervision.

46. Clause (c) of Section 13(2) of the 1952 Act expressly provided that "*all properties vested in the Board shall, during the period of supersession, vest in the Central Government*." The Court held that the word 'vest', as used in Section 13(2)(c) of the 1952 Act, was not

used in a plenary sense. The Court observed that the word 'vest' is a word of variable import and must be construed with reference to the context in which it is used. Since the power to supersede the Board was a temporary and a transitory provision, the Court held that the word 'vest' could not be construed as conveyancing/transferring the property from the Board of Tibbia College to the Central Government during the period of supersession. A plain reading of the judgment clearly indicates that it was not the Court's view that the property did not vest with the Board of 'Tibbia College'. On the contrary, the Court had explained that the word 'vest' as used in Section 9(1) of the 1952 Act was used in a plenary sense and "all property, movable and immovable", which belonged to the Society, vested with the Board of Tibbia College. The Court observed that the word 'vest' as used in Section 9(1) of the 1952 Act and as referred to Section 13(2)(c) of the Act were used differently.

47. The aforesaid is clear from the following extracts of the said judgment:

> "12. In this context, reverting to the facts of the present writ petitions, it is to be seen as to what is "vested" in the Board under the said Act and what vests in the Central Government during the period of supersession of the Board. Section 9 of the said Act of 1952 deals with the dissolution of the Board of Trustees of the Ayurvedic and Unani Tibbia College, Delhi and the transfer of its property to the Board under the said Act. Section 9 is as under:-

"9. (1) As from the appointed day, the Board of Trustees of the Ayurvedic and Unani Tibbi College, Delhi, a society registered under the provisions of the Registration of Societies Act, 1860, on the 12th day of August, 1911, by the name Anjumani-Tibbia whose purpose, constitution and name was amended on 25th November, 1915, shall stand dissolved and all property, movable and immovable, and all rights, powers and privileges of the said society which immediately before the appointed day belonged to or were vested in the said society shall vest in the Board and shall be applied for the purposes for which the Board is constituted.

(2) As from the appointed day all debts and liabilities of the said society shall stand transferred and attached to the Board and thereafter be discharged and satisfied by the Board.

(3) Any will, deed or other document whether made or executed before or after the commencement of this Act, which contains any bequests, gifts, or trust in favor, of the said society shall, as from the appointed day, be construed as if the Board were therein named instead of the said society."

The idiom used in section 9 (1) is of great importance. It reads - "all property, movable and immovable, and all rights, powers and privileges of the said society which immediately before the appointed day belonged to or were vested in the said society shall vest in the Board". Both expressions "belonged to" and "vested in" are used in the same sentence but they have different meaning and relate to different "things". The words "belonged to" have reference to the expression "all property, movable and immovable". On the other hand, "vested in" bears relation to "all rights, powers and privileges". So, section 9 (1) paraphrased could very well read as under:-

> ".......and all property, movable and immovable which immediately before the appointed day belonged to the said society, and all rights, powers and privileges of the said society which immediately before the appointed day were vested in the said society shall vest in the Board and shall be applied for the purposes for which the Board is constituted."

This is the meaning to be ascribed to the expressions "belonged to" and "vested in" used in the said section 9 (1). The word "vest", however, has been used in the plenary sense. Thus, what ultimately vests in the Board are (a) "all property, movable and immovable" which belonged to the Society, and (b) "all rights, powers and privileges" vested in the Society. Clearly, in this section itself, the words "vested in" and "vest" have been used differently.

It is, Therefore, to be examined as to in which sense or senses the expressions "vested in the Board" and "vest in the central Government" have been used in section 13(2)(c) of the said Act of 1952. But, before that is done, it would be apposite to refer to the remaining decisions of the Supreme Court which deal with the meaning of the word "vest".

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> 17. Reverting to section 13 (2)(c) of the 1952 Act, it is to be examined as to in which sense or senses the words "vested" and "vest" have been used in the phrase - "all property vested in the Board shall, during the period of supersession, vest in the central government". To my mind both these words have been used with reference to possession and that too for the limited period of supersession. They are not used in the plenary sense. What alters during the period of supersession is only the management, control and possession over the properties. During supersession the central government does not "acquire" the title to the properties belonging to the Board. If that were to be so then the Central Government would be permitted to do something indirectly which it could not do directly."

48. Thus, the question whether the properties vested with the Board of Tibbia College, as constituted under the 1952 Act, is no longer *res integra.*

49. By virtue of the 1997 Act, the Board of Tibbia College for all intents and purport, was substituted by the Government.

50. In ***Admn. Ayurvedic and Unani Tibbia College v. H.K.S. Malik and Ors.***(*supra*), the Court had observed that "*neither the 1952 Act nor the 1997 Act transferred any ownership of the properties of the Board to the Central Government.*" These observations must be understood in the context of the controversy being considered by the

Court. The question before the Court was whether the property belonged to the Government of NCT of Delhi by virtue of Section 13(2)(c) of the 1952 Act. The Court held that on supersession of the Board of Tibbia College, the properties did not vest absolutely with the Administrator but only the management. However, with regard to the properties being vested with the Board of Tibbia College in terms of Section 9 of the 1952 Act, the court had unambiguously declared that the vesting was absolute.

51. There could be little doubt that by virtue of the 1952 Act, the properties of the Society now vested with the Board of Tibbia College as so constituted under the 1952 Act.

52. The 1997 Act effectively replaced the Board of Tibbia College with the State Government. The Management of the College – which term was defined under Section 2(c) of the 1997 Act to mean College and allied units – now vested with the State Government. In that context, in ***Mahboob Alam Khan v Union of India &Ors.*** (*supra*), the Division Bench of this Court observed as under:-

> "…. However, having regard to the fact that provisions of the said statute for all intent and purport is merely an extension of 1952 Act by reason whereof the management of the college vests in the Central Government which had since remain vested in a statutory Board, we are of the opinion that the nature of the enactment has not been changed. Sub-section (1) of Section 4 had to be enacted by way of clarification in as much as properties belonging to the institution are

> brought to the purview of the definition 'college' the management thereof for all intent and purport would become impactable. In other words, sub-section (1) of Section 4 of the Act must be read with Section 3 whereof and in the behalf of this Act. There cannot be, however, no doubt, whatsoever, that the activities of the spirit in relation to the said properties must be kept confined to the spirit and object of the said enactment and not beyond the same….."

53. As noted above, by virtue of Section 3 of the 1997 Act, the Management of the College which included all properties – including all movable and immovable properties – stood transferred to and vested with the Government. Further, by virtue of Section 4(2) of the 1997 Act, all properties that had vested with the Government by virtue of Section 3 stood freed and discharged from any trust, obligation, mortgage, charge, lien or any other encumbrance.

54. For all intents and purposes, the properties vested with the Lieutenant Governor of Delhi. The observations made by the Division Bench in ***Mahboob Alam Khan v Union of India &Ors.****(supra)* and ***Admn. Ayurvedic and Unani Tibbia College v. H.K.S. Malik and Ors.***(*supra*) to the effect there was only a transfer of management and not of the property, must be understood in the sense that there was no absolute transfer of beneficial interest and the properties were required to be applied for the objects as specified and not for the Government's own purpose.

55. Having stated the above, this Court is of the view that the said issue whether the Government became the owner of the properties occupied by the petitioners is not material for deciding the controversy raised in these petitions. This is so because that there can be no dispute that the Management of the properties vested with the Government (the Lt. Governor of NCT of Delhi in terms of Section 2(e) of the 1997 Act). By virtue of Section 4(2) of the Act, this was without any charge or encumbrance. Thus, there can be no dispute that the Government can take the necessary action and/or steps for evicting any occupant from the properties that were earlier belonging to the Society, and after the 1952 Act with the Board of Tibbia College.

56. The challenge laid by the petitioners in the present petition may now be addressed bearing the aforesaid in mind.

57. The petitioners in W.P.(C) 12377/2005 have challenged notices issued to them calling upon the petitioners to vacate the quarters occupied by them and handover the possession. A copy of one such notice has also been annexed with the petition and the same is set out below:-

> "NOTICE FOR VACATING QUARTER NO. C-2/28
>
> Whereas, Residential Quarter No. 28 in Block C-2 under your occupation, vests exclusively in the Government of NCT of Delhi by virtue of provisions contained in sub-section (2) of section 4 of A&U Tibbia College (Take Over) Act, 1997 and is free from all encumbrances including any attachment or

mortgage or decree or orders of any court restricting use of this property.

And Whereas, that in accordance with sub-section (1) of Section 5 of the A&U Tibbia College (Take Over) Act 1997, you are required to handover the vacant possession of the quarter currently under your occupation and you have failed to so.

And whereas that the Public Works Department of the Government of NCT of Delhi has advised this Directorate, that the residential quarter under your occupation is dangerous and unfit for human habitation. It can collapse any time. Considering the fact that a portion of the Block where your Residential Quarter is located has collapsed on 24th July, 200.5 and the remaining portions are so precariously positioned that any small movement to remove debris or to remove dangerous portion could endanger the life and property of the occupants of Residential Quarters located immediately next to this portion that collapsed on 24.7.2005.

And therefore, Govt. of NCT of Delhi hereby directs you to immediately vacate the Residential Quarters so that entire Block can be demolished. The vacation of the unit must be completed by the evening of 26.7.2005.

Please note that the Government proposes to start demolition of the affected block tomorrow i.e. 27.7.2005 from 10.00 a.m. onwards. If you fail to vacate the Residential Quarter under your occupation, you shall be personally responsible for any loss of life and property that may have been stored within premises under your occupation apart from action under Section 11 of the aforesaid Act."

58. A plain reading of the aforesaid notice indicates that the same has been issued under Section 5(1) of the 1997 Act. It is relevant to refer to Section 5 of the 1997 Act, which reads as under:-

> **5. Delivery of possession of properties of College.—** (1) Every person having, on the appointed day, in his possession, custody or control of any property forming part of, or relatable to, the College, shall deliver forthwith such property to the Government or to any officer or other employee of the Government as may be authorized by the Government in this behalf.
>
> (2) Any person who has, on the appointed day, in his possession or under his control any books, papers or other documents relating to the College (including the minutes books containing resolutions in relation to the College adopted by persons in charge of the management of the Board before the appointed day), the current cheque books relating to College any letters, memoranda, notes and other communications between the College and the Board, shall, notwithstanding anything contained in any other law for the time being in force, be liable to account for the books, papers, and other documents (including such minutes books, cheque books, letters, memoranda, notes and other communications) to the Government or to such person (being an officer or other employee of the Government) may be authorized by the Government in this behalf.
>
> (3) Every person in change of the of the management of the College, immediately before the appointed day, shall within ten days from that day or within such further period as the Government may allow, furnish to the Government a complete inventory of all properties and assets (including particulars of donations received, book debts, investment and belongings) forming part of, or relatable to, the College immediately before the appointed day and all liabilities

and obligations of the Board in relation to the ?College subsisting immediately before that day and also of all agreements entered into by the Board in relation to the College and in force, immediately before the appointed day.

59. Further, Section 11 of the 1997 Act provides for the nature and extent of penalty being imposed on such person having wrongful possession of the property forming part of the College. Section 11 is set out below:

"**11. Penalties.–** Any person who–

(a) having in his possession or custody or under his control any property forming part of the College, wrongfully withholds such property from the Government, or any person authorized by the Government, as the case may be, in this behalf, or

(b) wrongfully obtains possession of, or retains, any property forming part of the College or willfully withholds or fails to furnish to the Government, or any person specified by the Government, as the case may be, any document relating to the College, which may be in his possession, custody or control or fails to deliver to the Government or any person specified by the Government, any assets, books of accounts, registers or other documents in his custody relating to the College, or

(c) wrongfully removes or destroys any property forming part of the College or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate;

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

60. The petitioners have based their case on the observations made by the Coordinate Bench of this Court in ***Admn. Ayurvedic and Unani Tibbia College v. H.K.S. Malik and Ors.***(*supra*) to the effect that the 1997 Act did not provide for the transfer of the properties in favour of the Government. It is their contention that in this view, the impugned notices dated 26.07.2005 are erroneous as they are premised on the basis that the property occupied by them exclusively vests with the Government of NCT of Delhi.

61. A plain reading of Section 3 and 4 of the 1997 Act alongwith the decision rendered by the Supreme Court in ***The Board of Trustees, Ayurvedic and Unani Tibia College Delhi v. The State of Delhi and Ors*** (*supra*) makes it clear that the management of the properties of College would vest with the Government of NCT of Delhi by virtue of Section 3 of the 1997 Act.

62. Even if the petitioners' contention is accepted that the properties in question did not vest with the Government of NCT of Delhi, there can be no dispute that the management of the said properties would vest with the Government of NCT of Delhi. Further, by virtue of Section 5(1) of the 1997 Act, all persons in possession or control of the property forming the part of the Tibbia College are required to deliver the same forthwith to the Government. In this view, the challenge to the impugned notices is unmerited and the contention that the impugned notice is without statutory sanction or authority, is also unmerited.

63. It is also important to note that the petitioners in W.P.(C) 12377/2005 have not produced any document to establish any right in respect of the properties occupied by them. It is averred in the petition that the ownership rights in respect of the properties were given to the employees and petitioners in different capacities. Plainly, the said claim is unmerited. There is no material to accept that these properties were transferred by either erstwhile Society or the Board of Tibbia College in favour of the petitioners.

64. In view of the above, no relief can be granted to the petitioners in W.P.(C) 12377/2005.

Re:W.P.(C) 6797/2008

65. The petitioners in W.P.(C) 6797/2008 challenge the notice issued to them under the 2006 Rules, which were notified on 13.07.2006. Copies of two such notices have been annexed with the petition. The same indicate that a general notice had been issued under Rule 3(1) of the 2006 Rules.

66. The principal contention advanced by the petitioners is that the said notice is not in conformity with the 2006 Rules. Rule 3 of the 2006 Rules provides for the powers to be exercised by the Director. Clause (h) of Rule 3 of the 2006 Rules expressly provides that the Director shall exercise all the powers "*to ensure that properties (moveable and immovable) of the College or relatable to the College are taken in the control of the Government.*" Further, by virtue of Clause (i) of Rule 3 of the 2006 Rules, the Director is empowered to

file criminal complaints under Section 11 of the 1997 Act against all persons who fail to deliver the property forming part of, or relatable to, the College.

67. Rule 6 of the 2006 Rules requires the Director to disclose the details of all the properties forming part of the College or relatable to the College so that the occupiers get clear sixty days notice to vacant the possession. Rule 7 of the 2006 Rules provides for the procedure for issuing direction to handover the properties of the College or relatable to College. Rule 6 and 7 of the 2006 Rules are relevant and are set out below:-

> "6. **Notification regarding the details of the property to the College or relatable to the College**.–The Director shall by notification disclose the details of all the properties forming part of the College or relatable to the College so that the occupiers get clear sixty days notice to vacant the possession and handover such properties to the Director or any officer authorized by him in that regard.
>
> 7. **Procedure for issuing direction to handover the properties of the College or relatable to College**.–(1) The Director shall not issue any notification under rule 3 unless an opportunity of being heard has been given to the occupier of the property of the College or relatable to the College.
>
> (2) For the purpose of sub-rule (1), a general notice given in a local leading newspaper and one pasted on the site of the property shall be deemed to be valid notice in all respects.

(3) Every occupier of the property of the College or relatable to the College shall be obliged to handover vacant possession of the property under his or her possession and on his or her failure to do so shall be liable to be prosecuted under Section 11 of the Act.

68. The learned counsel appearing for the respondents have unable to controvert the contention that no notification has been issued disclosing the details of the properties forming part of the College.

69. In terms of Rule 7(1) of the 2006 Rules, the Director is required to provide an opportunity of hearing to the occupiers of any property before issuing a notification under Rule 3 of the 2006 Rules. By virtue of Rule 7(2) of the 2006 Rules, the said notice could be a general notice published in a local leading newspaper.

70. In the present case, such a notice (as referred to under Rule 7(2) of the 2006 Rules) was given; however, the petitioners contend that a notification regarding the list of properties, as required under Rule 6 of the 2006 Rules, has not been issued.

71. The aforesaid contention is merited, as the respondents had unable to produce any notification specifying the properties forming a part of the College or relatable to the College. In this view, the petition is required to be allowed as it does appear that the respondents have not followed the procedures as set out in the 2006 Rules.

Re: W.P.(C) 3518/2011

72. The petitioners in the present petition challenged notices dated 11.12.2010 issued by the respondents informing the petitioners that the buildings occupied by them have been declared to be dangerous and further calling upon the petitioners to vacate the same. The petitioners contend that the Government of NCT of Delhi has no power to declare a building to be dangerous and seeking eviction of the occupants of such buildings. They rely on the provisions of Section 366 of the Delhi Municipal Corporation Act, 1957 to contend that the Commissioner is the specified authority for passing any order for declaring a building to be dangerous.

73. A plain reading of notice dated 11.12.2010 indicates that it is an advisory to the petitioners who have been requested to vacate the premises. They have also been cautioned that they would be liable for loss of life or property in case, if any, mis-happening. The said notice has been issued in public interest and not in exercise of any statutory power.

74. In view of the above, no interference by this Court is called for. The respondents would be at liberty to approach the Commissioner of North Municipal Corporation of Delhi for the necessary action in respect of the said building if they desire the same to be declared as dangerous under the provisions of the Delhi Municipal Corporation Act, 1957.

Re: W.P.(C) 6905/2014

75. The petitioners in W.P.(C) 6905/2014 impugn the action of the respondents in demolishing the toilet / latrines and further threatening to demolish the residential premises/quarters/flats occupied by them. The respondents alleged that the petitioners had illegally constructed toilets / latrines which were then demolished.

76. As noticed above, the petitioners were in occupation of the residential units and have unable to establish any right to do so. The petitioners and/or their predecessors were, at best, licensees who had been granted licenses to occupy the said premises. The respondents state that there are 453 residential quarters in the College Campus, out of which only 51 are occupied by serving employees of Tibbia College. The petitioners have not produced any documents to establish that they had any right in the properties in question. They have, however, produced certain receipts for license fees. Thus, at best, the petitioners or their predecessors were licensees of the premises in question. It is well settled that the licensee is only a permissive user and the license does not constitute any interest in favour of the licensee. (See: ***Thomas Cook (India) Limited v. Hotel Imperial and Ors.: 127 (2006) DLT 431***).

77. In view of the above, this Court is unable to accept that any relief is required to be granted to the petitioners in this petition.

Conclusion

78. In view of the above, the writ petitions W.P.(C) 12377/2005, W.P.(C) 3518/2011 and W.P.(C) 6905/2014 are dismissed.

79. W.P.(C) 6797/2011 is allowed to the extent that the notices impugned in the said petition are set aside, leaving it open for the respondents to take appropriate action after following the procedure as specified under the 2006 Rules.

80. The parties are left to bear their own costs.

VIBHU BAKHRU, J

DECEMBER 04, 2018
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