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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5868 OF 2014

Ahmed s/o Isaq Maklai & Another

PETITIONERS

VERSUS

The Chief Executive Officer,
Maharashtra State Board of Wakf & others

RESPONDENTS

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Mr. A. S. Bajaj h/f Mr. A. R. Vaidya, Advocate for the petitioners
Mr. S.V.Dixit h/f S. S. Patel, Advocate for respondents No.1&2
Mr. V. S. Undre, Advocate for respondents No.4 and 7

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th AUGUST, 2015

ORDER :

1. Learned advocate for the petitioners submits that the impugned order is not referable to and does not originate from any of the provisions of the Wakf Act. The order *per se* is in excess of powers vested in the chief executive officer and as such, is in colourable exercise. It is, therefore, being submitted that the matter may not lie before Wakf Tribunal, since the order is outside the jurisdiction of Chief Executive Officer.

2. Learned advocate for respondents No.1 and 2 submits that the matter ultimately relates to administration of trust by one or

the other body and under the circumstances, it is relatable to the Wakf Act. It is being particularly emphasized that the order can be said to be pursuant to section 25 (1) (c) of the Wakf Act. Learned advocate, to support his submission, places reliance on (2010) 14 SCC 588 “Board of Wakf West Bengal & Another V. Anis Fatma Begum and Another”. He refers to paragraph No.12 of said judgment, which reads as under-

“12. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he / she is aggrieved. It may be mentioned that Sections 83 (1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83 (2) refers to the orders passed under the Act, but in our opinion, Sections 83 (1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a wakf or wakf property, as the plain language of Sections 83 (1) and 84 indicates”.

3. I am, as such, inclined in favour of contention of the respondents that the petitioners have an adequate remedy pursuant to the observations of the Supreme Court, referred to above.

4. As such, the petitioners may approach the Wakf Tribunal, if they are aggrieved by order passed by the chief executive officer. If the petitioners are inclined, the proceedings shall be filed before the Wakf Tribunal within a period of six weeks from today. Till then the interim relief shall continue to operate.

5. Writ petition, as such, stands disposed of.

6. Having regard to pendency of the writ petition in this court, if it comes for consideration of the matter on the ground of delay, the period consumed in prosecuting present writ petition be accordingly considered.

[SUNIL P. DESHMUKH, J.]