

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

CIVIL REVISION APPLICATION NO.127 OF 2014

Ishtaque Ali Sayyad Ali,
Age-40 years, Occu:Business,
Amalner, Tq-Amalner,
Dist-Jalgaon.

...APPLICANT

VERSUS

- 1) Maharashtra State Wakf Board,
Through its Chief Executive Officer,
Panchakki, Aurangabad,
- 2) Masjid Barabhai through its trustee,
Mustaq Khan Gulshar Khan,
Age-Major, Occu:Business,
R/o-Amalner, Tq-Amalner,
Dist-Jalgaon.

...RESPONDENTS

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Mr. M.V. Bhamre Advocate for Applicant.
Mr. Sameer S. Patel Advocate for Respondent
No.1.
Mr. A.P. Gaikwad Advocate h/f. Mr. S.S. Kazi
Advocate for Respondent No.2.

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

DATE OF RESERVING JUDGMENT : 2ND FEBRUARY, 2015.

DATE OF PRONOUNCING JUDGMENT: 17TH FEBRUARY, 2015.

JUDGMENT :

1. The Applicant filed Application under Section 83(2) of the Waqf Act, 1995 against orders dated 16th May 2012 passed under Section 54 of the Waqf Act in Case No.54/417/2010 by the Chief Executive Officer (for short "C.E.O.") of Maharashtra State Waqf Board, at Aurangabad. The C.E.O. held the Applicant as trespasser and directed him to handover the property in dispute. In the Application filed before the Waqf Tribunal, the Applicant claimed that he was not a trespasser and he was tenant who inherited tenancy, of the shop in dispute, from his father.

2. Area admeasuring 13 ft. X 12 ft. out of City Survey No.885 admeasuring 51 Sq. Meters, belonging to Barabhai @ Andarpura Mohalla Trust, Amalner, Dist-Jalgaon, which is a Waqf is in dispute. The Applicant claims that father of the Applicant was inducted in such portion as a tenant

in the shop more than 50 years before and in his life time the father was the tenant. After the demise of the father, the Applicant is in possession of the said premises and carrying on business. The Applicant claimed that he had become the tenant. The Respondent No.2 - Masjid Barabhai instituted application before C.E.O. claiming the property from the Applicant. C.E.O. passed orders dated 16th May 2012 observing that inspite of notice being served on the Applicant and inspite of keeping the matter pending for hearing, the Applicant had not appeared and filed reply. He considered the application filed by Respondent No.2 and noted that the property was part of Waqf and was required for religious purposes to fulfill objects of the Waqf and tenancy cannot be inherited in view of provisions of Section 56 of the Waqf Act and consequently directed the Applicant to handover possession within fifteen days. The Applicant himself filed Application under Section 83 of the Waqf Act to the Waqf

Tribunal and raised dispute that he was present before C.E.O. but he was treated as absent and that he was not an encroacher, but that he was a tenant.

3. The Waqf Tribunal dealt with the Application and considered whether the order passed by the C.E.O. could be said to be illegal, erroneous and against the law. Tribunal noticed that there was a tenancy between father of the Applicant and Respondent No.2. The Tribunal held that the tenancy came to an end at the moment of death of father of the Applicant. It recorded that tenancy was not heritable and Applicant had no right to continue to be in possession. It recorded that there was no lease agreement between the Applicant and Respondent No.2. Applicant, although claimed that he used to pay rent to Respondent No.2, his name was not appearing in the receipts. It was argued before the Tribunal that under Section 56 of the Waqf Act, lease or sub-lease of

a period exceeding period specified shall be void and shall be of no effect and that for creation of lease exceeding one year, sanction of the Board was required. Tribunal found that lease exceeding period specified in the Act cannot at all be created and cannot exist. The Tribunal discarded the claim of the Applicant that he was present before the C.E.O. but was marked as absent, in view of the record of the C.E.O. The Tribunal found that before passing the impugned order, the application was kept for hearing for various dates but at that time the Applicant remained absent and did not submit his say. Thus, it found that the Applicant had been given the necessary opportunity. The Tribunal held that the C.E.O. rightly considered the possession of the Applicant as illegal and as that of encroacher.

4. The question is, whether the impugned order of the Tribunal is correct, legal and proper.

5. I have heard learned counsel for both sides. Learned counsel for Applicant submitted that father of the Applicant was tenant in the shop concerned since more than 50 years and according to the learned counsel, father of the Applicant died four years back and since then the Applicant was in possession of the shop concerned. The counsel submitted that the Applicant had sent rent to the Respondents by post. The learned counsel was unable to show any receipt issued by Respondent No.2 in favour of the Applicant, at the time of arguments. It was argued that it has been held that a dispute between land lord and tenant relating to Waqf property is liable to be decided by the Civil Courts and not the C.E.O. or the Tribunal.

6. Learned counsel for Respondents argued that looking to the Scheme of Section 56 of the Waqf Act, where the law lays down that given lease

could be only of specific period, Waqf properties could not be leased in perpetuity or could not be inherited. According to the learned counsel, the status of the Applicant in the property in dispute is only as that of an encroacher. The counsel referred to the amendment made in Section 83 of the Waqf Act in 2013, to submit that dispute between landlord and tenant relating to Waqf property was not earlier covered in Section 83, but now in view of the amendments in 2013, the same is required to be decided only by the Tribunal.

7. Sub-section (1) of Section 54 of Waqf Act reads as under:

"54. Removal of encroachment from waqf property.- (1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building,

space or other property which is waqf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned *mutawalli*."

. Thus, under this Section, it is for C.E.O. to consider whether there has been encroachment in the property of Waqf. In the present matter, there is no dispute regarding the fact that property concerned is of the Waqf. Record shows that the C.E.O. was moved by Respondent No.2 and after considering the complaint made by the Respondent No.2, the C.E.O. held the Applicant to be a trespasser. Being aggrieved by the order of C.E.O., the Applicant himself moved the Tribunal under Section 83(2) of

the Waqf Act. The Applicant did not move the Civil Court. The dispute raised before the Waqf Tribunal was, whether the Applicant was or not encroacher as held by the C.E.O. The dispute was with reference to orders passed under Section 54 of the C.E.O. which were challenged under Section 83(2) of the Waqf Act. Of course, the Applicant claimed before the Tribunal that he was not an encroacher but that he had inherited the tenancy. The Tribunal while considering the question whether or not the Applicant was encroacher, has upheld the order of the C.E.O. on the basis of arguments raised before it with reference to Section 56 of the Waqf Act relating to restrictions on the power to grant lease on Waqf property.

8. Now it is being argued that the C.E.O. and the Tribunal could not have decided the dispute as the Applicant claims that he had inherited tenancy. In this context, Section 83 of the Waqf Act is relevant. Sub-section (1) of

Section 83 of the Waqf Act before amendment of 2013 read as under:

“(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.”

. The above Sub-section (1) of Section 83 has been amended by the Waqf (Amendment) Act, 2013 which has been brought into force with effect from 1st November 2013 and the substituted Sub-section (1) of Section 83 reads as under:

“83. Constitution of Tribunals, etc.-

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals, as it may think fit, for the determination of any

dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.”

(Emphasis supplied.)

9. It is clear that the Legislature has added the underlined portion in the earlier Section 83. If the amended Section 83(1) is perused, it is quite apparent that any dispute, question or other matter relating to Waqf property, eviction of a tenant or determination of rights and obligation of the lessor and the lessee of such property i.e. Waqf property is to be decided by the Waqf Tribunal. The amended provision came into effect on 1st November 2013 and naturally when the Waqf Tribunal decided the Application on 5th May 2014, it was within its jurisdiction to consider the dispute of tenancy also, which was raised. This is apart from the

fact that the basic dispute the Tribunal was dealing with, was whether or not the Applicant was a trespasser as found under Section 54 of the Waqf Act. To decide that dispute, it was required to deal with the defence of the claim of tenancy.

10. Tribunal considered the admitted facts, the law and opportunity given to applicant by C.E.O. and rejected the application. The Applicant is unable to show that the impugned order is not correct, legal or proper. Consequently, there is no substance in the Revision application.

11. The Revision Application is rejected.

[A.I.S. CHEEMA, J.]