

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 113 OF 2007

Aurangabad Textile Mills Ltd.

PETITIONER

VERSUS

Mohd. Abdul Hai s/o Mohd.
Abdul Gafar and others

RESPONDENTS

Mr. M.N. Navandar, Advocate for the petitioner
Mr. R.L. Kute, Advocate holding for Mr. R.N.
Dhorde, Senior Advocate, for respondent No.1.
Mr. J.H. Deshmukh, Advocate for respondent No.3

CORAM : M.T. JOSHI, J.

DATE : 15/06/2015

ORAL ORDER :

1. Heard both sides.
2. Upon hearing both sides, it has become clear that on the basis of notice issued under section 40 of the Waqf Act, 1995, ultimately in Enquiry No. 3898/2005, the Chief Executive Officer of the Maharashtra State Wakf Board, Aurangabad came to the conclusion that the property in dispute is a wakf property. Aggrieved by the said order, the present revision petitioner

preferred appeal No. 6/2006 before the Wakf Tribunal, Aurangabad.

3. The Wakf Tribunal held that the appeal is not tenable and an application under section 83 (2) of the Wakf Act ought to have been filed.

4. The provisions of section 83 (2) of the Waqf Act, 1995 read as under :-

"83. Constitution of Tribunals, etc.

(1) *****

(2) Any mutawalli, person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf."

Rule 50 (1) of the Maharashtra Wakf Rules, 2003 provides as follows :-

"50. Time limit under sub-section (2) of section 83. -

(1) Any party aggrieved by the decision of the Board under sub-section (1) of section 40 and sub-section (3) of section 40 may file an appeal to the Tribunal within thirty days from the date of decision."

5. From the reading of the provisions, it is clear that if the order is passed in an action under section 40 of the Waqf Act, 1995, then the appeal will have to be filed before the Wakf Tribunal. In that view of the matter, both the sides submit that the case may be remanded back to the Wakf Tribunal by holding that the appeal was competent and fresh order, upon hearing both sides, be passed. In the circumstances, the following order is passed :-

6. (I) The civil revision application is allowed without any order as to costs. It is hereby held that

the appeal filed before the Wakf Tribunal is tenable.

(II) The Wakf Tribunal, Aurangabad shall hear the appeal on its own merit and shall pass the order afresh uninfluenced by the earlier observations made by the then learned Member of the Wakf Tribunal. The appeal be decided within four months from the date of appearance of the parties before the Wakf Tribunal. The parties are directed to appear before the Wakf Tribunal on 20th August, 2015.

(III) In the meantime, there shall be stay to the order, which is impugned in the appeal before the Wakf Tribunal, Aurangabad.

. The civil revision application accordingly stands disposed of.

[M.T. JOSHI]
JUDGE