

(2010) 04 KAR CK 0087

In the Karnataka High Court

Case No : Writ Petition No"s. 12929-30 of 2009

S.R. Quadri

APPELLANT

Vs

Madrasa B. Arabia and Competent Officer and the Chief
Executive Officer, Karnataka State Board of Wakf

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 KAR CK 0087

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

**Advocate : Kaleemullah Shariff, for the Appellant; T.N. Raghupathy, for C/R1
and R. Abdul Reyaz Khan, for R2, for the Respondent**

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—Even though the matter is listed for preliminary hearing, with consent, it is taken up for final disposal.

2. The petitioner is questioning the order passed by the Competent. Officer and as confirmed by the learned appellate Judge. The matter arises under the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974.

3. The petition schedule premises belongs to respondent No. 1 which is a registered institution as Wakf which was notified in the Gazette on 01.04.1965. The case of the first respondent is that the petitioner is a lessee in respect of the room No. 9 on a monthly rent of Rs. 350/- per month. Initially the lease was for a period of 11 months. But however, the petitioner continued to occupy the premises as a lessee and the first respondent has started accepting the rents. The first respondent would contend that the premises in question is a public premises and called upon the petitioner to vacate the premises by issuing a notice on 12.03.2007. The notice was served on the petitioner. The petitioner replied to the said notice on 13.04.2007. The Secretary of the Board granted

permission to the first respondent to initiate action to evict the petitioner. The notice was issued as contemplated under the Act. An enquiry was held. The estate officer was of the view that indeed alter the terminal ion of the lease, the petitioner is in unauthorized occupation. Hence, directed eviction. Aggrieved by the said order, the petitioner filed an appeal before the learned District Judge. The learned District Judge has dismissed the appeal, but however, without granting any time, as against which the petitioner is before this Court.

4. Mr. Kaleemullah Sheriff, learned Counsel for the petitioner would vehemently contend that the notice at Ex.P1 is not issued by the first respondent but is issued by an individual who is a Secretary of the first, respondent. Hence, the notice is bad. He further submits that the petitioner was not permitted to cross-examine the respondent No. 1. Hence, in these circumstances, the impugned order is liable to be interfered.

5. Mr. T.N. Raghupathy, learned Counsel for the respondent No. 1 submits that indeed, it is no doubt true that one Mr. Syed Ameer Ahmed has issued notice, but however, not in his individual capacity, but as a Secretary of the first respondent. He further submits that the petitioner was given an opportunity to cross-examine the respondent. Hence, it is not open for him now to contend that the initiation of proceeding is bad in law.

6. Mr. Abdul Reyaz Khan, learned Counsel for respondent No. 2 supports the order passed by the competent, authority as well as the learned District Judge.

7. I have perused the papers. Indeed, Mr. T.N. Raghupathy, learned Counsel appearing for the first respondent, is right in submitting that the notice is issued by one Syed Ameer Ahamed as Secretary of the first respondent. The notice is not issued in his individual capacity, but as a Secretary. Insofar as the cross-examination is concerned, the proceedings are made available and the proceedings would clearly disclose that the petitioner was permitted to cross-examine the first respondent. The Competent Authority, having regard to die issues involved, was of the view that alter the expiry of the lease, the possession of the petitioner would be that of unauthorized occupant. The learned appellate Judge has also addressed to these aspects of the matter and has come to the conclusion that the order passed by the competent officer cannot be interfered.

8. Having perused both the orders, I am of the view that there is very little scope for this Court to interfere under Article 226 of the Constitution of India. The law in respect of the eviction under Public Premises is set at rest by a Division Bench, ruling of this Court The Indian Bank, Bangalore Vs. Blaze and Central (P) Ltd. and Others, . Having given my anxious consideration, I am of the view that the concurrent orders cannot be interfered.

9. Mr. Kaleemullah Sheriff, learned Counsel for the petitioner submits that the petitioner is an Ayurveda Doctor and he needs some time to make an alternate arrangement and seeks three years time to vacate. The same is seriously opposed by Mr. T.N. Raghupathy, learned Counsel for respondent No. 1 and Mr.

Abdul Reyaz Khan, learned Counsel for respondent No. 2.

Having regard to the totality of the circumstances. I am of the view that, the policy of "live and let live" is to be adopted. Hence, the following order is passed:

- (1) Petitions are rejected.
- (2) The petitioner is granted time till 30th June 2011 to quit and deliver vacant possession.
- (3) The petitioner shall file an affidavit of undertaking to that effect within four weeks from today.