



2023:DHC:6913



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

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***Decided on: 20<sup>th</sup> September, 2023***

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W.P.(C) 12401/2023

MOHD. ADIL

..... Petitioner

Through: Mr. Mehul Gupta & Mr. Vijay Gupta,  
Advocates.

versus

GOVT. OF NCT, DELHI &amp; ORS.

..... Respondents

Through: Mr. Mohd. Irsad, ASC for GNCTD  
with Ms. Nasreen & Mr. Manish  
Kumar, Advocates for R-1 & 2. [M:-  
9999679903].Ms. Firdouse Qutb Wani, Mr. Md.  
Zaryab J. Rizvi & Mr. Pulkit  
Khaduja, Advocates for R-3/DWB**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)****CM APPL. 48949/2023 (for exemption)**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**W.P.(C) 12401/2023 & CM APPL. 48948/2023 (for stay)**

1. The petitioner has filed the present writ petition against notices dated 25.08.2023 and 11.09.2023 issued by the Sub Divisional Magistrate (Mehrauli), Government of NCT of Delhi, in respect of eviction of the petitioner from property bearing No. 1068, Ward 1, Khasra No. 1151/3, Mehrauli, New Delhi – 110030 [“subject property”].

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2. The petitioner is the plaintiff in civil proceedings being ML No. 29/2018,<sup>1</sup> which is pending before the learned Waqf Tribunal. In the said suit, the petitioner has sought a declaration that the subject property is not a Waqf property under the Waqf Act, 1995 [“the Act”] and a declaration that an eviction order and notice dated 24.08.2018 passed by the respondents be declared null and void. He has also sought an injunction against the respondents to restrain them from coercively dispossessing him, and a mandatory injunction directing demarcation and declaration of Waqf property. Mr. Mehul Gupta, learned counsel for the petitioner, states that, in the same suit, the Delhi Waqf Board [“DWB”] has made a counterclaim seeking cancellation of a sale deed in favour of the petitioner, and vacation of the property by the petitioner alongwith the occupation charges.

3. An application filed by the petitioner under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 was rejected by the learned Tribunal *vide* order dated 04.10.2019. Against the aforesaid order, the petitioner approached this Court in C.R.P. 225/2019. The petition was heard alongwith Civil Revision Petition Nos. 223/2019 and 224/2019, filed by other occupants, and came to be dismissed by a judgment of this Court dated 15.12.2021. One of the other occupants [not the petitioner herein] sought review of the aforesaid judgment in Review Petition No. 35/2022, which was dismissed by a judgment dated 22.02.2022.

4. The contention of Mr. Gupta is that the effect of the judgment dated 15.12.2021 is to permit DWB to evict the petitioner in accordance with law. He submits that Section 54 of the Act requires eviction to be undertaken

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<sup>1</sup> In the pleadings, it has been mentioned that the petitioner filed ML No.27/2018. However, as evident from the order dated 04.10.2019, attached as Annexure P8 of the petition, it is clear that the petitioner has filed ML No. 19/2018.



only upon an order of the Tribunal, and the notices impugned in this petition are, therefore, not in accordance with law. Mr. Gupta also submits that eviction of the petitioner ought not to be permitted, as the counterclaim of the DWB for eviction of the petitioner remains pending

5. Having heard Mr. Gupta, I am of the view that the discretionary relief under Article 226 of the Constitution of India is not available to the petitioner, particularly in light of the findings recorded by this Court in the judgment dated 15.12.2021 in C.R.P. 223/2019 & other connected matters.<sup>2</sup>

6. Paragraph 2 and 18 of the aforesaid judgement are relevant in this regard:

“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.

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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

<sup>2</sup> Mehvish Adil v. Delhi Wakf Board, 2021 SCC OnLine Del 5227.



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 16<sup>th</sup> 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 4<sup>th</sup> 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 18<sup>th</sup> 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.”<sup>3</sup>

7. Thus, Section 54 of the Act has been considered by the Court.<sup>4</sup> The submissions urged on behalf of the petitioner also include reference to Section 54 of the Act, and to the contention that the petitioners cannot be dispossessed during the pendency of the suit and counterclaim. It was specifically contended that the Waqf Board may proceed against action for eviction only as per the procedure under Sections 54 and 55 of the Act.<sup>5</sup>

8. All these contentions have been rejected in the said judgment. The amendments to the Waqf Act in 2013 have also been specifically noted.<sup>6</sup> The Court has also recorded the submission of learned Senior Counsel, on behalf of the petitioner, which is in effect the same submission which is made today. Paragraph 28 of the judgment is reproduced below:-

“28. The next contention raised by ld. 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.”<sup>7</sup>

<sup>3</sup> *Supra*, note 2, para 2 and 18. Emphasis supplied.

<sup>4</sup> *Supra*, note 2, para 2.

<sup>5</sup> *Supra*, note 2, para 18.

<sup>6</sup> *Supra*, note 2, para 24.

<sup>7</sup> *Supra*, note 2, para 28. Emphasis supplied.



9. Having found that the entire case put up by the petitioner before the Tribunal is “*completely false*”;<sup>8</sup> the Court relied upon the judgment of the Supreme Court in *Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) through Lrs.*<sup>9</sup> and of this Court in *Bal Bhagwan v. Delhi Development Authority*.<sup>10</sup> The Court recorded the following conclusion: -

“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.

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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.<sup>11</sup>

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 16<sup>th</sup> October, 2008 and 5<sup>th</sup> 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

<sup>8</sup> *Supra*, note 2, para 31.

<sup>9</sup> (2012) 5 SCC 370.

<sup>10</sup> 2020 SCC OnLine Del 1630.

<sup>11</sup> Emphasis in the original.



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.<sup>12</sup>

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."<sup>13</sup>

10. The petitioner herein has accepted the aforesaid judgment in his revision petition. The attempt in this writ petition is to agitate the very same issues again. Such an attempt is impermissible in law.

11. Proceedings under Article 226 of the Constitution are founded in equity and good conscience, as recently reiterated by the Supreme Court in *Central Council for Research in Ayurvedic Sciences and Another v. Bikartan Das and Others*.<sup>14</sup> I do not consider the conduct of the petitioner in the present case such as to entitle him to relief thereunder.

12. The writ petition, alongwith pending applications, is therefore dismissed, with costs of ₹25,000/-, to be paid by the petitioner to the DWB within two weeks from today.

**PRATEEK JALAN, J**

**SEPTEMBER 20, 2023/'pv/sm'/**

<sup>12</sup> Emphasis supplied.

<sup>13</sup> *Supra*, note 2.

<sup>14</sup> 2023 SCC OnLine SC 996.