

(2005) 01 AP CK 0039

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 5626 and 5627 of 2004

Sri Shinde Enterprises

APPELLANT

Vs

Arastu Talimi Trust and Another

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Waqf Act, 1954 — Section 36F
Waqf Act, 1995 — Section 112, 56, 56(1)

Citation : (2005) 2 ALD 239 : (2005) 2 ALT 76 : (2005) 1 APLJ 200

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; Vedula Venkata Ramana and A.M. Qureshi, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—Heard learned counsel for the parties.

2. O.S. Nos. 108 of 1998 and 100 of 1999 were disposed of by the Wakf Tribunal, Hyderabad, by its common award dated 2nd August, 2004. The common award has been challenged by way of two revisions. One challenging the award in O.S. No. 108 of 1998 and another challenging the award in O.S. No. 100 of 1999. There are common questions of law and fact, therefore, the revision petitions are being disposed of together.

3. O.S. No. 108 of 1998 was filed by the plaintiff seeking possession from defendant No. 1 and also for future compensation for holding over illegal use and occupation of the property beyond 14-10-1998 till the delivery of possession.

4. O.S. No. 100 of 1999 was filed by the first defendant in O.S. No. 108 of 1998 seeking a direction to the defendants to execute and register lease deed for 31 years with necessary permission in favour of the plaintiff in respect of the schedule property and consequently a direction to the defendants to extend/renew the lease under lease deed dated 14-10-1978 for a period of 31 years on

the same terms and conditions as per Clause (2) of the lease deed dated 14-10-1978. As a matter of fact, both the suits were cross-suits.

5. The parties shall be referred to as they are arrayed in O.S. No. 108 of 1998.

6. In O.S. No. 108 of 1998, the plaintiff claimed that he was the owner of the property bearing municipal No. 5-8-547 to 552 along with its rear side open land and other various properties situated at Hyderabad. The plaintiff and all its properties were registered as Wakf property and the Wakf is meant for the benefit of education of the progeny of the Wakf's Alal-Aulad as well as for charitable purposes and Saleem Hussain Arastu was the Secretary of the plaintiff. The defendant No. 1 obtained on lease from the plaintiff the rear side open land of the property bearing municipal No. 5-8-547 to 552 consisting 310 sq. yds. at Abids, Hyderabad and executed a lease deed on 14-10-1978 for a period of 20 years. At the time of obtaining the suit property on lease, the defendant No. 1 kept Rs. 9,000/- as security deposit with the plaintiff. The tenancy month under the lease deed dated 14-10-1978 commenced from 14th of the month according to English calendar. The defendant No. 1 as per the lease deed agreed to pay the rent of the suit property @ Rs. 1,500/- for the first ten years and thereafter the rent was to be enhanced by 10% and the present rate of rent was Rs. 1,650/- per month. The registered lease deed for the lease period of 20 years expired on 13-10-1998 but the defendant No. 1 failed to vacate and deliver the vacant possession of the suit property to the plaintiff and the tenancy of the defendant No. 1 came to an end by efflux of time u/s 111(a) of the Transfer of Property Act, therefore, the defendant No. 1 was liable to be evicted from suit property. Since defendant No. 1 failed to deliver the possession of the property, the plaintiff filed the suit. He claimed Rs. 25,000/- per month as rent for illegal occupation from 14-10-1998.

7. Defendant No. 1 filed a written statement stating that the suit was not maintainable. Contents of the plaint were denied. The property was open land not denied. However, it was denied that the lease expired on 13-10-1998. Rent at Rs. 1,500/- as fixed was accepted. Enhancement clause of 10% was also accepted. Rent was being paid to the plaintiff was not denied. It was denied that the tenancy came to an end by efflux of time. It was further contended that the contract under lease deed dated 14-10-1978 had been acted upon for more than 20 years by the plaintiff with the knowledge of defendant No. 2 and had not been challenged at any point of time. Claim of the plaintiff was contrary to the lease deed dated 14-10-1978 and was also barred by limitation.

8. Defendant No. 2 also filed a written statement. They contended that there was no relief claimed against them, therefore, the suit be dismissed against them.

9. In O.S. No. 103 of 1999, the first defendant in O.S. No. 108 of 1998 is the plaintiff, who submitted that the schedule property was leased out to them on 14-10-1973 and was registered. This deed was acted upon for 20 years. The defendants had agreed to extend the lease on expiry of 20 years for a period of

31 years at the option of the lessee. Therefore, he claimed a decree that the lease be extended to 31 years.

10. Defendant No. 1 in this case took the same case, which he pleaded in his plaint in O.S. No. 108 of 1998.

11. Defendant No. 2 also filed a written statement. The plaintiff taking the suit property on lease from defendant No. 1 with its permission, execution of the lease deed and payment of deposit were not disputed. It was contended that there was no sanction from it to further execute the similar lease agreement for a further period of 31 years. The plaintiff had no right to sue the defendants for the suit claim, as it was the duty of the plaintiff to vacate the suit property and handover its vacant possession to defendant No. 1. As per the Wakf Act, 1954 and as per the Wakf Act, 1995 any lease, beyond three years is illegal and the plaintiff could not claim the relief on the basis of the void lease.

12. Issues were framed. The most important issue was issue No. 7 in O.S. No. 108 of 1999:

"Whether the plaintiff is entitled to challenge the validity of contract of lease deed dated 14-10-1978 after lapse of 20 years and whether such plea is barred by limitation."

13. This Court is hearing the revisions under Article 227 of the Constitution of India and not an appeal. Therefore, this Court would not go into the factual disputes between the parties, but in my view, the issue referred to above is central to the controversy. Whether in the first instance, a lease could have been created for 20 years and if the answer to that issue is in affirmative, whether it could be now extended to 31 years because parties had agreed to such a course in their agreement dated 14-10-1978 is the question before this Court.

14. The Wakf Act, 1995 (for short "the 1995 Act") came into force on 22nd November, 1995. Section 56 of this Act reads as under:

"56. Restriction on power to grant lease of Wakf property:-

(1) A lease or sub-lease for any period exceeding three years of any immovable property which is Wakf property, shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of immovable property which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to

the revision of such terms and conditions in such manner as it may direct."

15. A bare perusal of this Section shows that there is no power to grant lease of Wakf Property beyond three years with anybody. Section 56(1) of the 1995 Act applies to all deeds, instruments and even to the law that was in force, at the time of coming into force of the Wakf Act, 1995. Therefore, even if it is accepted as is contended by the learned counsel for the petitioner that there was no such restriction in 1978 when the lease deed was executed, even then, by operation of law, enunciated u/s 56(1) of the 1995 Act, all leases exceeding three years relating to Wakf property became void. Therefore, the lease deed itself on the basis of which, the tenant wanted to extend the period of lease upto 31 years has become void in the eye of the law. While reading Sub-clauses to Section 56 of the 1995 Act, it becomes clear that a lease for a period of less than one year does not need any sanction from the Wakf Board, but there should be a sanction of Wakf Board if the lease is created between one year and three years and a lease for a period exceeding three years cannot be granted even with permission of the Wakf Board. Therefore, even if there is a lease for twenty years with the permission of the Wakf Board, it cannot even be treated, as a lease deed even for a year because it is a void agreement and it is settled law that void agreements are unenforceable.

16. However, learned counsel for the petitioner submits that in Section 112 of the 1995 Act, which deals with the repeal and savings, it has been laid down in Sub-section (2) that:

"Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act."

17. Learned counsel for the petitioner submits that the lease was created when the earlier Act i.e., Wakf Act, 1954 (for short "the 1954 Act") was in operation, therefore, the lease is saved. Now before going to the fallacy of this argument, it will be pertinent to have a look at Section 36-F of the 1954 Act, which lays down that:

36-F. Restrictions on the powers to grant lease of wakf property-

(1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or, instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for the making or renewal of lease

under this section reviewing the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

18. Section 36-F of the 1954 Act is almost similar to Section 56 of the 1995 Act. Therefore, when the lease was executed, it was void even on that date in terms of the law that was in force at that time. In view of Section 36-F of the 1954 Act, the argument advanced by learned counsel for the petitioner relating to Section 112 of the 1995 Act does not need an answer.

19. Learned counsel for the petitioner has also drawn my attention to Ex.A-5 proceedings of the Wakf Board, and according to him, there was the approval of the Wakf Board, Hyderabad, approving the agreement entered into between the parties with regard to the lease of the property for a period of 20 years. This approval was also in contravention to Section 36-F of the 1954 Act. Therefore, this will not confer any rights on the petitioner. The approval, at best, could be taken as approval for a period of three years because in terms of Section 36-F of the 1954 Act, the Board had the power to grant leases for a period of three years.

20. For the reasons mentioned hereinabove, the revision petitions fail and are accordingly dismissed.

21. However, since the property is in the occupation of the petitioner for a longtime and he has to make alternative arrangements, therefore, he is granted three months' time for vacating the premises, provided he gives an undertaking within fifteen days before the Wakf Tribunal to that effect. There shall be an unconditional stay for fifteen days and the stay shall continue beyond the period of fifteen days, if the undertaking is given. No order as to costs.