

(2002) 05 PAT CK 0067
In the Patna High Court
Case No : Civil Revision No. 1073 of 2001

Mrs. Shamshad Rahman

APPELLANT

Vs

Sri. Jagannath Prasad Singh and Others

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 15, 32
Waqf Act, 1995 — Section 85

Citation : (2002) 3 PLJR 761

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Forooq Ahmad Khan, Sadat Ali Khan and Salauddin Khan, for the Appellant; J.S. Arora, Ajay Kumar and Ravi Bhatia Advs., for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—As the questions involved in all the civil revisions applications being one and the same and the parties also being the same, they have been heard together and are being disposed of by this common order.

2. Out of 20 civil revision applications, 10 have been filed by the Bihar State Sunni Wakf Board (hereinafter referred to as the Wakf Board) and remaining have been filed by the tenants. They have challenged the common order dated 2.5.2001 passed in the Title Eviction Suits by the court below allowing the prayer of the Plaintiffs/opposite parties and holding that the defence of the tenants be struck off for non-compliance of the order passed u/s 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act (hereinafter referred to as the Act) to pay future rent, rejecting their objection regarding the jurisdiction of the Court to try the suit and also rejecting the prayer made by the Wakf Board to re-hear the matter u/s 15 of the Act as earlier order was passed before its addition as a party.

3. The factual matrix necessary for disposal of the present applications are that the Plaintiffs/opposite parties filed title eviction suits against the tenants. During pendency of the suit, the Plaintiffs filed a Petition u/s 15 of the Act for direction

to the tenants to pay arrears of rent as well as the current rent. The Court below by a common order dated 26.8.1999 directed for payment of arrears of rent as well as current rent. The said order was challenged before this Court in Civil Revisions and the Civil revisions applications were dismissed. Thereafter, the tenants moved before the Apex Court by filing SLP (Civil) Nos. 9369, 13513-13517/2000 giving rise to Civil Appeals No. 4864, 4865-69 of 2000. It appears that while the matter was pending before the Apex Court, the Wakf Board was added as a party on 19.8.2000. The tenants before the Apex Court asserted that they have paid the rent in past to the Wakf Board, real owner of the entire property and as such the direction of the trial Court to again pay arrears of rent to the Plaintiffs will amount to paying double payment of rent for the same period. The Apex Court having noticed that the Wakf Board has been added as party and after hearing learned Counsel for the parties and the Wakf Board, finally disposed of the matter on 4th September, 2000. It directed that so far as arrears of rent are concerned, any monies or rents which has already been paid to the Wakf Board treating the Wakf Board as a landlord will have to be given credit to by the trial Court. The same will be without prejudice to the contentions of the landlord and accordingly it set aside the order with regard to payment of arrears of rent and directed the trial (sic-Court?) to go into the above question again. So far the order of the trial Court with regard to future rent passed u/s 15 of the Act is concerned, the order was upheld.

4. In pursuance of the aforesaid direction of the Apex Court, the trial Court has disposed of the matter with regard to arrears of rent.

5. The tenants also filed an application challenging the jurisdiction of the Court to proceed with the suits as according to them, the Civil Court has no jurisdiction to try the suit in view of the specific bar created u/s 32 of the Act which provides that the Act is not applicable with regard to buildings owned by the Government and trust including the Wakf Board. It was also stated that the question of maintainability be decided first before proceeding with the suit.

6. The Plaintiffs-landlord on the other hand stated that the suit was maintainable as the property is not a Wakf property. Alternatively, it was stated that no notification under the Wakf Act has been issued nor any Tribunal has been constituted to decide the controversy as such the suit is not barred.

7. The trial Court having considered the matter rejected the prayer of the tenants by order dated 18.9.1999 and held that the question as to whether the suit is maintainable or not will be decided as one of the issues as the same requires evidence in view of the rival stands taken by the parties. The aforesaid orders were up held by this Court in Civil Revision No. 1105 of 1999 disposed of on 30.9.1999 and Civil Revision No. 1493 of 1999 and other batch cases disposed of on 3.4.2002.

8. Admittedly, after the order passed by the trial Court the tenants have not paid the future rent. The landlord/Plaintiff/opposite party filed an application in all

suits for striking off the defence u/s 15 of the Act as the tenants have not paid the rent in terms of the provisions contained under the said Section. The tenants and the Wakf Board objected to the said prayer on the ground that the tenants have already paid rent to the Wakf Board from July, 2000 to December, 2001. The Court below as stated above has rejected the said prayer on the ground that no such plea was taken by the Wakf Board or tenants before the Apex Court on 4th September, 2000 that they paid rent from July, 2000 to December, 2001 and their plea is only a device not to pay the rent.

9. The tenants/Petitioners and Wakf Board filed petitions before the Court below that the Court has no jurisdiction to hear the suits in view of the provisions contained u/s 85 of the Wakf Act. The Plaintiffs objected to the said prayer on the ground that the question as to whether the trial Court has jurisdiction to proceed with the suits or not has already been decided and the order has been passed that the said question will be decided along with other issues after evidence is led by the parties. The trial Court rejected their prayer as stated above.

10. The Wakf Board also filed a Petition that the question of Section 15 of the Act may be decided afresh as earlier decision was taken when the Wakf Board was not a party and the said prayer was also rejected by the trial Court on the ground that the Wakf Board had appeared before the Apex Court while the matters of Section 15 of the Act were being heard and as such the said question cannot be reopened again. This apart, the landlords have not been allowed to withdraw the money deposited by the tenants and as such the Wakf Board would not suffer in any way and ultimately money will be paid to the landlord entitled to receive the same in accordance with law.

11. The learned Counsel appearing for the tenants and the Wakf Board submitted that as the tenants have already paid rent to the Wakf Board which has been received by it, the Court below was not justified in striking off the defence. They have also submitted that under the provisions of the Wakf Act, any controversy with regard to dispute as to whether the property is a Wakf Property or not has to be decided by the Tribunal under the Wakf Act and Section 85 of the Wakf Act bars the institution of any suit in the Civil Court and accordingly, the Court below should have held that the suit for eviction was not maintainable in the Civil Court. The learned Counsel for the Wakf Board further submitted that the trial Court should not have rejected the prayer for reopening of the matter u/s 15 of the Act as the earlier order was passed behind the back of the Wakf Board.

12. Learned Counsel appearing for the landlord Plaintiffs/opposite parties on the other hand submitted that the Court below rightly rejected the prayer of the Petitioners on the grounds mentioned in the order.

13. In view of the rival contentions, all the three points raised in these cases will be discussed in seriatum.

14. Admitted position is that an order u/s 15 of the Act was passed for payment

of arrears of rent as well as for current rent against the tenants/Petitioners and so far direction for future rent is concerned that has attained finality by the order of the Supreme Court dated 4th September, 2000. So far as the arrears of rent are concerned, the matter was remitted to the trial Court and the trial Court has disposed of the matter in terms of the aforesaid direction. On 4th September, 2000 before the Apex Court, the learned Counsel for the Wakf Board also appeared. No statement was made before the Apex Court on 4th September, 2000 that advance rent has been paid to the Wakf Board from July, 2000 to September, 2001, nor any such information was given to the trial Court immediately after disposal of the matter by the Apex Court. In that view of the matter, the trial Court has rightly come to the conclusion that the aforesaid stand taken by the tenants and the Wakf Board has been taken only with a view to flout the order passed u/s 15 of the Act. The documents which have been filed by the tenants and Wakf Board can easily be created and the stand of Wakf Board prima facie supports the argument advanced on behalf of the learned Counsel for the opposite parties that the Wakf Board and the tenants are hand in gloves.

15. Be that as it may, the fact remains that the direction of the trial Court for payment of future rent which has been upheld by the Apex Court has not been carried out by the tenants. The result is that the consequences as mentioned in Section 15 of the Act shall follow. In other words, the court below rightly struck off the defence of the tenants for not carrying out the direction contained u/s 15 of the Act.

16. The Civil Court has jurisdiction to decide all the disputes of civil nature and ouster of jurisdiction cannot be readily inferred, though its jurisdiction can be barred by statute either expressly or impliedly. In case the Statute creates rights and liability and provides the Tribunal the authority for determination of the same, the ouster of jurisdiction may be expressly barred or it may be readily inferred.

17. According to the tenants/Petitioners, the Wakf Act has created a Tribunal for determination of disputes, including dispute regarding Wakf property and Section 85 of the Act bars the institution of the suit with regard to matters mentioned in the said section which under the Wakf Act to be tried by the Tribunal. The Plaintiffs have asserted that no Tribunal has been constituted under the provisions of the Wakf Act and in that view of the matter, Section 85 of the Wakf Act is not attracted.

18. As stated above, the question as to whether the civil Court has jurisdiction to decide the matter in question or not raised earlier by the tenants with reference to Section 32 of the Act has already been ordered to be decided along with other issues. The same point has been raised again in different form. As the said question has to be decided by the trial Court, it is not proper for this Court to express any final opinion as to whether the trial Court has jurisdiction to decide the suit in view of the provisions contained u/s 32 of the Act or under the provisions of the Wakf Act. This question has to be decided in the suit itself. This

apart, in a suit for eviction only question that has to be decided is as to whether there is relationship of landlord or tenant between the parties or not. If the Plaintiffs fail to prove the said question, the suit will fail. The complicated question of title cannot be gone into the eviction suit. The question as to whether the Civil Court has jurisdiction or not to decide the eviction suit will be decided by it as ordered earlier along with other issues after giving opportunity to the parties to lead evidence.

19. It is well settled that as to whether the civil Court has jurisdiction to try the matter or not has to be decided by the Civil Court though ultimately the Court may come to the conclusion that it has no jurisdiction to try the suit, but the suit filed in the civil Court cannot be thrown out only because the tenants/Petitioners said that the same is not maintainable under the provisions of the Wakf Act. This question has to be decided by the trial Court. Thus, the Court below rightly rejected their prayer regarding maintainability of the suit.

20. No doubt, an order u/s 15 of the Act was passed against tenants before addition of the Wakf Board as party, but the Wakf Board has appeared before the Apex Court while the matter u/s 15 of the Act was disposed of and as such it cannot be said that the order u/s 15 of the Act was passed behind the back of the Wakf Board. The other aspect of the matter is that the trial Court has only directed the tenant to deposit the rent in Court and has not permitted the landlord/opposite party to withdraw the same. In that view of the matter, the Wakf Board is not going to suffer in any way. The said amount will be paid ultimately to the persons entitled as a landlord to receive the aforesaid amount.

21. Thus there is no merit in any of the submissions advanced on behalf of tenants/Petitioners and Wakf Board and accordingly, all the civil revision applications are dismissed.