

18.05.2024

Present:- Sh. Sumit Sood, Advocate for plaintiff.
Ms. Priyanka Dhaulta, Advocate for defendant No. 1.
Sh. Sahil Verma, Advocate for defendant No. 2.
Sh. Pawan Gupta, Advocate for defendant No. 3.
Sh. B.S. Thakur, Advocate for defendant No. 4.

This application under Order 7 Rule 10 of the Code of Civil Procedure has been filed by the defendant No. 4 to return the plaint on the ground that in view of the notification issued by the Hon'ble Governor of Himachal Pradesh published vide notification No. Rev. C (F)(Waqf) 1-1/2014, dated 06.01.2016, published in the Gazette of Himachal Pradesh, this court has no jurisdiction as the suit property is waqf property.

2. The plaintiff filed reply and resisted and contested the application on the ground of maintainability, abuse of process of law, estoppel etc. On merits, it is submitted that the present matter is simplicitor suit for permanent prohibitory injunction. He is not seeking any adjudication with respect to the rights, title and interest of the tenancy for lease rights with respect to the waqf property.

3. The defendant No. 3 also contested the application. It is submitted that the present dispute arose when the Municipal Corporation, Shimla, declared the building unsafe for human habitation. The suit is only for permanent prohibitory injunction for restraining the Municipal Corporation for not disconnecting the water and electricity connection. Therefore, this court has jurisdiction and application is liable to be dismissed.

4. I have heard the learned counsel for the parties and have also gone through the case file.

5. The plaintiff filed suit for permanent prohibitory injunction restraining the defendants No. 1 to 3 from illegally and unlawfully disconnecting and withholding the essential and necessary amenities of electricity and water in Set No. 6 situated in First Floor of Building identified as Elgin Villa, Lakkar Bazaar, Shimla comprising of 2 rooms, 1 kitchen, Bathroom-cum-toilet measuring approximately 500 Sq. feet. The plaintiff submitted that he is a tenant in the aforesaid property and defendant No. 4

is owner and landlord. As per the plaintiff, the defendant No. 4 issued a notice dated 17.02.2022, on the ground that the building is unfit and unsafe. The defendant No. 4 tried to get the essential amenities of water and electricity connection disconnected. The notice was issued by the State Officer Himachal Pradesh Waqf Board, Shimla. The copy of notice was sent to the Commissioner Municipal Corporation, Shimla for information and further necessary action. Thus, the plaintiff filed a simplicitor suit for injunction to restrain the defendants No. 1 to 3 from illegally and unlawfully disconnecting the essential amenities. He is not seeking any adjudication regarding his rights of tenancy. As per Section 6 of the Waqf Act, 1995, the Civil Courts jurisdiction to entertain any suit or other proceedings stands specifically excluded in relation to any question referred to in sub-section (1). The jurisdiction is barred to decide the question whether a particular property specified as wakf property in the list of wakfs is or is not a wakf property and whether a wakf specified in such list is a Shia wakf or a Sunni Wakf. The Hon'ble Supreme Court in '**Ramesh Gobindram Vs. Sugra Humayun Mirza (2008) 8 SCC 726**', has held that the jurisdiction of civil court is barred only in regard to questions that are specifically enumerated in Section 6 read with Section 7. It was held that bar is not complete so as to extend to other questions that may arise in relation to the wakf property.

6. Learned counsel for the applicant/defendant No. 4 relied upon the judgment of Hon'ble Supreme Court titled as '**Rashid Wali Beg VS Farid Pindari and Ors. Civil Appeal No. 6336 of 2021**' and submitted that this court has no jurisdiction. This argument cannot be accepted. I have gone through the judgment relied upon by the learned counsel for the applicant/defendant No. 4. However, it is not applicable to the facts and circumstances of the present case. In Rashid Wali Beg case, the question of adjudication was relating to Wakf property and the plaintiff was claiming himself to be a beneficiary of the Wakf which claim was denied by the defendant. In this case, the simplicitor suit of the plaintiff is for injunction to restrain the

defendants No. 1 to 3 from disconnecting the electricity and water connection in the tenanted premises. The question which is to be adjudicated by this court is as to whether the Municipal Corporation can be restrained from disconnecting the water and electricity connection in the premises or not. Taking into consideration the judgment of Hon'ble Supreme Court titled as Ramesh Gobindram cited supra, I am of the considered view that the application is not sustainable and is hereby dismissed. Application stands disposed of. Be registered and tagged with the main case file.

7. Matter now be listed for framing of issues to come up on **24.06.2024**.

(Ashok Kumar)
Senior Civil Judge, Court No. 1,
Shimla, H.P.