

Mustamand Ali Khan @ M.A. Khan Vs. Surjit Bhatia and ors.

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Court : Delhi

Decided On : Aug-04-2008

Reported in : 153(2008)DLT24

Judge : Shiv Narayan Dhingra, J.

Acts : Wakf Act, 1955 - Sections 36 and 57; [Constitution of India](#) - Article 227

Appeal No. : CM (M) No. 415/2002

Appellant : Mustamand Ali Khan @ M.A. Khan

Respondent : Surjit Bhatia and ors.

Advocate for Def. : Ravi Gupta, Adv.

Advocate for Pet/Ap. : S. Mehdi Imam, Adv

Disposition : Petition dismissed

Judgement :

Shiv Narayan Dhingra, J.

1. By this petition under Article 227 of the [Constitution of India](#) the petitioner has challenged the legality of order dated 24.5.2002 passed by the learned Additional Rent Control Tribunal whereby he dismissed an appeal preferred by the petitioner against order dated 3.1.1994 passed by the learned Additional Rent Controller.

The Additional Rent Controller as well as the learned Additional Rent Control Tribunal held that the petitioner had no locus standi to file the eviction petition against the respondent since the property in question was wakf property and the petitioner had filed the eviction petition in his personal name, that also through an attorney.

2. The contention of the petitioner is that the petitioner was a duly appointed mutawalli by the original wakif (trustee). This wakf was registered with the Sunni Central Wakf Board, UP. The Wakf Act would not be applicable in respect of the administration and in achieving aims and objects of the wakfnama therefore Delhi Wakf Board will have no say so far as property in question was concerned. He submitted that Hon'ble Supreme Court in respect of the same property had observed that the petitioner was at liberty to assert his rights in respect of the property against Delhi Wakf Board. The petitioner contended that reliance placed by Trial Court on Section 36 and Section 57 of the Wakf Act was misplaced and the petitioner had been acting as de-facto mutawalli, having all the powers of a mutawalli as enshrined under the Wakf Act, 1995.

3. A brief resume of facts would be necessary to understand the controversy. The petitioner filed an eviction petition against the tenants through his attorney Shri Shakeel Ahmed on various grounds in respect of property at Dharmapura Lodge Subzi Mandi, Delhi. The respondent took the objection that petitioner had no locus standi and the Trial Court came to the conclusion that in view of the provisions of Section 36 of the Wakf Act, mutawalli was merely a manager of the wakf and was not competent to file a suit in his own name. The petition filed by the petitioner in his own name and not on behalf of the wakf was not maintainable. Against this order an appeal was preferred. In the appeal, the learned Appellate Tribunal reproduced the title of the suit and observed that the suit was filed by petitioner through his attorney. The petitioner had not acquired or inherited any rights of ownership or land lordship from late Smt. Bibi Ahmedi Begum and he had no locus standi to file the suit. The Appellate Court also observed that in a report made by Shri Israr Ahmed, Wakf Commissioner, Delhi after survey of the wakf property within the Union Territory of Delhi, a letter was written to District Judge Bulandshahar wherein it was observed by the Wakf Commissioner, Delhi that the

property in question was wakf property and in terms of wakf deed, District Judge Bulandshahar was named as mutawalli and he was to manage the suit property through four persons professing Islam belonging to the Districts of Bulandshahar and Aligarh, UP and also to establish School for imparting religious education and to establish a dispensary. This letter was also sent to UP Government. This document was relied upon by the appellant/petitioner himself to show that the property belonged to a wakf created by late Smt. Bibi Ahmedi Begum to be managed for certain purposes as described in the wakf deed. The Appellate Court observed that the appellant has filed three eviction petitions in his individual capacity through attorney and such petitions were not maintainable. A mutawalli (manager) was only entitled to manage the property and he could not transfer his duties in favour of any other person. The petition was held not maintainable on the face of it.

4. The order dated 17.2.1984 of the Hon'ble Supreme Court relied upon by the petitioner itself shows that the Hon'ble Supreme Court had taken into account the fact that Delhi Wakf Board had accepted the tenant directly under it in respect of Dharampura Lodge, and it modified the order of Delhi High Court accordingly. The Supreme Court gave liberty to the petitioner to assert his rights in respect of the property as against Delhi Wakf Board. No liberty was given to the petitioner vis-a-vis tenants. The learned Additional rent Control Tribunal after coming to conclusion that petitioner had no right to file the eviction petition upheld the order of the learned Additional Rent Controller.

5. The petitioner has raised the same issue again before this Court. Two Courts below have come to the conclusion that the petitioner had no locus standi to file the eviction petition. The petitioner has failed to show how the order of the Tribunal was without jurisdiction or contrary to law. The petitioner has relied upon AIR 2002 Ker 56 Badagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji and Ors. The facts of that case are entirely different from the facts in the instant case. The issue before the Court is not whether the property in question was a wakf property. The issue before the Court was whether the petitioner has any locus standi to file the eviction petition or not. Even in cited judgment, the Court had observed that office of mutawalli was not transferable. A

mutawalli has no power to transfer the office to another, unless such a power is expressly conferred upon him by the founder. The petitioner has filed this eviction petition in his personal name. Even if he had been mutawalli, he had no right to transfer his duties under the wakf to an attorney as these powers were not transferable. Moreover, in view of judgment of Supreme Court, his right vis-a-vis tenant cannot be re-agitated. If he has any right in the property he can agitate only against Delhi Wakf Board, he cannot re-agitate an issue which has been taken right upto Supreme Court and ultimately Delhi Wakf Board was considered as landlord by the Hon'ble Supreme Court.

6. I find no ground to interfere in the order of the learned Additional Rent Controller or learned Additional Rent Control Tribunal. The petition is hereby dismissed.

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