

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1386 of 2019

ORDER:

This Revision is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act') challenging the order dt.03.06.2019 in EA.No.34 of 2017 in EP.No.13 of 2008 in RC.No.288 of 2002 of the I Additional Rent Controller, City Civil Court, Hyderabad.

2. The said RC was filed by the father of respondents 1 to 3, by name Mohammed Dastagir, against the 4th respondent for eviction of the 4th respondent before the I Additional Rent Controller, Hyderabad invoking Sec.s 10(2)(i) and 10(2)(vi) of the Act.

3. He raised in the said RC a plea of willful default in payment of rents by the 4th respondent for the period January, 1999 to July, 20002. He also contended that the 4th respondent had denied his title to the RC schedule property and that the denial of title is not bonafide.

4. The 4th respondent filed a counter stating that the property is a Wakf property attached to a Dargah, by name Dargah Hazrath Dhamal Shah Saheb. He alleged that father of respondents 1 to 3 was the Mutawalli of the said Dargah and that the 4th respondent had taken it on lease from the father of respondents 1 to 3 in his capacity as a Mutawalli. He denied that father of respondents 1 to 3 was the owner of the property. He also pleaded that the father of respondents 1 to 3 had lost a suit O.S.No.1458 of 1992 before the VIII Junior Civil Judge against the A.P. Wakf Board and so the suit schedule property was a Wakf property.

5. After trial, on 06.05.2004 the said RCC was allowed and the 4th respondent was directed to vacate the RC schedule premises within two (02) months. The Rent Controller gave a finding that the subject premises was not a Wakf property.

6. The order in the RC.No.288 of 2002 was challenged in RA.No.125 of 2004 by the 4th respondent before the Additional Chief Judge, City Civil Court, Hyderabad, and the said appeal was also dismissed on 26.06.2018.

7. Challenging the order in the appeal, 4th respondent filed CRP.Nos.3550 of 2008 and 1079 of 2009 before this Court and the said Revisions are also dismissed on 04.04.2013.

8. Then the petitioner herein filed EA.No.34 of 2017 invoking Rule 23(7) of the Act as a claim petitioner to declare that the order passed in RC.No.288 of 2002 is null and void, inoperative and does not bind him.

9. Petitioner alleged in the said claim petition that respondents 1 to 4 colluded with each other and got passed an eviction order in RCC.No.288 of 2002 in respect of the subject premises and they are trying to evict him fraudulently and collusively. He alleged that the RC schedule property belongs to a Wakf Dargah by name Dargah Hazrath Dhamal Shah Saheb, and was under the management of the Telangana State Wakf Board. He claims to be a tenant of the Telangana State Wakf Board. He alleged that father of respondent No.s 1 to 3 suppressed the fact and sold the RC schedule property to one Shaik Hyder Ali under registered Agreement of Sale-cum-GPA with possession on 10.07.2007 and a Sale Deed was executed in favour of one Mohd Fasiuddin subsequently for the area of 95 sq. yards with shops as mentioned in the EP schedule. He alleged that

the possession of the property was not with Mohd.Dastagir and so his legal heirs i.e., respondents 1 to 3, cannot maintain the EP.

10. Respondents 1 to 3 filed counter denying the said contentions and stating that the claim petition is not maintainable either in fact or law. They further contended that the claim petition is filed only to delay and drag on the eviction proceedings, though the order in the RC had been confirmed even by the High Court on 04.04.2013 in CRP.No.s 3550 of 2008 and 1079 of 2009. They contended that the claim petitioner/petitioner herein was never in possession of the property. They also denied about the alleged execution of the Agreement of Sale dt.10.07.2007 by their father in favour of Md.Fasiuddin and the sale deed document No.635/2007.

11. In the claim petition, petitioner was examined as PW1 and marked Exs.P1 to P11. He also examined PWs.2 and 3. In the cross-examination of PW1, Exs.R1 to R3 were marked. The 2nd respondent examined himself as RW1 and got marked Exs.R4 and R5.

12. By order dt.03.06.2009, the Additional Rent Controller dismissed the EA.No.34 of 2017. He rejected Exs.P1, P3 to P5, photographs showing the alleged possession of the petitioner over the RC schedule property, pointing out that the said photographs did not contain any time and date, and they clearly establish that the petitioner temporarily superimposed a banner on the signboard of the 4th respondent and took photographs. It noted that the claim petitioner was none other than the brother of the 4th respondent. It also noted the admission of the petitioner that he did not state for how many years he was in possession of the property, and that he did not file also any documents to prove that he had taken the property on rent either from the Wakf Board or from the father of respondents 1 to 3. It relied on Exs.R1

and R2 photographs and Ex.R3 newspaper showing that 4th respondent alone was in possession of the RC schedule property. It also referred to order dt.13.09.2001 in I.A.No.218 of 2001 in O.S.No.40 of 2001 filed by the State Wakf Board for declaration and injunction and ancillary reliefs and also Ex.R5 certified copy of the order dt.10.01.2003 in CRP.No.5713 of 2001, and held that the claim petitioner's contentions are not valid in view of the same. It also held that the petitioner is not a tenant of the RC schedule premises and he is not in possession thereof. It opined that he filed the claim petition only to safeguard the 4th respondent, who is the judgment debtor, and it is nothing but an abuse of process of law.

13. Assailing the same, this Revision is filed.

14. Counsel for the petitioner contended that the finding of the Court below that the petitioner is not in possession of the EP schedule property and has nothing to do with it, is not correct. He contended that the petitioner is a tenant of the Wakf Board and he is also paying rent to the Wakf Board. He contended that in respect of the wakf properties, the authorities under the Act have no jurisdiction and since the petitioner is not a party in the RC.No.288 of 2002, he is not bound by the proceedings therein. He also contended that the order in RC.No.288 of 2002 is a collusive one.

15. Counsel for the respondents 1 to 3 refuted the said contentions and supported the order passed by the Court below.

16. I have noted the contentions of both sides.

17. From the admissions of the petitioner as PW1 in EA.No.34 of 2017, it is clear that petitioner is the brother of the 4th respondent, who is the Judgment Debtor in RC.No.288 of 2002. It is also not in dispute that in the

claim petition, petitioner did not state for how many years he was in possession of the EP schedule property. It is also not disputed that the petitioner did not file any document to prove that he had taken the EP schedule property on rent either from the Wakf Board or from the father of respondents 1 to 3. The Court below had rejected Ex.P1 photographs filed by the petitioner on the ground that it did not contain any time and date. Ex.P3 and P5 are original Cash Memo dt.06.05.2017 and provisional Trade License issued by the GHMC on 20.07.2018 in the name of the petitioner, but in the absence of any material to show how the petitioner got into possession of the EP schedule property, these documents cannot be considered.

18. The question whether the EP schedule property is Wakf Property or not, was considered in RC.No.288 of 2002 wherein the Assistant Secretary of the A.P. Wakf Board was summoned as a Court Witness and the said witness had admitted that the Proforma for Survey of Wakf Properties and the Official Gazette dt.09.05.1985 do not refer to the EP schedule property. On the basis of his evidence, the Rent Controller had rejected the claim of the 4th respondent that the EP schedule property is wakf Property.

19. In the claim petition, petitioner has not examined anybody connected with the Wakf Board to establish his plea that it is a wakf property and he had taken it on lease from the Wakf Board.

20. Obviously, petitioner had been set up by his brother, the 4th respondent, to delay the execution of the order passed in RC.No.288 of 2002 and to harass the respondents 1 to 3.

21. In my considered opinion, the Court below had properly appreciated the evidence on record and rightly rejected the claim of the petitioner.

22. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Section 22 of the Act.

23. Accordingly, this Civil Revision Petition fails and it is dismissed with costs of Rs.1000/-.

24. As a sequel, miscellaneous applications, if any pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 11.07.2019
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