

121 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-8499-2025

Date of Decision: 23.05.2025

Anil Kumar Trehan and another

..... Petitioners

Versus

Punjab Wakf Board Through Its Estate Officer

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vaibhav Narang, Advocate
for the petitioners.

HARSH BUNGER J. (ORAL)

Petition herein is, *inter alia*, for issuance of a writ in the nature of Mandamus for directing the respondent-Wakf Board to either grant the cost of construction/damages to the petitioners or to issue lease order in respect of some alternate site to the petitioner.

2. Briefly, the petitioners are stated to have been granted lease by the Punjab Wakf Board in respect of the area measuring 860.66 sq. yards, forming part of Khasra No.412/265, situate at Dhangu Road, Pathankot, District Gurdaspur, vide Lease Deed dated 01.04.1988, for commercial purposes. The period of lease is stated to be of three years

2.1 Petitioners claim that after obtaining 'No Objection' from the Municipal Council, Pathankot, they had raised construction of 32 shops in the name and style of 'Trehan Complex', on the leased property; whereon 16 shops were constructed on the ground floor and the remaining 16 shops were constructed on the first floor. It is stated by the petitioners that they had been letting out the said shops to different persons up to 03.09.2020; however subsequently, an inquiry under Section 52 of the Wakf Act was initiated and

a case FIR No.48 dated 04.04.2021 (Annexure P-4) was also registered against the petitioners, whereupon they had to surrender the lease and possession *qua* the aforesaid 32 constructed shops in favour of the Wakf Board.

2.2 Here, it would be apposite to extract the contents of aforesaid FIR No.48 dated 04.04.2021 (Annexure P4), which reads as under:-

“ To The Senior Superintendent of Police, Pathankot, Punjab. Sir, Complaint against Mr. Anil Trehan and Mr. Anup Terhan, both sons of Sh. Shanti Saroop Trehan, for committing fraud and the shopkeepers/business office owners of Trehan Complex. 1. We, all shopkeepers and officer owners of Trehan Complex, Dhangu Road, Peer Baba Chowk, Pathankot, humbly submit that the following few lines as to how the fraud amounting to several hundred lacs has been committed by Trehan Brothers, resident of Rose Avenue, Behind Police Station Divn. No.2, Pathankot, Mob. No.9478402646 (a) The land khasra no. 412/265 measuring 86.66 sq. yards, on which Trehan Complex was built belongs to Punjab Wakf Board and Trehan Brothers were allotted this land on leave vide Punjab Wakf Board Order No. 24/Lease/Urban/F.No.819/97 dated 31 March 1988 for commercial use for a period of three years. (b) NOC for construction of ground floor and first floor was given by Punjab Wakf Board to Trehan Brothers vide letter no.24(Lease-U) 81/97 23205 effective from 01 April, 1988. (c) After construction of shop as per NOC given by Punjab Wakf Board they sold the shops to different people at the rates as follow:- 1. Cost of Infrastructure-Between Rs.8,00,000/- and Rs.20,00,000/- per shop. 2. Upfront Charges- Rs.2,00,000/- for transfer of per shop in names of buyers in the records of Punjab Wakf Board. 3. Life Time Rent- Rs.20,000/- per shop. 2. They entered into a life time rent agreement with all of us with a promise of giving receipt of infrastructure charges they took from all of us after transfer of shops in our name in the record of Punjab Wakf Board which they never did even after

our repeated requests. 3. They quietly cleared all dues of Punjab Wakf Board in the month of September, 2020 without informing us and we only came to know when we were served notices by Punjab Wakf Board declaring all of us as illegal occupants/encroachers of Wakf Property. 4. Trehan brothers have committed fraud with all of us by not getting the shops transferred in our names between to the tune of Rs.10,00,000/- to 22,00,000/- per shop. 5. We humbly request you to help us recover our money from the fraudster brothers so that we can now have these shops transferred in our names please or else we will lose our money and business both and our families would be on the roads. 6. We also believe that they are planning to leave India for abroad, hence their foreign travel documents may please be confiscated till they clear our dues please. An FIR under appropriate sections of IPC/Cr.P.C. may also be registered against the defaulters. We thank you in anticipation. (Your faithfully) (All Shopkeepers/Business office owners of Trehan Complex)."

2.3 Petitioners state that in September, 2021, the respondent-Board had issued fresh lease orders in favour of the erstwhile tenants of petitioners and those persons are now the tenants of Punjab Wakf Board.

2.4 It is the case of the petitioners that since they had raised the construction of 32 shops, therefore, they are entitled to the cost of construction of the said shops or any alternate site be granted to them.

3. In the aforementioned circumstances, petitioners have filed the present writ petition before this Court, seeking relief(s) as noticed hereinabove.

4. Heard.

5. In the present case, it is noticeable that petitioners have relied upon lease order dated 31.03.1998 (Annexure P-1), which reads as under:-

"1. Name and Address of the lessee Sh. Anil Kumar, Anup Kumar, ss/o, Sh. Santi Swaroop, r/o. Dhangu Road, Pathankot.

2. Description of the property leased out

- i) Kind of leased out property whether shop, residential house, lower storey, upper storey etc. with Kh.No./property No. Wakf Property bearing No.412/265. (Commercial purpose) situated at Dhangu Road, Pathankot, Distt. Gurdaspur.
- ii) Plce, Name of municipality/Tehsil District: Dhangu Road, Pathankot, Teh. Pathankot, Distt. Gurdaspur.
- iii) Total Area 10K-19M
- iv) Area leased out with brief description 860.66 Sq/ Yards as per site plan over leaf.
- v) Nature of Wakf Graveyard
- vi) Area reserved and purpose

3. Name of the previous tenant/lessee with rate of rent, and arrears left unpaid by him upto Sh. Anil Kumar, Anup Kumar ss/o. Sh. Shanti Swaroop

4. Rate of monthly rent/lease money agreed Rs.1500/- (Rs. One thousand five hundred) only P.M.

5. Date of commencement of lease 1.4.1998, (1st April 98).

6. Purpose for which lease out (whether shop/industry/residence etc.) Commercial purpose. (As per site plan). Ground Floor & Ist Floor.

7. Period for which leased out Three years.

8. Terms & conditions for lease:

- i) The lessee will bear all taxes including house tax, property tax, electricity charges, Water charges or any other cost on the leased out property.
- iii) The lessee will be responsible for all repairs and maintenance of the premises at his own cost.
- iv) The lessee will not sublet the property or assign any interest therein to anybody else.
- v) The lessee will not be entitled to make any construction, reconstruction, addition, alteration or change the nature of the property without written permission of the Board.
- vi) The lessee will pay the rent in advance on the first of each calendar month.
- vii) The lessee will be responsible for sanction of his site plan from local authority i.e. HUDA, Housing Board, Town planner,

Municipal committee etc. on NOC Issued by the Board for Construction.

viii) The rate of rent as well as the lease shall be subject to review after every three years.

ix) In case of termination of lease, the lessee shall remove his malba at his own cost and shall not be entitled for any compensation.

x) The lessee will allow the officials of the Board to inspect the property during reasonable hours.

xi) In case of acquisition, the lessee will not have any right/share in compensation or other benefits.

In case of infringement of any of the conditions of lease, the lease in question shall stand automatically terminated and the lessee shall not be entitled to retain the possession of the property. The lease can also be terminated at any time by the Board.

Agreed and accepted.

Sd./-

Sd./-

*Officer on Special Duty
Punjab Wakf Board,
Ambala Cant.”*

5.1 Petitioners have also attached Lease Agreement dated 11.11.1999, wherein following terms and conditions have been mentioned:-

“NOW THIS DEED WITNESSETH AS UNDER:-

1. That the lease shall be for a period of three years coming from 31.3.1998.

2. That the Lessee shall pay to the Lessor a monthly rent of Rs.1500/- (Rupees One thousand and five hundred only) in advance by the 1st week of each calendar month.

3. That the term of the lease shall be reviewed after every three years & the rate of rent as well as lease shall be subject to review after every three years. 10% enhancement in rent will be revised after every three years.

4. That the lessee shall also pay the arrears of rent from the previous tenant upto 31.3.98 which has been verified by the Lessee from the Behi Khata maintained by the Lessor.

5. That the lessee shall use the land for constructing commercial complex on the lease land for ground floor and 1st

floor. The lessee will not use the land for any purpose prohibited by Islam or Shariat.

6. That the lessee shall be empowered to sub-lease the ground floor & Ist floor.

7. That the lessee shall not be entitled to raise any construction except on the ground and Ist floor, with the prior written approval of the Lessor for the specified period so granted and it will be responsibility of lessee to obtain sanction from the Local Authority concerned for the raising of construction in accordance with the plan approved by the Board.

8. That on termination of tenancy whether by affix of ... or sooner by the Board, the lessee will not claim any damages of compensation from the Board and shall be liable to remove he Malba at his own cost within one month from the termination of the tenancy. However, the board may pay market value to the lessee if he so .. through mutual negotiations but if the negotiations do not Materialise then the board will remove the structure at his cost and in case lessee fails to do so, in that even the lessor will be entitled to get the Malba demolished and get the cost recovered from the lessee.

9. That in case any action is taken by the local authority against the lessee, the Board will not be liable in any manner.

10. That the authorized official of the Board shall be entitled to enter the premises without notice for the purpose of inspection during working hours.

11. That no further addition/alteration will be made by the lessee beyond the permission already granted by the lessor.

12. That all Municipal/local taxes and cessee shall be paid by the lessee when which are enforced and may be enforced subsequently by the authorities.

13. That in case of breach of any of the above convents on the part of the lessee, the Board shall be competent to terminate the tenancy by serving one month notice. On termination of the tenancy lessee shall deliver vacant and peaceful possession of the premises to the Board.

14. That in case the Board is required to take possession from

the lessee on account of some order/direction/notification from the Central or State Govt. then the lessee shall be liable to deliver the possession of the same to the Board even before the expiry of the lease period without claiming any compensation.”

5.2 A perusal of the above extracted conditions would reflect that as per the lease order, the lessee was not entitled to sub-lease the property or assign any interest therein to anybody else, whereas, under the Lease Agreement, it has been provided under Clause 6 that the lessee shall be entitled to sub-lease the ground floor and the first floor.

5.3 Similarly, in lease order (Annexure P-1), it has been stated that the lessee will not be entitled to make any construction, re-construction, addition, alteration or change in the nature of property without written permission from the Punjab *Wakf* Board, whereas, under Clause 5 of the Lease Agreement, it is mentioned that lessee shall use the land for constructing commercial complex on the lease land for ground floor and first floor.

5.4 Likewise, in the lease order (Annexure P-1), it has been provided under Clause 8(ix) that in case of termination of lease, lessee shall remove the *malba* at its own cost and shall not be entitled for any compensation. A somewhat similar provision has been made in Clause 8 of the Lease Agreement.

6. Upon considering the lease order (Annexure P-1), Lease Agreement and also the contents of FIR No.48 dated 04.04.2021 (Annexure P-4), I am of the considered view that there are disputed questions of fact involved in this case, that would require leading of evidence, which is not permissible before this Court.

7. Keeping in view the above, the instant writ petition is dismissed, however, leaving it open to the petitioners to avail their other

remedies, if so advised, in accordance with law.

8. All pending application(s), if any, shall also stand closed.

23.05.2025

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No