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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: March 22, 2023

Onkar Singh

....Petitioner

versus

Punjab Wakf Board and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. R.K. Arya, Advocate for petitioner.

Mr. Ghulam Nabi Malik, Advocate for respondent No.1.

Mr. N.K. Vadehra, Advocate
for respondents No.2 to 4 & 5(i) & (ii).

ARUN MONGA, J. (ORAL)

Revision petition herein is to set aside impugned order dated 06.12.2016(Annexure P-9) passed by learned Civil Judge (Senior Division), Gurdaspur, whereby application of petitioner-plaintiff under Section 144 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') for restoration of possession, was dismissed.

2. Learned counsel for petitioner contends that suit for his ejectment in respect of shops in question filed by respondent-Punjab Wakf Board was dismissed on 31.05.2001. Appeal against said order was filed by respondent and vide order dated 31.01.2007 (Annexure P-2), learned First Appellate Court remanded the matter to learned trial Court. Aggrieved, petitioner filed an appeal before this Court and vide order dated 02.09.2008 (Annexure P-3), set aside the aforesaid orders and transferred the case to Wakf Board Tribunal, Gurdaspur for fresh decision. Vide judgment and decree dated 10.04.2010 (Annexure P-4), learned Wakf Board Tribunal, Gurdaspur decreed the suit of respondent. Aggrieved, petitioner preferred revision petition, which was allowed on 30.11.2010 vide Annexure P-5. Therefore, petitioner filed an application under Section 144 read with Section 151 of CPC for restoration of

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possession of shops in question. Vide impugned order dated 06.12.2016 (Annexure P-9), said application was dismissed. Hence, the present revision petition.

3. I have heard learned counsel for parties and perused the record.

4. What thus, emerges is controversy, which can be narrowed down in a very short compass, i.e., whether petitioner herein has been evicted from premises in question otherwise than in due course of law, as was observed vide interim order dated 27.10.1992 (Annexure P-8) passed by learned Court below. The said interim order, being apposite, is reproduced herein below:

“As per report on the summon seems to have evaded the service one of the case alongwith the certified copy of Jamabandi and Khasra girdwari issued by the defendant suit of the plaintiff, on perusal of these documents the plaintiff appears to be in possession of the suit is therefore, the defendants are restrained from interfering into the peaceful possession of the plaintiff over the suit property, further the defendants are restrained from leasing out the same property of person except in due course of law. Notice to the defendants be issued again for 17.11.1992. Compliance of order 39 rule 3 C.P.C. be issued by the following xxx announced.”

5. Aforesaid order was passed on 27.10.1992 and on a Court query, learned counsel for petitioner states that he was evicted in violation of above order sometime in the year 1993. Being so, one is unable to understand as to why at the relevant time petitioner would not take steps to proceed against respondent-Wakf Board against whom he has made an allegation in a belated application dated 05.01.2011 (Annexure P-6) that the Wakf Board evicted him in violation of above order. Not only that, suit of petitioner was decreed in his favour as he claims (since judgment/ decree has not been placed on record) that Wakf Board would not evict him from premises in question except in due course of law. Believing the assertion to be correct, there is nothing on record to show, as he claims in his application dated 05.01.2011 (Annexure P-6) under Section 144 read with Section 151 CPC for restoration of possession that he has been evicted by not following due course of law. There is nothing shown in the application that there is any violation committed by respondent-Wakf Board either of aforesaid interim order or decree, if at all, passed in favour of petitioner. That apart, description

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of property in interim order *ibid* as compared with one mentioned in application also reflects that both are distinctly different. Furthermore, application was dismissed vide impugned order dated 06.12.2016 (Annexure P-9) validly as is borne out from the reasons given by learned trial Court, relevant part of which being apposite, is reproduced herein below:

“8. *The onus to prove the issue was upon the applicant. It is admitted fact that Wakf Board is owner of the suit property and defendant department had filed suit for ejectment of the plaintiff Onkar Singh and other tenant Sudesh Kumar and said suit was dismissed vide judgment dated 30.5.2001 passed by Sh. Jasbir Singh, the then Civil Judge (Junior Division), Gurdaspur. Defendant Wakf Board had filed an appeal against the above said judgment dated 31.5.2001 and appellate court had set aside the judgment and decree dated 31.5.2001 and remanded back the case to the trial Court for fresh decision vide order dated 31.1.2007 passed by the court of Sh. S.K.Arora, the then Additional District Judge, Gurdaspur. Thereafter, defendant department had filed appeal/ revision against order dated 31.1.2007 before Hon'ble High court and Hon'ble High Court vide its order dated 3.10.2008 had set aside order dated 31.1.2007 passed by Sh. S.K.Arora, the then Additional District Judge, Gurdaspur and thereafter, case was remanded to the Tribunal, Gurdaspur. Sh. Tejwinder Singh, the Tribunal-cum-Addl. District Judge, Gudaspur vide order dated 10.4.2010 had decreed the suit of defendant Wakf Board and ordered for ejectment of present plaintiff. It is also admitted fact that plaintiff went into appeal against order dated 10.4.2010 before Hon'ble High court and Hon'ble High court vide its order dated 3.11.2010 had set aside order dated 10.4.2010 passed by Sh. Tejwinder Singh, the Tribunal-cum-Addl. District Judge, Gudaspur. The contention of the counsel for the applicant is that suit of the defendant Wakf Board decreed vide order dated 10.4.2010 by Sh. Tejwinder Singh, the then Tribunal-cum-Addl. District Judge, Gurdaspur was set side vide order dated 3.11.2010 passed by Hon'ble High Court, therefore, applicant/plaintiff is entitled for restoration of the possession of demised shops, on the basis of judgment & decree dated 30.5.2001, passed by Sh.Jasbir Singh, the then Civil Judge(Junior Division), Gurdaspur. On the other hand, the contention of the respondents is that defendant Wakf Board had revoked tenancy of the plaintiff Onkar Singh vide notice dated 21.7.1993 and demised shops were allotted to the above said respondents no.2 to 5 and tenants Anil Kumar, Sham Lal, Vijay Kumar and Ram Lal came into possession with effect from 24.8.1993 and said shops were earlier allotted to the present applicant/plaintiff, therefore, applicant/ plaintiff is not entitled for restoration of the possession of demised shops. For adjudication of the present case, Section 144 CPC as follow:*

“Application for restitution-(1) Where and in so far as a decree (or an order) is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be,

place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified] and, for this purpose, the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order]

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1) ”.

*The sense of section 144 CPC is that where property has been received by decree-holder in execution of a decree, and the decree, or part thereof, is subsequently varied or reversed on appeal by the judgment-debtor, or even in a separate suit or otherwise. For example, A filed suit for a declaration that grant of bhumidari rights by the revenue authority in favour of B was illegal and sought for recovery of possession. The suit was decreed by the trial judge. A first appeal against the decree was dismissed. In second appeal, the High court held that civil courts had no jurisdiction to entertain a suit relating to bhumidari rights under S.84 of the Delhi Land Reforms 1954, and dismissed the suit. On such dismissal, B became entitled by way of restitution to possession of the land from A who had taken possession in execution of the decree passed by the trial judge. Where the decree remains valid and unaltered but becomes in-executable due to intervening circumstances, such as enforcement of a new law, the doctrine of restitution is not available. The legal maxim *actus curiae neminem gravabit*, means that an act of court shall prejudice no man. That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court, the 'act of the Court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. Here in the present case, tenancy of the plaintiff had already been revoked by the defendant no.1 vide notice dated 3.10.1994 as mentioned in the order dated 4.11.2009 passed by Hon'ble High Court in the last part of the said order as follows:-*

“allegation of the plaintiff that he was dispossessed after 25.3.1996 was disbelieved in civil suit no.142 dated 26.8.1996. As per the same, Sham Lal, Anil Kumar, Ram Lal and Vijay had been allotted shops in dispute since 24.8.1993, which were earlier leased out to plaintiff Onkar Singh by the Wakf Board. In these circumstances, learned Additional District Judge rightly held that the suit of the plaintiff was liable to be dismissed as the defendants had been allotted shops in dispute by the Wakf Board after the allotment of the same in favour of the plaintiff was cancelled. The license of the plaintiff had been revoked vide notice dated 3.10.1994.

Thus, in the present case, decree/order has been altered in favour of the defendants as license of the plaintiff had already been revoked (sic revoked) by the defendant no.1 Wakf Board, therefore, applicant/plaintiff is not entitled for restoration of the possession of the shops in dispute. Accordingly this issue is decided against applicant and in favour of the respondents.”

6. Having heard the arguments of learned counsels for parties, I am of the opinion that there is no room for interference in the aforesaid valid reasons recorded by learned Court below.

7. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

8. Apart from aforesaid, it is rather intriguing that if petitioner was evicted from premises in question way back in 1993 and yet he claimed restoration of property in question in 2011 given that he has been out of possession since 1993. There is nothing on record to establish his right to continue in the premises in question. *Qua* the claimed right of restoration also, controversy had been settled in view of judgment rendered by Sabina, J. (as she then was in this Court) in RSA-2397-2006, which was decided on 04.11.2009. Relevant part thereof is reproduced herein below:

“In the present case, admittedly, the suit land belongs to the Wakf Board. The case of the plaintiff is that he had raised construction over the plot leased out to him by the Wakf Board, whereas, the case of the respondent is that the shop in dispute had been constructed by him. Plaintiff filed a civil suit bearing No.142 dated 26.8.1996 for possession of the shop in dispute along with other shops against Wakf Board, Anil Kumar, Sham Lal, Ram Lal and Vijay Kumar.

The said suit was dismissed by the trial Court on 7.10.1999. It was observed in the said judgment Ex.D-5 that the plaintiff, in his cross-examination, had admitted that the Wakf Board had allotted the shop in dispute to the defendant. Defendant was allotted disputed shop vide order dated 24.8.1993 w.e.f. 1.5.1993. The said finding was given by the Court after perusing the original allotment letters on record. It was further held that the suit filed by the plaintiff was not maintainable as it had been filed beyond the period of limitation. It was also observed that it was clear from the evidence on record that plaintiff Onkar Singh was a tenant under the Wakf Board and had sublet the plots in favour of different persons and instead of execution of rent note had got a partnership deed and consequently was getting a fixed sum equal to monthly rent. The said partnership deed was a sham document in order to avoid eviction on the ground of sublet. Thus, the respondent is in possession of the property owned by the Wakf Board w.e.f. 24.8.1993.

The case of the respondent is that after the allotment in favour of the plaintiff was cancelled, the shop was allotted to him and, thereafter, he raised construction. Partnership deed dated 10.1.1990 was not believed by the Court in the civil suit No. 142 dated 26.8.1996.

As per letter dated 2.8.1985, Wakf Board gave a liberty to raise construction to the plaintiff. However, the plaintiff failed to establish on

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record that he had raised construction after getting the site plan sanctioned from the Municipal Committee. The allegation of the plaintiff that he was dis-possessed after 25.3.1996 was disbelieved in civil suit No.142 dated 26.8.1996. As per the same, Sham Lal, Anil Kumar, Ram Lal and Vijay Kumar had been allotted shops in dispute since 24.8.1993, which were earlier leased out to plaintiff Onkar Singh by the Wakf Board. In these circumstances, learned Additional District Judge rightly held that the suit of the plaintiff was liable to be dismissed as the defendant had been allotted shop in dispute by the Wakf Board after the allotment of the same in favour of the plaintiff was cancelled. The license of the plaintiff had been revoked vide notice dated 3.10.1994.

The judgments relied upon by learned counsel for the appellant failed to advance the case of the appellant as these are on different facts.

No substantial question of law arises in this regular second appeal. Accordingly, the same is dismissed.”

9. In view of aforesaid since controversy of rights of petitioner has already been settled in the aforesaid regular second appeal filed by him, nothing survives for adjudication.
10. Revision petition is dismissed accordingly.
11. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 22, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No