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C.R.P.Nos.2431 & 2606 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos.2431 & 2606 of 2017
and C.M.P.Nos.11482 & 12430 of 2017

C.R.P.No.2431 of 2017:-

The President,
Fakkir Labbi Jamaath Moseque,
New No.115, Old No.54,
Dr.Natesan Road,
Krishnampet,
Triplicane, Chennai – 5.

... Petitioner

Vs.

S.Jawahar

... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.04.2017 made in M.P.No.202 of 2017 in R.C.O.P.No.1602 of 2016 on the file of the learned XVI Judge, Small Cause Court, Chennai and allow the Civil Revision Petition.

For Petitioner : Mr.N.A.Nissar Hussain
For Mr.N.A.Nissar Ahmed

For Respondent : No appearance



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C.R.P.No.2606 of 2017:-

Pakkir Labbi Jamaath Managing Committee,
Rep by its President M.Syed Bilal,
Old No.54, New No.115,
Dr.Natesan Road,
Triplicane, Chennai – 5.

... Petitioner

Vs.

1. S.Jawahar
2. N.Mohammed Gani
3. M.Syed Ibrahim

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 29.04.2017 made in M.P.No.217 of 2016 in R.C.O.P.No.422 of 2016 on the file of the learned XVI Judge, Small Cause Court, Chennai and allow the Civil Revision Petition.

For Petitioner : Mr.N.A.Nissar Hussain
For Mr.N.A.Nissar Ahmed

For Respondents : No appearance

COMMON ORDER

The Civil Revision Petition in C.R.P.No.2431 of 2017 has been filed as against the order dated 29.04.2017 passed by the learned XVI Judge, Small Cause Court, Chennai, in M.P.No.202 of 2017 in R.C.O.P.No.1602 of



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2016, thereby dismissing the petition to decide the preliminary issue of maintainability.

2. The Civil Revision Petition in C.R.P.No.2606 of 2017 has been filed as against the order dated 29.04.2017 passed by the learned XVI Judge, Small Cause Court, Chennai, in M.P.No.217 of 2016 in R.C.O.P.No.422 of 2016, thereby dismissing the petition to implead himself as third respondent in the above R.C.O.P.

3. According to the respondent, he is a statutory tenant under the petitioner for the shop No.4, Fakkir Labbai Mosque Complex, No.115, Dr. Natesan Road, Triplicane, Chennai 5, from the year 2005. Initially he was carrying on business under the name and style of Royal Cellphone Service and thereafter he started a business of fancy store. Since the petitioner enhanced the rent, the respondent filed a petition in R.C.O.P.No.1602 of 2016 under Section 8(5) of the Tamil Nadu Building (Lease & Rent Control) Act, 1960 (herein after referred to as “the Rent Control Act”) to deposit rents into Court. Pending the petition, the petitioner filed an application in



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I.A.No.202 of 2017, to decide the issue of maintainability of the petition itself. The learned Rent Controller closed the said petition as against which the petitioner filed the Civil Revision Petition in C.R.P.No.2431 of 2017.

4. In respect of the very same petition premises in R.C.O.P.No.1602 of 2016, the first respondent viz., S.Jawahar filed a petition in R.C.O.P.No.422 of 2016 for eviction on the ground of owner's occupation as against the respondents 2 & 3 herein. Pending R.C.O.P., the petitioner filed an application in I.A.No.217 of 2016, to implead him as one of the party to the rent control proceedings. The learned Rent Controller dismissed the said petition as against which, the petitioner filed the Civil Revision Petition in C.R.P.No.2606 of 2017.

5. The learned counsel appearing for the petitioner submitted that the petition premises is a wakf property and the learned Rent Controller has no jurisdiction to deal with the property belonging to wakf. Further the wakf properties are notified under the supervisory control of Tamil Nadu Wakf Board and all the provisions under the Rent Control Act has been exempted



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by virtue of G.O.Ms.No.2000/76 in exercise of Section 29 of the Rent Control Act. That apart, by virtue of Sections 83 and 85 of the Wakf Act 1995, there is a bar to deal with the wakf property under the Rent Control Act. He further submitted that now the respondent had sub-let the petition premises to other third parties viz., the respondents 2 & 3 in C.R.P.No.2606 of 2017. Hence, he prayed to allow both the petitions.

6. Heard Mr.N.A.Nissar Hussian, learned counsel appearing for the petitioner. Though notice served and name printed in the cause list, no one is appearing on behalf of the respondents in both petitions.

7. Admittedly, the petition premises is a wakf property. The respondent viz., S.Jawahar filed two rent control proceedings in R.C.O.P.Nos.422 & 1602 of 2016 before the learned XVI Judge, Rent Controller, Small Causes Court, Chennai. He filed eviction petition in R.C.O.P.No.422 of 2016, on the ground of owners occupation as against the respondents 2 & 3 in C.R.P.No.2606 of 2017. However, in the another petition in R.C.O.P.No.1602 of 2016, the respondent categorically stated that



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the petitioner viz., Fakkir Labbai Jamaath Mosque is the owner of the property and therefore he filed petition to deposit of rent under Section 8(5) of the Rent Control Act. However, in the earlier petition in R.C.O.P.No.422 of 2016, he filed the petition as if he is the owner of the petition premises and he filed petition for eviction on the ground of owners occupation. In both R.C.O.Ps, the properties are one and the same viz., Shop No.4, Fakkir Labbai Mosque Complex, No.115, Dr. Natesan Road, Triplicane, Chennai.

8. It is also seen that the petition premises is a wakf property and the learned Rent Controller has no jurisdiction to deal with the property belonging to Wakf. In this regard it is relevant to extract the provisions under Section 83 of the Wakf Act as follows:-

“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 property, under this Act and define the local limits and jurisdiction of such Tribunals.]



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(2) Any mutawalli person interested in a 2[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 2[waqf].

(3) Where any application made under sub-section (1) relates to any 2[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 2[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”

Thus it is clear that the Tribunal has no power to deal with the issue relating to the wakf property.

9. Therefore, the learned Rent Controller has no jurisdiction to hear the eviction petition under the Rent Control Act, since the Wakf Tribunal



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only has got power to deal with the wakf property. Therefore, the main petitions in R.C.O.P.Nos.422 & 1602 of 2016 itself are liable to be set aside.

10. In view of the above discussions, the petition in R.C.O.P.Nos.422 & 1602 of 2016 are hereby dismissed as not maintainable before the learned Rent Controller. However, the respondent is at liberty to approach the Tribunal for appropriate relief.

11. Accordingly, both the Civil Revision Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

27.01.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts



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WEB COPY To

1. The XVI Judge,
Small Cause Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

rts

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