

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

CIVIL REVISION APPLICATION NO.11 OF 2010

M/s Nirmal Associates,
A partnership firm, through
its Partner Shri Anil s/o Popatlal Munot,
Age 40 years, Occ. Business,
R/o Khadkeshwar, Aurangabad.

... APPLICANT
(Original Plaintiff)

VERSUS

Maharashtra Wakf Board,
through its Chief Executive Officer ...

RESPONDENT
(Original Defendant)

.....
Shri Aditya Sikchi, Advocate for applicant
Shri S.A.G. Qureshi, Advocate for respondent
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 22nd January, 2015.

Date of reserving judgment : 14/1/2015
Date of pronouncing judgment : 22/1/2015

JUDGMENT :

1. This revision application has been heard finally. The applicant – original plaintiff, Chief Executive Officer of the respondent (original defendant) in case No.17/2005, passed orders on 1.9.2005, invoking Section 54 of the Waqf Act, 1995

(hereinafter referred to as "the Act") read with Maharashtra Waqf Rules, 2003 (hereinafter referred to as "the Rules") under which enquiry was held, that the present applicant – plaintiff should remove, what was held by the Chief Executive Officer to be encroachment on Waqf land, within 15 days. It was directed that, if this is not done, the said encroachment will be removed through Sub-Divisional Officer.

2. Against the said order, the applicant – plaintiff filed Suit No.53/2005 before the Maharashtra Waqf Tribunal, at Aurangabad, raising various grounds and the suit was filed against Maharashtra Waqf Board, through its Chief Executive Officer. The suit challenged the action and orders passed by the Chief Executive Officer of the Board and prayer was made to declare the order passed by the Chief Executive Officer as null and void.

3. In the suit filed, the defendant filed application under Order VII Rule 11 of the Code of Civil Procedure (C.P.C. for short) for rejecting the plaint on the ground that the suit could not have been filed without notice under section 89 of the Waqf Act. The Tribunal, vide impugned order dated 9.4.2008, held that it had read the plaint and suit claim, and that it was

admitted fact that notice under Section 89 was not issued and thus, found that the suit was not maintainable. The plaint was rejected, invoking Order VII Rule 11(d) of the C.P.C. read with Section 89 of the Waqf Act. This order is in challenge before this Court.

4. Counsel for the applicant argued that, undisputedly the order which was subject matter of the suit before the Tribunal, was order under Section 54 of the Waqf Act. Section 54 of the Waqf Act deals with powers of the Chief Executive Officer and the orders which the Chief Executive Officer could pass. According to him, Section 89 of the Waqf Act relates to filing of suit against the Board in respect of any act purporting to be done by it pursuant to the Act. The argument is that, Section 89 does not relate to act of the Chief Executive Officer. The counsel submitted that there are different powers and duties of the Chief Executive Officer and different powers and functions of the Board, and the Act, at various places, clearly mentions as to what are the acts to be performed by the Board and what are the acts to be performed by the Chief Executive Officer. It is also argued that, Rule 50 of the Rules lays down the requirement to file suit within 60 days against order under Section 54(3) of the Waqf Act. If the applicant – plaintiff were to issue notice under

Section 89, they cannot file suit for two months. According to the counsel, the provisions cannot be reconciled and placed reliance on the case of Farrukh Mehmood s/o Late Haji Mehmood Khan & anr. Vs. Maharashtra State wakf Board & ors., reported in [2011(3) Mh.L.J. 700] to submit that the plaint could not have been rejected under Order VII Rule 11(d) of C.P.C.

5. Learned counsel for the respondent – original defendant, after hearing the submissions of the counsel for applicant – original plaintiff, submitted that, Court may pass suitable orders and the suit in the trial Court would be required to be expedited.

6. Section 54 of the Waqf Act deals with powers of the Chief Executive Officer for removal of encroachment from Waqf property. Section 54(1) requires the Chief Executive Officer to issue notice specifying the particulars of encroachment. Sub-section (2) of Section 54 requires that the notice shall be served in manner as may be prescribed. Sub-sections (3) and (4) of Section 54, before recent amendment of 2013, read as under :

“(3). If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property

in question is Wakf property and that there has been an encroachment on any such Wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the Wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property.

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the Wakf or by any other person authorised by him in this behalf."

7. The procedure regarding enquiry to be made is specified in Rule 23 of the Rules.

8. Invoking powers as above, the Chief Executive Officer directed removal of encroachment "within 15 days" and specified that if this is not done, the possession should be recovered through Sub-Divisional Officer. Sub-rule (3) of Rule 50, which is relevant for the present matter, reads as under :

"50. Time limit under

(1)

(2)

(3) Any person aggrieved by an order of the Chief Executive Officer under sub-section (3) of Section 54 may institute a suit in the Tribunal within sixty days from the date of the said order."

9. This rule makes it clear that, if the person is aggrieved by the order of the Chief Executive Officer under Section 54(3), the person has to institute suit in the Tribunal within 60 days from the date of order. In the matter of "Farrukh Mehmood" (supra) referred by the counsel for applicant also there was order of Chief Executive Officer under Section 54 of the Act and in the context of Rule 53 and Section 89, it was observed that the Presiding Officer could not have rejected the petition taking recourse to Order VII Rule 11 of the C.P.C.

10. I find substance in the submission of the learned counsel for the applicant – plaintiff that Section 89 could not have been invoked in any case as Section 89 deals with suit against the Board in respect of any act purported to be done by it in pursuance of the Act. Section 89 reads as under :

"89. Notice of suits by parties against Board.-- No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of

two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

(emphasis supplied)

11. In the present matter, the act challenged before the Tribunal was not the act of the Board, but it was the act of the Chief Executive Officer. If the Waqf Act is perused, at various places the Sections clearly state as to what are the acts to be performed by the Board and what are the acts to be performed by the Chief Executive Officer. For example, Section 25 deals with the duties and powers of the Chief Executive Officer. While Section 32 deals with powers and functions of the Board. They operate in separate spheres under the various provisions. In the present matter, the suit did not relate to act purported to be done by the Board, but it was clearly act performed by the Chief Executive Officer under Section 54, which exclusively deals with what the Chief Executive Officer has to do if he finds that there has been an encroachment. Thus, plaint filed could not have been rejected looking to the order which was challenged before the Tribunal.

12. For reasons mentioned above, the impugned order

dated 9.4.2008, passed by the Waqf Tribunal, below Exhibit 12 in Waqf Suit No.53/2006 is quashed and set aside. The suit is restored to its original number. Parties are directed to appear before the Waqf Tribunal on 13th February 2015. The suit shall proceed further according to law. As it is old suit, the same is expedited.

13. The Civil Revision Application is accordingly allowed with costs.

(A.I.S. CHEEMA, J.)