
(2003) 11 AHC CK 0109

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47134 of 2002

Rose Lock Factory and Anr.

APPELLANT

Vs

District Judge, Aligarh & Anr.

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 6, 83, 85

Citation : (2003) 11 AHC CK 0109

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—This writ petition has been by the petitioners, inter alia, seeking quashing of the order dated 1992002 (Annexure No. 4 to the writ petition) passed by the learned Addl. District Judge, Aligarh (Respondent No. 1), and the order dated 422002 (Annexure No. 2 to the writ petition) and the order dated 3072002 (Annexure No. 3 to the writ petition) passed by the learned Judge Small Cause Court, Aligarh (Respondent No. 2).

2. The dispute relates to an accommodation in a building bearing Municipal Corporation number 11/17, Karavan Manzil Balliaqillah Upperkot, Pargana and Tehsil Koil, District Aligarh. The said accommodation has hereinafter referred to as the ?disputed accommodation?.

3. From the allegations made in the writ petition, it appears that the Respondent No. 3 filed a suit against the petitioners as the defendants Ist set, Respondent No. 5 as the defendant IInd set and the Sunni Central Waqf Board, Lucknow (Respondent No. 4) as the defendant IIIrd set in respect to the disputed accommodation. The said suit was filed inter alia, praying for decree for possession, arrears of rent and damages for use and occupation etc. The said suit was registered as SCC Suit No. 68 of 2000.

4. It was, inter alia, alleged in the said suit that the Respondent No. 3 (plaintiff) was the landlord and Mutwalli of the Waqf property popularly known as ?Waqf

Alal Aulad? having its registration Waqf Property No. 51 ExDistrict Aligarh Bearing Municipal Corporation No. 11/17, Karwan Manzil, Balliaqillah, Upperkot Paragana and Tehsil Koil, District Aligarh; and that the disputed accommodation was a part and parcel of the said property; and that the petitioners were the tenant at the rate of Rs. 40 per month in the said disputed accommodation; and that the property in question being waqf property did not come within the ambit of the U.P. Act No. XIII of 1972 (in short 'the Act?'); and that the petitioners did not pay rent since 141999 despite repeated and constant demands, requests and persistent approaches made by the Respondent No. 3 (plaintiff); and that the petitioners became defaulter in payment of rent etc.; and that the Respondent No. 3 (plaintiff) terminated the tenancy of the petitioners by the composite notice dated 542000 to the petitioners which was served personally upon the petitioners but the petitioners failed to comply with the said registered notice.

5. The petitioners have not filed a copy of the plaint alongwith the writ petition. However, during the course of arguments, a copy of the plaint has been filed and the same is taken on record.

It further appears that the petitioners contested the said suit by filing written statement. A copy of the written statement has been filed as Annexure No. 1 to the writ petition. In the said written statement, the petitioners admitted themselves to be the tenant of the disputed accommodation. However, they pleaded that they had no knowledge about the said property being waqf property. It was, inter alia, alleged in the said written statement that the said Suit was not cognizable by the Judge, Small Cause Court.

6. It further appears that the question regarding the maintainability of the said Suit before the Judge, Small Cause Court was pressed, and thereupon, the said order dated 422002 (Annexure No. 2 to the writ petition) was passed by the learned Judge, Small Cause Court (Respondent No. 2). It was, inter alia, furtehr observed that it observed in the said order that the evidence of the plaintiff had already been closed, and the case was fixed for evidence of the defendant. It was, inter alia, would not be proper to give decision on the said question at present, and the decision on the said question would be given after evidence of the defendant or at the time of final judgment.

7. The petitioner, it appears, again moved a similar application, but the same was rejected by the learned Judge, Small Cause Court (Respondent No. 2) by the order dated 3072002 (Annexure No. 3 to the writ petition).

Thereafter, the petitioner filed a revision under Section 25 of the Provincial Small Cause Courts Act which was registered as S.C.C. Revision No. 28 of 2002. The said Revision No. 28 of 2002 was dismissed on 1992002 (Annexure No. 4 to the writ petition) by the learned Addl. District Judge, Aligarh (Respondent No. 1).

8. Thereafter, the petitioners have filed the present writ petition seeking the reliefs mentioned above.

9. I have heard Sri Manish Chand Tiwari, learned Counsel for the petitioners and Sri Ashish Chitranshi, learned Counsel for the caveatorrespondent No. 3.

10. Sri Tiwari, learned Counsel for the petitioners has submitted that in view of the provisions of Section 85 of the Waqf Act, 1995, the Court of Judge Small Cause had no jurisdiction to decide the said Suit as there was dispute regarding the property in question being waqf property. It is also submitted that the said question could be decided only by the Tribunal constituted under Section 83 of the Waqf Act, 1995.

11. In order to appreciate the submission made by the learned Counsel for the petitioners, it is relevant to reproduce the provisions of Section 6 of the Waqf Act, 1995:

6. Disputes regarding Wakfs. (1) If any question arises whether a particular property specified as Wakf property in the list of Wakfs is wakf property or not or whether a Wakf specified in such list is a Shia Wakf or Sunni Wakf, the Board or the Mutawalli of the Wakf or any person interested therein may institute a suit in 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 Wakfs.

Explanation. For the purposes of this section and Section 7 the expression 'any person interested therein' shall, in relation to any property specified as Wakf property in the list of Wakfs published after the commencement of this Act, shall include also every person who, though not interested in the Wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4.

(2) Notwithstanding anything contained in subsection (1) no proceeding under this Act in respect of any Wakf 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 subsection (q) 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 Wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under subsection (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 subsection (1)?.

12. A perusal of Section 6 of the Wakf Act, 1995 shows that if any question arises as to whether any particular property is Wakf property or not, then a suit

may be instituted in the Tribunal constituted under the Wakf Act, 1995. Similarly, if any question arises as to whether a Wakf is a Shia Wakf or Sunni Wakf, then a suit may be instituted in a Tribunal constituted under the Wakf Act, 1995.

Section 85 of the Wakf Act, 1995 lays down as under:

85. Bar of jurisdiction of Civil Court. No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf; Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

13. Thus, Section 85 of the Wakf Act, 1995 shows that if there is any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under the Wakf Act, 1995 to be determined by a Tribunal, then no suit or other legal proceeding shall lie in any Civil Court in respect of such dispute, question or other matter.

14. Thus, the combined reading of Sections 6 and 85 of the Wakf Act, 1995 shows that the question as to whether any particular property is Wakf property or not, is to be decided by the Tribunal constituted under the Wakf Act, 1995, and the Civil Court has no jurisdiction in respect of such question. Similarly, the question as to whether a Wakf is Shia Wakf or Sunni Wakf, is to be decided by the Tribunal constituted under the Wakf Act, 1995, and the Civil Court has no jurisdiction in respect of such question.

15. Keeping in view the aforesaid legal position, let us now examine the facts of the present case.

16. In the present case, there is no question involved as to whether a Wakf is Shia Wakf or Sunni Wakf. Let us consider as to whether there is any question involved in the present case as to whether a property is a Wakf property or not.

17. Learned Counsel for the petitioner does not dispute that the petitioners (Defendants Nos. 1 and 2 in the said Suit) accepted themselves as tenants of the Respondent No. 3 (plaintiff in the said Suit) in respect of the disputed accommodation. The Respondent No. 3 (plaintiff) has been described as Mutwalli Waqf Alal Aulad in the array of parties in the plaint. Further, in Paragraph No. 1 of the plaint, it is categorically stated that the property in question (including the disputed accommodation) was the waqf property.

18. In the written statement (Annexure No. 1 to the writ petition), the petitioners have not specifically disputed or denied the allegations made in the plaint regarding the property being the Waqf property. The petitioners have inter alia stated in the said written statement that they were not aware that the property in question was the Waqf property.

19. Thus, in the present case, no dispute or question regarding the property in question being the waqf property is involved. No dispute has been raised by the petitioners in this regard.

20. In fact, the petitioners, in the present case, have admitted the relationship of landlord and tenant with the Respondent No. 3 who is evidently Mutwalli of the said waqf. The property in question (including the disputed accommodation) is the property of the said Wakf.

21. In view of the aforesaid, the provisions of Sections 6 and 85 of the Wakf Act, 1995 are not attracted to the present case. The said SCC Suit No. 68 of 2000 is a suit by the Respondent No. 3 as landlord against the petitioners as tenants for ejectment, arrears of rent, damages for use and occupation etc., in respect of the disputed accommodation. The said suit is, thus, cognizable by the Court of Judge Small Cause. No illegality has been committed by the Courts below in passing the impugned orders.

22. In view of the aforesaid discussion, I am of the opinion that this writ petition lacks merits and the same is liable to be dismissed. The writ petition is dismissed accordingly.