

Hari

Vs

Waqf of Jalal Haji Abdul Kareem Sahib

Civil Appeal No. 763 of 1978

(D. A. Desai, Ranganath Misra, R. B. Mirsa, JJ)

07.12.1983

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave is by the tenant of a commercial premises located in the city of Madras and is directed against the confirming revisional order of the Madras High Court upholding an order of eviction. Eviction was asked for on two ground : (1) material alteration in the building impairing the value and utility thereof; and (2) using the premises let out for non-residential purposes as residential accommodation. The Rent Controller rejected both the grounds and dismissed the petition for eviction. The appellate authority reversed the decision of the Rent Controller by accepting both the contentions and ordered eviction. The High Court agreed with the Controller that the construction of an additional room in the first floor did not materially impair the value and utility of the building but sustained the appellate order by holding :

... there is no reason to interfere with the finding of the appellate authority on the other ground having regard to the fact that it had not been disputed that the building had been let only for non-residential purpose, viz., for the purpose of running a business in clocks and watches. The petitioner and his servants used to stay in the first floor of the premises though not continuously. The user of the additional room for the petitioner and his servants staying now and then clearly amounts to using the premises for a purpose different from the one for which it was let, viz., for residential purpose when the building was let for running a business in clocks and watches

2. Undoubtedly the appellant has been running the business of clocks and watches in the premises. As found by the High Court, the occupation of the additional space is casual. The appellant and his servants obviously of the additional space is their residential accommodation. As rightly explained by counsel for the appellant, such space has been occasionally utilised as a resting place providing for accommodation for the guard to keep watch over the valuables in the shop. This cannot be taken to be a diversion of the tenancy from commercial to residential use.

3. We had a feeling that the respondent which is a waqf was anxious for enhancement of the rent and when that aspect was discussed, counsel for the respondent indicted that the landlord's representative was present in Court and both sides agreed that the rent which was Rs. 50 per month in respect of this tenancy which had been created in 1954 should be now fixed at Rs. 300 per month with effect from December 1, 1983. Respondent's counsel indicated that rent was in arrears from 1976 but that fact was not accepted by appellant's counsel. Parties have, however, agreed that arrears of rent up to the end of November 1983 calculated at the rate of Rs. 50 per month would

either be deposited with the Controller or paid to the respondent by the end of January 1984. We accordingly dispose of this appeal with the direction that the decree for eviction be set aside and arrears of rent up to the end of November 1983 be paid by the end of January 1984 and the rent for the premises be raised to Rs. 300 per month from December 1, 1983. There will be no order as to costs throughout.

Narinder Singh

Vs

Surjit Singh

Civil Appeal No. 3174 of 1981

26.09.1983

JUDGMENT

1. This election appeal arises out of the judgment of the Punjab and Haryana High Court dismissing the election petition filed by the appellate who was candidate for the State Assembly (Constituency No. 83) namely, Barnala, the result whereof were declared on July, 1, 1980, The petitioner secured 26, 797 whereas the respondent, who had succeeded, polled 30, 289 votes. The view we are taking in this case to direct the High Court to frame issues in the context of averments made in paragraphs 29 and 36, in the facts and circumstances of this case is a logical sequel to the view taken by this Court in the first round by the order of this Court dated January 22, 1981 in an earlier proceeding between the same parties arising of the same election petition. Mr. Ashok Sen with his usual fairness reduced the scope of this case by conceding that he would only press for framing of issue in the context of allegations incorporated in paragraphs 29 and 36 of the election petition which were originally struck off by the High Court, but restores by this Court as that art of the high Court, but restored by this Court as that part of the High Court order was set aside by this Court's order dated January 22, 1981. We, therefore, send the case back to the High Court for framing issues and taking evidence in the context of paragraphs 29 and 36. We do not propose to express any opinion for the present about finding recorded on the allegations made in paragraph 35 of the election petition. It appears that according to the High Court the allegations made in paragraphs 29 and 36 were too vague and did not contain material particulars of statement of facts to indicate in what way the respondent was able to further the prospects of his election. Before dealing with these two paragraphs it may be necessary to state here that after these two paragraphs were struck off by the High Court the matter came up to this Court did not agree with the view taken by the High court. This Court remitted the matter to the learned Judge leaving open to him to raise appropriate issues on the basis of the allegations made in paragraphs including paragraphs 29 and 36 of the election petition. When the matter was remitted to the High Court the learned Judge observed that the allegations made in paragraphs 29 and 36 were vague and did not call for framing any issue at all. We are constrained to observe that this order passed by the Learned Judge was contrary to the order passed by this Court dated January 22, 1981. This Court had clearly observed that the order of the High Court striking off paragraphs 29 and 36 was set aside and these paragraphs were restored and were to remain in the election petition. The only liberty given to the learned Judge to frame appropriate issues in a particular manner after considering the facts in these paragraphs. We do not

find any force in the argument of Mr. Hardev Singh that this Court had given the option to the learned Judge either to frame the issues or refuse to frame issues. When the Supreme Court had in terms reversed the decision of the High Court and restored the paragraphs, the Supreme Court had not done this as an exercise in futility without any purpose for namesake. We are greatly distressed to note that the learned High Court Judge while considering the matter after remand has made certain observations which are totally subversive of judicial discipline. In this connection the learned Judge observed :

Their Lordship, as would a bare reading of the judgment reveal, besides simply observing that deletion of paragraphs 29, 30, 33 and 36 was not justified, threw no light on the aspect as to why the deletion was not justified, with the result that, in all humility, one is left in the dark in regard to the non-justifiability of the deletion of the said paragraphs

2. These observations besides being in poor taste are lacking, in property as also in respect due to the highest court of the land by the State High Court. It may be that the learned Judge felt that the decision in respect of paragraphs 29 and 36 was not to his liking but when its own decision was set aside by this Court it became the law of the land and it was the duty of everybody including the High court to obey the order and not try to avoid it. Nor was it open to the High Court to find fault with the same. More than this we would not like to say but we cannot refrain from observing that the High Court will realise its limitations in future.

3. As regards the second limb of the order this Court stated that the learned Judge will, of course, be free to consider the question regarding the framing of issue which arises appropriately on the basis of the averments in these paragraphs. This part may be extracted :

..... The learned Judge, of course, be free to consider the question regarding the framing of issues which arises appropriately on the basis of the averments in these paragraphs.

4. Mr. Hardev Singh appearing for the respondent tried his best to persuade us that this order had given him the option to either frame or refuse to frame issues in respect of allegations made in paragraphs 29 and 36. We are unable to agree with this argument. The tenor and the spirit of the order is clear that the allegations made in paragraphs 29 and 36 are not vague and are not lacking in material particulars but are such as would have been taken into consideration. The only liberty given to the Court was to frame issues on the basis of allegations in an appropriate manner and there after the High Court was to take evidence of both the issue. We would, therefore, direct the High Court to frame issue in respect of paragraphs 29 and 36 as they stand and then take evidence of both the parties and then give a final verdict on the issues and record its finding and submit the same to this Court after which we will hear the entire case and decide also issue No. 35 on which we have not adjudicated so far because we have called a finding from the High Court.

5. We therefore set aside the order of the High Court to the extent indicated above. All the records should be sent to the High Court immediately. All the parties are directed to appear before the Registrar on November 21, 1983, for appearing before the court to which the matter is assigned by the learned Chief Justice.

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