

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

R.A. No. 13 of 2000

Applicant : Hyderabad Municipal Corporation
through Mr. Aqeel Ahmed Siddiqi,
Advocate.

Respondent : Evacuee Trust Property Board
Nemo

Date of hearing & Decision: 03.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Basically, the Applicant is asking for setting aside the Judgment and Decree dated 6.11.1999 & 27.11.1999 respectively passed by learned Vth Additional District Judge, Hyderabad in Civil Appeal No. 81 of 1998 whereby the learned appellate Court while dismissing the said appeal maintained the judgment and decree dated 4.5.1998 & 5.5.1998 respectively passed by the trial Court in F.C Suit No. 63 of 1988.

2. Brief facts of the case as per pleadings of the parties are that respondent No.1 owned properties bearing Nos. E/2836 to E/2840 situated at Pucca Qilla Hyderabad; the respondent / defendant No.5 has been in occupation of one Hall and one Tihkhana of the same property while the other portions, six godowns have illegally been transferred to different persons by the Settlement Department. The respondent / defendant No.5 based on possession, tried to get the Hall and Tihkhana transferred from Settlement Department and also filed necessary forms, but he could not succeed. The letter of respondent No.1 to this effect was also not responded to by respondent / defendant No. 5. On 13.8.1988 respondent No.2 called a meeting for determining the status of the property, which was attended by defendant Nos. 2, 3, 4, and 5, and the representative of respondent No.1 who pointed out that the property is an evacuee trust property, which was not considered, but on the contrary, it was written in the minutes that portion in possession of defendant No.5 will be handed over to defendants 3 and 4. It is alleged that the meeting called by respondent No.2 was illegal, malafide and his

decision was not binding on respondent No.1, hence they filed suit for declaration and permanent injunction before learned Senior Civil Court Hyderabad. Defendants 2, 3, and 4 filed written statements while the other defendants did not contest the suit.

3. On the pleadings of the parties, learned trial Court framed as many as ten (10) issues.

4. Learned trial court after recording evidence and hearing the parties decreed the suit No. 63 of 1988 vide judgment dated 4.5.1998 and decree dated 5.5.1998. An excerpt of the judgment is reproduced as under:-

Issue No.6

It is an admitted position that Defendant No.5 has been in use and occupation of one hall and Tahkana of the suit property hence this issue is answered accordingly.

Issue No.7

It is pleaded by the plaintiff in para No. 5 and 6 of the plaint that the school building was shifted to some other place due to its ruinous condition but the defendants through their written statement have replied to this fact in an evasive manner and as mentioned above that as per law the reply of the fact should be specific and evasive reply it shall be presumed as an admission of the fact hence this issue is also decided accordingly.

Issue No.8

Photocopy of the letter issued by Settlement Department is on record refusing to transfer hall and tahkhana in favour of defendant No.5 for the reason that the property is an evacuee trust property and this fact has also been admitted by the learned advocate for defendant No.5 in his written statement. Hence these issues were answered accordingly.

Issue No.9

As I have observed in detail in issue No.5 that suit property is an evacuee trust property hence view the plaintiff is entitled to the relief claimed.

Issue No.10

The upshot of my above discussion is that the suit of the plaintiff is decreed as prayed with no order as to costs.

5. The applicant-HMC being aggrieved by the decision of trial court filed C. A No. 81 of 1998, which was also dismissed by the learned appellate court vide judgment and decree dated 27.11.1999. An excerpt of the judgment is reproduced as under:-

“Summing up the above discussion, I am of this opinion that the conclusion reached by the learned III-Senior Civil Judge, Hyderabad warrants facts on record and there is no misreading of evidence on record.

Resultantly, the appeal fails, which is hereby dismissed leaving the parties to bear their costs.

6. Mr. Aqeel Ahmed Siddiqi learned counsel for the applicant-HMC has argued that both the courts below have failed to clarify and justify their judgments on the point of alleged malafide action of Deputy Commissioner, Hyderabad and the issue of malafide has not been proved by the plaintiff- Evacuee Board, yet the point of jurisdiction alleged by the plaintiff has been mixed with the point of powers so vested with the Deputy Commissioner, Hyderabad regarding allocation of property controlled by him throughout the city of Hyderabad; that the judgments and decrees of both the courts below are in violation of Order 14 Rule 25 & Order 41 Rule 33 CPC which enjoins upon the courts to decide all the issues separately, distinctively yet both the courts below have not followed the procedure which renders the entire judgments and decrees as null and void; that the judgments of both the courts below are contradictory because at the one hand they have held that the status of Evacuee Trust Property or non Trust Property must be decided by the Chairman Evacuee Trust Property, yet they have assumed the jurisdiction of Chairman by giving declaration, clarifying the status of Evacuee property; that there is complete non-appreciation rather misreading of documentary evidence Ex. 121 dated 22.1.1972 passed by Chairman E.T.P. so also the document Ex. 122, because the document Ex. 121 is the Photostat copy of the original order and attested by the same person who has stated on that basis. Moreover this document Ex. 121 is not proved by the plaintiff though the burden heavily lies upon him. Further, the aforesaid document was got exhibited in the Trial Court despite the legal objection of the defense counsel. Even otherwise the authenticity and validity of the document was the paramount function of the trial court for just conclusion of the case, hence this basic and one document of the plaintiff cannot be the foundation of judgments of lower courts; that both the courts below have ignored the fact that in the plaint, the plaintiff has asserted that the properties No. E/2836 to 2840 may be declared as Evacuee Trust Property and taking over of these properties for HMC Hall by the Deputy Commissioner, Hyderabad

should be declared as illegal and ultra-vires; that documents Ex.121 show that property No. E/2836 to 2840 were not declared as Evacuee Trust Property based on any documentary evidence by the Chairman E.T.P. nor the names of creator, nor the nature of Trust nor the purpose of Trust was specified in his order, yet this document Ex.121 has been wrongly believed by the courts below although the defense evidence Ex.131 Ex.132 to 135, show that properties No.E/2836 to 2840 was Evacuee Properties and the remaining area of these properties still vested with Hyderabad Municipal Corporation; that these properties were already transferred in the year 1965 to different persons, the City Survey Record was also mutated according to the final transfer order issued by the Competent authority i.e. Deputy Settlement Commissioner, Hyderabad, yet there was/is no mention of canceling these transfer deeds in the order passed by Chairman E.T.P., similarly the Deputy Commissioner, Hyderabad and HMC was not party before the Chairman E.T.P. hence that document has directly affected the right of H.M.C. i.e. applicants; that entire documentary evidence as mentioned by the Settlement Department & City Survey Office, Hyderabad show that the suit property was originally belonging to Hyderabad Municipality; and the parts thereof were sold to Hindu owner namely Chalaram who had left Pakistan or died, therefore, those properties had formed part and parcel of the Compensation Pools according to Section 3 of Displaced Persons Act of 1958 the same was transferred in 1965, by the concerned authority and the respondent No.1 did not agitate against the transfer up to 1972 as alleged by the plaintiff. Moreover the alleged order Ex.121 is neither mentioned in the plaint nor it was disclosed at the time of institution of suit; that the lower courts have not cared to hold that the suit itself is barred under Section 92 CPC and Order 7 Rule 3, 6 CPC, because the permission from Advocate General Sindh was not taken before filing this suit; similarly, the particulars of malafide were not described in the plaint or evidence, though witness Zafar Ali Khan's statement Ex.122, show that it was the meeting held by Deputy Commissioner, Hyderabad in presence of the then Assistant Evacuee Property Administrator of Trust Department, Hyderabad; that the alleged order of Chairman E.T.P Ex. 121 has never been disclosed or implemented so far therefore it was within the powers of Deputy Commissioner, Hyderabad to take over the control of suit property for the Welfare of Public by allocating it in the

name of Community Hall of HMC; that learned lower courts have wrongly held that no relief is sought against HMC by the plaintiff though the HMC is made party and the suit property was reserved especially for HMC to control the community hall; that the appellate court has wrongly decided issue 1 to 10 by holding that the suit property is the Evacuee Trust Property, the Chairman E.T.P. had powers to pass the order Ex. 121, and the Deputy Commissioner, Hyderabad is not a Revenue Authority; that the appellate court has wrongly assumed that the suit is not barred under Section 91 & 172 of Sindh Land Revenue Act, because the powers exercised by the Deputy Commissioner, Hyderabad reserving the suit property for public community Hall was legal; that the impugned Judgments have wrongly held that the suit is not under-valued, without holding the inquiry regarding court fee; that learned appellate court has illegally held that the applicant HMC is not affected party and the appeal is not maintainable because of this reason, although the law is quite different, that even the stranger if effected by any judgment or order can file suit/appeal, etc, before the competent Court, so the same was done by the HMC who is the party in the original suit and mainly affected by the judgments.

7. Though the respondents have been served, however, they have chosen to remain absent. In such a situation I have no option but to hear the counsel representing the applicant and the documents available on record.

8. I have heard the counsel for the applicant and perused the material placed on record.

9. The learned trial court based on its finding that suit property is an evacuee trust property without looking into the documentary evidence. The learned appellate court also did the same thing and heavily relied upon the order dated 22.1.1972, of the Chairman Evacuee Trust Property Board / Settlement Commissioner, who simply opined that the suit property had been declared as Evacuee Trust Property. The deposition of witness of the Evacuee Trust Property Board explicitly shows the following factual position of the case. The learned appellate court erroneously held that the order of the Chairman is final and cannot be called in question in any Court. The documents produced by the applicant-HMC in evidence show

different picture of the case. The witness of the applicant namely D.W. Haji Muhammad Asif has admitted in the cross-examination that HMC had already sold out the property in question to Tikamdas Nanakram, therefore, simply saying that the disputed property has come out from the pool of Hyderabad Municipal Corporation as such, they have no right, title or interest over the property in question at present and therefore, they are even not aggrieved party with the Judgment. Even the learned trial court failed to frame the issue of ownership of HMC on the disputed property and when there was the specific denial of the title of plaintiff in the written statement filed by the applicant-HMC. The learned appellate court wrongly held that the HMC has no locus standi to file the appeal. In nutshell, the learned appellate court wrongly held that there is no misreading of evidence on record and erroneously dismissed the appeal.

10. Resultantly, the instant revision application is allowed, the matter is remitted to the trial court to recast the issue of ownership of applicant and other ancillary issues including maintainability of the suit as the trial court deem fit and proper; and, the Government of Sindh through Senior Member Board of Revenue be made party in the proceedings with amended title; and allow the parties to file their respective replies to the plaint and lead evidence, and after hearing them decide the same within two months.

JUDGE

*Karar Hussain/PS**