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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 52/2025 & CM APPL. 8132/2025, CM APPL. 8133/2025, CM APPL. 8134/2025

GHULAM NABI SINCE DECEASED THROUGH
HIS LRS

.....Petitioner

Through: Mr. M. Tarique Siddiqui,
Mr. Aslam Ahmed, Mr.
Fajallu Rehman, Ms.
Lakshmi, Ms. Kheyali
Singh and Mr. Harilal,
Advs.

versus

MOHD KAMIL SINCE DECEASED THROUGH
MOHD AQIL & ANR.

.....Respondents

Through: Mr. Aly Mirza, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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19.02.2025

1. The petitioner is aggrieved by the order dated 17.08.2024 (hereafter '**impugned order**'), passed by the learned Additional Rent Controller ('ARC') in RC ARC 96/2015 80027/16, dismissing his application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**') objecting to the jurisdiction of the Rent Controller.
2. The eviction petition was filed by the respondents, under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 seeking eviction of the petitioner from a shop on the ground floor bearing Municipal No. 2199/X, Bazar Turkman Gate, Delhi 110 006.
3. Respondent No. 1 had contended that he is mutawalli of *Waqf Al-al-Aulad* and is the owner / landlord in respect of the

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suit property.

4. It was contended that the petitioner had been paying the rent for the suit property and therefore, cannot dispute the title of the landlord.

5. The eviction petition also states that in order to avoid any technical legal objection in regard to the jurisdiction of the Rent Control Tribunal, the *Waqf Al-al-Aulad* was impleaded as Petitioner No. 2 in the eviction proceedings.

6. The petitioner filed leave to defend taking various grounds including that the learned ARC had no jurisdiction on property belonging to the waqf.

7. The petitioner thereafter on 11.09.2023 filed an application under Order VII Rule 11 of the CPC, contending that the suit property is a Waqf property under Section 3(r) of the Waqf Act, 1995 and therefore, in terms of Sections 83 and 85 of the Waqf Act, the jurisdiction to adjudicate any dispute in regard to the possession would lie before the Waqf Tribunal. The application was dismissed noting that Waqf Haji Abdul Hameed being *Waqf Al-al-Aulad* is not covered under Section 3(r) of the Waqf Act and is beyond the purview of Waqf as defined in the Waqf Act. It was consequently noted that the eviction petition is not hit by the bar under Section 83 and 85 of the Waqf Act.

8. The learned counsel for the petitioner submits that it is an admitted case of Respondent No. 1/ landlord that the suit property belongs to Waqf Haji Abdul Hameed which is a *Waqf Al-al-Aulad*.

9. He submits that Section 3(r)(iv) of the Waqf Act defines Waqf to include *Waqf Al-al-Aulad* and therefore, learned Tribunal erroneously noted that the same is not covered under



Section 3(r) of the Waqf Act and beyond the purview of Waqf defined in the Waqf Act.

10. The learned counsel for the respondents submits that the definition of the Waqf, as contained in Section 3(r) of the Waqf Act, clearly stipulates that *Waqf Al-al-Aulad* has been included in the definition of the Waqf only to the extent that the property is dedicated for any purpose recognized by Muslim Law as pious, religious or charitable.

11. He submits that the same is categorically defined in Section 3(r) of the Waqf Act itself.

12. He submits that Paragraph 4 of the Waqf Deed in regard to the suit property clearly stipulates the purpose which is not recognized by Muslim Law as pious, religious or charitable.

13. He submits that the perusal of Paragraph 4 of the Waqf Deed in regard to the suit property, makes it apparent that the property has been used for personal purposes and therefore, will not be covered in the definition of Waqf under Section 3(r)(iv) of the Waqf Act.

14. The learned counsel for the petitioner, however, submits that Paragraph 4 of the Waqf Deed specifically mentions the purposes which are recognized by Muslim law as pious, religious or charitable.

15. He submits that no finding has been recorded by the learned ARC in that regard.

16. The impugned order, in the opinion of this Court, does not reflect any reason for coming to the conclusion as to why the subject property will not be covered under Section 3(r) of the Waqf Act. The impugned order only reproduces the Section and relevant paragraph from the Waqf Deed.



17. The impugned order, thus, is bereft of any reasons. No reason has been given for reaching the conclusion that the purpose mentioned in Para 4 of the Waqf Deed is not covered under Section 3(r)(iv) of the Waqf Act.

18. The learned counsel for the parties are at *ad idem* that the matter be remitted back to the learned ARC for passing a fresh order after hearing the arguments afresh.

19. On being asked, it is pointed out that the application seeking leave to defend is also pending consideration and is listed for final arguments.

20. As noted above, the objection to the jurisdiction is also taken by the petitioners in their application seeking leave to defend.

21. Considering the above, this Court considers it apposite to set aside the impugned order and remand the matter back to the learned ARC to decide afresh. However, since the matter has been pending since the year 2015 the ARC is directed to hear both the applications under Order VII Rule 11 of CPC as well as the leave to defend together and decide the same expeditiously.

22. The present petition is allowed in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

FEBRUARY 19, 2025

‘KD’