

(2021) 08 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ Petition No. 7542 Of 2021, Civil Miscellaneous Application
No. 23642 Of 2021

Haroon Ahmed

APPELLANT

Vs

Delhi Waqf Board

RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:

Waqf Act, 1995 — Section 54

Waqf Properties Lease Rules, 2014 — Rule 5, 6, 18, 26

Citation : (2021) 08 DEL CK 0019

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Rukhsar Ahmed, Wajeeh Shafiq, Mohd. Qaseem, Shaista Siddiqui

Final Decision : Disposed Of

Judgement

Asha Menon, J

WP (C) No. 7542/2021, C.M. Appl. No. 23642/2021 (by the petitioner u/S 151 CPC for interim relief)

1. This petition under Article 226 of the Constitution of India has been filed by the petitioner with the following prayers:

â??(a) Issue a Writ of mandamus or any other suitable Writ, or Direction in favour of the petitioner and against the respondent to remove

its seal from the shop in question, i.e., Shop no.649, Waqf Haji Abdul Qayyum, Hamilton Road, Kashmiri Gate, Delhi - 110006 forthwith;

(b) Issue a writ of mandamus or any other suitable Writ or Direction thereby directing the respondent, Delhi Waqf Board to consider the

petitioner under the provisions of the Waqf Properties Lease Rules, 2014 as amended upto date;

(c) Issue a writ of Certiorari or any other suitable Writ or Direction thereby quashing the public notice/advertisement published in news

papers on 27.07.2021 to the extent it includes the shop in question Shop no.649, Waqf Haji Abdul Qayyum, Hamilton Road, Kashmiri Gate,

Delhi -110006.

(d) Pass any such and further order as deemed fit in the interest of justice.

2. Mr. Rukhsar Ahmed, learned counsel for the petitioner has submitted that the petitioner's uncle had been the tenant in the Waqf Property being

Shop No.649, Waqf Haji Abdul Qayyum, Hamilton Road, Kashmiri Gate, Delhi -110006 since before 1970. He passed away in the year 2003

whereafter the petitioner remained in possession of the said shop and had himself continued paying the rent till the year 2016, when the Rent Collector

of the respondent/Delhi Waqf Board stopped coming to the premises to collect rent from him. It is also submitted that he had also approached the

respondent/Delhi Waqf Board to treat him as a tenant and had expressed his willingness to pay all the arrears of the rent. In fact, he had transferred

the arrears of rent through IMPS.

3. Learned counsel for the petitioner further submitted that under Section 54 of the Waqf Act, 1995, if the respondent/Delhi Waqf Board had desired

to evict the tenant/petitioner, describing him as an encroacher, it had to approach the Tribunal. Instead, without following due process, the

respondent/Delhi Waqf Board sealed the premises i.e., the shop in question on 8th July 2021. Further, it had affixed a Public Notice at the premises,

including the shop in the list of properties available for bidding, to induct fresh tenants.

4. Learned counsel for the petitioner also relied on the amended Rule 18 of the Waqf Properties Lease Rules, 2014 to contend that the procedure for

bidding need not be adopted in case of a lessee occupying Waqf property uninterruptedly from 1995 onwards or prior thereto as a measure of one-

time concession. Learned counsel for the petitioner also relies on Rule 26 of the Waqf Properties Lease Rules, 2014 to submit that the lease was

intended for the benefit of and was binding on the successors and assigns of the lessor and the heirs, executors and administrators and permitted

successors and assignees of the lessee and since the original lessee was the uncle of the petitioner, he was covered under this provision. In these

circumstances, his possession be protected and the respondent/Delhi Waqf Board be directed to de-seal the property and the Public Notice dated

27th July, 2021 in so far as it includes the shop in question in possession of the petitioner be quashed.

5. Mr. Wajeeh Shafiq, learned Standing Counsel for the respondent/Delhi Waqf Board, who appears on advance notice, submits that with the

amendment of the Waqf Properties Lease Rules, 2014 on 18th February, 2020, there could be no automatic renewal of the lease. Further, the lease

can be renewed only through an open bid in which the existing tenant can also participate. Learned counsel for the respondent/Delhi Waqf Board has

relied on Rule 5 and 6 of the Waqf Properties Lease Rules, 2014 to submit that the Public Notice had to be issued to invite bids and the rules have

been duly followed.

6. Learned counsel also submits that when the officers of the respondent/Delhi Waqf Board had visited the shop on 6th July, 2021, the petitioner's

shop was found with its shutters down and the persons in the neighbouring shops had also informed the officials that this shop was lying locked. In

order to protect the property from the encroachment, the shop was sealed. The Public Notice was pasted at the spot and the property was included in

the list of properties available for bidding in order to ensure that the property is not wasted. Learned counsel for the respondent/Delhi Waqf Board

also points out that Rule 26 has no applicability inasmuch as the status of the petitioner as the successor of the erstwhile tenant had to be established

by proof, as it was not known whether there was any Will or other legal heirs of the erstwhile tenant.

7. After hearing the submissions of learned counsel appearing for both sides and in the light of the extant rules and without prejudice to the rights and

contentions of the parties, it is considered appropriate by this Court to direct that the shop in question i.e. Shop No. 649, Waqf Haji Abdul Qayyum,

Hamilton Road, Kashmiri Gate, Delhi - 110006 be de-sealed forthwith. However, there shall be no stay of the process for inviting fresh bids for

creating fresh tenancy in which process the petitioner may also participate, as learned counsel for the respondent/Delhi Waqf Board informs that the

petitioner has time till 5 PM tomorrow i.e., 4th August 2021 to apply and participate in the fresh bidding. It is made clear that the possession of the

petitioner in the said shop shall be subject to the outcome of the bidding process and in the event the petitioner is not the highest bidder, he shall vacate the premises in accordance with the Rules.

8. With the aforesaid directions, the present petition and pending application are disposed of.

9. The order be uploaded on the website forthwith. Copy of this order be sent to learned counsel for the parties through their respective emails.