

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL CIVIL JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Samapti Chatterjee

C.O 4061 of 2015

**Sk. Abdul Matallib @ Sk. Saiful Islam
Vs
Abu Naim Siddique**

For the Petitioner : Mr. Supratick Shyamal, Learned Advocate

For the Opposite Party : Ms. Sharda Parmar, Learned Advocate
Mr. Gour Baran Sau, Learned Advocate

Heard on : 02.12.2016, 07.12.2016, 15.01.2016,
10.03.2016

Judgment on : April 20, 2016.

Samapti Chatterjee, J

1. The petitioner/defendant has filed the present revisional application assailing the Order No.11 dated 14th August, 2015 passed by the Learned Judge, 3rd Bench, Small Causes Court at Calcutta in Ejectment Suit No.250 of 2014.

2. The point to be determined, whether the Waqf Tribunal has exclusive jurisdiction to try and determine any suit thereby excluding the jurisdiction of Civil Court to try or entertain any dispute?

3. The facts of the case in brief is as follows :-

The petitioner/defendant is the tenant under Touleyet Waqf estate in respect of one shop room situated on the ground floor of premises No.7A Abdul Halim Lane, Kolkata-7000016 at a monthly rental of ` 150/- payable according to the english calendar months. The plaintiff filed Ejectment suit being Ejectment Suit No.250 of 2014 before the Learned Judge, 3rd Bench, Small Causes Court at Calcutta. The petitioner/defendant filed an application under Order 7 Rule 11 read with Section 151 of Civil Procedure Code for rejection of the application on the ground that in view of the amendment of the Waqf Act, suit for eviction against any tenant in respect of any Waqf property ought to be tried by the Waqf tribunal exclusively. The Civil Court has no jurisdiction to tri and entertain the suit for eviction.

The said application was rejected by the impugned order dated 14th August, 2015.

4. Mr. Supratick Shyamal, learned Advocate appearing for the petitioner/defendant submitted that after the amendment of the Waqf

Act, the learned Civil Court has no jurisdiction to try, entertain and determine any dispute between the landlord and tenant.

5. Mr. Shyamal drew my attention to the Section 85 of the Waqf property which is quoted below :

“Section 85-Bar of jurisdiction of Civil Court, revenue Court and any other authority-No suit or other legal proceeding shall lie in any Civil Court, revenue Court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to the determined by a Tribunal.”

In support of his contention Mr. Shyamal relied on a decision of this Hon'ble Court reported in **(2015) 1 WBLR (Cal) Page-455 (M/S. Hooghly Building & Investment Co. Ltd vs Janab Syed Asghar Hussain Ismail & Ors)** Paragraph-11 which is quoted below :-

“Para-11- From the above quoted observation it appears that on the one hand, the learned Court has said that Court has no jurisdiction to determine the question whether the suit property is a thika land or the defendant is thika tenant or not but, at the same time, the Court has finally concluded that the suit is not barred under the provisions of Thika Tenancy Act. Be that as it may, the conclusion

of the Court and the finding made before such conclusion are contradictory rather conclusion is not based on the finding and, therefore, I have no option but to hold that the impugned order cannot be sustained and the same is hereby set aside and is remanded back to the learned Trial Court for a fresh decision., on the application filed by the defendant/petitioner under Order VII Rule 11 of the Code of Civil Procedure. I remit the case back to the Trial Court for deciding the application under Order VII Rule 11, CPC on the basis of the averments in the plaint after affording an opportunity of being heard to the parties in accordance with law.”

Therefore in conclusion Mr. Shyamal contended that this revisional application should be allowed by directing the Learned Court below to refer the said suit before the Waqf tribunal.

6. Per contra, Ms. Sharda Parmar, learned Advocate appearing for the plaintiff/opposite party strongly submitted that there is no absolute bar mentioned in the amendment of Waf Act, 2013.

7. Ms Parmar further vehemently urged that by the amendment of 2013 has not taken away the jurisdiction of Civil Procedure Code, therefore, there is no absolute bar to file Ejectment suit before the appropriate Civil Court instead of filing the same before the learned

Tribunal. In support of her contention Ms. Parmar relied on the Supreme Court decision reported in **AIR 2014 Supreme Court Page - 2064 (Faseela M. vs Munnerul Islam Madrasa Committee and another)** Paragraphs 17 & 18 which are quoted below :

“Para-17—The matter before us is wholly and squarely covered by Ramesh Gobindram (AIR 2010 SC 2897 :2010 AIR SCW 5185) The suit for eviction against the tenant relating to a waqf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.

Para-18-In view of the above, the impugned order cannot be sustained and it is liable to be set aside and is set aside. The order passed by the Waqf Tribunal on 19.09.2010 is also set aside. The order of the Waqf Tribunal dated 18.09.2010 is restored. The Civil Court shall now proceed with the suit accordingly.”

8. In conclusion Ms. Parmar contended that the suit has rightly been filed before the Learned Civil Court as the said Court has exclusive right to try, entertain and determine the said dispute.

9. Mr. Parmar further contended that since the Ejectment suit has been filed before the Learned Civil Court, therefore the application filed by the petitioner/defendant under Order VII Rule 11 of the Civil

Procedure Code is rightly rejected by the learned Court below which does not deserve any interference by this Hon'ble Court.

10. After considering the submissions advanced by the learned Counsels appearing for the parties and after perusing the record, the relevant provision of the law and the decision relied on by the learned advocates, now the issue is before this Court to determine whether by virtue of the amendment of the Waqf Act, 2013 the tribunal has exclusive jurisdiction to try, entertain and determine the Ejectment suit thereby excluding jurisdiction of Civil Court to determine the Ejectment suit. For proper adjudication of the said issue I have to narrate Sections 6, 7 , 83 & 85 of the Waqf Act, 2013. **Section 6 & 7 as well as Section 83 (1)** of the Waqf Act are quoted below :-

“Section-6-Disputes regarding auqaf- (1) If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the Mutawalli of the waqf or any person aggrieved may institute a suit n a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final.

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf.

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of Section 4.

(2) Notwithstanding anything contained in sub-section (1) no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of auqaf shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1) be final and conclusive.

(5) On and from the commencement of this Act in a State no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

Section-7-Power of Tribunal to determine disputes regarding auqaf.-

(1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia waqf or a Sunni waqf, the Board or the Mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section 5 therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final :

Provided that-

(a) in the case of the list of auqaf relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of auqaf; and

(b) in the case of the list of auqaf relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement :

Provided further that whether any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5) no proceeding under this section in respect of any waqf shall be stayed by any court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1)

(4) The list of auqaf and whether any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the

waqf property and to recover the damages as arrears of land revenue through the Collector;

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.”

“Section-83 Constitution of Tribunals, etc.-(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.”

11. From the bare reading of Section 83 (1) and Section 85 of the Waqf Act, 2013 it is crystal clear that nowhere it is mentioned that the Civil Court jurisdiction has been waived, excluded or barred by those sections. In my considered view if it is an ejection/eviction suit of the waqf property and no dispute raised which are specified in Section 6 and 7 of the Act, then the suit for eviction against the tenant relating to a waqf property is very much within the domain of Civil Court and not

within the jurisdiction of waqf Tribunal. This ejectment suit is a simplicitor for evicting the tenant from the waqf property the meaning thereby no dispute has been raised under Section 6 and 7 of the waqf Act in the present case in hand by the tenant. It is nobodies case that the suit property is not a waqf property.

12. It is also nobodies case that some disputes have been raised regarding the waqf property itself. It is an admitted fact that the suit property is waqf property and the plaintiff filed the said ejectment suit against the defendant/petitioner for eviction from the said suit property. Therefore in my considered view in the present case in hand no 'dispute' has been raised by any of the parties regarding waqf property. A 'Dispute' as indicated under Section 85 of the Amendment Act, 2013 does not include eviction of a tenant from the waqf property.

13. Since no dispute has been raised by any of the parties under Section 6 & 7 of the Waqf Act regarding Waqf property, therefore after considering the Faseela M case (supra) in my considered view Civil Court has exclusive jurisdiction to try, entertain and determine the said Ejectment suit being Ejectment suit no. 250 of 2015.

14. Now I have to deal with the decision relied on by Mr. Shyamal appearing for the petitioner/defendant. In the very beginning it is found

at the time of delivering the decision M/S Hooghly Building & Investment Co. Ltd (supra) the Hon'ble Court has no occasion to deal with the Hon'ble Supreme Court decision in Faseela M case (supra). Therefore the Hon'ble Court was not in a position to consider Faseela M case (supra).

Moreover, that suit involved in the decision of the Hon'ble Court was not for eviction of a tenant as defined under the West Bengal Premises Tenancy Act, 1997. Furthermore, there was another issue involved in the said suit, as the said suit relate to whether a suit involving a Thika tenancy property can be tried by the Civil Court or not ? Ultimately, the Hon'ble Court remanded the said suit to the Learned Trial Court for a fresh decision without determining the issue. I find that the decision of the Hon'ble Supreme Court as Faseela M case (supra) passed on 31st March, 2014 and the Waqf Act was amended on 29th September, 2013. Not only that in the said decision Section 83 (1) of the Waqf Act was narrated and the Hon'ble Supreme Court passed the said decision by holding that the said suit for eviction against the tenant relating to a Waqf property is exclusively triable by the Civil Court on the specific ground that such suits are not covered by the disputes mentioned in Sections 6 & & of the Act.

15. Therefore, in my considered view in the Ejectment suit No. 250 of 2015 since the defendant/petitioner did not raise any "Dispute"

regarding the said Waqf property, therefore, this Ejectment suit cannot be referred to the Waqf Tribunal and the said Ejectment Suit being No.250 of 2015 shall be exclusively tried, entertained and determined by no other forum but the Civil Court.

16. Therefore, in view of the above discussions I find that the present revisional application does not deserve any interference by this Hon'ble Court. As a result thereof this revisional application stands dismissed. However no order as to costs.

17. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.

(Samapti Chatterjee, J)