

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.95 OF 2010

- 1] Mohammed Abdullah Ibrahim
Merchant, age 70 years,
occ. Business, r/o. C-Bldg.,
7 floor, Diamond Apt.,
Opp. 24 Carat Cinema,
Near Markaz Hotel, S.V.Road,
Jogeshwari (W), Mumbai
- 2] Abubakar Abdul Razzak Shaikh,
Age 70 years, occ. Business/
trustees, r/o. 2nd Floor,
Flat No.2, Aloma Apts.,
Turner Road, Off Perry Road,
Bandra (W), Mumbai ..Applicants

Versus

- 1] Maharashtra State Board of Wakf,
through its Chief Executive
Officer, Panchakki, Aurangabad
- 2] Makke Abubakar Darvesh
Age 75 years, occ. Business,
r/o. Mondesir, Plot No.42,
New Kantwari Road, Bandra (W),
Mumbai 400 050
- 3] Yaqoob Abamiya Khandwani,
Age 67 years, occ. Business,
r/o. 14 Pathan Manzil,
1st floor, Balamiya Lane,
Mahim, Mumbai 400 016

- 4] Ebrahim S. Darvesh,
Age 51 years, occ. Business,
Having his office at Associate
House 85-A, Mustafa Bazaar,
Mumbai 400 010
- 5] Farouk S. Darvesh,
Age 57 years, occ. Business,
Having his office at
Associate House, 85-A,
Mustafa Bazar, Byculla,
Mumbai 400 010
- 6] Moin ul Haque, Age Major,
occu. Business, r/o. 11-D
Room No.8, 1st floor,
Haji Ismail Haji Allana
Chawl, Mustafa Bazar,
Byculla, Mumbai 400 010
- 7] Haji Fateh Mohamed Haji
Usman, Religious and Charitable
Trust, Mustafa Bazar Masjid,
104, Sant Savta Marg,
Mustafa Bazaar, Mumbai 400 010 ..Respondents

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Mr.A.S.Bajaj and Mr.Sagheer A. Khan, Advocates
instructed by Mr.Gulam Dastagir Shaikh, advocate
for petitioner

Mr.M.B.W.Khan, advocate for respondent no.1

Mr.A.D.Kasliwal, advocate for respondent nos.2 to 7

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CORAM : M.T. JOSHI, J.

DATE : APRIL 28, 2015

ORAL JUDGMENT :

Heard both sides.

2] Present Civil Revision Application depicts a sorry state of affair regarding the perverse reasons forwarded by the then Presiding Officer of the Wakf Tribunal, Aurangabad - Mr.Z.Y.Khan and even functioning of the then Chief Executive Officer, who remained blind not only to the provisions of the Wakf Act, but acted in a perverse manner.

3] The facts, which are undisputed and which cannot be controverted, as detailed in the reasons of the very same Presiding Officer of the Wakf Tribunal, would show that respondent no.7 - Haji Fateh Mohamed Haji Usman Religious and Charitable Trust was brought into existence in 1900.

Thereafter, the High Court, on the application of learned Advocate General, has framed the scheme under Section 92 of the Code of Civil Procedure. After coming into force of the Wakf Act in 1995, though legally deemed to be registered as Wakf, remained to be registered as a Wakf.

. Present respondent nos.2 and 3 on 24th September, 2007 filed an application under Section 36 of the Wakf Act, with the Chief Executive Officer i.e. respondent no. 1, without joining the then regular trustees as party, for registration of the Wakf. A non-existent scheme dated 14th September, 2007 was also mentioned in the said application. The original trustees i.e. present petitioners were excluded from the said proceedings. Even, the so called scheme attached to that application, would show that the control and management of the Wakf was said to be limited as against the original beneficiaries.

4] In the circumstances, since the registration was carried behind the back of the petitioners, they filed application in the Wakf Tribunal under Section 83(2) of the Wakf Act, challenging the said order.

5] Learned Presiding Officer of the Wakf Tribunal (Mr.Z.Y.khan) had agreed with all the submissions of the present petitioners on merit, which cannot be anyway controverted, i.e. the registration of the trust under the Bombay Public Trust Act, framing of the scheme by the High Court and present petitioners being the two trustees. In the circumstances, learned Presiding Officer was very candid in declaring that the order passed by the Chief Executive Officer of the Board – respondent no. 1, was illegal. Learned Presiding Officer went further and even declared that the said application under Section 36 of the Wakf Act was beyond limitation. Surprisingly enough, learned Presiding

Officer observed *"Therefore, on this ground also application of applicant is rejected"*.

6] It is difficult to find out as to, when the learned Presiding Officer came to the conclusion that initially, the application filed by concerned respondent nos.2 and 3 before the Chief Executive Officer, was beyond the limitation, how the application under Section 83(2) of the Wakf Act filed by the present petitioners, challenging the said order, was required to be rejected.

7] Learned Presiding Officer, though, on facts, agreed with the present petitioners, however, dismissed their application on two technical grounds; one is regarding the limitation and another, filing of an application by the present petitioners to the very same Chief Executive Officer also, for revocation of the earlier order.

8] The submissions from both the sides and perusal of the provisions of the Wakf Act, 1995 and the rules made therein, however, would clearly show that no period of limitation was prescribed for filing an application under Section 83(2) of the Wakf Act. Still, learned Presiding Officer has held that the said application was beyond the limitation only because in the words of the Presiding Officer, *"However, it is stated in Section 83(2) of Wakf Act application against any order passed under Wakf Act by R. No.1 can be filed within a reasonable time period before Wakf Tribunal."*

9] Learned Presiding Officer failed to take note of the fact that the present petitioners were not party to the application filed by respondent nos.2 and 3 for registration of the Wakf and without any provision, has held that within a reasonable time, the application should have been filed by the

present petitioners to challenge the said illegal order passed by the Wakf Board.

10] The next question is regarding the filing of the application by the present petitioners before the learned Chief Executive Officer challenging the very same order passed by the learned Chief Executive Officer. It is an admitted fact that there is no provision about filing of any such application before the Chief Executive Officer once he has passed the order. In the circumstances, if a superfluous application was filed by the present petitioners, it is difficult to understand the reasons of learned Presiding Officer that in view of the filing of said application, the application filed by present petitioners before the Tribunal under Section 83(2) of the Wakf Act, would not be maintainable.

11] Upon hearing both sides, it is necessary to underline that the purpose of the Wakf Act is to streamline the management of a Wakf and whenever necessary, to control the same. Here, in the present case, the Chief Executive Officer, without any efforts to find out the earlier trustees, to call them to inquire, passed the order behind their back. Learned Presiding Officer went one step ahead and though found that the activities carried by the Chief Executive Officer were illegal, dismissed the application of the present petitioners on perverse grounds.

12] In the circumstances, the following order :-

a] Present Civil Revision Application is hereby allowed with costs. The impugned order passed learned Presiding Officer of the Wakf Tribunal in Wakf Application No.33 of 2008, is hereby set aside.

b] Further, the order passed by respondent no.1 – Chief Executive Officer of the Maharashtra State Board of Wakf, dated 1st December, 2007, directing registration of the Wakf, is hereby quashed and set aside.

c] Respondent no.1 is directed to conduct suo-motu inquiry, collect the documents and register the Wakf as per the provisions of the Wakf Act within a period of one year from the date of this order.

[M.T. JOSHI, J.]

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