**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**256-7** **CR No.855 of 2018**
**Date of Decision: 27.02.2023**

Punjab Wakf Board ....Petitioner

VERSUS

M/s Kissan Rice Trading Co. through its proprietor ....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Aruz Khan, Advocate for the petitioner.

Mr. Satinder Khanna, Advocate for the respondent.

**ALKA SARIN, J. (Oral)**

The present revision petition has been filed challenging the order dated 01.09.2017 passed by the Tribunal (constituted under Section 83 of the Wakf Act, 1995), Kapurthala.

The plaintiff-respondent filed a suit for permanent injunction and mandatory injunction for restraining the defendant-petitioner from interfering in the peaceful possession of the plaintiff-respondent over the premises measuring 2288.22 sq. yards as fully described in the plaint. It was averred in the plaint that the plaintiff-respondent was inducted as lessee in the suit property by executing a lease deed dated 15.02.2003 w.e.f. 01.01.2003. It was further averred that the plaintiff-respondent was inducted @ Rs.6000/- per month and since 01.01.2003 it is in continuous possession of the suit property. It was further averred that the plaintiff-respondent has been regularly paying the lease money to the defendant-petitioner but the defendant-petitioner has not accepted the lease money after the year 2014. It was averred that though there is a specific bar created vide the Wakf (Amendment) Act, 2013 for leasing out the property without the permission

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of the Board, however, proviso to Section 51 of the Wakf Act carves out an exception, which reads as under :

> *"Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013."*

The suit was contested by the defendant-petitioner on the ground that after the amendment of the Wakf Act, 1995 vide the Wakf (Amendment) Act, 2013, the lease deeds have to be executed strictly as per the provisions of the amended Act and the Rules thereunder and as per Rule 18(1), no lease agreement shall contain a clause providing for automatic renewal. The relationship of landlord and tenant was admitted. It was further pleaded that after the expiry of the lease the status of the plaintiff-respondent is that of an encroacher. Replication was filed reiterating the averments made in the plaint and controverting those made in the written statement.

On the basis of pleadings, the following issues were framed :

1. Whether plaintiffs is in possession of suit property as alleged ? OPP
2. If issue no.1 is proved, whether the nature of the said possession of the plaintiff becomes as encroacher as stated by the defendant in their written statement ? OPD

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3. Whether plaintiffs is entitled to relief of permanent injunction as prayed for ? OPP
4. Whether the plaintiffs is entitled to relief of mandatory injunction as prayed for ? OPP
5. Whether suit is not maintainable in the present form ? OPD
6. Whether suit is bad for non-service of notice under section 89 of Wakf Act, 1995 ? OPD
7. Whether plaintiffs have not come to the court with clean hands and suppressed true and material facts from the Court, if so, its affect ? OPD
8. Relief.

Vide judgment dated 01.09.2017 the suit was decreed. Aggrieved by the same, the present revision petition has been filed by the defendant-petitioner.

Learned counsel for the defendant-petitioner would contend that the lease deed had no automatic renewal clause as is apparent from a perusal of the lease order. It is further the contention that after the coming into force of the Wakf (Amendment) Act, 2013 there could be no leasing out of the property without the prior permission of the Board and that the status of the plaintiff-respondent was that of an encroacher. Learned counsel for the defendant-petitioner would further contend that the only ground on which the suit has been decreed is that it was not shown to the Court as to whether the Wakf (Amendment) Act, 2013 was retrospective or prospective

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in nature. It is submitted that no finding qua the applicability of the Wakf (Amendment) Act, 2013 was warranted in a simpliciter suit for injunction.

*Per contra* learned counsel for the plaintiff-respondent has contended that the Wakf (Amendment) Act, 2013 is not retrospective in nature and hence would not apply to the lease deed in favour of the plaintiff-respondent. It is submitted that since the plaintiff-respondent is a lessee the defendant-petitioner cannot forcibly evict it from the suit property.

Heard.

In the present case admittedly the plaintiff-respondent was inducted as a lessee in the suit property and is in possession thereof. The Wakf Board would always have the right to eject the plaintiff-respondent in accordance with law. Even though the plaintiff-respondent may be a tenant holding over but it cannot be ejected by force and due procedure would have to be followed. It is trite that no injunction can be granted in favour of a tenant for restraining the landlord from evicting the tenant. However, at the same time, a tenant cannot be dispossessed except in due course of law as applicable.

In the present case, the plaintiff-respondent having been found to being in possession of the suit property, the core issue of granting protection to the plaintiff-respondent can be decided without going into the question as to whether the provisions of the Wakf (Amendment) Act, 2013 would be applicable or not. The Tribunal has on an appreciation of the evidence on the record passed the impugned order in favour of the plaintiff-respondent. No illegality or irregularity in the final relief granted is made out.

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However, keeping in view the discussion by the Tribunal on the applicability or inapplicability of the Wakf (Amendment) Act, 2013, the instant revision petition is disposed off with a direction that the plaintiff-respondent, who is in possession of the suit property under the Wakf Board, would not be evicted therefrom except in due course of law. The discussion in the impugned order regarding the applicability or inapplicability of the provisions of the Wakf (Amendment) Act, 2013 is held to be *obiter dicta* and the question is left open to be determined in appropriate proceedings.

Disposed off. Pending applications, if any, also stand disposed off.

**( ALKA SARIN )**
**JUDGE**

27.02.2023
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NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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