

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 2nd December, 2021.**

+ **CM(M) 521/2021 & CM No.25524/2021(for stay)**

SYED AMIR ALI

..... Petitioner

Through: Mr. Arvind Sharma with Mr. Alok Kumar Sharma, Mr. M. Rais Farooqui & Mr. Amiteya Sharma, Advocates.

Versus

ANJUMAN-E-HAIDERI & ORS.

..... Respondents

Through: Ms. Tasneem Ahmadi with Ms. Mahima Rathi, Advocates for R-1.
Mr. Wajeeh Shafiq, Advocate for R-2.
Mr. Tushar Sannu, ASC with Ms. Nippun Sharma, Advocate for NDMC/R-3.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. This petition under Article 227 of the Constitution of India has been filed by the petitioner being aggrieved by the order dated 26th July, 2021 of the Rent Control Tribunal (RCT) (South-East), Saket Courts, New Delhi passed in RCT No. 24/2018, whereby the order of the Rent Controller dated 16th October, 2017 directing restoration of the electricity supply to the property in question consisting of two rooms and an open courtyard on the first floor, known as Balakhana (Naqqarkhana), Main Gate, Dargah Shah

Mardan at Aliganj, Jor Bagh, New Delhi, was set aside, with the further observations that the petition under Section 45 of the Delhi Rent Control Act, 1958 was not maintainable before the Rent Controller. A further direction had been given to the respondent no.3/NDMC to disconnect the electricity supply to the property in question, after 30 days of the impugned order, within which time the petitioner was to approach the right forum.

2. The issue that arises for consideration before this Court is whether in light of the amendments carried out to Sections 83 and 85 of the Waqf Act, 1995 (Waqf Act) in 2013, the remedy of the petitioner in respect of disconnection of his electricity connection by the respondent no.1 would lie before the Rent Controller (under the Delhi Rent Control Act, 1958) or before the Waqf Tribunal in terms of the Waqf Act.

3. Mr. Arvind Sharma, counsel for the petitioner, submits that the RCT had come to an erroneous conclusion that the Rent Controller had no jurisdiction to adjudicate the petition under Section 45 of the Delhi Rent Control Act, 1958 filed by the petitioner, and that the right forum for adjudication of the dispute between the petitioner and the respondent no.1 was the Waqf Tribunal. It is further submitted that even after the 2013 amendments to the Waqf Act, the petitioner could not have approached the Waqf Tribunal since the dispute was not in the nature of a dispute in terms of Section 6 or Section 7 of the Waqf Act. It is also pointed out that though, initially the petition under Section 45 of the Delhi Rent Control Act, 1958 had been filed only against the respondents no. 1 and 2, but since they had taken the stand that it was not their obligation to supply electricity and it was the respondent no.3/NDMC, which was the competent authority to supply electricity, the NDMC was impleaded as a party. The Rent Controller had

directed the respondent no.3/NDMC to install a sub-meter at the suit premises and supply electricity to the same, the cost of which was to be borne by the petitioner. This was an interim order against which the respondent no.1 had preferred an appeal before the RCT. The RCT had therefore, misdirected itself by going into the question of jurisdiction and dismissed the petition without allowing the Rent Controller to decide this issue.

4. Ms. Tasneem Ahmadi, counsel appearing on behalf of the respondent no.1 has drawn attention to provisions of Sections 83 and 85 of the Waqf Act to contend that it is not just issues arising under Section 6 or Section 7 of the Waqf Act that are subject matter of jurisdiction of the Waqf Tribunal, but all matters covered under Section 83 of the Waqf Act would also be subject to jurisdiction of the Waqf Tribunal. Attention has also been drawn to provisions of Section 108A of the Waqf Act which gives an overriding effect to the provisions of this Act over any other laws in force including the Delhi Rent Control Act, 1958.

5. Mr. Wajeeh Shafiq, counsel for the respondent no.2 has also filed an affidavit where a categorical stand has been taken that in view of the amendments carried out to the Waqf Act in 2013, the Waqf Tribunal has the exclusive jurisdiction to decide the *lis* between lessor and lessee of a Waqf property and hence, the jurisdiction under the Delhi Rent Control Act, 1958 would be barred. It is further stated since the proceedings under Section 45 of the Delhi Rent Control Act, 1958 were initiated by the petitioner only in the year 2017, after the aforesaid amendments to the Waqf Act, the Rent Controller/Rent Control Tribunal would have no jurisdiction to entertain the

same even if the relationship between the petitioner and the respondent no.1 was that of a lessor and lessee.

6. Counsels for both the respondents no.1 and 2 have placed reliance on the recent judgment of the Supreme Court in ***Rashid Wali Beg Vs. Farid Pindari and Ors.*** MANU/SC/1001/2021. The relevant portions from the said judgment are set out below:

“35. A conjoint reading of Sections 6, 7 and 85 would show that the bar of jurisdiction of civil court contained in Section 6(5) and Section 7(2) is confined to Chapter-II, but the bar of jurisdiction Under Section 85 is all pervasive.....

36. It is seen that there are 2 limbs to Section 85. The words, "any dispute, question or other matter relating to any waqf or waqf property" used in the first limb of Section 85, provide a clear indication that the Tribunal would have jurisdiction to adjudicate upon any dispute and answer any question relating to a waqf or waqf property, including the two questions mentioned in Sections 6(1) and 7(1). The words in the second limb of Section 85 namely, "other matter which is required by or under this Act to be determined by a Tribunal", seek to cover matters which have no relevance to the two questions covered by Section 6(1) and 7(1).

37. Unfortunately, many courts were misled by the reference to two specific questions in Sections 6(1) and 7(1), to come to the conclusion that the bar of jurisdiction was confined only to disputes revolving around those two questions.

38. Interestingly, the basis of the decision in Ramesh Gobindram was removed through an amendment under Act 27 of 2013. As we have stated elsewhere, Ramesh Gobindram sought to address the question whether a Waqf Tribunal was competent

*to entertain and adjudicate upon disputes regarding eviction of persons in occupation of what are admittedly waqf properties. Since this Court answered the question in the negative, **Section 83(1) was amended by Act 27 of 2013 to include the words, "eviction of tenant or determination of rights and obligations of the lessor and lessee of such property"**.*

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40. The upshot of the above discussion is that the basis of Ramesh Gobindram now stands removed through amendment Act 27 of 2013. In fact, when Ramesh Gobindram was decided, Sections 6(1) and 7(1) enabled only three categories of persons to approach the Waqf Tribunal for relief. They are, (i) the Board; (ii) the mutawalli of the waqf; or (iii) any person interested therein. However, the explanation Under Section 6(1) clarified that the expression "any person interested therein" shall include every person, who, though not interested in the waqf, is interested in the property. **But by Act 27 of 2013 the words, "any person interested" were substituted by the words, "any person aggrieved", meaning thereby that even a non Muslim is entitled to invoke the jurisdiction of the Tribunal. Due to the substitution of the words "any person aggrieved". Act 27 of 2013 has deleted the Explanation under 6(1). This amendment has also addressed the concern expressed in Ramesh Gobindram (in para 21 of the see report) whether a non Muslim could be put to jeopardy by the bar of jurisdiction, merely because the property is included in the list of waqfs.** We must point out at this stage that the Explanation Under Sub-section (1) of Section 6, as it stood at the time when Ramesh Gobindram was decided, already took care of this contingency, but was omitted to be brought to the notice of this Court.

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43. Having seen the extent to which this Court followed or distinguished Ramesh Gobindram in subsequent decisions and having seen that the basis of Ramesh Gobindram now stands removed by Act 27 of 2013, let us now turn our attention to the "other matters", which are required by or under the Act to be determined by the Tribunal. **This is for reason that the second limb of Section 85, as we have seen earlier, bars the jurisdiction of any Civil Court, Revenue Court and any other authority, in respect of any dispute, question or other matter which is required by or under this Act to be determined by the Tribunal.**

45. **In sum and substance the Act makes a reference, to 3 types of remedies, namely that of a suit, application or appeal before the Tribunal, in respect of the following matters:**

.....

(xvii) **any dispute, question or other matter relating to a waqf property {Section 83(1)}**

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55. It is well settled that the court cannot do violence to the express language of the statute. **Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).**

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57.The dichotomy created in some decisions of this Court, between the properties which are admitted to be waqf properties and properties which are disputed to be so, is on account of the misapplication of the two limited questions in Sections 6(1) and 7(1) to the whole of the Act including Section 83. At the cost of repetition we should point out that Section 83(1) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.”

7. The position in law that emerges upon a perusal of the aforesaid extracts from *Rashid Wali Beg* supra is that in terms Section 83(1) of the Act, the jurisdiction of determination of any dispute in relation to a Waqf property lies with the Waqf Tribunal. Further, Section 85 of the Act ousts the jurisdiction of any other Court or authority in respect of any dispute relating to a Waqf property, as the same is required to be determined by a Waqf Tribunal. As rightly submitted by the counsels for the respondents no.1 and 2, the bar of jurisdiction under Section 85 of the Act is not confined only to Sections 6 and 7 of the Act, but is all pervasive. Additionally, the amendment to Section 83(1) of the Act in 2013 enables the Waqf Tribunal to determine any dispute relating to eviction of a tenant in a Waqf property or the rights of a lessor and lessee of such property.

8. The judgment of the Supreme Court in *Rashid Wali Beg* supra is squarely applicable to the present case. It is an admitted position that the property in question is a Waqf property and is undisputed that the petition under Section 45 of the Delhi Rent Control Act, 1958 was filed in April,

2017, after coming into effect the amendments carried out in the Waqf Act in 2013. Even if the petitioner claims to be a tenant, though such claim is controverted by the respondents, in terms of Section 83(1) as amended, the jurisdiction of the Waqf Tribunal includes the eviction of tenant or determination of rights and obligations of the lessor and lessee of a Waqf property. Therefore, in terms of amended Section 83 read with Section 85 of Waqf Act, the jurisdiction to decide the dispute raised by the petitioner with regard to the property in question would exclusively vest with the Waqf Tribunal and not with the authorities under the Delhi Rent Control Act, 1958.

9. The impugned order has correctly addressed the issue of jurisdiction. In this regard reference may be made to paragraphs 66, 67 and 68 of the impugned order which are set out below:

“66. This Court also held that when there is special law providing for a special forum, then recourse cannot be taken to the general law.

*67. Now coming for the facts in the present case, the petition under S.45 has been filed on 11.01.2018. The observation of the Supreme Court in the case of **Ramesh Gobindram** (supra) was in the context of unamended Act which did not provide for nay proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant. The position however, stands changed with the introduction of amendments that have been brought in 2013 to Wakf Act, 1995. Now all the matters and disputes between tenants, lessees or encroachers as defined under the Act shall be determined by the Tribunal as provided in S.6&7, S.83 and other provisions of the Act. The present dispute relates to restoration of electricity in the wakf property at the instance of the respondent no.1 who is claiming to be a tenant. Section 83 sub-section (1)*

specifically includes eviction of a tenant or determination of rights or obligations of the lessor and lessee of such property. Whether he is a tenant, lessee or an encroacher, the dispute raised is in respect of rights and obligations of the occupant of the wakf property which is covered by S.6 & S.83 of the Act.

Applying the test propounded in Ramesh Gobindram, the Tribunal having been conferred with jurisdiction to deal with disputes between landlord – tenant in respect of their disputes and obligations vis. a. viz the Wakf property, the jurisdiction of Rent court stands ousted and any dispute in regard to restoration of electricity has to be agitated before the Tribunal.

68. *The order of learned ARC under S.45 (3) of the Rent Act is without jurisdiction and is liable to be set aside. In view of the observations in regard to petition itself not being maintainable before the Rent Controller, the Ld. ARC shall dispose of the petition accordingly. The Respondent No.1 is granted 30 days to approach the right forum after which the Respondent No.3 NDMC shall disconnect the electricity supply to the suit premises.”*

10. There is no infirmity at all in the impugned order passed by the RCT. In fact, the impugned order granted 30 days to the petitioner to approach the right forum and it was only thereafter that the respondent no.3/NDMC would disconnect the electricity supply to the suit premises.

11. In view of the above, the petition along with the pending application is dismissed. However, 30 days' time is given to the petitioner to approach the Waqf Tribunal. In the event that a petition along with an interim application is filed by the petitioner before the Waqf Tribunal within 30 days, the electricity connection of the petitioner shall not be disconnected till the time the Waqf Tribunal decides the petition or the interim application of

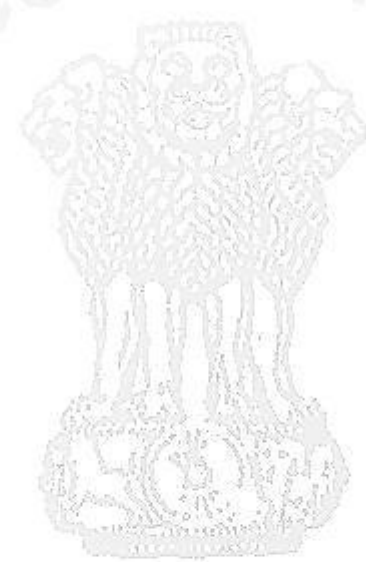
the petitioner. The Tribunal is requested to expeditiously decide, at the very least, the interim application to be filed on behalf of the petitioner.

12. The petition/interim application to be filed by the petitioner before the Waqf Tribunal shall be considered by the Waqf Tribunal uninfluenced by any observations made in this order. It is clarified that no observations with regard to the merits of the matter or the status of the petitioner of being a tenant has been made in this order.

DECEMBER 2, 2021

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AMIT BANSAL, J



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