

**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,
THANJAVUR.**

Present : ***Tmt.R.Malathi, M.L.,***
Principal Subordinate Judge, Thanjavur.

Thursday the 25th day of October 2018.
(Thiruvalluvar Andu 2049 Ippasi Matham 8th day)

RENT CONTROL APPEAL NO :1/2018

M.Abubucker	...	Appellant/petitioner
	Vs	
Hazarath Syed Sha Mian Sakkaf Saheb Kathiri Thaikkal wakf Alal Avulath Private Hereditary Trust, rep. by its Senior Trustee Syed Moin Ahamed Sakkaf	...	Respondent/Respondent

On Appeal from the Order dated 16.12.2017 passed by the Rent controller,
Thanjavur cum District Munsif, Thanjavur in IA.No.19/2017 in RCOP.No.21/2015.

BETWEEN:

M.Abubucker	...	Petitioner/Respondent
	Vs	
Hazarath Syed Sha Mian Sakkaf Saheb Kathiri Thaikkal wakf Alal Avulath Private Hereditary Trust, rep. by its Senior Trustee Syed Moin Ahamed Sakkaf	...	Respondent/petitioner

This Rent Control Appeal is coming before this court for final hearing on 08.10.2018 before this court upon perusing Appeal Memo, Decree and Judgment of the Lower court and material papers in the case and upon hearing the arguments of Thiru.P.Lenin, Advocate for the Appellant and Thiru.S.Jayachandran, Advocate for the Respondent and having stood over for consideration till this day, this court passed the following,

JUDGMENT

This respondent has filed a R.C.O.P. 21/2015 on the file of the Rent controller cum District Munsif, Thanjavur. This petitioner has filed an application I.A.19/2017 questioning the maintainability of the application. The said application has been dismissed by the tribunal and therefore this appeal has been filed before this court.

THE CONTENTION OF THE PETITIONER IN I.A.19/2017 IS AS BELOW:

2) The original petition has been filed by the respondent to evict this petitioner from the property. The petitioner goes to submit that the original structure was built by him and this respondent do not have right over the same. There is no landlord-tenant relationship between them. This application is not maintainable under the Tamil nadu Building Lease and rent control Act G.O.M.S.No.1998 (Home) dated 12.8.1974. Hence, the original petition by itself is not maintainable. The respondent has to approach the wakf tribunal or civil court for property remedy and there the maintainability, jurisdiction and bar of the petition has to be decided as the preliminary point and dismiss the original application.

THE CONTENTION OF THE RESPONDENT IN I.A.19/2017 IS AS BELOW

3) The intention behind the petitioner when the matter is posted for cross examination of witnesses is an act of deliberate abuse and lack of bonafideness. The claim of the petitioner as if he is the owner of the building is a calculate act of cheating and fraud, it is against the rental agreement between the parties. The allegation that G.O.M.S.No.1998 (Home) dated 12.8.1974 is applicable to the proceeding is also false hood, the petitioner wants to cancel the subsequent G.O.2000(Home), dated 16.08.1976. The question of maintainability of petition before the Rent Controller is no more lis-integra. The matter settled by the Supreme Court long before. Further the maintainability of the petition is a question of facts and law to be tested on the basis of the evidence and law which cannot be decided

primarily.

4) Both sides arguments heard by the tribunal and the petition was dismissed with observation that without the trial the preliminary issue cannot be decided hence dismissed.

ARGUMENTS OF THE APPELLANT

5) The learned counsel for the appellant goes to argue that the tribunal has erred in coming to conclusion that the trial has not been conducted and therefore the issue of maintainability cannot be decided. The petition clearly mentions that the respondent is a public trust when it is so the petition is not maintainable before the tribunal and there if no necessary to go for a trial. When the trust is a public trust the application before tribunal for eviction is not maintainable. Further more, this petitioner has taken lease of the landed property alone and he has constructed the building, therefore, this tribunal do not have any jurisdiction to try the case.

ARGUMENTS ADVANCED BY THE RESPONDENT

6) The contention of the petitioner is totally false. There is no documents to show that the petitioner has leased only the landed property and he has constructed the building. Though this respondent trust is a public trust there is no activities involving public. It has been formed only to maintain the properties belonging to the family. No public activities involved and therefore the trust is not public trust in strict sense. The lower court is right in dismissing the application. Without full fledged trial this issue cannot be decided and there fore this appeal is liable to be dismissed.

POINT FOR CONSIDERATION

1. Whether the appeal is liable to be allowed?

POINT

7) The pristine question before this court is regarding the maintainability of the main OP filed by the respondent to evict this petitioner from the premises. The

arguments of the learned counsel for the petitioner whirls around the G.O.Ms.No.1998 (Home) dated 12.8.1974, the learned counsel for the petitioner also goes to read out the G.O.2000(Home), dated 16.08.1976 which has superseded G.O.Ms.No 1998. He goes to argue that the respondent is a public trust and therefore the petition filed before the Tribunal of Rent Controller is not maintainable. Also goes to argue that only the landed property was leased out to him and the petitioner has constructed the house and therefore the petition is not maintainable before the Tribunal of Rent Controller. Further, continues to argue that the observation of the Rent Controller that the maintainability can be decided only after the trial is not correct the same need to be interfered by this court and to be set aside and maintainability of the petition to be decided preliminarily.

8) The learned counsel for the respondent goes to accept the contents in G.O.Ms.No.1998 (Home) dated 12.8.1974, G.O.2000 (Home), dated 16.08.1976 but goes to argue that the beneficiaries of the trust are not members of the public and there is no public related activities. It is a trust formed to maintain properties and therefore cannot be strictly termed as Public Trust. He also goes to argue that this appeal is maintainable since no rights of the parties has been affected.

9) Both side arguments heard. Before we go into detail discussion as to maintainability it is just and necessary to reproduce the definition of wakf.

Clause (1) of [S. 3 Wakf act](#) defines that expression as follows:--

"Wakf' means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes--

(i) a wakf by user;

(ii) grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;

and 'wakif' means any person making such dedication".

10) The wakfs created by Muslims generally fall into two categories. One is public wakfs in the sense that the beneficiaries are members of the public and the other is private wakfs in the sense that public as such are not the beneficiaries and certain specified individuals happen to be the beneficiaries. Even with regard to a private wakf there may be two kinds.

11) One is a wakf-alal-aulad simpliciter as we have in the present case where the public in the form of the poor will come into the picture only when the line of the wakif becomes completely extinct at some future uncertain point of time. The second is a wakf in which there is a dedication or gift in praesenti in the sense that a portion of the income from the wakf property is reserved for being spent on strangers and other objects of piety or charity and the other portion being spent for the benefit of the wakif's relations and members of the family. The latter category alone is called generally a composite wakf in the sense that even in praesenti it takes the character of a private wakf as well as a public wakf simultaneously. In other words, it is partly private and partly public. From what we have stated already, [Section 3\(1\)\(iii\)](#) takes in only such a composite wakf. It does not take in a wakf-alal-aulad simpliciter.

12) The contention of the learned counsel for the respondent is that this is not a matter to be preliminarily decided. He will be able to let in evidence regarding the administration of the wakf only during the evidence. Also the contention of the petitioner that there is no relationship as landlord and tenant can also be only decided during trial and therefore the lower court is right in dismissing the application.

13) The learned counsel for the respondent goes to argue that the appeal is not maintainable when the order of rent controller does not affect the rights of parties referring to the following decision.

In the High court of Judicature at Madras

S.Mani .. Petitioner

Vs.

T.K.Jacob .. Respondent

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), section 19i – Petition for eviction – Applicability of section 19 – Decision of Rent Controller that this need not be tried as preliminary issue – Does not affect rights of parties – Held appeal from the Controller's order not maintainable.

14) The learned counsel for the petitioner goes to rely upon the following decision and argue that the respondent being public trust is prevented from filing the application before the Rent Controller.

(2005) 1 M.L.J. 646

I.Salam Khan ... Appellant

Vs.

The Tamil Nadu Wakf Board, Chennai represented by its Chairmand and others.

... Respondents

(A) Wakf Act (29 of 1954), Sec.83(1) - Wakf Tribunal, jurisdiction of - Can decide all disputes, questions or other matters, relating to wakf property - Has got all powers of the Civil Court under Code of Civil Procedure.

(2002)3 M.L.J. 625

S.M. Pitchaiyammal ... Appellant

Vs.

Tamil Nadu Wakf Board,
represented by its Secretary,
Madras and others.

... Respondents

(A) Deed - Construction - Entire document to be taken into consideration - Document construed as a wakf.

2006 (5) CTC 341		
Abdul Suban	...	Petitioner
	Vs.	
Syed Tharu Hussain	...	Respondent
Wakf Act, 1995 (43 of 1995), Sections 6 & 85 - Code of Civil Procedure, 1908 (5 of 1908), Section 9 – Jurisdiction of Civil Court – Question whether or not particular property is Wakf property or not has to be decided only by Wakf Tribunal and not by any Civil Court – Section 85 creates bar of jurisdiction of Civil Court – Suit property found to be wakf property as evidenced by Government Notification – Suit filed for injunction before District Munsif Court cannot be sustained and jurisdiction of Civil Court is clearly barred.		

15) The decisions relied by both the counsels perused. On scrutinizing the records, this court finds that the main petition filed for eviction goes to read as their respondent as Public Trust. But the learned counsel for the respondent goes to argue that the trust is neither a religious public trust nor a public charitable trust. The trust was formed only to maintain private properties. Further, he goes to argue that the matter has already been settled before the Apex Court that his trust is a trust without public religious or charitable activities. It has been brought to the notice of this court that the case is posted for cross examination of PW1. As to the contention of relationship between the parties the petitioner has not filed any document that he has taken only the landed property for the lease and building was constructed by him. As rightly argued by the learned counsel for the respondent these aspects can only be decided during the trial and therefore this court finds that no interference needed in the order of the Rent Controller in I.A.19/2017 and hence the appeal is liable to be dismissed. The point is answered accordingly.

16) In the result, this appeal is dismissed. The fair and decretal order of the lower court in IA.No.19/2017 in RCOP.No.21/2015, dated: 16.12.2017 is confirmed. No costs.

Typed in my laptop and pronounced by me in the open court, this the 25th day of

October 2018.

Sd/-...R.Malathi,
Principal Subordinate Judge,
Thanjavur.

Copy to :

The Rent Controller Cum District Munsif,
Thanjavur.