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C.R.P.(NPD).Nos.691 and 692 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).Nos.691 and 692 of 2020

Khan Bahadur Hajee Abdul Rahiman Sait
and Hanifa Bai's Hedlaz Fund,
Mr.Jaffer Mohamed Sait @ Saad Sait,
Cranley House, Hospital Road,
Ootacamund – 643 001, Nilgiris District. ... Petitioner (in both CRPs)

VS

1.Saraswathi Raju

2.The Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathy Nagar,
Chennai – 600 001. ... Respondents (in both CRPs)

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.07.2019 passed in O.A.Nos.90 and 92 of 2018, on the file of the Waqf Tribunal at Chennai.

For Petitioner : Mr.N.A.Nissar Ahmed
Senior Advocate
for M/s.V.Arul
(in both CRPs)



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For R1 : Mr.Naveen Kumar Murthi
(in both CRPs)

For R2 : Mr.Sachin Vijay
for M/s.V.Srimathy
(in both CRPs)

COMMON ORDER

These two Civil Revision Petitions are filed challenging the order passed by the Waqf Tribunal dismissing the original applications filed by the petitioner seeking eviction of the 1st respondent herein.

2. According to the petitioner in C.R.P.(NPD).No.691 of 2020, suit 'A' schedule property was let out to the 1st respondent orally on a yearly lease rent of Rs.4,500/-. It is stated that she failed to pay the lease rent from 2011 to 2016. The 1st respondent also committed trespass into the adjoining property of the petitioner and encroached schedule 'B' and 'C' properties. Therefore, the petitioner issued a notice on 09.05.2016 terminating tenancy under Section 106 of Transfer of Property Act, 1882 with effect from 31.05.2016 and laid the present original application on 03.06.2016 before the Waqf Tribunal.



WEB COPY 3. The petitioner in C.R.P.(NPD).No.692 of 2020 filed the instant original application on 03.06.2016 for eviction of the 1st respondent/tenant on the ground that originally there was a written monthly tenancy between the petitioner and 1st respondent, she failed to pay rent for long time from 01.01.1997 to 30.05.2016 and committed wilful default. Therefore, the petitioner issued a notice on 09.05.2016 terminating tenancy with effect from 31.05.2016.

4. The Tribunal dismissed both the applications on the ground that the petitioner failed to issue termination notice for required period as per Rule 23 (2) (iv) of the Waqf Properties Lease Rules and hence, dismissed the applications. The Tribunal also incidentally said that if it is the case of the petitioner that 1st respondent is continuing her possession after expiry of the lease period, he should have followed the procedure under Section 54 of Waqf Act to evict the 1st respondent. Aggrieved by the dismissal of the original applications, the petitioner is before this Court.



WEB COPY 5. Mr.N.A.Nissar Ahmed, learned Senior Counsel appearing for the petitioner assailed the impugned order on following grounds:-

- (i) The 1st respondent is not in occupation of the petition mentioned property under a valid lease as contemplated under the provisions of Waqf Act, 1995. Therefore, question of issuing a notice under Rule 23(2)(iv) of Waqf Properties Lease Rules, 2014 will not arise in the present case and the Tribunal by wrongly applying the said provision non-suited the petitioner.
- (ii) The learned Senior Counsel further submitted that if the 1st respondent found to be in occupation of the property after expiry of the lease period, she shall be treated as an encroacher and the petitioner-Mutawalli of the Waqf is entitled to approach the Tribunal seeking eviction of the 1st respondent.



WEB COPY 6. Mr.Naveen Kumar Murthi, learned counsel appearing for the contesting 1st respondent submitted that petitioner even in the pleadings admitted that 1st respondent was a lessee under the Waqf and hence, the submission made by the learned Senior Counsel as if, the 1st respondent has been in occupation of the petition mentioned property under invalid lease is against his own pleadings. The learned counsel also submitted that termination notice was issued by petitioner on 09.05.2016 and the original applications for eviction of 1st respondent was filed on 03.06.2016 even before expiry of one month period and therefore, the mandatory provisions under the Waqf Properties Lease Rules, 2014 have not been followed by the petitioner.

7. A perusal of the application filed by the petitioner in C.R.P.(NPD).No.691 of 2020 would indicate that petitioner in his averment in original application clearly admitted the 1st respondent was a lessee in respect of suit 'A' schedule property. It was further averred by the petitioner that lease was oral one. The learned counsel by relying on the averment that lease was



oral one, submitted that lease of waqf properties by oral arrangement is not at all contemplated under the relevant rules framed under the Waqf Act, 1995, therefore, the lease relied on by the petitioner was not a valid lease.

8. The petitioner in his pleadings clearly admitted the 1st respondent was a lessee in respect of 'A' schedule property. Now, it is pointed out by the learned Senior Counsel that lease arrangement was a oral one and the same is invalid under the provisions of Waqf Act, 1995. However, it was not the case of the petitioner that 1st respondent has been in occupation of petition mentioned property under a invalid lease. Therefore, it is not open to the petitioner to raise new issue in a revision, if the petitioner is allowed to raise a new point, as if, lease is only oral and hence it is invalid, sufficient opportunity shall be given to the 1st respondent to meet such a stand on the part of the petitioner. Therefore, in the facts and circumstances of the case, in view of the pleading in original applications that 1st respondent has been occupying the property under oral lease agreement, the validity of the same has to be gone into by the Waqf Tribunal. Therefore, the matter requires reconsideration by the Waqf Tribunal. As far as properties covered by 'B' and



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'C' schedule properties are concerned, it is the case of the petitioner that those properties were encroached by the 1st respondent taking advantage of her occupation of suit 'A' schedule property, whether the 1st respondent encroached 'B' and 'C' schedule property was not at all gone into by the Tribunal.

9. The original applications filed by the petitioner were disposed on preliminary ground namely want of proper notice under Waqf Properties Lease Rules, 2014. Therefore, the order passed by the Tribunal is set aside and the matter is remitted back to the file of Waqf Tribunal for fresh consideration including the question of validity of lease raised by the petitioner.

10. In C.R.P.(NPD).No.692 of 2020, the petitioner in the averment found in original application stated that 1st respondent had been in occupation of the petition mentioned property under written tenancy. There is no evidence available on record whether the written tenancy is still subsisting or already expired.



WEB COPY 11. The learned Senior Counsel appearing for the petitioner submitted that lease pleaded by the petitioner was not sanctioned under the provisions of Waqf Act and therefore, the same cannot be treated as a valid one. The written lease deed referred to by the petitioner was not produced by the petitioner before the Waqf Tribunal and only if the same is produced, the Waqf Tribunal will be in a position to come to a conclusion whether the lease pleaded by the petitioner is a valid one or not. In case, it is found that lease referred to by the petitioner is an invalid lease, then question of issuing notice under Waqf Properties Lease Rules will not arise. Therefore, the validity of the written lease mentioned by the petitioner has to be gone into by the Waqf Tribunal. In the absence of sufficient evidence on the side of both the parties, the validity or otherwise of the written lease pleaded by the petitioner is not clear. Therefore, the impugned order is set aside and the matter is remitted back to the file of Waqf Tribunal for fresh consideration including the question of validity of written lease pleaded by the petitioner in C.R.P.(NPD).No.692 of 2020.



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12. In view of the discussion made earlier, both the Civil Revision

Petitions are allowed and the impugned orders are set aside. The matters are remitted back to the file of Waqf Tribunal for fresh consideration, including the question of validity of lease pleaded by the petitioner, in accordance with Waqf Act and Rules framed thereunder. The Tribunal shall afford sufficient opportunity to both the parties to lead fresh evidence in this regard. No costs.

12.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

1.The Waqf Tribunal,
Chennai.

2.The Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathy Nagar,
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S.SOUNTHAR, J.

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