

(1997) 08 KL CK 0011
In the High Court Of Kerala
Case No : S.A. No. 1019 of 1996

K.V. John

APPELLANT

Vs

Sooppikka Veettile Kunhibi Wakaf

RESPONDENT

Date of Decision : 19-08-1997

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 25, 30(c)
Waqf Act, 1995 — Section 36, 87

Citation : (1997) 2 KLJ 250

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : C.S. Ananthakrishnan Iyer, K.K. Muhammed Ravuf and Sajan Varghese, for the Appellant; P.K. Musa, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, J.—The defendant in a suit for recovery of a building situate within an area to which the Kerala Buildings (Lease and Rent Control) Act has been extended, is the appellant in this Second Appeal. The said building belonged to one Kunhibi who leased it out to the defendant on 18.5.1973 under Ext.A1 lease deed. The building involved was a room in a building consisting of two rooms and satisfies the definition of a building under the Rent Control Act. The suit for eviction was filed by the present plaintiff bypassing the Kerala Buildings (Lease and Rent Control) Act on the averment that the landlord Kunhibi had created a Wakf by deed dt. 12.8.1986 in respect of the building, that the said Wakf had been registered with the Wakf Board and by virtue of the Notification issued u/s 25 of the Rent Control Act, the building stands exempted from within the purview of that Act and consequently, the suit for eviction was maintainable. The plaintiff claimed that he was the Muthavalli of the Wakf. The defendant, while he admitted the transaction with Kunhibi the landlord, questioned the creation of the Wakf and the motive with which it was created and since the motive for the alleged creation of the Wakf was to illegally get rid of the tenants of the building, the Wakf was invalid under Muslim law, that he

was a tenant protected by the Rent Control Act and that the landlord Kunhibi never had the intention that the title to the property should vest in God or to divest herself of the entire rights over the property. He thus contended that no decree for eviction should be granted since the building was not one which was exempt from within the purview of the Rent Control Act. Before the trial court, two documents were produced by the plaintiff to establish that the Wakf had been created by Kunhibi. The document bearing No. 436 of 1986 dated 5.5.1986 was marked as Ext.A5 and another document No. 813 of 1986 dt. 12.8.1986, was marked as Ext.A2. The registration obtained from the Wakf Board was marked as Ext.A1 and that Ext.X1 referred to the deed dt. 12.8.1986 marked as Ext. A2 which was later in point of time than Ext.A5 dt. 5.5.1986. The trial court held that the Wakf created by Kunhibi was genuine and valid. Since the Wakf was registered with the Wakf Board, the suit was maintainable. The trial court also found that there was a due termination of the tenancy and granted the plaintiff a decree for recovery of possession on the basis that the Rent Control Act did not apply because of the Notification issued u/s 25 of the Act. The trial court seemed to proceed on the basis that Ext. A2 was a valid deed of Wakf and its registration with the Wakf Board excluded the operation of the Rent Control Act. On appeal by the defendant, the lower appellate court came to the conclusion that Ext.A5 deed dt. 5.5.1986 had itself brought into existence of Wakf and therefore, the subsequent wakf deed Ext.A2 was invalid. That court held that Ext.A2 would constitute a valid dedication of the property to the Almighty. That court also held that by virtue of Ext.A5, the Wakf had already been created. In the light of this finding, the argument by the defendant that since it was the Wakf Ext.A2 which had been registered with the Wakf Board as is clear from Ext.X1, the exemption would not apply to the Wakf in question created under Ext.A5 since that Wakf was not registered, was brushed aside by the lower appellate court by taking the view that since a Wakf had come into existence and that Wakf is shown to be registered, the exemption would be available to that Wakf and consequently, the suit was maintainable notwithstanding the finding that Ext.A5 had already created a Wakf. The Appellate Court therefore confirmed the decree of the trial court. The defendant challenges the decree for eviction passed against him.

2. According to me, the questions that would arise for consideration are whether Ext.A5 had created a valid Wakf and if it had created a valid Wakf, could it have been cancelled by Kunhibi? In that context the question would arise whether Ext.A2 wakf was valid and if Ext.A2 is found to be invalid, could the registration with the Wakf Board based on that deed, be of any avail to the plaintiff to contend that the building is one exempted from the purview of the Rent Control Act.

3. It is contended by learned counsel for the defendant that the suit is based on Ext.A2 Wakf deed and its registration with the Wakf Board and once the lower appellate court had found that Ext.A2 was not a valid Wakf, that court ought to have simply dismissed the suit on the ground that the suit filed in that court was not maintainable and was also not maintainable u/s 87 of the Wakf Act, 1995.

Learned counsel for the plaintiff submitted that, according to him, Ext.A5 itself created a valid Wakf and since there is the creation of a Wakf validly and registration of that Wakf with the Wakf Board, the Notification under the Act applied and even if Ext.A2 is treated as invalid, that would not disentitle the plaintiff Wakf from seeking recovery of possession of the building by taking advantage of the Notification issued u/s 25 of the Rent Control Act. He also contended that if there was any dispute regarding the validity or otherwise of the Wakf or its registration, that was for the Wakf Board to decide and since there is a valid dedication of the property for a purpose recognised by the Muslim law, and there is the registration of that Wakf with the Wakf Board, the decree for eviction granted to the plaintiff was sustainable.

4. As observed by the lower appellate court, as regards the words of dedication, there is not much difference or there is practically no difference between Exts. A5 and A2. Probably it is in this context that counsel for the plaintiff did not canvass the correctness of the finding of the lower appellate court that Ext.A5 itself had created a valid Wakf of the property in question. On reading Ext.A5, I am also inclined to agree with the lower appellate court that a wakf has been created for the purposes referred to in that deed. There was no argument before me by either side that Ext.A5 did not contain sufficient words of dedication or words of relinquishment in favour of God and that therefore Ext.A5 did not bring about a valid Wakf. It has therefore to be taken that there was a due dedication and consequent creation of a Wakf by the execution of Ext.A5. If it is held that by Ext.A5 dt. 5.5.1986 a Wakf had been created, it is obvious that Kunhibi did not retain any title in herself thereafter either to cancel that deed of wakf or to execute another Wakf deed Ext.A2 dt. 12.8.1986. It is therefore clear that Ext. A2 is incapable of creating any valid wakf since the property had already been dedicated under Ext.A5 dt. 5.5.1986. I am therefore inclined to agree with the lower appellate court that by Ext.A5, a valid wakf was created and no valid wakf could be thereafter created by Ext.A2.

5. Then the question is whether the lower appellate court is right in holding that the fact that the registration Ext.X1 refers to Ext.A2 as the deed, it would not make any difference and once it is shown that there is a wakf created and that there is registration of that Wakf, it would be sufficient to satisfy the requirements of the Notification u/s 25 of the Rent Control Act. Learned counsel for the defendant contended that the Notification Ext.X1 does not relate to the wakf created by Ext.A5. He also submits that u/s 25(4) of the Wakf Act, 1954 an application for registration of the wakf with the Wakf Board ought to be accompanied by the deed of wakf and in the present case, what was produced along with the application was Ext.A2 deed, which has been found to be invalid and any registration of the wakf with the Wakf Board based on that document, would be of no avail to attract the exemption Notification issued u/s 25 of the Rent Control Act. Section 25(4) of the Wakf Act specifically says that every application for registration shall be accompanied by a copy of the wakf deed. It is clear from column 10 of the application submitted in this case that the deed that

accompanied the application was Ext.A2 which has been found to be invalid. It is based on Ext.A2 that the registration has been granted as evidenced by Ext.X1. Having found that Ext. A2 is invalid as a wakf deed, it is obvious that the registration based on that deed would also be of no avail. The fact that a Wakf had earlier been created followed by an invalid registration cannot be taken to be the registration of the wakf coming within the exemption Notification issued under 25 of the Rent Control Act.

6. Kerala Buildings (Lease and Rent Control) Act is a beneficent piece of legislation enacted with the intention to protect tenants of buildings in the areas to which that Act is extended. Being an exemption, the Notification issued u/s 25 of the Act exempting the buildings owned by the wakfs registered with the Wakf Board, should be strictly construed since by virtue of the Notification what is sought to be done is to keep out that building from within the purview of the Rent Control Act and thus deprive the tenant of his protection which he was otherwise entitled to. The relevant Notification, SRO No. 47/82 dated 12.1.1982 issued u/s 25 of the Rent Control Act is in the following words....."the Government of Kerala hereby exempt in public interest, the buildings owned by Wakfs registered under the wakfs Act, 1954 (Central Act 29 of 1954) with the Kerala Wakf Board from all the provisions" of the Act. Section 25 of the Wakf Act, 1954 provides for registration with Wakf Board (before the words were replaced with "Wakf Commissioner" by Act 69 of 1984). Section 25(3) consists on the details to be furnished including the description of the Wakf properties, the gross annual income, the amount of land revenue, cesses, rates and taxes payable and the estimate of the expenses annually incurred in realising the income of the properties. Clause (e) of Section 25(3) then calls for the following details.

(e) the amount set apart under the Wakf for-

- (i) the salary of the Muthawalli and allowances to individuals;
- (ii) purely religious purposes;
- (iii) charitable purposes; and
- (iv) any other purposes

and any other other particulars described by the Wakf Board (now Commissioner). Sub-section (4) of Section 25 insists that every application shall be accompanied by a copy of the Wakf deed and if one is not executed or a copy of it is not available, furnishing of full particulars of the origin, nature and objects of the Wakf. In the case on hand since the deed of Wakf is available, what is relevant is, a production of its copy. Sub-section (5) of Section 25 provides for formal signing and verification of the application for registration. It may be noted that Section 36 of the Wakf Act, 1995 is also along the same lines.

7. These provisions read in the light of the Notification issued u/s 25 of the Kerala Buildings (lease and Rent Control) Act show that it would not be sufficient if there is a Wakf and there is a registration. In the case on hand, the registration

was of a wakf created by Ext.A2 deed. The effect of the finding of the lower appellate court, accepted by me, is that no wakf could be created under Ext.A2, since a valid wakf had come into existence under Ext.A5 earlier executed. The objects of the charity in Ext.A5 are also not the same as the objects under Ext.A2 deed. In terms of Ext.A5, after meeting the expenses, 25% of the income has to be paid over to Calicut Yattheem-Khana, 25% has to be utilised for giving away as "Sakkath" during Ramzan month and the balance 50% utilised for the living expenses of the members of the family. Ext.A2 Wakf deed provides that an amount deemed fit by the Mutawalli is to be donated to the Calicut Yattheemkhana (as against 25% set apart under Ext.A5) an amount has to be spent for rendering financial help to impecunious Muslim families and orphaned Muslim children (obviously at the discretion of the Mutawalli) and the balance used for the expenses of the family of the Mutawalli. The dedication of 25% of the income to be distributed as "Sakkath" in Ext.A5 is replaced by a vague direction to the Muthawalli to help impecunious and orphaned Muslim and instead of the specific demarcation of 50% of the income for expenses of the members of the family, an unspecified portion is to be utilised for the expenses of the family of the Muthawali. It is thus clear that the dedication under Ext.A2 is not identical with the ones contained in Ext.A5 wakf.

8. Once Ext.A5 is found to create a valid Wakf, it is obvious that the Wakf had relinquished all her rights over the property and could not create another Wakf Ext.A2. What is registered with the Wakf Board in this case is the Wakf created by Ext.A2. That deed accompanied the application for registration. The registration Ext.X1 could not also be accepted as valid as the Wakf Ext.A2 could not have been created by the Wakf who had effaced herself once she executed Ext.A5 deed of Wakf. The registration evidenced by Ext.X1 appears to be of a non-existent Wakf or a Wakf which could not legally come into being.

9. Learned Counsel for the plaintiff contended that all that was needed to attract the exemption was the creation of a wakf and its registration and in the case on hand, there is a Wakf, Ext.A5 and there is a registration, Ext.X1. It cannot be forgotten that the Kerala Buildings (Lease and Rent Control) Act is a beneficent piece of legislation brought for the protection of a class in view of the shortage of living and trading accommodation and the increasing demand for such accommodation. The Notification u/s 25 of the Rent Control Act is one exempting buildings from the purview of the Act and such a Notification which deprives the tenant class of its protection must be construed strictly. The Kerala Buildings (Lease and Rent Control) Act, is a remedial statute.

10. In *Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli*, in construing an exception to the Calcutta Thika Tenancy Act, the Supreme Court observed:- In construing the provisions which provide for exception to the applicability of beneficent legislation, if two constructions are reasonably possible, the court should prefer the construction which helps to carry out the beneficent purpose and does not unduly expand the area or the scope of the exception.

Earlier, in the same judgment, their Lordships held:-

In our opinion, while construing S. 30 (c) it would be necessary to bear in mind the context of the Act in which the section occurs. We have already noticed the broad features of the Act and the object of the Act to help the thika tenants is writ large in all the material provisions. In the case of such a statute, if an exception is provided, the provision prescribing the exception and creating a bar to the application of the Act to certain cases must we think, be strictly construed.

Their Lordships reiterated this principle in connection with a parallel Rent Restriction Act in Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others, . Their Lordships observed:-

But there is one principle of interpretation which offers some guidance in the interpretation of the rather obscure language of this Explanation and it is that since the Explanation raises a conclusive presumption in favour of the landlord in a legislation which is intended to protect the tenant against unreasonable eviction, it must be construed strictly against the landlord so as to cut as little as possible into the protection afforded to the tenant. If the language of the Explanation is susceptible of two interpretations, we should prefer that which enlarges the protection of the tenant rather than that which restricts it.

Since the Notification issued u/s 25 of the Kerala Buildings (Lease and Rent Control) Act takes away the protection afforded to the tenant by the Act, the same ought to be strictly construed against the exclusion and in favour of the class sought to be protected by the Act. Thus viewed, it has to be held that the exemption applies only to the Wakf that is registered and not when there comes into existence a wakf which is not registered with the Wakf Board and what is registered is a wakf which could not legally come into existence based on a deed which it was not in the competence of the wakf to execute. It has to be held in this case that the Wakf created by Ext.A5 dt. 5.5.1986 though valid does not qualify for protection of the Notification issued u/s 25 of the Act since that Wakf is not registered with the Wakf Board and what was registered with the Wakf Board was the Wakf which was attempted to be created subsequently, an attempt which has to be held to be abortive Registration of an invalid Wakf cannot be deemed to be the registration of a Wakf which had been created earlier but the registration of which had not been sought. I am therefore constrained to hold that so long as Ext.A5 wakf is not registered with the Wakf Board, the plaintiff is not entitled to bypass the Kerala Buildings (Lease and Rent Control) Act and ask the tenant to vacate.

Considering the purpose with which the Rent Control Act is enacted, and the rule of interpretation to be adopted regarding the exemption from that welfare legislation, I am of the view that the mere coming into existence of a Wakf and the coming into existence of a registration with the Wakf Board without reference to the deed that created the Wakf would not be sufficient to attract the notification issued u/s 25 of the Rent Control Act. I am therefore constrained to

interfere with the decree of the lower appellate court and hold that the present suit is not maintainable since the Notification under Sec. 25 of the Rent Control Act is not attracted to the Wakf in question and consequently, to the building in question.

In that view, I allow this Second Appeal, set aside the judgments and decrees of the courts below and dismiss the suit. I make it clear that this decision would not stand in the way of the plaintiffs seeking the registration of the wakf created under Ext.A5 with the Wakf Board and on obtaining such registration filing a suit on the basis of the Notification issued u/s 25 of the Kerala Buildings (Lease and Rent Control) Act. In the circumstances of the case, I make no order as to costs.