

(2011) 07 AHC CK 0199
In the Allahabad High Court
Case No : Writ Petition No. 41388 of 2005

Abdul Qayyum

APPELLANT

Vs

Waqf No.519 Estblished By H.N.Ali Khan and another

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1)(bbb), 21(2)(a)

Citation : (2011) 07 AHC CK 0199

Hon'ble Judges : Shashi Kant Gupta, J

Final Decision : Dismissed

Judgement

Shashi Kant Gupta,J.

1. The present writ petition has been filed against the judgement and order dated 6.5.2005 passed by the Additional District Judge , Court no. 17, Meerut in SCC Revision No. 121 of 2000(Annexure10) upholding the order of the trial court dated 1.5.200 (Annexure 7) whereby the suit No. 224 of 1995 filed by the plaintiffs for arrears of rent and ejectment was decreed in their favour.

2. The petitioner is a tenant of the premises in dispute which is situated in Mohalla Bhatipura Edgah, Baghpat Gate, Meerut. A suit, being suit no. 224 of 1995, for arrears of rent and ejectment was filed by the landlord respondents against the defendant petitioner. As per plaint averments suit property is waqf property founded by late Hazi Nadir Ali Khan and Hazi Mohd. Ishaq which was managed by Mutwallis Hazi Nadir Ali Khan and Nasir Ali Saleem. The father of the petitioner Mr. Abdul Qaiyum, who was a tenant of the premises in dispute at the rate of Rs. 5/ per month, committed default in paying rent from April, 1995, hence a registered notice dated 25.7.1995 under Section 106 of Transfer of Property Act (in short "T. P. Act") on behalf of the plaintiffs was served upon the defendant and when the defendant neither paid the arrears of rent nor vacated the premises in dispute, the plaintiffs filed the said suit for arrears of rent,

ejectment and also claimed damages at the rate of Rs. 1000/ per month, interalia, alleging that the suit property is waqf property as such the provisions of U.P. Act NO. XIII of 1972 (In short "Act") are not applicable.

3. The defendant tenant filed his written statement and admitted the tenancy and receipt of notice but denied the allegation about any default in payment of rent.

4. After hearing the parties and considering the evidence led by the rival sides, the trial court held that since the premises in dispute is a waqf property, the Act is not applicable to the premises in dispute and the plaintiff respondents have rightly terminated the tenancy, and, consequently, the suit for arrears of rent and ejectment was decreed in favour of the landlord respondents on 1.5.2000.

5. Being aggrieved and dissatisfied with the said order, a revision, being J.S.C.C. Revision NO. 121 of 2000, was filed by the petitioner which too was dismissed on 6.5.2005 by the Addl. District Judge, Meerut. Hence, the present writ petition.

6. During the pendency of the writ petition the petitioner Abdul Qaiyum expired, hence he was substituted by his heirs and legal representatives. The plaintiff respondent no. 2 Nasir Ali Saleem also expired during the pendency of the writ petition and this Court by order dated 17.3.1991 directed for substitution of Aftab Ahmad son of late Mohd. Ishaq in his place who was appointed as Mutwalli but despite the said order dated 17.3.2011 the petitioners have not brought him on record.

7. Learned counsel for the petitioner submitted that the impugned orders suffer from manifest errors apparent on the face of record and the same are liable to be set aside by this court. He further submits that the plaintiffs have completely failed to prove that the suit property is waqf property and there is landlord and tenant relationship between the parties. He further submitted that the alleged notice terminating the tenancy of the defendants was invalid.

8. Per contra, learned counsel for the plaintiff respondents submitted that the father of the petitioner himself has admitted in his written statement and in reply to the notice that the property in dispute is a waqf property.

9. Heard learned counsel for the parties and perused the record.

10. Bare perusal of the record would show that the suit property is a wakf property and the suit was filed by the Waqf through its Mutwallis Hazi Mohd. Saeed and Nasir Ali Saleem who were impleaded as plaintiffs no. 2 and 3 in the said suit and they were authorised to realise rent of the said property and had right to file the suit. In paras 1 and 2 of the said plaint, the plaintiff had pleaded as follows:

11. The petitioner's father had filed his written statement and in reply to paras 1 and 2 of the said plaint, he had stated in paras 1 and 2 of the written statement as under:

?(1) That the defd. has no knowledge, whether the property in suit is a Waqf alalaulad property and plffs. no. 2 & 3 are Mutwallies of the said alleged Waqf as stated in para 1 of the plaint. The plffs. Have to prove the said fact strictly according to law.

(2) That para 2 of the plaint is admitted subject to averments made in additional pleas.?

12. Thus, the tenant in his written statement did not specifically deny the averments that the property was owned by the waqf and plaintiffs no. 2 and 3 were its Mutwallis. The record further reveals that before instituting the suit, a legal notice under section 106 of the Transfer of Property was issued by the Mutwallis on behalf of waqf to the tenant (father of the petitioners). The factum of receipt of notice sent by the plaintiffs under section 106 of Transfer of Property Act has also not been denied by the petitioner's father.

13. The main contention of the petitioners is that the property in dispute does not belongs to waqf and there is no landlord and tenant relationship between the parties and the said property is covered under the provisions of U.P. Act no. 13 of 1972. This contention of the learned counsel for the petitioner has also no substance because the father of the petitioner in his written statement had categorically stated that the rent was being paid by him to the defendant respondents, who are Mutwallis of the waqf, as such in view of the admission of the tenant that the rent was being paid by him to the plaintiff, now , at this stage, the petitioners can not be permitted to resile from their own admission. Bare perusal of the written statement would clearly show that there was landlord and tenant relationship between the parties.

14. The Courts below, on the basis of the materials available on the record, recorded a finding of fact that the petitioners have committed default in payment of the rent and the property in dispute belongs to the waqf and the same is exempted from the provisions of U.P. Act no. 13 of 1972 and have further held that there is landlord and tenant relationship between the parties. The findings so recorded by the courts below are just and proper and I do not find that the courts below committed any illegality or perversity in recording the said findings.

15. The courts below, after meticulously examining the entire materials on record, have given a cogent, convincing and satisfactory reasons while decreeing the suit of the plaintiffs in their favour. Since the findings recorded by the courts below are neither perverse nor based on any extraneous consideration or irrelevant material, this Court, while exercising its power under Article 226 of the Constitution of India, can not substitute its opinion for the opinion of the courts below unless it is found that the conclusion drawn by the courts below is manifestly illegal and perverse. The courts below have recorded a categorical finding that the petitioners have committed default in payment of the rent.

16. In view of what has been discussed, herein above, I do not find any illegality, infirmity or perversity in the impugned orders which may warrant any

interference by this Court.

17. In the result, the writ petition fails and is dismissed.