

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Civil Revision Application No. 11 of 2015

The Managing Committee,
Jama Masjid, Roza Baugh,
Aurangabad,
Through its Secretary
Moh. Abdul Rasheed s/o Ahmed Ali. .. **Applicant.**

Versus

Abdul Gani s/o Abdul Rahman
And Others. .. **Respondents.**

Shri. P.G. Godhamgaonkar, Advocate, for petitioner.

Shri. S.V. Adwant, Advocate, for respondent No.1.

Shri. A.S. Bajaj, Advocate for respondent No.2.

Shri. Mohd. Mustafa Ahemad Momin, Advocate, holding
for Shri. Sameer Patel, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 14th AUGUST 2015

ORDER:

1) The proceeding is filed to challenge the judgment and order of Wakf Suit No.38/2011 which was pending before the Wakf Tribunal Aurangabad. The suit filed by the Managing Committee of Jama Masjid, a wakf

institution for relief of possession of encroached portion of its property, for relief of mandatory injunction and for relief of declaration is dismissed by the Wakf Tribunal. Both sides are heard. Learned counsel for the Wakf Board supported the applicant/plaintiff.

2) The construction of plaintiff Masjid is situated on Survey No.7, Aurangabad. It is the case of the plaintiff that the area of Survey No.7 Aurangabad is 9 Acres 21 Gunthas. It is contended that for Cidco, the Government acquired land admeasuring 9 Acres 14 Gunthas only and so the remaining portion of 7 Gunthas (708 square meters approximately) remained with the plaintiff. It is contended that Cidco allotted to plaintiff Plot Nos.1 to 7 from Survey No.7 having area of 700 square meters. The plaintiff has described the portion of 1408 square meters by describing the boundaries of this portion. It is contended that on the western side of its property there are plot Nos.92 and 94 and part of plot No.95. It is contended that on the north side, there is plot No.95 and these plots are from the same survey number. On south side of the suit property, plot No.92 is shown by the plaintiff. Thus, it is the case of the

plaintiff that it owns property admeasuring 1408.08 square meters which is part of old Survey No.7 of Roja Baugh.

3) It is the case of the plaintiff that in the initial allotment of Cidco, defendant No.2 had allotted plot Nos.92 and 93 to defendant No.1 but by making alteration in the development scheme, Cidco allotted more area admeasuring 266 square meters belonging to the plaintiff Masjid to defendant No.1. It is contended that it was represented to the Cidco by defendant No.1 that his plot, plot No.93 was affected by State highway and due to set back line of State highway. It is the case of the plaintiff that due to the aforesaid alternation in the scheme in respect of Survey No.7 some portion of western side and some portion of northern side of the property of plaintiff was included in the plots shown to be allotted to defendant No.1. It is contended that due to such alteration, defendant No.1 made encroachment over area of 266 square meters of plaintiff and he started making construction on the encroached portion also.

4) It is the case of the plaintiff that in the city survey record the area of the property of the plaintiff was wrongly shown as 114.60 square meters however its area is 1408 square meters. It is contended that the plaintiff has applied to city survey office for making necessary correction in the record. It is the case of the plaintiff that this dispute was raised by it with Cidco and also with local body but these authorities have not paid any attention and so the plaintiff was constrained to file the suit.

5) In plaint para 12-A (added after amendment) the plaintiff has contended that the encroachment is of 4 meters in width by 20 meters in length on north south direction on western side of Masjid and it is of 9.5 meter x 12.5 meters on other side i.e. north side of the Masjid. It is contended that defendant No.1 has constructed compound wall on the western side of Masjid by making encroachment and that wall needs to be pulled down by giving relief of mandatory injunction. It is contended even service lane is not left between property of the plaintiff and the property of the defendant No.1. Thus the plaintiff contended that the encroachment over area of 266 square

meters is made by respondent No.1 and it requested for giving possession of this encroached portion. Relief of declaration is claimed in respect of the act of Cidco of alteration of areas of Plot Nos.92 and 93 which were initially allotted to defendant No.1 and it is contended that this alteration is illegal.

6) Defendant No.1 has denied that plaintiff owns area of 1408 square meters. He has denied that due to alteration in the development scheme of survey No.7 some area of Masjid is included in Plot Nos.92 and 93. It is the case of the defendant No.1 that, after allotment of the land he obtained permission of local body for making construction about 3 years prior to the date of the suit and construction to the extent of 90% is already completed. Defendant No.1 contended that he was required to file suit against local body as the local body had stayed the construction permission at the instance of the plaintiff and in the said suit defendant No.1 succeeded. It is contended by defendant No.1 that plaintiff is using influence of even the Minister and due to the plaintiff, much harassment is caused to the defendant No.1.

7) It is the case of the defendant No.1 that plot Nos.92 and 93 were allotted to him by Cidco and alteration was required to be made in the original scheme as his plot No.93 was affected due to State highway situated on that side and due to service road which was required to be kept on that side. It is contended that as he is entitled to have the area which was initially allotted to him after making payment of the charges, the scheme was altered and there was no illegality committed by the Cidco in that regard.

8) It is the case of the defendant No.1 that for Cidco, entire area of survey No.7 viz. 9 Acres 14 Gunthas was acquired and no land was left with the plaintiff. It is contended that plaintiff has no right to claim any of the reliefs.

9) Cidco, defendant No.2 filed written statement and it contended that the entire area of Survey No.7 viz. 9 Acres 14 Gunthas was acquired for it and this area included the area covered by the structure of Masjid of the plaintiff. It is contended that there was no question of

making encroachment by defendant No.1 on 266 square meters area of the plaintiff as no property is yet allotted to Masjid by Cidco. It is contended that Plot Nos.1 to 7 from the development scheme are kept vacant by Cidco for religious use and plaintiff can use the portion, which can also be used for grave yard after necessary procedure in that regard is followed.

10) Cidco has denied that the plaintiff owns property admeasuring 1408 square meters in Survey No.7. It is contended that there was some mistake in the area mentioned in the revenue record and this mistake was corrected by revenue authority on 30-11-1970. It is contended that the correct area of Survey No.7 is 9 Acres 14 Gunthas. It is contended that the entire area of Survey No.7 is acquired for it and the compensation of this area is paid by Cidco. It is contended that it was necessary for the Masjid to apply to Cidco for getting allotment letter in respect of area covered by structure of Masjid but that procedure is not yet followed. It is denied that the Masjid is having in the area of 700 square meters.

11) It is the case of Cidco that in the year 1990 it decided to allot area of 550 square meter to Masjid but for getting this area the Masjid was required to file application and follow the procedure but no such step is taken as yet by the Masjid. It is contended that area of 550 square meters which is situated to the eastern side of plot No.92 can be allotted to the plaintiff and it cannot get more area than such area. The Wakf Board supported the plaintiff before the Tribunal.

12) Before considering the evidence on aforesaid rival contentions, it needs to be kept in mind that when there is dispute of present nature, record of the authorities like revenue authority, local body and Cidco needs to be given due weight. The record created and maintained by such authorities has the presumptive value. It needs to be presumed that they have followed the due procedure and they have created the record correctly and properly and maintained the record properly. It also needs to be kept in mind that the plaintiff has filed the suit for the reliefs claimed and so the burden was on the plaintiff to prove that it has rights mentioned in the plaint. In such

cases the defendant may not have the record to prove his case but only because the defendant fails, plaintiff cannot get the reliefs which are claimed in the present matter.

13) There is dispute over the area of even survey No.7. Plaintiff wanted to prove that area of survey No.7 was 9 Acres 21 Gunthas and out of this area only 9 Acres 14 Gunthas is acquired for Cidco and so remaining area of 7 Gunthas is already with the plaintiff. It wants to prove that 7 Gunthas more portion is given by Cidco to it (Plot Nos.1 to 7) and so it is having the area as contended in the plaint.

14) There is record like 7/12 extract starting from 1959-60 and this record shows that initially area of Survey No.7 was shown as 9 Acres 21 Gunthas. Though in the 7/12 extract (Exhibit 85) which is of the year 1959 construction only of Dargah of Sayyad Shah was shown and no Masjid was shown in Khasara Extract one Masjid, one Dargah and two old Dargahs were shown. The record shows that Inamdar was dead at the relevant time and so Survey No.7 was under the supervision of Government.

15) There is record of correction of area and it is of revenue authority. The record is not only of Survey No.7 but it is in respect of many other lands. The record shows that by mutation dated 30-11-1970 the revenue authority corrected the area to make it to 9 Acres 14 Gunthas from 9 Acres 21 Gunthas. In the order, it is mentioned that due to mistake more area was shown in the past. Admittedly nobody challenged this mutation till this date. There is record of city survey like PR card and map prepared by city survey office during general survey conducted by city survey office. As per this record, Masjid portion is given CTS No.11547 and the area of this portion is shown as 114.6 square meters. This record is also not challenged by anybody till today. It needs to be kept in mind that this city survey was done prior to starting of acquisition proceeding. It also needs to be kept in mind that, this city survey record was used when the Masjid came to be registered as Wakf in the register of Wakfs.

16) The record of acquisition of Survey No.7 shows that this property was acquired for City and Industrial Development of New Aurangabad Project. The record

shows that entire Survey No.7 admeasuring 9 Acres 14 Gunthas was notified for the purpose of acquisition under sections 4 and 6 of Land Acquisition Act. Award in respect of area of 9 Acres 14Gunthas was made and compensation was paid in respect of this area. The award was prepared on 15-11-1976. Out of 9 Acres 14 Gunthas, area of 9 Acres and 3 Gunthas was shown as vacant and area of 11 Gunthas was shown to be occupied by structures. There were 17 such structures. The Award shows that at the time of acquisition, persons occupying the structures could not produce any document with regard to the ownership of the property. Valuation of both the acquired vacant land and the structures was done for the purpose of acquisition. Though possession receipt is in respect of 9 Acres 10 Gunthas, as per the Award, the area of 9 Acres 14 Gunthas was acquired. Possession was taken over on 23-11-1976. It appears that mutation was also made in respect of 9 Acres and 10 Gunthas. On the basis of this record, even if the best possible case for the plaintiff is considered and accepted, it will lead to the decision that the Masjid is having the portion of at the most of 4 Gunthas. However, that is not possible as aforesaid record

shows that the area of Masjid is 114.6 square meters and in Survey No.7 there were other religious structures like construction of three Darghas.

17) The learned counsel for the Cidco took this Court through the provisions of Land Acquisition Act, the Maharashtra Regional Town Planning Act, the rules made under the Maharashtra Regional Planning Act and the provisions of the Maharashtra Land Revenue Code. The learned counsel submitted that due to acquisition of entire Survey No.7 the property in Survey No.7 vests in Cidco. He submitted that unless and until the rights of any nature like lease rights are given by Cidco, nobody including the Masjid, can claim rights in the property of Cidco. He submitted that Cidco was expecting the Masjid Committee to apply for getting such rights and to pay necessary charges for it. Learned counsel submitted that the plaintiff never approached Cidco for getting such rights and no document of whatsoever nature is executed in respect of any portion of Survey No.7 in favour of the plaintiff. The propositions made by the learned counsel need to be accepted in view of the provisions of the

aforesaid Acts and the facts of the case.

18) In view of the aforesaid circumstances and position of law it was necessary for the plaintiff to show that after acquisition of Survey No.7, particular area was allotted to the plaintiff by Cidco. There is a record of city survey office with the plaintiff but that is in respect of only some portion i.e. 114 square meters. Thus, there is no record with the plaintiff to show that, the structure of the Dargah is occupying the space of 700 square meters or area of 700 has been in possession of Masjid from prior to the date of acquisition.

19) It was submitted for the plaintiff that first plan which was prepared by Cidco for development of Survey No.7 needs to be taken as the basis for deciding the present dispute. It is not disputed that there was such initial plan prepared by Cidco. To the west and north sides of Masjid in the plan there were 4 plots like Plot Nos.92 to 95. It is also not disputed that as per initial plan and letter of allotment, two plots bearing Nos.92 and 93 were allotted to defendant No.1. The area of both the plots

together was 500 square meters. It is not in dispute that subsequently it was realised that due to Jalgaon Road, State highway and the service road which was required to be left towards Jalgaon road, defendant No.1 was not getting the area of 250 square meters of Plot No.93 for his use. Similarly the area of Plot Nos.94 and 95 was affected due to these circumstances. But they were not allotted to anybody. It is not disputed that defendant No.1 applied to Cidco and he requested to see that he gets the area which was to be given to him and for that he needs to be given portions of Plot Nos.94 and 95 which remained after considering the existence of Jalgaon Rad and the service rod which was required to be kept by the side of Jalgaon road. Thus defendant No.1 requested Cidco to compensate him. Accordingly, new development plan of Survey No.7 was prepared by Cidco and some area of Plot Nos.94 and 95 was included in the plot of defendant No.1 to compensate him. Learned counsel for the plaintiff submitted that the second plan, the altered plan, was not sent for approval to the State Government and it was not approved and due to this circumstance, the second plan cannot be considered in favour of defendant No.1. In the

proceeding like present one, it is not possible to consider such defence. Even if that defence is considered, the plaintiff cannot get anything as it was necessary for the plaintiff to establish its rights.

20) It appears that the Tribunal directed a Surveyor to work as Court Commissioner and to take measurement of Plot Nos.92 and 93 as per the first development plan of Cidco. This Court has no hesitation to observe that such direction ought not to have been given as it was up-to the plaintiff to prove that it has right in respect of the property described in the plaint. When the plots were re-arranged by Cidco and the allotment of more area was done to defendant No.1 by Cidco and there was no record of any right with the plaintiff, such direction ought not to have been given to the Court Commissioner. It appears that the Court Commissioner did take measurement of plot Nos.92 and 93 as per old development plan and he found that there was some encroachment made by defendant No.1 as defendant No.1 had crossed the boundaries of old plots allotted to him.

21) The learned counsel for the plaintiff and the Wakf Board took this Court through some record of correspondence made by the Chief Officer of the Wakf Board and they submitted that the Wakf Board has taken steps to see that correct area, area of 1408 square meters, is entered in the record of city survey in favour of Masjid. There is record to show that the Masjid is registered as Wakf in the register of Wakfs. However, there was no record of area allotted to Masjid. In such cases orders, if any, made by the Chief Officer cannot make much difference as he cannot confer title on Wakf in respect of any area in such a case. Learned counsel for the Wakf Board placed reliance on a case reported as **2007 AIR SCW 7300 (Chhedi Lal Misra v. Civil Judge, Lucknow)**. This case was altogether on different point. In the present case it is not disputed that Masjid is Wakf. There is dispute only in respect of the area to which the Masjid is entitled from Survey No.7.

22) Learned counsel for the Cidco submitted that the Tribunal has unnecessarily made some observations with regard to Plot Nos.1 to 7 and it is observed that they

belong to the Masjid. There is force in this contention. Cidco has not admitted that those plots are allotted to Masjid though it is mentioned that they have reserved these plots for religious purpose. The proper procedure needs to be followed for getting rights in respect of Plot Nos.1 to 7 and that procedure is not yet followed.

23) The learned counsel for plaintiff submitted that the compound wall of defendant No.1 is almost touching the structure of Masjid and the construction of defendant No.1 is not as per building regulations. This point cannot be decided in view of absence of specific evidence on the case of encroachment. The Surveyor could have taken measurement of property of Masjid on the basis of city survey map but there was no such direction from the Court and plaintiff is not admitting correctness of the map also. However, it will be always open to local body to take action if the construction of defendant No.1 is not in accordance with building regulations.

24) The discussion made above shows that the Tribunal has not committed any error in dismissing the

suit. The entire material which was made available by plaintiff is considered by the Tribunal and this Court sees no reason to interfere in the decision given by the Tribunal.

25) In the result, the Civil Revision Application is dismissed. Civil Application No.627 of 2015 stands disposed of.

26) The learned counsel for the petitioner submitted that the interim relief which was granted by the Hon'ble Apex Court was continued by this Court and it is still operating till this date. He submitted that the relief be continued as he wants to challenge the decision of this Court. The relief is of nature that until further orders respondent No.1 shall maintain *status quo* like not letting out the property or using the disputed structure during the pendency of the proceeding. This relief is continued for the period of six weeks.

Sd/-
(T.V. NALAWADE, J.)

rs1