



CRP(MD)Nos.751, 752 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)Nos.751, 752 of 2008
and
MP(MD)No.1 of 2008

Mohammed Ibrahim Saheb (Died)

2.Irfan Mohamed

3.Mohammed Raza

4.Noor Ahamed

5.Syedunisa Begam : Petitioners in CRP(MD)751/2008

[P.5 is brought on record as the legal heir of the deceased P.1, vide order dated 15.02.2021]

Mohammed Ibrahim Sahed (Died)

2.Noor Ahamed

3.Syedunisa Begam : Petitioners in CRP(MD)752/2008

[PP.2, 3 are brought on record as the legal heirs of the deceased P.1, vide order dated 15.02.2021]

Vs.



CRP(MD)Nos.751, 752 of 2008

Hazarath Syed Shamian

Sawwuf Saheb Kadheri Thaikkal,

Rep. by its Junior Trustee

Janab. Syed Anwar Ahamed Hussaini : Respondent in both CRPs

[Name of the Junior Trustee is substituted vide order dated 07.12.2021]

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India read with Section 83(9) of the Tamil Nadu Wakf Act, 1995, to call for the records pertaining to the fair and decreetal orders dated 30.10.2007, passed by the Wakf Tribunal (Principal Sub Court), Thanjavur, in W.O.P.Nos.9 & 27 of 2004, respectively and set aside the same.

For Petitioners : Mr.A.Arumugam
for M/s.Ajmal Associates

For Respondent : Mr.K.Anbarasan

[In both CRPs]

COMMON ORDER

These civil revision petitions are filed by the petitioners as against the orders dated 30.10.2007 passed by the Wakf Tribunal in W.O.P.Nos.9 & 27 of 2004 under Section 83 (9) of the Tamil Nadu Wakf Act, 1995.



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2.The case of the respondent / landlord is that the property originally belongs to the respondent trust and the first petitioner has been in possession of the property, in pursuance of a tenancy agreement dated 24.06.1965. The said agreement was periodically renewed and it was finally renewed on 25.07.1985. The first petitioner, who was running a shoe mart business, sublet the premises to one Mohamed Iqbal. Therefore, the respondent issued a legal notice for eviction dated 19.06.1995 on the grounds of subletting and arrears of rent. The first petitioner has sent a reply dated 06.07.1995 denying the allegations and subsequently, the respondent did not pursue further, as the petitioners have agreed to cancel the sublease. The respondent, then, issued a fresh notice dated 17.03.2000, since the petitioners failed to honor their promise. To this notice dated 17.03.2000, the first petitioner has sent a reply dated 01.04.2000 denying the allegations. Therefore, the respondent filed the eviction petition under the grounds of sub-letting and wilful denial of title in W.O.P.No.9 of 2004 and a petition of recovery of arrears of rent in W.O.P.No.27 of 2004. The Tribunal, by orders dated 30.10.2007, directed the petitioners to vacate the premises and also for recovery of arrears of rent.



3.Sum and substance of the submissions made by the petitioners' Counsel are as follows:-

3.1.With regard to the disputes regarding the landlord and tenant, only a civil suit is maintainable and not a Wakf Original Petition. The Wakf Tribunal is not having any jurisdiction in respect of eviction of tenants.

3.2.The Tribunal wrongly held that in order to establish Mohamed Iqbal is running the business as a tenant, his sons were not examined by the petitioners. But to prove that Mohamed Iqbal is running the business, several documentary evidences, viz., Registration Certificates, Assessment Notices, Invoices [Ex.R1 to Ex.R8 & Ex.R19 to Ex.R25] were produced before the Tribunal. All these documents prove that Mohamed Iqbal was conducting the business in the petition schedule property as a family business. Therefore, the petitioners are not liable to be evicted on the ground of subletting and the Tribunal, without considering the available pieces of evidence, wrongly ordered the eviction petition.

3.3.The Tribunal came to the conclusion that there is no evidence that the petitioners constructed the building with their own funds, without any discussion. The permission letter in Ex.P6 is dated 24.05.1965, whereas the rental agreement



[Ex.P1] proves that the construction in the schedule property was available in the year 1965 itself. Further, the electricity bills [Ex.R10 to Ex.R17] and property tax receipts [Ex.R26 & Ex.R27] will prove that the superstructure was put up only by Mohamed Iqbal. Hence, both the petitions are not sustainable in law and liable to be dismissed.

Therefore, he prayed for appropriate orders.

4.In reply, learned Counsel appearing for the respondent made his submissions as follows:-

4.1.The respondent originally filed a suit in O.S.No.206 of 2000 before the Principal Sub Court, Thanjavur, seeking eviction. The petitioners herein / tenants have raised the issue of maintainability and in the written statements, the petitioners / tenants vehemently contended that the suit was not maintainable, since the property belonged to Wakf. Hence the issue regarding maintainability was decided as a preliminary issue and thereafter, the suit was transferred to the Wakf Tribunal and re-numbered.

4.2.The petitioners, before the Tribunal, contended that they were running the business together, but the evidences produced by them, viz., Ex.R1 to Ex.R33,



would show that the business was operated in the name of Mohamed Iqbal and not in the name of the first petitioner. The petitioners have also not produced any documents or oral evidence to show that there was any privity of contract between the respondent and the sub-lessees. Hence, they have to be evicted on the ground of subletting.

4.3.The petitioners have not denied the title of respondent over the site on which the superstructure is situated. The superstructure also belongs to the respondent, which can be seen from Ex.P6, the approval letter issued by the Thanjavur Municipality in the year 1976 to the respondent for the reconstruction of the property. Further, the Ex.P2 lease deed mentions that the property leased also includes the superstructure.

Therefore, he prayed for dismissal.

5.This Court considered the rival submissions and also perused the materials placed on the record.

6.These revision petitions are filed under Section 83(9) of the Tamil Nadu Wakf Act, 1995, as against the orders made in W.O.P.No.9 of 2004 and W.O.P.No.



27 of 2004 respectively. The Wakf Original Petitions were initially filed as O.S.No.206 of 2000. The maintainability of the suit was taken up as a preliminary issue and it was decided as against the respondent herein. Hence, the suit was transferred and re-numbered as wakf original petitions. W.O.P.No.9 of 2004 was filed for recovery of possession of the wakf property and WOP.No.27 of 2004 was filed for recovery of arrears of rent. Since both the petitions were allowed, the petitioners / tenants have filed these revision petitions.

7.The first issue raised by the petitioners is the maintainability of these wakf original petitions. The petitioners contended that in disputes regarding landlord and tenant in respect of a wakf property, only civil suits are maintainable and the Wakf Tribunal has no jurisdiction in respect of eviction from a wakf property. The petitioners have also relied on the decision of the Hon'ble Supreme Court in **Ramesh Gobindram v. Sugra Humayun Mirza Wakf [(2010) 8 SCC 726]**, wherein, it was held as follows:-

“28. Section 85 of the Act clearly bars jurisdiction of the civil courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the civil



courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the civil court does not fall within the four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred.

... ..

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.”

8. In the cases on hand, the issue regarding maintainability was taken up as a preliminary issue in O.S.No.206 of 2000, wherein, the petitioners herein, in their written statements, questioned the maintainability of the suit. The petitioners, having opposed the civil suit earlier, cannot now take a different stand. These original petitions were renumbered from the civil suit, by order dated 04.11.2004, only after the preliminary issue was decided as against the respondent. Therefore, this Court is of the opinion that the petitioners are trying to reopen an issue which



was already decided and the issue of maintainability is clearly barred by the doctrine of *issue estoppel*.

9. In fact, the Tribunal has also considered this issue of maintainability. One Peeran Saheb filed a suit in O.S.No.13 of 1960 questioning the validity of inclusion of this Wakf under the Wakf Act. The said suit was dismissed and the appeal preferred in A.S.No.13 of 1960 [Ex.R32] was also dismissed, holding that the dispute has to be decided only by the Tribunal and not by the civil Court. Hence, the Wakf Tribunal came to the conclusion that this issue is hit by the principle of *res judicata*.

10. Though the ratio in ***Ramesh Gobindram***'s case (supra) is in favour of the petitioners, this judgment came to be passed only after the wakf original petitions were decided and after the institution of these revision petitions. There is no express retrospective effect given by the Hon'ble Supreme Court in the above decision. Therefore, in the interest of justice, this Court feels that the respondent / landlord cannot be vexed by reopening the petitions for the reason of maintainability.



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11.W.O.P.No.9 of 2004 was filed by the respondent / landlord for recovery of possession, on the grounds of subletting and denial of title. Regarding the subletting, the case of the respondent is that originally the premises was let out to the first petitioner, who, in turn, unauthorizedly, let out the premises to his brother, Mohamed Iqbal and after the demise of the said Mohamed Iqbal, his sons / petitioners 2 to 4 are in possession of the premises now. The respondent has produced two lease agreements dated 24.06.1965 and 25.07.1985 marked as Ex.P1 and Ex.P2 respectively. The petitioners, though admitted Ex.P1, have denied Ex.P2. It appears that the first petitioner executed both agreements as the tenant and not Mohamed Iqbal.

12.The petitioners produced Ex.R1 to Ex.R8 to show that Mohamed Iqbal was running the company “New Star Foot Wear” on behalf of the family. But the petitioners are not in a position to explain on what authority Mohamed Iqbal was acting as the tenant, when the agreements were in the name of the first petitioner. The Tribunal also took note of the fact that though the petitioners claim that the rent is paid only by Mohamed Iqbal, none of his sons, who are parties to the proceedings, were examined to establish any direct tenancy with the respondent.



This substantiates the case of the respondent wakf that the premises was let out by the first petitioner / tenant without any permission.

13.Regarding the denial of title, the petitioners / tenants claim that the lease is only in terms of the ground and the superstructure was constructed by them using their own funds. It appears that The Tribunal, by referring the lease agreement [Ex.P2], has held that the superstructure was also leased out to the first petitioner and therefore, the petitioners are estopped from denying the title of the respondent.

14.Further, this Court in the decision in ***K. Shyamala v. Khaleel Basha*** [2018 (2) MWN (Civil) 55] has held that mere pleading by the tenant that he put up a superstructure would not suffice and that it must be proved by suitable evidence. The petitioners, by relying on the electricity bills [Ex.R10 to Ex.R17] and the tax receipts [Ex.R26 & Ex.R27] contended that the superstructure was constructed by them. Per contra, the respondent produced Ex.P6 which is the approval letter issued by the Thanjore Municipality to the respondent for the reconstruction of the property.



15. In any event, the petitioners have failed to prove that they have the authority / permission from the landlord to raise such a superstructure. The Hon'ble Supreme Court in ***Vithal N. Shettiand Another v. Prakash N. Rudrakarand Others***, [2003 (1) SCC 18] has upheld the order of eviction, holding that the tenant should have pleaded and proved that he had obtained written permission for raising the superstructure from the landlord as well as the Municipal Corporation. In the cases on hand, the petitioners neither established that the superstructure was constructed by them nor proved that they have the authority / permission to make such construction. Therefore, the petitioners are liable to be evicted on this ground also.

16. W.O.P.No.27 of 2004 was filed by the respondent / landlord for recovery of Rs.35,700/-, being the arrears of 34 months' rent commencing from March 2000 to December 2002. The contention of the petitioners is that even though the rent was tendered by them, it was refused by the respondent. The respondent, in turn, stated that the payment was refused for the reason that it was sent in the name of the Trustee Board and not in the name of the Junior Trustee. This Junior Trustee was the executor of the lease deeds and was recognized by Ex.P5 Hibba deed and Ex.P6 approval letter from the Chairman of Wakf Board in W.O.P.No.27 of 2004.



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17. Be that as it may, it appears that this Court has passed a conditional order dated 16.04.2008, while granting an order of interim stay in MP.No.1 of 2008, directing the petitioners to deposit the entire arrears of rent from March 2000 to April 2008 and they were also directed to pay the monthly rent of Rs.1,050/- to the credit of W.O.P.No.9 of 2014 on the file of Principal Sub Court, Thanjavur. Since the petitioners said to have followed this order till date, nothing survives in W.O.P.No.27 of 2004 filed for recovery of arrears of rent.

In view of the above discussions, there are no infirmities in the eviction order passed by the Tribunal in W.O.P.No.9 of 2004 and accordingly, the revision petition in C.R.P(MD)No.751 of 2008 is dismissed. The revision petition in C.R.P(MD)No.752 of 2008 is closed, as no further order is required to be passed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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22.08.2022



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To

The Principal Subordinate Judge,
Wakf Tribunal,
Thanjavur.



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B.PUGALENDHI, J.

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