

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.06.2019

DELIVERED ON: 24.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP No.1481 of 2003 and
M.P.No.16093 of 2003

R.Sakuntala ... Petitioner

Vs.

1. Haji Khatija Beevi Trust,
Nagapattinam, represented by
its Trustee Jaila Nachiyar (deceased)
2. V.Ibrahim Maracoir @ Azad (deceased)
3. Ponnachi @ Ummal Hootha
(R3 brought on record as LR of the deceased R1 viz. Jaila Nachiyar
vide court order dated 19.12.2017 made in
CMP 21882 to 21884 of 2017 in CRP No.1481 of 2003.
4. Hameed Kathija Nachiar
(R4 brought on record as LR of the deceased R2 viz
V.Ibrahim Maracoir @ Azad vide court order dated
19.12.2017 made in CMP 21885 o 21887 of 2017 in
CRP No.1481 of 2003.) ... Respondents.

PRAYER: Civil Revision Petition filed under Article 227 of the
 Constitution of India against the orders dated 01.08.2003 passed in Wakf
 O.P.No.2 of 2000 by the Wakf Tribunal/Principal Subordinate Judge,
 Nagapattinam.

For Petitioner : Mrs.Hema Sampath, Senior Counsel
for Mr.V.Raghupathi

For Respondents : Mr.R.Viduthalai, Senior Counsel
(for R3 and R4)

R1 and R2 died

ORDER

The revision petitioner is the first respondent in Wakf Original Petition No.2 of 2000 on the file of the Wakf Tribunal/Principal Subordinate Judge, Nagapattinam. The 1st respondent herein (since deceased) filed the above petition for eviction of the revision petitioner/tenant from the petition mentioned premises.

2. The case of the 1st respondent/ petitioner in Wakf O.P.No.2 of 2000 is that the petition mentioned property belonged to Wakf Board and that the revision petitioner/tenant refused to pay enhanced rents and also did not pay rents for the period from 01.12.1998 to 31.07.1998, which forced the petitioner to issue a lawyers' notice dated 24.04.1999 (a copy of which is marked as Ex.A1), terminating the tenancy and that the 1st respondent/ revision petitioner sent a reply notice dated 06.05.1999 (a copy of which is marked as Ex.A2), which contained false allegations.

Therefore, the 1st respondent filed Wakf O.P.No.2 of 2000 seeking for eviction of the tenant from the petition mentioned premises.

3. The revision petitioner /1st respondent filed a counter contending that the petition mentioned property is not a wakf property and that there is no arrears of rents as alleged by the landlord. According to the petitioner, the rents for the period from 15.11.1998 to 15.11.1999 were sent through money orders and that the landlord refused to receive the rents, after Ex.A1 notice. The further contention of the revision petitioner/1st respondent is that her husband was inducted as a tenant in the property on 08.01.1949 and till the year 1991, he had carried out several repairs in the premises, apart from paying house tax. It is also contended by the revision petitioner that the landlord had suppressed the execution of rental agreement dated 01.06.1994 and that the petition is not at all maintainable, as the landlord can only file a civil suit for ejectment.

4. The Wakf Tribunal/ the Principal Subordinate Judge, Nagapattinam, after full contest, allowed the petition vide his decree and judgment dated 01.08.2003. Aggrieved over the same, the present revision petition has been filed by the 1st respondent/tenant.

5. The points for determination are

1. Whether the petition mentioned property does not belong to the Wakf Board, as alleged by the revision petitioner?

2. Whether the Wakf Tribunal has got jurisdiction to try and determine the issues involved in this matter or whether only a civil court has got jurisdiction to try and determine the issues?

6. Claiming that the property involved in the matter belonged to the Wakf Board and putting forth the case that the revision petitioner is a tenant in the petition mentioned property, the first respondent/ landlord filed Wakf O.P.No.2 of 2000 before the Wakf Tribunal seeking for recovery of a sum of Rs.720/- and for future mesne profits and also for eviction of the revision petitioner from the tenanted premises. The tenant/ petitioner herein filed counter by contending that the petition mentioned property is not a wakf property and that the civil court alone has got jurisdiction to try the issues involved in this case. It is also the contention of the revision petitioner/tenant is that her husband, who was inducted as a tenant in the year 1949 had carried out several repairs in the property, apart from paying house tax. She therefore, prayed for dismissal of the wakf original petition.

7. Mrs.Hema Sampath, learned Senior Counsel, appearing for the revision petitioner mainly stressed the point that filing of wakf original petition before the Wakf Tribunal is not maintainable, in view of the decision of the Honourable Supreme Court in ***Ramesh Gobindran (dead) through LRs V. Sugra Humayun Mirza Wakf reported in 2010 (8) Supreme Court Cases 726***, wherein, it has been held that since the Wakf Act, 1995 does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a Wakf property or the rights and obligations of the lessor and lessees of such property, a suit seeking eviction of tenant from the property, what is admittedly a Wakf property, could be filed only before a civil court and not before the Tribunal.

8. The learned Senior Counsel also adverted the attention of this court to the decision in ***Punjab Wakf Board V. Sham Singh Harike reported in 2019 SCC On line SC 142*** and contended that the Ramesh Gobindram Case (cited supra) was followed by the Honourable Supreme Court in 2019 and had clearly held that as per the law laid down by the Supreme Court in Ramesh Gobindram Case (cited supra), a civil court alone has got jurisdiction to try a case, which involves eviction of a tenant from the Wakf property.

9. In Ramesh Gobindram case (cited supra), the Andhra Pradesh Wakf Tribunal passed an order of eviction against the tenant. A revision petition filed before the Andhra Pradesh High Court was dismissed, against which an appeal was filed before the Honourable Supreme Court. The issue involved in the Ramesh Gobindram case (cited supra) is that whether the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1955 was competent to entertain and adjudicate upon the disputes regarding eviction of the tenants, who are occupying different items of what are admittedly Wakf properties. The Honourable Supreme Court in Ramesh Gobindram case (cited supra), observed that there is a cleavage in the judicial opinion on the question of jurisdiction of Wakf Tribunal by different High Courts and after noticing the scheme of Section 6, 7, 25 and 85 of the Wakf Act, held in para 24 and 25 thus.

24. Section 85 of the Wakf Act reads:

85. Bar of jurisdiction of civil courts:- No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

A plain reading of the above would show that the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words "which is required by or under this Act to be determined by a Tribunal" holds the key to the question whether or not all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court.

25. Whenever a question arise whether "any dispute, question or other matter" relating to "any wakf or wakf property or other matter" falls within the jurisdiction of a civil court, the answer would depend upon whether any such dispute, question or other matter is required under the Act to be determined by the Tribunal constituted under the Act. If the answer be in the affirmative, the jurisdiction of the civil court would be excluded qua such a question, for in that case the Tribunal alone can entertain and determine any such question. The bar of jurisdiction contained in Section 85 is in that sense much wider than that contained in Section 6(5) read with Section 7 of the Wakf Act. While the latter bars the

jurisdiction of the civil court only in relation to questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the jurisdiction of the civil courts not only in relation to matters that specifically fall in Section 6 and 7 but also other matters required to be determined by a Tribunal under the Act. There are a host of such matters in which the Tribunal exercises original or appellate jurisdiction.

10. As per Section 83(1) of the Act, 1995 the State Government is empowered to establish as many Tribunals as it may think fit for determination of any dispute, question or other matter relating to a Wakf or Wakf property under the Act and define the local limits and jurisdiction. Section 83(2) of the Act permits any Mutawalli or other person interested in a Wakf or any other person aggrieved by an order made under this Act, or rules made thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the wakf. The remaining provisions of Section 83 provide the procedure, which the tribunal should follow and the manner in which the decision of a tribunal should be executed.

11. It is relevant to point out that the expression for the determination of any dispute, question or other matter relating to a wakf or wakf property appearing in Section 83(1) of the Act, also appears in Section 85 of the Act. However, Section 85 of the Act does not exclude the civil courts' jurisdiction in respect of any or other questions or disputes merely because the same relates to a wakf or wakf property.

12. The Honourable Supreme Court in Ramesh Gobindram case (cited supra) in para 34 and 35, held as follows:

"34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter, the jurisdiction of the civil court would stand excluded."

35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation

of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.

13. However, in a subsequent decision in ***Board of Wakf, West Bengal V. Anis Fatma Begum (2010) 14 SCC 588***, the Ramesh Gobindram's case (cited supra) was distinguished, however, it was held that the words "any dispute, question or other matters relating to a wakf or wakf property" are words of very wide connotation and that any dispute, question or other matters whatsoever and in whatever manner, which arises relating to a wakf or wakf property, can be decided only by the Wakf Tribunal. However, it is to be noted that the Ramesh Gobindram's case (cited supra) was decided prior to the amendments made in 2013 and 2015. It is also to be noted that the Wakf Original petition was filed before the Wakf Tribunal during the year 2000 and the amendments which came in the year 2013 cannot have any retrospective effect.

14. Mr.R.Viduthalai, learned Senior Counsel, appearing for the respondents would contend that after the amendments made in the Wakf

Act in the year 2013 and 2015, civil court's jurisdiction is ousted and the Wakf Tribunal alone has got the powers to decide the matter in issue. He would further contend that even if the present petition is returned, the civil court cannot entertain the present petition, in view of the amendments made in the Wakf Act. His specific contention is that by remitting the matter back to the Wakf Tribunal to decide the case afresh, would only be a waste of time and the landlords cannot be directed to undergo the ordeal of trial once again. He therefore would contend that the civil revision petition filed by the petitioners/landlords has to be dismissed.

15. A perusal of the Ramesh Gobindram's case and Punjab Wakf Board's case (cited supra) would clearly show that only the civil courts have got jurisdiction, as far as the eviction of the tenants from the Wakf property is concerned, prior to the amendment of Section 83 of the Wakf Act, by virtue of the Wakf Amendment Act 2013, which came into force with effect from 01.11.2013. Section 83 of the Wakf (Amendment) Act 2013, reads as follows.

In section 83 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:— “(1) The State Government shall, by notification in the Official Gazette, constitute as many

Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;”;

(b) for sub-section (4), the following sub-sections shall be substituted, namely:— “(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman; (b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.”

16. Therefore, a perusal of the above said provision of law would disclose that the jurisdiction to determine any dispute, question or other matters relating to a wakf or wakf property, eviction of a tenant or determination of rights and obligations of the lessor or lessees of such property under the Act, would lie only before the Wakf Tribunal.

17. In the instant case, the revision petitioner/tenant in her counter has specifically contended that the tenanted premises is not a wakf property. In the petition, it is specifically averred that the petition mentioned property belongs to the Wakf Board and that as per the decree and judgment passed in O.S.No.45 of 1971 on the file of the Subordinate Judge, Nagapattinam and as per the decree and judgment passed in A.S.No.575 of 1972 on the file of this court, the respondents 1 and 2 were directed to maintain the wakf in the alternative years. The civil revision petitioner did not adduce any contra evidence in this regard. The averments of the Wakf O.P.No.2 of 2002 clearly shows that the petition mentioned property is a Wakf property and in the absence of any contra evidence, it cannot be held that the property is not a Wakf property. Moreover, this aspect was not at all very seriously raised either at the time of trial before the Wakf Tribunal or in the present civil revision petition. However, when the tenant in her counter has disputed the character of the

property, the nature of lis involved in the instant case also includes as to whether the tenanted premises is a Wakf property or not and therefore, the Wakf Tribunal alone has got jurisdiction to try the case. Merely because the learned Subordinate Judge, Nagapattinam did not frame separate issue to decide whether the property belonged to Wakf Board, it cannot be said that the lis does not involve the determination of nature / character of the property. Even as per the decision rendered in Ramesh Gobindram's case and Punjab Wakf Board's case (cited supra) the crucial question that shall has to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised, is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter, the jurisdiction of the civil court would stand excluded. As already observed, since the dispute with regard to the character of the property has to be decided in the instant case, the Wakf Tribunal alone has the jurisdiction. The respondents had also stated that the suit property is a Wakf property and the revision petitioner did not adduce any contra evidence to that effect.

18. Mrs.Hema Sampath, learned Senior Counsel appearing for the petitioner contended that the respondents/landlords did not issue proper notice under Section 107 of the Transfer of Property Act, since the premises was let out for rice mill and for residential purpose. Per contra, Mr.R.Viduthalai, learned counsel appearing for the respondents would contend that the respondents/landlords had issued a notice of quit, as evidenced by Ex.P1, ending with the period 31.05.1999 and considering the fact that the said Wakf O.P.No.2 of 2000 was taken on file only during the year 2000, it cannot be said no proper notice of quit has been issued in the instant case. Though it is contended by the learned senior counsel appearing for the petitioner that the premises was let out for rice mill also, the petitioner did not produce any acceptable evidence to show her rice mill would come under a manufacturing unit. The revision petitioner did not also adduce any license issued to her in this regard. Therefore, she cannot raise the point that proper notice of quit under Section 107 of the Transfer of Property Act was not issued to her. Ex.P1 notice clearly shows that notice under Section 106 of the Transfer of Property Act has been issued to the respondent/revision petitioner and the Wakf Tribunal had clearly discussed these aspects in extenso and the observations made by the Wakf Tribunal in this regard are perfectly in order. Hence, I do not see any reason to interfere with the findings recorded by the Wakf Tribunal.

19. In the result, the Civil Revision Petition is dismissed. No costs. The connected miscellaneous petition is closed. The orders passed by the Wakf Tribunal/Principal Subordinate Judge, Nagapattinam in Wakf.O.P.No.2 of 2002 is upheld.

24.06.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst
To

The Principal Subordinate Judge, Wakf Tribunal, Nagapattinam.



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R.HEMALATHA,J.
mst



Pre-delivery order in
CRP No.1481 of 2003 and
M.P.No.16093 of 2003

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