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

Reserved on: 18th November, 2021
Date of decision: 15th December, 2021

+ **C.R.P. 223/2019 & CM APPLs. 44663/2019 & 44665/2019**

MEHVISH ADIL Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Vijay K. Gupta and Mr. Mehul
Gupta, Advocate.

versus

DELHI WAKF BOARD & ORS Respondents

Through: Mr. Wajeeh Shafiq, Standing Counsel
with Ms. Ramsha Shan and Ms.
Sabika Ahmed, Advocates for R-1.

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WITH

+ **C.R.P. 224/2019 & CM APPLs. 44666/2019 & 44668/2019**

AFROZNISHA Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Vijay K. Gupta and Mr. Mehul
Gupta, Advocate.

versus

DELHI WAKF BOARD & ORS Respondents

Through: Mr. Wajeeh Shafiq, Standing Counsel
with Ms. Ramsha Shan and Ms.
Sabika Ahmed, Advocates for R-1.

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AND

+ **C.R.P. 225/2019 & CM APPL. 44669/2019 & 44671/2019**

MOHD ADIL Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Vijay K. Gupta and Mr. Mehul
Gupta, Advocate.

versus

DELHI WAKF BOARD & ORS Respondents

Through: Mr. Wajeesh Shafiq, Standing Counsel
with Ms. Ramsha Shan and Ms.
Sabika Ahmed, Advocates for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The Waqf Act, 1995 (*hereinafter* “*Waqf Act*”) is a special enactment which is meant to provide for the better administration of Waqfs, including the property which vests in Waqfs. The Waqf Act has been enacted for the larger public good to ensure that Waqfs and Waqf-related properties are properly managed and the income derived from the Waqf property is utilized for the larger good of the community.

2. A perusal of the scheme of the Waqf Act shows that this statute contemplates the creation of Waqf Boards which, in Delhi, is the Delhi Wakf Board/Respondent No.1 (*hereinafter* “*Waqf Board*”). The Waqf Board conducts surveys as per the Waqf Act. Disputes relating to Waqf properties are resolved by the Waqf Tribunal under Sections 6 & 7 of the Waqf Act. The constitution of the Waqf Board is provided for in Chapter IV of the Waqf Act, including the duties and functions of the Waqf Board. One such duty of the Waqf Board is to ensure removal of encroachments from Waqf properties under Section 54 of the Waqf Act. Section 55 of the Waqf Act further provides that the Executive Magistrate shall take action for the enforcement of such orders made under Section 54, in case the occupant against whom eviction orders are issued by the Waqf Board, fails to remove such encroachment.

Facts

3. The present revision petitions arise out of orders dated 4th October, 2019 passed by the Waqf Tribunal/NDD/PHC (*hereinafter* “*Waqf Tribunal*”) in **ML No.27/2018** titled ***Mehvish Adil v. Delhi Wakf Board & Ors.***, in **ML No.29/2018** titled ***Mohd Adil v. Delhi Wakf Board & Ors.*** and in **ML No.28/2018** titled ***Afroznisha v. Delhi Wakf Board & Ors.*** Vide the said orders, the applications of Petitioners/Plaintiffs/Mehvish Adil, Mohd. Adil and Afroznisha (*hereinafter collectively* “*Petitioners*”) under Order XXXIX Rules 1&2 CPC were dismissed. Effectively, the prayer seeking injunction against the Waqf Board from dispossessing the Petitioners, from property being 1068, Ward No.1, Khasra no. 1151/3, Mehrauli, Delhi ad measuring 425 sq. yards (*hereinafter* “*suit property*”), was rejected. A brief background of the present proceedings is as below.

4. Initially, a notice was issued on 22nd January, 2007, against the Petitioners under Section 54 of the Waqf Act, by the Chief Executive Officer, Waqf Board, stating that the Petitioners were in unauthorized occupation of Waqf property. Therefore, they were directed to vacate the suit property, within 15 days of service of the order. Since the said notice was not complied with by the Petitioners, procedure for enforcement of the eviction orders was triggered under Section 55 of the Waqf Act. Accordingly, the Waqf Board made applications to the office of the Sub-Divisional Magistrate (Mehrauli), GNCTD (*hereinafter* “*SDM*”), seeking directions for removal of encroachments by the Petitioners under Section 55 of the Waqf Act. During the pendency of the enforcement of the said order dated 22nd January, 2007, the Petitioners entered into rent agreements with the Waqf Board on 16th October, 2008 and 5th November, 2008. Their

tenancy itself came to an end by efflux of time in 2012. The Petitioners, however, continued to remain in occupation of the suit property.

5. In 2015, the Waqf Board filed proceedings before the High Court of Delhi, against the SDM in *W.P. (C.)6275/2015* titled ***Delhi Waqf Board v. Principal Secretary, Revenue & Ors.***, seeking execution under Section 55 of the Waqf Act, of various eviction orders and encroachment proceedings pending over Waqf properties. In this petition, vide order dated 29th May, 2017, the High Court directed the SDM to execute pending eviction orders over Waqf properties. Pursuant to this order (*wrongly written as 29th May, 2015 in this eviction notice*), the SDM issued an eviction notice No.2/73/Teh./Meh/2018-19/128 dated 24th August, 2018, directing Mohd. Adil to vacate the suit premises.

6. It is the case of the Petitioners that this notice was not accompanied by the eviction order which it was relying upon. Thus, as per the Petitioners, there was no clarity as to which eviction order was sought to be executed by the Waqf Board. On 19th September, 2019, the Petitioners submitted a reply to the SDM's communication dated 24th August, 2018, stating that the eviction order was only received by the Petitioners on 14th September, 2018 and sought the following:

- (i) A copy of the eviction order passed by the Waqf Board pursuant to which this notice was being issued, and other documents, such as order of the High Court dated 29th May 2015 and proof of the Waqf Board's ownership of the suit property; and
- (ii) Opportunity to reply/respond to the notice dated 24th August, 2018 and to be afforded a hearing.

7. On eliciting no response from the SDM, the Petitioners, filed three suits for declaration, permanent and mandatory injunction against the Waqf Board, the SDM and GNCTD. In the said suit, the Petitioners claimed, *inter alia*, that:

- (i) the family of the Petitioners was in occupation of the suit property since 1969-1970;
- (ii) the suit property had always been a family property, partitioned vide Memorandum of Settlement dated 11th October, 2005, and in fact a civil suit for partition among the family members had been disposed of in terms of the said settlement vide compromise decree dated 6th December, 2005 in ***Civil Suit No.349/05*** titled ***Mohd. Adil v. Mohd. Rizwan and Ors.***; and
- (iii) the eviction order was illegal as the Waqf Board had never undertaken demarcation of the suit property and there was no eviction notice of the Waqf Board pursuant to which the present eviction order could have been issued by the SDM.

8. The reliefs sought in the suit plaint filed by Mohd. Adil, were as under:

“a. Decree of declaration may kindly be passed in favour of the Plaintiff and against the Defendants declaring the suit property i.e. 1068, Ward no.1, Khasra no. 1151/3, Mehrauli, Delhi admeasuring 425 sq. yards is not a wakf property under the Wakf Act 1995;

b. Decree of declaration may kindly be passed in favour of the Plaintiff and against the Defendants declaring the eviction order passed in respect of suit property under the said act and notice dated 24.08.2018 issued by Defendant no.2 may be declared as

null and void;

c. Decree of permanent injunction may kindly be passed in favour of Plaintiff and against the Defendants restraining them from forcibly dispossessing the Plaintiff from the suit property;

d. Decree of mandatory injunction may kindly be passed directing Defendant no. 1 to demarcate and identify the wakf property if any in neighbourhood/locality so as to avoid any confusion of the nature of suit property being wakf property in future and for necessary follow up action including eviction order etc;

e. cost of the present suit may kindly be awarded to the Plaintiffs;

f. pass such other and further order(s) which this Hon'ble Court deems fit in the facts and circumstances of the case."

9. In the suit proceedings, the Waqf Board upon receiving summons, appeared before the Waqf Tribunal and brought to the notice of the Waqf Tribunal that the Petitioners had actually entered into rent agreements on 16th October, 2008 and 5th November, 2008 executed between the Waqf Board and Mohd. Adil and between the Waqf Board and Smt. Afoznisa, respectively.

10. On 31st October, 2018, the Waqf Tribunal also recorded the statement of Mohd. Adil under Order X CPC, that the rent agreement on 16th October, 2008 was indeed entered into. Accordingly, Mohd. Adil's prayer for *status quo* to be maintained in the suit property, was rejected by the Tribunal vide order dated 31st October, 2018 in view of the material suppression of facts and submissions. Notably, the same order was directed to be placed in the other two suits being ML No.27/18 and ML No.28/18. The said order is relevant and is set out below:

*“ML No. 29/18 (also ML No. 27/18 and 28/18)
Mohd. Adil Vs. Delhi Waqf Board and ors*

31.10.2018

*Present : Ld. Counsel Sh. Vijay K. Gupta for the plaintiff along
Ld. Counsel Sh. Wajeeh Shafiq for defendant no. 1 along with
Court Clerk Mohd. Ishaque.*

*Sh. K.S. Rawat, Senior Assistant, SDM Mehrauli/defendant no. 2,
also for defendant no. 3.*

None for defendant no. 4.

*Defendant no. 1 may file the WS within 30 days from the date of
service with advance copy to the plaintiff, who may file the
replication to the WS.*

*As far as defendant no. 2 and 3 are concerned, they may file the
WS/status reports regarding suit property. Status report be
accompanied with the relevant documents, revenue records if
any.*

*At this stage, it is submitted by Ld. Counsel for defendant no. 1
that plaintiff had entered into one rent agreement with defendant
no. 1 in respect to the suit property. Copy of rent agreement
shown. It is submitted that this material fact has been
deliberately suppressed/concealed by the plaintiff. It is also
submitted that same is the position in case ML NO. 27/18
wherein the plaintiff therein is the wife of present plaintiff as well
as ML No. 28/18. It is submitted that plaintiff no. 1 in ML No.
28/18 is the mother of plaintiff in the present suit and plaintiff no.
2 is the brother. Copy of rent agreement entered by plaintiff no. 1
in ML No. 28/18 is placed on record as Mark B.*

*Heard. Upon being asked and shown the copy of the rent
agreement, plaintiff admits that the said agreement was indeed
entered with defendant no. 1 in respect of the suit property.
Plaintiff has been examined under Order 10 CPC in this regard,
despite the objection of Ld. Counsel for the plaintiff who
submitted that the court cannot examine the plaintiff as such. It is
settled law that examination under Order 10 CPC can be at any
stage. Even otherwise the Tribunal has all the power to examine
the parties so as to ascertain the exact nature of the suit and so*

as to elicit the truth.

As far as Mark B is concerned plaintiff in the present suit as well as plaintiff no. 2 in ML No. 28/18 have submitted that they are not sure whether Mark B bears the signatures and photographs of their mother or not.

At this stage, Ld. Counsel for the plaintiff prays for status quo to be maintained in respect of the possession of the plaintiff in the suit property. Heard. Prima facie there appears to be some material concealments, suppression of facts, by the plaintiffs in ML No. 27/18, 28/18 and 29/18 in the plaint regarding execution of rent agreement with defendant no. 1. In view of categoric submissions made by Ld. Counsel for defendant no. 1, this Tribunal is not inclined to grant any status quo in respect of suit property in favour of the plaintiff.

At request copy of order be given dasti to parties. Copy of the present order be also Placed in ML No. 27/18 and ML No. 28/18.
Relist the matter now on 06.02.2019.”

11. Pursuant to this order dated 31st October, 2018, the Petitioners approached the High Court by way of applications being **CM Nos.41767/2018, 41769/2018 and 46704/2018** in **W.P.(C.) 6275/2015**, seeking directions that the proceedings before the High Court shall not influence the adjudication of individual claims of the Petitioners for residing in the suit property. The High Court disposed of the said applications vide order dated 3rd April, 2019, in terms of its earlier order dated 27th July, 2018 in the same writ petition. The Court observed that the Waqf Board and Waqf Tribunal would have to examine all pending eviction matters on their own merits, uninfluenced by the pendency of the writ proceedings. The said order reads as under:

“CM No.29885/2018

1. We are of the view that the applicant is required to set up its individual claim based on its individual facts. The applicant is not a necessary party for the purposes of adjudication of the

present writ petition which is in the nature of public interest litigation.

2. In view of the above observations, ld. counsel for the applicant prays for leave to withdraw this application.

3. This application is disposed of as withdrawn.

CM No.29886/2018

1. This application has been filed by the widow and sons of Late Shri Suraj Bhan, a resident of House No.54, Village Hauz Khas, New Delhi contending that they have invoked the appropriate remedy before the Delhi Wakf Tribunal under Section 54(4) of the Wakf Act, 1955.

2. The applicant has expressed an apprehension that the proceedings before this court would influence the adjudication in the proceedings under the Wakf Act, 1955 and consequently modification of the order dated 29th May, 2017 is sought.

3. It cannot be denied that individual property owners have a legal right to invoke their appropriate remedy under the Wakf Act, in case a claim is made that the same is a Wakf property. The adjudication of such a claim has to abide by due process and application of mind by the forum concerned.

4. We make it clear that the Delhi Wakf Tribunal shall examine all claims made before it by the Delhi Wakf Board and any individual, laying a claim to a land or any other kind, uninfluenced by the pendency of the present matter. However, each matter shall be decided by the Delhi Wakf Tribunal on its own merits after due application of mind.

5. The Delhi Wakf Tribunal shall consider all objections, legal and factual, including those premised on limitation and delay in approaching the tribunal on their own merits.

6. So far as the directions made in para 5 of our order dated 29th May, 2017 are concerned, the respondent no.1 shall inform this court as to whether any litigation is pending which has resulted in delay in enforcement of vacation orders in compliance with Section 55 of the Wakf Act, 1955. These facts will be disclosed in the status report which is required to be filed in terms of the order dated 29th May, 2017 and also whether there is any order of restraint by any court or forum.

7. This application is disposed of.”

12. Accordingly, the suit proceedings before the Waqf Tribunal continued. The Waqf Board filed its written statement on 6th February, 2019, highlighting that an eviction order dated 22nd January, 2007, under Section 54 of the Waqf Act was passed against the Petitioners, which was never challenged. Therefore, the same had attained finality. The Waqf Board also filed a counter-claim along with the written statement. The Waqf Board pleaded therein that there was never any sale of the suit property to the Petitioners. Moreover, the counter-claim stated that the fact that the rent agreements were executed by the Petitioners in respect of the suit property in 2008, showed their acceptance of the suit property being Waqf property.

13. During the pendency of such suit proceedings, the High Court in **W.P.(C.) 6275/2015** vide order dated 27th August, 2019, directed the relevant authorities including the SDM and police to take necessary steps for eviction of unauthorized occupants in Waqf properties. The relevant order reads as under:

“4. In view of the aforesaid submission, and also looking to the memo of this writ petition as well as status reports filed by the respondents, it appears that the respondents, it appears that the respondents are already working for the property of the Waqf board and the eviction of illegal occupants. Nonetheless, as stated by learned counsel for the respondents, there are court litigations also and hence, we see no reason to give any time bound schedule/direction for eviction of the properties.

5. It is expected from Respondent Nos. 2 to 18 that actions will be initiated by them against the illegal occupants of the property of the Waqf Board and after getting them vacated, the property will be handed over to the owner(s) of the property.

6. We also direct Respondent Nos.2 to 18 to act in accordance with law, rules, regulations and Government

policies as applicable to the facts of the case, while processing the eviction and in handing over of the property to the owner(s) of the property.

7. For the above purpose, we also direct the Commissioner of Police (Respondent No. 19) to render necessary assistance to the concerned SDM.

8. With these observations, this writ petition is hereby disposed of.”

14. The SDM then issued a second eviction notice under Section 55 of the Waqf Act, on 28th September, 2019. At this stage, feeling threatened by the impending eviction, the Petitioners filed applications under Order XXXIX Rules 1&2 CPC, seeking temporary injunction against the Waqf Board, from dispossessing the Petitioners from the suit property, during the pendency of the suits. The reliefs sought in the application were as under:

“a. In view of subsequent developments vide aforesaid notice which involves grave urgency, ex parte ad interim injunction order may kindly be passed restraining Defendant no.1 & 2 from dispossessing the Plaintiff the suit property till the final adjudication of the present case and the orders of status-quo may kindly be passed protecting possession of Plaintiff;

b. Pass such other/further order(s) as the Hon’ble Court may deem fit in the facts of the present case.”

15. The applications for interim relief were heard in detail by the Waqf Tribunal. Vide the impugned orders dated 4th October, 2019, the Tribunal dismissed the applications seeking interim injunction and held as under:

- (i) That Mohd. Adil has admitted in his statement under Order X CPC, that a rent agreement was entered into by him with the Waqf Board. In fact, rent deeds have been executed in favour of Mohd. Adil on 16th October, 2008 and in favour of Mst.

Afroznisha on 5th November, 2008, both being operative *w.e.f.* 1st June, 2008.

- (ii) The Petitioners are guilty of suppression of material facts as the factum of tenancy was completely concealed in the plaint. The relief of *status-quo* which was sought had already been rejected.
- (iii) The initiation of the eviction order was in exercise of the powers vested in the CEO, Waqf Board, under the Waqf Act.
- (iv) In view of the amendment to Section 83 of the Waqf Act *w.e.f.* 1st November, 2013, the Waqf Tribunal is competent to decide even eviction related matters, related to tenants. Thus, the injunction application was rightly dismissed.

16. In the present revision petitions, on the first date, submission was made by the Petitioners that a copy of the impugned orders of the Wakf Tribunal dated 4th October, 2019, was not available. Accordingly, this Court directed vide order dated 10th October 2019 that no coercive measures shall be taken against the Petitioners. This interim order dated 10th October, 2019 is still operative.

17. The impugned orders of the Waqf Tribunal dated 4th October, 2019 – out of which the present revision petitions arise – are now on record.

Submissions

18. Mr. Kirti Uppal, Id. Sr. Counsel appearing on behalf of the Petitioners, makes the following submissions to contend that the impugned orders be set aside and reversed and the interim injunction be granted:

- (i) The Waqf Tribunal would not have jurisdiction to entertain landlord-tenant disputes in cases of eviction.

- (ii) In any event, in the present suits, a question has also been raised under Section 6 of the Waqf Act, as to whether the suit property is itself a Waqf property and thus, this issue deserves to be adjudicated upon by the Waqf Tribunal in final proceedings. Therefore, the orders dated 4th October, 2019, effectively allowing dispossession of the Petitioners before a decision on the property's identity as a Waqf property is taken, cannot be sustained.
- (iii) Moreover, the eviction order which was originally passed against the Petitioners on 22nd January, 2007 by the Waqf Board, was never given effect to by the Waqf Board. During the pendency of the execution of that order, a rent agreement was executed between the Petitioners and Waqf Board, on 16th October, 2008, and the tenancy finally ended on 2012. Thus, the original eviction order was no longer valid and has been overridden by the subsequent rent deed. In any event, he submits that the 12-year limitation period has also lapsed for executing the said order of 2007. Therefore, the said order of 22nd January, 2007 was no longer alive and valid for it to be relied upon by the Tribunal in the impugned orders dated 4th October, 2019.
- (iv) As for the rent agreements entered into by the Petitioners, he submits that a notice under Section 54 of the Waqf Act, dated 18th January, 2012, has also been issued after the tenancy of the Petitioners ended and no order by the Waqf Board or the SDM has been passed pursuant to the said show cause notice.

- (v) Additionally, he submits that the adjudication cannot be as to whether the tenant is an unauthorized occupant, in a suit filed by the tenant himself. Reliance is specifically placed upon the counter-claim filed by the Waqf Board in ML No. 29/18, ML No. 27/18 and ML 28/18, before the Waqf Tribunal and the reliefs sought therein to argue that the Waqf Board itself is seeking eviction of the Petitioners in the counter-claim and since that is the final relief, by way of dismissal of the interim application, the Petitioners cannot be dispossessed. He submits that since this suit and the counter-claim are pending before the Waqf Tribunal, the eviction ought to await the final decision of the Waqf Tribunal.
- (vi) It is finally submitted that before any tenant can be evicted, '*due process*' has to be followed and the said '*due process*' would mean that the Waqf Board ought to take action for eviction under Sections 54 and 55 of the Waqf Act. Without following these specific provisions for eviction of occupants from Waqf properties, the decision for eviction cannot be taken by way of relief in an interim application. Consequently, the eviction herein could only have taken place as per the '*due process*' prescribed under Sections 54 and 55 of the Waqf Act. Since the earlier notices and orders under Section 54 and 55 of the Waqf Act, were not valid as per his earlier submissions, the same cannot be used to establish compliance with '*due process*' of eviction under the Waqf Act. Since '*due process*' has not been followed, the logical conclusion would be to

grant injunction in favour of the Petitioners.

19. On the other hand, Mr. Shafeeq, Id. Counsel for the Waqf Board, has made the following submissions:

- (i) That by the orders of the Waqf Tribunal dated 31st October, 2018 and 4th October, 2019, the Petitioner's plea for *status quo* was refused and the applications under Order XXXIX Rules 1 & 2 CPC were rejected by the Waqf Tribunal in **ML No. 29/18, ML No. 27/18 and ML 28/18**. He highlights that this was done on the basis of the rent agreements and statement of Mohd. Adil that was recorded under Order X CPC before the Waqf Tribunal, wherein he admitted the rent agreement. Thereafter, by a detailed judgment, the Waqf Tribunal has dismissed the applications under Order XXXIX Rule 1 and 2 CPC. Therefore, the Waqf Tribunal has considered all the contentions of the parties on merits and this is sufficient to satisfy the requirement of '*due process*' for dispossession of the Petitioners.
- (ii) Mr. Shafiq further submits that the Petitioners are guilty of suppression of material facts, since they failed to bring eviction orders of 2007 and rent agreements of 2008 to the notice of the Waqf Tribunal. They have taken a false stand before the Waqf Tribunal as also before this Court.
- (iii) He then addresses the submission of the Petitioners that the 2007 eviction order has lapsed on account of delay in the SDM issuing orders under Section 55 of the Waqf Act. In this regard, he submits that the original eviction notice of 2007 had

not lapsed as it had already been sent by the Waqf Board to the concerned SDM to execute it. It was during the pendency of the said execution proceedings in the eviction notice of 2007, that the rent deed was executed. However, the Waqf Board cannot be blamed for delay in execution of that order by the SDM. In this regard, he also relies upon the order dated 27th August, 2019, of the High Court in ***W.P. (C.)6275/2015***, whereby the High Court directed the relevant authorities including the SDM and police to take necessary steps for eviction of unauthorized occupants, with regard to various pending eviction orders issued by the Waqf Board. Even so, he brings to the Court's notice, that apart from the payment of one month's rent of Rs.2,000/- in October 2008, the Petitioners have not paid anything to the Waqf Board, and they are in occupation of prime property.

- (iv) In so far as the Petitioner's submission that the 2007 eviction order would no longer be valid on account of expiry of 12 years since its issuance, he relies upon Section 107 of the Waqf Act. The same provides that the provisions of the Limitation Act, 1963 (*hereinafter "Limitation Act"*) do not apply to proceedings involving recovery of Waqf properties. Therefore, he submits that the eviction notice of 2007 would remain valid.
- (v) In any event, he submits that the Petitioners cannot question the right and title of the Waqf Board *qua* the suit property on two grounds. One, that they were tenants and they had entered

into a rent deed in 2008 and second, because of their statement recorded under Order X CPC where one of the Petitioners, in fact, specifically admits that he had taken the suit property on rent from the Waqf Board. Hence, estoppel would operate against the Petitioners under Section 116 of the Indian Evidence Act, 1872 (*hereinafter "Evidence Act"*).

20. Mr. Shafiq, thus, submits that the present petitions are not liable to be entertained. Accordingly, the Waqf Tribunal should be permitted to proceed with the suit property in accordance with law, as also the Waqf Board should be allowed to take steps in accordance with law.

Findings

21. Heard the Id. Counsels for the parties and perused the record. Initially a submission was made by the Id. Senior Counsel for the Petitioners, that the Waqf Tribunal was not competent to deal with eviction related issues. Reliance was also placed upon the judgment of the Supreme Court in ***Ramesh Govindram (Dead) through Lrs. v. Sugra Humayun Mirza Wakf [Civil Appl. No.1182 of 2006, decided on 1st September, 2010]*** to argue that under Section 83 of the Waqf Act, the eviction of tenants from Waqf property would not be within the domain of the Waqf Tribunal.

22. Section 83 of the Waqf Act was amended in 2013. The provision currently reads as under:

83. Constitution of Tribunals, etc.—1 [(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 property¹, under this Act and define the local limits and jurisdiction of such Tribunals.]

(2) 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]

(3) Where any application made under sub-section (1) relates to any [waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the [waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the [waqf] or any other person interested in the [waqf] or the [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such [waqf] or [waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is

¹ Section 44(a), Wakf (Amendment) Act, 2013 (Act 27 of 2013), vide S.O. 3292(E) dated 29th October, 2013, w.e.f. 1st November, 2013; Sub-section (1) before substitution read as under:

“(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 wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.”

necessary in the interest of justice to deal with the application afresh.

[(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.]

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.”

23. Most recently, on the applicability Section 83 of the Waqf Act, in ***Rashid Wali Beg v. Farid Pindari & Ors. [Civil Appeal 6336 of 2021, decided on 28th October, 2021]*** the Supreme Court held as under:

“20. Thus, Act 27 of 2013 did 2 things. First it expanded the jurisdiction of Waqf Tribunal even to cover landlord-tenant disputes and the rights and obligations of lessor and lessee. Second, the Amendment Act enlarged the bar of jurisdiction, to cover even revenue courts and other authorities.

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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".”

24. The decision in ***Ramesh Gobindram (supra)*** was prior to the amendment of the Waqf Act. Post the amendment, it is clear that the Waqf Tribunal’s jurisdiction is exercisable even in the case of landlord-tenant disputes, lessor-lessee disputes etc., as in the present case. On a query being

put to Mr. Uppal, Id. Sr. Counsel, that the said provision of Section 83 has now been amended, he fairly submits that after the amendment, issues relating to eviction of tenants can be considered by the Waqf Tribunal. Thus, this issue was no longer pressed by the Petitioners, in view of the amendment under Section 83.

25. In so far as the provisions of the Limitation Act are concerned, in view of Section 107 of the Waqf Act, the provisions of the Limitation Act would not apply to the eviction proceedings in question, including the eviction notice dated 22nd January, 2007. The said provision reads as under:

“107. Act 36 of 1963 not to apply for recovery of [waqf] properties.—Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any [waqf] or for possession of any interest in such property.”

26. This position has been confirmed by the Supreme Court in ***T. Kaliamurthi v. Five Gori Thaikal Wakf***, AIR 2009 SC 840, where it was categorically held:

“Section 107 lays down that nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property. Thus it can be said that this section virtually repeals the Limitation Act, 1963 so far as the Wakf properties are concerned. Therefore, it can be concluded without any hesitation in mind that there is now no bar of limitation for recovery of possession of any immovable property comprised in a Wakf or any interest therein.”

27. This settles the issues relating to limitation and the power of the Waqf Tribunal for eviction.

28. The next contention raised by Id. senior counsel for the Petitioners is

that any occupants of a public property can only be removed by following due process of law, which could only be effected by following the procedure under Sections 54 and 55 of the Waqf Act. However, in the present case, the occupants would be removed from the suit property by rejection of an application for injunction under Order XXXIX Rules 1&2 CPC, filed by the Petitioners themselves against the Waqf Board.

29. At the outset, this Court notes that in the present case, the Waqf Board has taken repeated steps to evict the Petitioners. In 2007, the first eviction notice was issued. However, the same remained pending for execution due to, what can at best, be described as administrative lethargy. In 2008, the Petitioners who were occupying the land entered into rent agreements. This fact is also not disputed by the Petitioners. Amidst these events, the orders passed by this Court, generally relating to Waqf properties, also gave some impetus to the actions to be taken by the authorities for securing possession of Waqf properties. Therefore, in the meantime, the Waqf Board took further action for eviction which resulted in filing of the suits by the Petitioners. In the suit, the Waqf Board, apart from filing the written statement in response to the Petitioners' suits, has also filed its counter claim before the Waqf Tribunal and along with the said two pleadings, the rent agreements were attached. The first rent agreement is dated 16th October, 2008 and is between the Delhi Waqf Board and Mohd. Adil and one Mohd. Sufyan, stated to be another son of Mohd. Razi. On similar terms, the second rent agreement dated 5th November, 2008 was executed between the Waqf Board and Smt. Afroznissa. The said rent deeds related to the suit property in question. There is a clear admission in the recital of the said rent deed as under:

“Whereas a Wakf property pertaining to the part of Mpl.No. 1068/1, Khasra No. 667, Mehrauli, New Delhi, is a Wakf Property under the management and control of the Delhi Wakf Board (Landlord) and more particularly described in the plan prepared & signed by Mohd. Haider Ali Khan, draftsman, Mor. Mohd. Arif, S.O, R & P, Delhi Wakf board and Smt. Afroz Nisa, widow of late Mr. Mohd. Razi, R/o 1068/1, Khasra No. 667, Mehrauli, New Delhi, the tenant, here to annexed is a Wakf property under the management and control of the Delhi Wakf Board (Landlord) whereas at the request of the tenant, it has been decided to rent out the aforesaid Wakf property pertaining to the part of Mpl.No. 1068/1, Khasra No. 667, Mehrauli, New Delhi, vide Resolution No.15 of the Board dated 19-06-2008.

This Deed witnesses as follows:-

In consideration of the rent thereafter reserved and the tenant covenants hereinafter contained, the Owner/landlord hereby with all appurtenances thereto a Wakf property pertaining to the part of Mpl.No. 1068/1, Khasra No. 667, Mehrauli, New Delhi (hereinafter called “The Wakf Property”) to hold the same unto the tenant for a period of 11 (Eleven) months w.e.f. 01-06-2008 yielding and bearing during the said term at a monthly rent of Rs.2,000/- payable in advance in the 1st week of each month.”

30. Both the rent deeds have similar warranties and conditions. The properties concerned are duly identified by means of a site plan.

31. In view of these facts, this Court is of the opinion that the entire case put up by the Petitioners is completely false. The Waqf Board has also filed a detailed written statement showing how late Sh. Mohd. Razi, husband of Smt. Afroznisa was also a tenant earlier. The suit property is already entered in the list of Auqaf published by the Delhi Administration in the Gazette dated 30th December, 1976. Repeated proceedings have been initiated for eviction of these tenants in 2006-07, 2012 and in 2018. The notice of eviction by the SDM under Section 55 of the Waqf Act, was issued on 24th

August, 2018, which led to the filing of the suits in the present petitions. The final notice was issued by the SDM on 28th September, 2019, which led to the filing of the applications under Order XXXIX Rules 1&2 CPC in the said suits. The cause of action pleaded in the suit is as under:

“20. That Plaintiff has been under constant apprehension that under the false notion as threatened by Defendants in the said notice dated 24.08.2018 received on 14.09.2018, that Defendant no.2 in association with other defendants might take illegal action to dispossess the Plaintiff from suit property under the garb of compliance of law as stated therein. In such an event Plaintiff shall be rendered remediless and shall suffer irreparable harm and injury.

21. That the cause of action accrued to the Plaintiff to file the present suit when Defendant No.2 served a notice dated 24.08.2018 on the Plaintiff calling upon him to vacate the suit property. The cause of action has further accrued when the Defendant no.2 has threatened the Plaintiff to vacate the suit property even after serving of the notice dated 24/08/2018 and is of a continuous nature. Hence, the present suit.”

32. In so far as satisfaction of the requirement of ‘due process’ in dispossession of the Petitioners, in accordance with these reliefs, it is evident that:

- (i) The Waqf Tribunal which is the competent forum to adjudicate as to whether the land belongs to the Waqf or not, has entertained the suit.
- (ii) The Waqf Tribunal has given due and proper hearing to the parties. It has also recorded the statement of one of the Petitioners, i.e., Mohd. Adil, under Order X CPC.
- (iii) It has perused the complete records of the suits and has passed two detailed orders, first, rejecting the prayer for *status-quo*

vide order dated 31st October, 2018, and second, dismissing the applications for interim injunction vide impugned orders dated 4th October, 2019.

33. As held in *Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) through LRs*, (2012) 5 SCC 370, 'due process' need not always mean a process initiated by the owner it can be any judicial proceedings where the respective contentions of the parties are adjudicated in a free and fair manner and with proper opportunity being afforded to the parties. The observations of the Supreme Court in *Maria Margarida (supra)* are as under:

"81. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the Defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

82. The High Court of Delhi in a case Thomas Cook (India) Limited v. Hotel Imperial, 2006 (88) DRJ 545: (AIR 2007) (NOC) 169) held as under:

"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing - ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process' or 'due course' condition is satisfied the

moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence.”

34. Recently this Court in ***Bal Bhagwan v. Delhi Development Authority [CM (M) 416/2019, decided on 18th December, 2020]*** has held that the ‘due process’ condition would be sufficiently met if a person in settled possession is dispossessed by the dismissal of an application for interim injunction, as long as the rights of the parties are adjudicated upon and opportunity is given to them to present their case. On the question of ‘due process’, this Court has observed as under:

“The issue as to what constitutes ‘due process’ is thus settled beyond any doubt. The Plaintiff, who is claiming possession, can be dispossessed in the suit for injunction filed by him. Due process does not always mean that the owner has to file the suit to prove his title. So long as a Court of law has examined the documents and has given a fair hearing to the parties concerned, the compliance of due process has taken place. Moreover, due process of law also does not mean the final adjudication after trial. It merely means an opportunity being given to present the case before the Court of law and the rights of the parties being adjudicated. It does not mean the whole trial, as per Maria Margarida (supra).

60. The judgment of the Supreme Court in *Rame Gowda (supra)* is to the effect that if a party is in settled possession, his possession cannot be disturbed without due process of law being followed. The said case related to a private land in dispute between two private parties. The lands of the Plaintiff and the Defendant were adjoining in nature and there was a

dispute as to the demarcation thereof. Since the identification and extent of the land itself was in doubt, the Court, in order to protect the Plaintiff, held that the owner would have to assert his title in an independent suit. The facts of the said case cannot be compared to the facts of the present case to permit an encroacher and illegal occupant to retain possession of the suit property.

61. The plea of adverse possession, though pleaded in the plaint, has been given up in the present petition and only settled possession is argued. The question as to whether the Plaintiff is in settled possession or not, in terms of the test laid down in Puran Singh (supra) need not be gone into in the present case, inasmuch as the fact that the Plaintiff is in possession, in whatsoever capacity, to the knowledge of the authorities, is clear from the khasra girdawari itself. The person in settled possession cannot continue to remain in possession forever. Once a Court of law has arrived at the conclusion that the person in possession has no rights, the possession can be taken away. The Trial Court has not merely relied upon Jagpal Singh (supra) but also considered various judgments of the Supreme Court including Rame Gowda (supra) and Maria Margarida (supra). Thus, the grievance against the Trial Court judgment that it followed Jagpal Singh (supra) which is per incuriam is without any merit.

62. Several judgments on various propositions have been cited, which, according to the Court, do not require any consideration in the present case. The main question to be determined is whether the Plaintiff, who is in settled possession, can be dispossessed in an application under Order XXXIX Rules 1 & 2 CPC. The answer is a clear yes.

35. Thus, it is the settled legal position that 'due process' need not mean only an active process initiated by the owner of the property. It can even mean rejection of relief in a proceeding initiated by the occupants/encroachers or persons in possession.

36. Moreover, in the present petitions, the Petitioners have admitted the

ownership of the Waqf Board over the suit property by entering into rent agreements.

37. The recitals in the rent agreements dated 16th October, 2008 and 5th November, 2008 leave no scope for any ambiguity. These rent deeds and material facts have been deliberately and intentionally concealed from the Waqf Tribunal when the complaints were filed. The rent deeds are very clear that the tenancy was only for a period of 11 months. The Petitioners are encroachers/trespassers and in any case, unauthorized occupants of public land belonging to the Waqf and the said issue has been considered in detail by the Waqf Tribunal. The submission made on behalf of the Petitioners to the effect that '*due process*' has not been followed is thus, liable to be rejected.

38. In any event, the Petitioners having entered into rent agreements are estopped from challenging the title of the Waqf Board as stipulated under Section 116 of the Evidence Act. Under such circumstances, this Court has no hesitation in holding that the dismissal of the applications for injunction vide orders of the Waqf Tribunal dated 4th October, 2019, is in accordance with law.

39. Accordingly, the applications for injunction having been rejected, the Waqf Board is free to take proceedings in accordance with law to take possession of the suit property.

40. Further, in view of the conduct of the Petitioners of concealing relevant facts before the Tribunal and initially before this Court, each of the Petitioners shall deposit a sum of Rs.50,000/- as costs with the Waqf Board within a period of six weeks from today.

41. The present petitions are accordingly dismissed. All pending

applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 15,2021
MW/MS

