

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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WRIT PETITION NO.3168 of 2022

MUHAMMAD MUNIR

versus

MANSOOR RASHEED and others

JUDGMENT

Date of hearing: **21.11.2024**

Petitioner by: Mr. Shahid Mehmood Abbasi,
Advocate.

Respondent No.1 by: M/s Muhammad Ilyas Sheikh and
Muhammad Kashif, Advocates.

MIRZA VIQAS RAUF, J. This single judgment shall proceed to decide the fate of instant petition (W.P.No.3168 of 2022) as well as Writ Petitions No.3169 & 3170 of 2022) on account of involvement of similar questions of facts and law in these petitions.

BRIEF FACTS:

2. The petitioner namely Muhammad Munir, claiming himself to be landlord of Shops No.2, 42 and 43 forming part of property, bearing No.W-318 in the name and style of Taj Mahal Market, situated in Nankari Bazar, Rawalpindi (hereinafter referred to as “**premises in question**”), moved three separate applications under Section 19 of The Punjab Rented Premises Act, 2009 (hereinafter referred to as “**Act, 2009**”), seeking eviction of the private respondents herein (hereinafter referred to as “**respondents**”), before the learned Special Judge (Rent), Rawalpindi, *inter alia*, on the

grounds that there was an oral tenancy and the **respondents**, being tenants, were though bound to vacate the **premises in question** in case of personal *bona fide* need of the petitioner but they refused to do so; that the **respondents** have committed default in payment of rent and that the **respondents** have damaged the **premises in question**. In order to resist the ejectment proceedings, **respondents** submitted their respective applications for leave to contest, wherein they denied the existence of relationship of landlord and tenant and instead pleaded that **premises in question** are part of *Waqf* and they were initially tenant of Haji Imam Din and after his death, affairs of the trust are managed by Haji Mehr Din, who is their landlord and receiving the rent. Leave to contest was allowed to the **respondents** whereafter necessary issues were framed and ultimately after recording of evidence, ejectment applications were accepted vide order dated 11th April, 2022. Feeling dissatisfied, the **respondents** preferred their respective appeals before the learned Additional District Judge, Rawalpindi. The appeals were allowed by way of separate judgments dated 19th September, 2022 and resultantly, the ejectment applications were dismissed hence, these petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

ARGUMENTS:

3. Learned counsel for the petitioner contended that though overwhelming evidence was produced by the petitioner to establish that there exists relationship of landlord and tenant between the parties but it has been discarded by the appellate court in an illegal and unlawful manner. It is argued with vehemence that initially, the learned Special Judge (Rent) allowed the ejectment applications through well-reasoned orders but same have been set at naught by the appellate court without assigning any lawful reasoning. Learned counsel emphasized that the stance taken by the **respondents** in their applications for leave to contest was contradictory and as such, the appellate court committed illegality while allowing the appeals.

While making reference to Section 2(e) of The Punjab Waqf Properties Ordinance, 1979 (hereinafter referred to as “Ordinance”), learned counsel emphasized that *Waqf* was invalid and there was no hurdle in alienating the **premises in question** in favour of the petitioner. Learned counsel contended that in view of sale deed executed in favour of the petitioner, he became owner of the **premises in question**. Learned counsel submitted that the impugned judgment is not tenable in the circumstances.

4. Conversely, learned counsel for the **respondents** submitted that originally the **premises in question** were owned by Haji Imam Din, who executed a Waqf-deed in the form of *waqf* (وقف على اليه). It is added that after execution of the Waqf-deed, the original owner practically parted his proprietary rights. He added that after execution of Waqf-deed, **premises in question** could not be further alienated and as such, the petitioner is neither owner nor landlord of the **premises in question**. It is emphatically contended by learned counsel for the **respondents** that the learned Special Judge (Rent) committed illegality while passing the eviction orders, which have rightly been set-aside by the appellate court. In order to supplement his contentions, learned counsel placed reliance on KHALID JAVED and others versus Qazi MASOOD-UR-REHMAN, ADDITIONAL DISTRICT AND SESSIONS JUDGE, SIALKOT and 2 others (PLD 1988 Lahore 541), HAFEEZULLAH BAIG through his Legal Heirs and others versus Mst. NAHEED JALIL (1996 C L C 663) and FARAZ AHMAD BHUTTA versus ADDITIONAL DISTRICT JUDGE and others (PLD 2011 Lahore 483).

POINT FOR DETERMINATION:

- Whether there exists relationship of landlord and tenant interse petitioner and **respondents**?

FINDINGS:

5. It is an admitted position that **premises in question** alongwith other commercial property were originally owned by Haji Imam Din,

grandfather of the petitioner, who executed Waqf-deed bearing No.2094 (Exh.R-93). By virtue of said Waqf-deed, Haji Imam Din dedicated the properties mentioned therein alongwith **premises in question** for *waqf على اليه* (وقف على اليه). The petitioner claiming himself as owner of the **premises in question**, on the basis of sale deeds, moved applications for eviction of the **respondents**. On filing of ejectment applications by the petitioner under the “Act, 2009”, **respondents** submitted their respective applications for leave to contest in terms of Section 22 of the “Act, 2009” wherein they denied the relationship with the petitioner with the stance that the **premises in question** were dedicated as *waqf على اليه* (وقف على اليه) by original owner Haji Imam Din through Waqf-deed by appointing himself as trustee during his lifetime and reserving right to give rent of the **premises in question** to any deserving institute. It is also asserted in the applications of leave to contest that in the Waqf-deed, an embargo was placed on further alienation of the **premises in question**. It evinces from the record that initially leave was declined to the **respondents** by learned Special Judge (Rent) and eviction order was passed on 26th July, 2016, which was assailed by the **respondents** through separate appeals before learned Additional District Judge, Rawalpindi. The appeals were consolidated and vide judgment dated 17th March, 2017, handed down by learned Additional District Judge, Rawalpindi, all the appeals were allowed; leave was thus granted to the **respondents** and matter was remanded to the learned Special Judge (Rent), Rawalpindi with the direction to decide it afresh after recording evidence of the parties. In post-remand proceedings, the ejectment applications were accepted by way of order dated 11th April, 2022 but the appellate court set-aside the eviction order through the impugned judgment dated 19th September, 2022.

6. The moot point, which requires determination is restricted to existence of relationship of landlord and tenant interse the petitioner and the **respondents** to which effect issue was also framed and parties produced their respective evidence *pro* and *contra* to the core

issue. Before advertizing to any other aspect of the matter, it would be advantageous to observe that “Act, 2009” was promulgated to regulate relationship of landlord and tenant in respect of rented premises and to provide mechanism for settlement of disputes inter se landlord and tenant in an expeditious and cost-effective manner and for connected matters therewith. It is thus imperative for the applicant invoking provisions of the “Act, 2009”, seeking eviction of a person arraying him as respondent in the application, to first establish relationship, being landlord and tenant. Section 2 (d) of the “Act, 2009” defines “landlord” as under:-

“2. Definitions. – In this Act:–

(a) -----

(b) -----

(c) -----

(d) **“Landlord”** means the owner of premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises;”

On the other hand, “tenant” is defined in Section 2(l) in the following manner:-

“2. Definitions. – In this Act:–

(l) **“Tenant”** means a person who undertakes or is bound to pay rent as consideration for the occupation of a premises by him or by any other person on his behalf and includes:

(i) a person who continues to be in occupation of the premises after the termination of his tenancy for the purpose of a proceeding under this Act;

(ii) legal heirs of a tenant in the event of death of the tenant who continue to be in occupation of the premises; and

(iii) a sub-tenant who is in possession of the premises or part thereof with the written consent of the landlord;"

7. Needless to mention that for determining the relationship inter se the parties to the ejectment application, one has to keep in mind both the above noted provisions which can neither be separated nor read in isolation to each other while proceeding with the ejectment application. Thus, for setting the law into motion under the "Act, 2009", the applicant has to demonstrate that he is owner of the premises or he is the person who is, for the time being, entitled or authorized to receive rent in respect of the premises. Simultaneously, a respondent in the ejectment application would only qualify to be called as tenant if he undertakes or bound to pay rent as consideration for occupation of a premises by him or by any other person on his behalf, including his legal heirs on account of death. It also includes sub-tenant, who occupies the premises or part thereof with written consent of the landlord.

8. In the above backdrop, when case at hand is examined, it is noticed that in view of respective claims of both the sides, Waqf-deed (Exh.R-93) becomes of great import. Perusal of Waqf-deed reveals that the original owner specifically dedicated **premises in question** as well as rent derived therefrom for *waqf* (وقف على اليه) to be paid to the deserving institution. It is pre-condition in the Waqf-deed that **premises in question** as well as other properties, mentioned therein would not be subject to further alienation.

9. Adverting to the contention of learned counsel for the petitioner that by virtue of Section 2(e) of the "Ordinance", Waqf-deed is invalid and sale deed executed by the father of the petitioner Haji Mehr Din in his name is valid one and equips him with the right to seek eviction of the **respondents** being landlord; suffice to observe that Section 2(e) of the "Ordinance" has been misconstrued by the learned counsel. As already observed that a specific clog was imposed in the Waqf-deed on using the **premises**

in question for the personal benefit of legal heirs so Section 2(e) of the “Ordinance” would not come to rescue the petitioner.

10. *Waqf* means the permanent dedication by a person professing Islam of any property for any purpose recognized by the Muslim as religious, pious or charitable. *Waqf* is always of permanent character. In the case of FARAZ AHMAD BHUTTA versus ADDITIONAL DISTRICT JUDGE and others (PLD 2011 Lahore 483), this Court while dealing with a similar proposition held as under:-

“9. So far as the first contention of the learned counsel for the petitioner that a Rent Controller cannot look into the title of the landlord is concerned, this Court does not find itself in agreement with such contention. In section 2(c) of the Ordinance (*ibid*) the definition of landlord has been given which says that any person for the time being entitled to receive rent in respect of any building or rented land. The word "entitled" means the legal entitlement of a person; such person has to prove that he has legally', been authorized to collect the rent or he is collecting the rent on his own account. In the instant case, the petitioner did not produce any evidence showing that they were authorized by Haji Nawab-ud-Din and others to collect rent on their behalf from the tenants of the property. The petitioner has solely relied upon the sale-deed executed by Haji Nawab-ud Din and others in their favour alienating the property in favour of the petitioners. So the learned Rent Tribunal in this situation has to examine whether the petitioners are lawful owners and the property transferred in their favour was transferred by lawfull means or that they have been legally authorized for the collection of the rent from the tenants, No doubt, the learned Rent Controller is not supposed to conduct detailed inquiry into the fact, but in order to satisfy itself, Rent Controller has to examine these facts before assuming jurisdiction under Rent Laws. Both the courts below while examining these factual positions have rightly held that the petitioners are not the lawful transferee of the property in dispute for the reason that Shahab-ud Din had created the Waqf of the property prohibiting the alienation.

10. In order to examine the creation of Waqf, the principle laid down by D.F. Mulla in this respect are to be considered. According to section 173 of Muhammadan Law, a Waqf is a permanent dedication by a person professing the Muslim faith of any property, recognized by the Muslim Law as religious, pious or charitable. Section 174 of the Muhammadan Law directs a waqf to make a permanent waqif without limiting the period while the object of the Waqf has been described in 178 mentioning that it should be for religious, pious and writable purposes and Waqf could be in favour of settlor's family, children and descendants.

11. Doctrine of press has been laid down in section 181 and the creation of Waqf by inter vivos or testamentary has been provided in sections 184 and 185. To complete a testamentary waqf, section 186 provides the procedure. Section 189 of Muhammadan Law clearly provides that testamentary waqf can be revoked any time before the death of the waqif meaning thereby the other waqif's are not revocable. Further section 193 provides that Waqf property cannot be alienated except in the case mentioned in sections 207 and 208 which sections provide the powers of Mutawali to sell or mortgage of the Waqf property with the 'permission of the court or if such power has been given expressly in the Waqf deed. The purpose of mentioning all these sections is to ascertain the intention of late Haji Shahab-ud Din from Waqf deed available at page 88. of this constitutional petition which was also produced before the trial Court and was marked as Exh.R.233. If this deed is kept in view, created as far as back on 2-1-1931 and further deed executed in 1935 by said Shahab-ud-Din, shows that it was made as a permanent dedication for charitable and pious purposes mentioned therein and subsequently restraining the successive Mutawalis' from alienation of the whole property or any part thereof. It was mentioned at page 13 of the waqf-deed that:-

مظہر یا مظہر کے وارثان کا کوئی مالکانہ حق و تصرف و قبضہ جاندہ مدد کور پنہیں بلکہ یہ جانیدا و خداوند عالم کی مکمل ملکیت و
مقبوضہ ہے اور وہی اس کا واحد مالک و قابض ہے۔

In clause 5 of the said deed at page 15, the right to sell the property was prohibited in the following words:--

لیکن کسی متولی کو جو میرے مرنے کے بعد مقرر ہو کوئی حق حاصل نہیں کر سکی صورت میں کسی جزو و جاندہ کو
کسی وقت کسی غرض کے لیے رہن یا بیچ کرے۔ اگر کوئی متولی ایسا فعل کرے تو اس کو ولیت سے ہٹا دیا
جائے۔ اور اس کا رہن یا بیچ با مقابلہ وقف ہذا کا اعدام اور بے اثر ہو گا۔

It is further elaborated in clause 8 that

یہ کہ میری وفات کے بعد اگر کسی وقت یہ ثابت ہو جائے کہ کسی متولی نے بے ایمانی کی ہے تو اس شخص کو حصے
اس وقف نامہ کے ماتحت فائدہ پہنچا ہے اختیار ہے کہ ایسے متولی کو عبده ولیت سے باضابطہ ہٹادے اور اس
کے خلاف فوجداری یا دیوانی چارہ جوئی کرے۔ اور کینٹر کردار تک پہنچا دے۔

The charitable purpose is also explicit from the wording of this waqf deed i.e. the waqif wanted to establish a school for the children. This is besides other charitable purpose which he intended to establish in his life time. The reading of these different clauses of the waqf-deed clearly established the intention of the waqif and prohibition from the alienation in future. The submission of the learned counsel for the petitioner that on 26-11-1946, said Shahab-ud-Din himself cancelled the Waqf through a registered document, therefore, it would be deemed that property was never bequeathed by Shahab-ud-Din through waqf-deed; This submission of the counsel in view of the afore-noted wording has no legs to stand for the reason that when the property did not vest in the waqif and the possession has been delivered to Allah

Almighty then he has left with no authority to cancel it. The waqf-deed is found to be very comprehensive document which was allegedly revoked by the waqif through instruments appearing at page 166 of this petition, in which the waqif cancel the waqf-deed in the shallow words:--

مجھے قانونی مسودہ ملا ہے کہ جو دستاویزات میں نے تحریر کی تھیں وہ اصول و منشاء وقت کے منافی تھی۔ اور ان دستاویزات سے میری جاندار وقف نہیں ہو رہی۔

This is very funny statement made by the waqif. When it is compared with the original waqf-deed, it appears to be very casual and shallow statement because the waqf-deed was executed by Shahab-ud-Din with the help of his special attorney Malik Jalal-ud Din, B.A., LL.B. Pleader, Sialkot thus, the excuse that in 1946 he got a legal advice that the document executed previously did not fulfil the requirements of Waqf appears to be an attempt to wriggle out the waqf-deed for which the waqif had no authority at all."

Reference to the above effect can also be made to KHALID JAVED and others versus Qazi MASOOD-UR-REHMAN, ADDITIONAL DISTRICT AND SESSIONS JUDGE, SIALKOT and 2 others (PLD 1988 Lahore 541) and HAFEEZULLAH BAIG through his Legal Heirs and others versus Mst. NAHEED JALIL (1996 C L C 663).

11. There is yet another important aspect, the petitioner while appearing as AW.1, in specific words, deposed as under:-

مجھے علم نہ ہے کہ مسٹوں علیہ دکان مندو یہ پر کب سے قابض ہیں۔ دادا اپنی زندگی میں کرایہ داران سے خود کرایہ وصول کرتے تھے۔ دادا مام دین سال 1975 میں فوت ہوئے۔ دادا کی وفات کے بعد ان دکانات کا کرایہ میرے والد صاحب وصول کر رہے ہیں۔ مسٹوں علیہ کو قبضہ دکان مندو یہ میں نے نہ دیا ہے۔ از خود کہا کہ میرے والد صاحب نے دیا ہے۔ مجھے علم نہ ہے میرے والد نے دکان مندو یہ مسٹوں علیہ کو کب کرایہ پر دی تھی۔ یہ درست ہے کہ میں نے مسٹوں علیہ کو کبھی نوٹس نہ دیا کہ کرایہ مجھے دیں میرے والد صاحب کو نہ دیں۔ مجھے علم نہ ہے کہ دادا کی وفات کے بعد میرے والد صاحب مسٹوں علیہ سے کرایہ تخت وقف نامہ وصول کر رہے ہیں۔

The above noted extract from the statement of the petitioner leaves no room to hold that the petitioner has badly failed to prove his status as landlord of the **premises in question**. In other words, when the petitioner did not succeed in establishing that he is landlord of the **premises in question**, he is precluded to move an application, seeking eviction of the **respondents** under the "Act, 2009".

12. The nutshell of above discussion is that there exists no relationship of landlord and tenant between the petitioner and the **respondents**. Eviction order was thus patently illegal and the appellate court was fully justified to set-aside the eviction order, passed by learned Special Judge (Rent), Rawalpindi through the impugned judgment, which is unexceptionable. Resultantly, this and connected petitions are **dismissed**, with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Sajjad

APPROVED FOR REPORTING

JUDGE