

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE ACTING CHIEF JUSTICE
RAGHVENDRA SINGH CHAUHAN**

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.A.No.309 of 2019

Date: 09.04.2019

Between:

Mr. Mohammed Masihuddin Khan

...Appellant

and

State of Telangana,
Rep. by its Special Secretary to Government,
Minorities Welfare (Estt.II) Department,
Secretariat, Saifabad, Hyderabad, and another.

...Respondents

**Counsel for the appellant : Mir Mukarram Ali for
Ms. Vladimeer Khatoon**
**Counsel for respondent No.2: Mr. M.A.Mujeeb,
SC for Wakf Board**

The Court made the following:

JUDGMENT: *(per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)*

Mr.Mohammed Masihuddin Khan, the appellant, has challenged the legality of the order dated 14.03.2019, passed by the learned Single Judge in W.P.No.5229 of 2019, whereby the learned Single Judge has dismissed the writ petition filed by the appellant ostensibly on the ground that the appellant has efficacious alternative remedy under Section 83 of the Waqf Act, 1995 (for short, 'the Act').

The learned counsel for the appellant submits that the appellant is a tenant in a wakf property i.e., shop bearing M.C.H.No.21-1-1088/134, situated at Mecca Madina Allauddin Wakf, Pathergatti, Hyderabad. On 16.11.2018, a notice was issued to the appellant directing him to pay arrears of rent, and to enter into a new rental agreement within fifteen days. He was also warned that in case he does not comply with the said notice, the Wakf Board would be constrained to initiate appropriate legal action under Section 54(3) of the Act. Consequently, the appellant offered to pay the arrears of rent. For that purpose, he submitted a representation to the respondent No.2. However, despite the best efforts of the appellant to clear the arrears, the same has not been accepted by the respondent No.2. It is in these circumstances, the learned counsel for the appellant claims that the writ petition was filed.

Secondly, Section 83 of the Act does not bestow an efficacious alternative remedy on the appellant. For, Section 83

of the Act deals with a dispute that may arise between any person and the Wakf Board with regard to an order made under the Act or the rules made thereunder. According to the learned counsel for the appellant, so far, no order has been made either under the Act, or under the rules made thereunder. Therefore, the learned Single Judge was not justified in concluding that the appellant has an efficacious alternative remedy available to him, and in dismissing the writ petition.

On the other hand, Mr.M.A.Mujeeb, the learned Standing Counsel for the respondent No.2, submits that despite the fact that the notice was issued in November, 2018, the appellant did not approach the respondent No.2 till February, 2019. Therefore, the respondent No.2 was well justified in refusing to accept the arrears of rent. Moreover, the appellant is still required to enter into a new lease deed, which has not been done so far. Therefore, the learned counsel submits that the respondent No.2 is justified in its stand. Hence, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties and perused the impugned order.

Section 83(2) of the Act is as under:

“Any mutawalli person interested in a Waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Waqf.”

A bare perusal of the said provision clearly reveals that the provision bestows a right both on a mutawalli, or on “any other

person” to approach the Tribunal in case such a person is aggrieved by an order made under the Act, or the rules made thereunder. Furthermore, the Tribunal is empowered to determine any dispute, question or other matter relating to the Waqf.

However, in the present case, the appellant is not aggrieved by any order made under the Act, or the rules made thereunder. In fact, the appellant is aggrieved by the non-consideration of his representation, and by the non-acceptance of the arrears of rent. Hence, the learned Single Judge is unjustified in concluding that the appellant has efficacious alternative remedy under Section 83 of the Act.

For the reasons stated above, this appeal is allowed. The impugned order dated 14.03.2019 is set aside. The respondent No.2 is directed to consider the representation of the appellant, and to accept the arrears of rent offered by him within a period of four weeks from the date of receipt of a certified copy of this judgment.

As a sequel, Miscellaneous Petitions, pending if any, shall stand closed. There shall be no order as to costs.

(RAGHVENDRA SINGH CHAUHAN, ACJ)

(A.RAJASHEKER REDDY, J)

Date: 09.04.2019
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