

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.1450 of 2022

Md Mahafuzul Anwar @ Mahafuzul Anwar

VS.

Syed Anowar Hossain & Ors.

For the petitioner :Mr. Shibaji Kumar Das, Adv.

For the Opposite Party no.2 :Mr. Sofiulla Mondal, Adv.

For the Board of Auqaf :Mr. Sk. Md. Galib, Adv.
Mr. Abu Siddique Mallik, Adv.

Last Heard On :20.01.2025

Judgement On :13.02.2025

Bibhas Ranjan De, J. :

1. The Instant civil revision application has been filed under Article 227 of the Constitution of India being aggrieved and dissatisfied with the judgment and decree dated 06.05.2022 and 12.05.2022 respectively passed by the Ld. Waqf Tribunal, West Bengal, in connection with Suit no.38 of 2017 involving the issue of

declaration and khas possession of tenanted flat valued at Rs. 8280/- lying and situated at premises no. 13/1, Taltala Lane, (Flat No. 3), PS Taltala, Kol-700014.

Synopsis:

2. The petitioner herein before filing the suit no. 38 of 2017, initiated a criminal proceeding against the opposite party no. 1 to 3 herein being Taltala PS Case no. 159 dated 21. 11. 2017 under Sections 420/406/120B/339 of the IPC corresponding to GR(s) no. 1309 of 2017 which was tried by the Ld. Court of JM, 20th Court, Calcutta. In connection with the said criminal proceeding, the I.O. seized original tenancy agreement dated 22.05.2015, original possession letter dated 14.12.2015 and five original rent receipts from the petitioner herein which were made a part of the charge sheet and was submitted before the Ld. Magistrate for the purpose of trial.
3. Therefore, at the time of filing the suit being no. 38 of 2017, as well as passing of the impugned judgment and decree, the petitioner was not in possession of the original documents. In support of this contention, petitioner relied on the seizure list, prepared by the I.O. which was marked as exhibit-7. The same was brought to the notice of the Ld. Tribunal but while deciding

the fate of the suit in issue no. 5 observed that the plaintiff ought to have summoned the record from the criminal court for purpose of proving xerox copies of the necessary documents and since the plaintiff opted not to discharge the onus upon him and since those documents were not exhibited, the same cannot be relied upon.

4. Now coming to issue no. 6 & 7 of the said judgment, Ld. Tribunal decided against the plaintiff only on the ground of non-production of original tenancy agreement.
5. The said Criminal Proceeding had ended in the month of November, 2019 and the Petitioner herein who was the Defacto Complainant had only deposed as PW-1 and thereafter did not have any knowledge about the fate of the proceedings which eventually ended in an acquittal of the accused persons. From the Lower Court Records in connection with G.R.(S) No. 1309 Of 2017 it will be evident that after the Judgment & Decree was passed by the Learned Tribunal on 6th May, 2022 & 12th May, 2022 respectively, the petitioner herein thereafter on 23rd June, 2022 based on his prayer made before the Learned Magistrate got back the Original Copies of the Original Tenancy Agreement dated 22nd May, 2015, Original Possession Letter dated 14th

December, 2015 & Five Original Rent Receipts which are presently in his possession and thus he could have never produced the same before the Learned Tribunal at the time of hearing of the Suit.

At the Bar:-

6. Ld. Counsel, Mr. Shibaji Kumar Das, appearing on behalf of the petitioners has contended from the Seizure List being Exhibit-7, it is evident that the original tenancy agreement, letter of possession, rent bills and Special Power of Attorney were a part of the record of the Criminal Court and the existence of the said original documents was never in dispute. The Petitioner herein could never have summoned the records from the Learned Criminal Court as he did not have the power and authority to do so under the law and it was easily doable by the Learned Tribunal and thus the observations of the Learned Tribunal while deciding the Issue No.5 were completely erroneous and perverse.
7. Mr. Das has further argued that the Learned Tribunal ought not to have disbelieved Exhibit-10 which was a Letter dated 24.07.2019 under Memo No.1792(2) dated 24th July, 2019 written by the Chief Executive Officer, Board of Waqf to O.C. Taltala Police Station thereby acknowledging Mahafuzul Anowar

and his wife, Ruksona Parveen as Bonafide tenant in the suit property.

8. Before parting with, Mr. Das has submitted that from the Trial Court Records in connection with G.R.(S) No.1309 Of 2017 which have been called by this Hon'ble Court, it will be evident that after the Judgment & Decree was passed by the Learned Tribunal on 6th May, 2022 & 12th May, 2022 respectively, the Petitioner herein thereafter on 23rd June, 2022 based on his prayer made before the Learned Magistrate got back the Original Copies of the Original Tenancy Agreement dated 22nd May, 2015, Original Possession Letter dated 14th December, 2015 & Five Original Rent Receipts which are presently in his possession and thus he could have never produced the same before the Learned Tribunal at the time of hearing of the Suit.

9. In opposition to that, Ld. Counsel, Mr. Sofiulla Mondal, appearing on behalf of the opposite party no. 2 has submitted that the plaintiff suppressed the material facts in connection with the said Criminal/complaint case being G.R.-1309/17 which was disposed of on 15/11/2019 by the Learned Metropolitan Magistrate, 20th Court, Calcutta whereas the impugned Judgement was passed on 06/05/2022 by the Learned Waqf

Tribunal, West Bengal in Suit No.38 of 2017 which was filed by the petitioner not within 6 (Six) months which is the statutory period for Declaration and Recovery of Possession according to Section 6 of the Specific Relief Act, 1963 although Padlock was put on 12/09/2016 which was the date of the Petitioner's dispossession as he was not a tenant but illegal occupier. Therefore, Mr. Mondal has vehemently suggested that the petitioner at the time of moving of this civil revision application mentioned the aforesaid Section of the Act but due to delay in filing beyond statutory period in terms of Specific Relief Act, he is not entitled to get any relief.

10. Mr. Mondal has tried to make this Court understand that the alleged Tenancy Agreement was void *ab initio* as the Special Power of Attorney dated 14.09.1988 was not lawful and fake as it was not sanctioned by Board of Auqaf, West Bengal and there is no such provision in the Waqf Act, 1995 except appointing "NAIB MUTAWALLI".

11. In this context, Mr. Mondal has contended that Defendant/O.P. No.2/Mutawalli has not taken any "Salami" (Premium) and "Rent" from the Plaintiff and has not issued any

Rent Receipt to him for any flat at the said Waqf premises being the appointed sole Mutawalli by the Board.

- 12.** Ld. Counsel, Mr. Sk. Md. Galib, appearing on behalf of the Board of Waqf has duly supported the judgement passed by the Ld. Waqf Tribunal and submits that there is no irregularity or infirmity or perversity in the order impugned in this revision application. Therefore, no sort of interference with the impugned order is required.

Analysis:-

- 13.** Rival contentions of the parties to this revision application boils down to a vital issue of existence of tenancy agreement between the parties in respect of subject premises/a flat.
- 14.** As mentioned in the plaint, plaintiff/petitioner herein used to posses the flat at the relevant point of time when renovation work was going on keeping the said flat under lock and key.
- 15.** On 12.09.2016 defendants, availing the opportunities, put another padlock on the door on the plea of dispute among the defendants/opposite parties herein.

16. Ultimately, at the instance of the petitioner one compliant was registered being Taltala PS Case No. 159 dated 21.11.2017 resulting in a G.R. Case no.1309 of 2017 prior to filing of the suit being no. 38 of 2017 which is involved in this revision.

17. In the suit Learned Waqf Tribunal framed following issues:-

“ ISSUES -

- 1) Is the suit maintainable in its present form and prayer?
- 2) Is the suit bad for defects of parties?
- 3) Is the suit premises a part, of the Waqf Estate?
- 4) Is the defendant no.2 appointed a Mutawalli?
- 5) Is the Plaintiff a lawful tenant in the suit premises under the Waqf Estate?
- 6) Is the Plaintiff entitled to have the decree as prayed for?
- 7) To what other relief/reliefs if any as the Plaintiff entitled?”

18. Issue no. 5 is the only persuasive factor of the suit. Therefore it would be profitable to reproduce the decision of the Ld. Tribunal on that issue which runs as follows:-

“ Issue No. 5:

The case of the Plaintiff is that he is lawful tenant of Flat No.3, 1st floor of present no.13/1, Taltala Lane, Calcutta-

700014. Plaintiff has filed Xerox copy of tenancy agreement dated 01.01.2016 and Xerox copy of some rent bills allegedly issued by the then Mutawalli, Aziza Khatoon and Xerox copy of special power of attorney dated 14.09.1988. All these documents are Xerox copies and these are neither marked for identification nor have been exhibited as the Plaintiff did not summon the record from the criminal court. Exhibit-7 shows seizure of original documents by Police at the time of registration of FIR. Plaintiff ought to have been summoned the record from criminal court for the purpose of proving Xerox copies of tenancy agreement, letter of possession, rent bills and special power of attorney, but Plaintiff opted not to discharge the onus put upon him. As the relevant documents such as tenancy agreement, possession letter, rent bills and special power of attorney are not exhibited, these cannot be relied upon. Exhibit-7 cannot be said a document for proving originals in the possession of criminal court. Exhibit-10 is not a document sterling quality for proving these aforesaid Xerox copies as per Law of Evidence.

Thus, Issue No. 5 is decided against the Plaintiff holding that Plaintiff is not lawful tenant of suit flat no.3, 1st floor, premises no.13/1, Taltala Lane, Calcutta-700014.”

- 19.** Therefore, Ld. Tribunal while deciding the particular issue against the petitioner herein mainly observed his finding on the ground that the plaintiff/petitioner herein ought to have summoned the record from criminal court for the purpose of proving the necessary documents but instead opted not to discharge the onus put upon him. Ld. Tribunal further added that exhibit 7 cannot be said to be a document for

proving originals in the possession of the criminal court and also stated that exhibit 10 is not a document of sterling quality for proving xerox copies as per Law of Evidence. But, a bare perusal would make it abundantly clear that the judgment of the suit was passed on 6th May, 2022 and decree was drawn on 12th May, 2022. Whereas, the petitioner got back the specific documents mentioned above only on 23.06.2022 i.e. after passing of the judgment by the Tribunal. Therefore, in common parlance it can easily be understood that at the relevant point of time the petitioner did not have possession of the said original documents and the existence of those documents was never in dispute. Moreover, it is a settled proposition of law that if a document is required for adjudication in a civil matter, the Tribunal may request it, even if it is currently lying with a criminal court. However, this is contingent upon the relevance of the document to the issues being adjudicated. Therefore, keeping in mind the nature of the suit and also for just adjudication the Waqf Tribunal could have easily called for the record of the tenancy agreement from the criminal court if it was deemed to be relevant for the

adjudication of the dispute in hand. Therefore, I am not agreeable with the view of the Ld. Tribunal in this regard.

20. In the aforesaid view of the matter, I find glaring irregularities in the findings of the Ld. Waqf Tribunal while dealing with the main contentious issue which in turn makes it liable to be set aside.

21. As a sequel, the instant revision application being no. C.O. 1450 of 2022 stands allowed and the impugned judgment and decree dated 06.05.2022 and 12.05.2022 respectively passed by the Ld. Waqf Tribunal, West Bengal, in connection with Suit no.38 of 2017 stands set aside.

22. The matter is remanded back to the Ld. Waqf Tribunal for fresh adjudication strictly on merit after taking into consideration all the necessary documents with regard to exhibit 7 (seizure list) to be filed at the behest of the petitioner within two (2) weeks from the date of communication of this order. It would be open for the Tribunal to take additional evidence on the said documents if deemed necessary for just adjudication. However, I would like to make it abundantly clear that the Ld. Tribunal should not be influenced by any

observation made hereinabove in any manner whatsoever while disposing of the suit.

23. With the aforesaid observation the instant revision application stands disposed of. However, with no order as to costs.

24. Parties to act on the server copy of this order duly downloaded from the official website of this Court.

25. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]