

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

WRIT PETITION NO.1393 OF 2014

Maharashtra State Board of Wakf,
through its Chief Executive Officer,
at Panchakki, Aurangabad

..Petitioner

Versus

1. The State of Maharashtra,
through Revenue and Forest
Department, Mantralaya,
Mumbai
2. The Additional Collector,
Beed, District Beed
3. The Deputy Collector,
Beed, District Beed
4. Smt.Shashikala w/o Shrimal kathed,
Age 66 years, Occu.Household
5. Atul s/o Shrimal Kathen,
Age 36 years, Occu. Agri.,
6. Sanjay s/o Shrimal Kathed,
Age 30 years, Occu.Aгри.,
7. Rahul s/o Shrimal Kathed,
Age 25 years, Occu.Aгри.,
8. Syed Khaled s/o Syed Maheboob
Age Major, Occu.Aгри.,
9. Syed Basti s/o Syed Maheboob
Age Major, Occu.Aгри.,
10. Syed Raisuddin s/o Syed Maheboob
Age Major, Occu.Aгри.,
11. Syed Meer s/o Syed Maheboob,
(deceased), through L.Rs.
- 11a) Syeda Hajarabee w/o Meer
Age 61 years, Occu. Household

11b) Syed Musa s/o Syed Meer,
Age 49 years, Occu. Agri.,

11c) Sayed Rauf s/o Syed Meer,
Age 48 years, Occu. Agri.,

Resp.No.4 to 10 and 11a to 11c
R/o Ashti, Taluka Ashti,
District Beed

..Respondents

Mr Y.B.Pathan, Advocate for petitioner
Mrs Y.M.Kshirsagar, A.G.P. for respondents 1 to 3
Mr N.L.Jadhav, Advocate for respondent No. 7

CORAM : N.W. SAMBRE, J.

DATE : 4th March 2015

PER COURT

1. The petitioner – Board has questioned the legality and validity of the order dated 20th September 2013, order dated 31st May 2011 and order dated 10th March 2012, passed by the Deputy Commissioner (Revenue), Aurangabad, Deputy Collector (General), Beed and Additional Collector, Beed, respectively thereby the proceedings taken out by the petitioner in relation to the land Survey Nos.914-A, 914-E and 914-U which are framed to be *Khalsa* lands and in relation to which the ownership rights are transferred in favour of the respondents 4 to 10 and 11-a to 11-c.

2. The learned Counsel for the petitioner-Board, while questioning the legality and validity of the said orders has invited my attention to the gazette notification issued in relation to the lands in question on 11th April 1974, so as to urge that the sale-deeds in favour of the respondents on 7th October 1974 and 6th December 1974 are void, as

after notifying the lands as wakf property, same ought not to have been transferred in favour of the respondents. He would further urge that the lands in question since are the wakf property being service inam lands, they are excluded from the provisions of Hyderabad Tenancy and Agricultural Lands Act, 1950, particularly Section 102-A (b) and the provisions of Section 2 of the Hyderabad Abolition of Inams and Cash Grants Act, 1954, as the lands/inams were held for the benefit of charitable and religious institution. So as to canvass the said contention, he has placed reliance on the *Muntakhab* in relation to the said lands and the succession statement issued by Deputy Collector (*Atiyat*), Beed in the year 1992.

3. According to him, in the revenue entries also the lands are mutated as the inam lands and same is subject to *ek sala lawani*. According to him, the property in question, as such ought not to have been declared as a *Khalsa* property and has sought to place reliance upon the judgment of Apex Court in the matter of **Sayyed Ali and ors. Vs. A.P.Wakf Board, Hyderabad and others**, reported in **AIR 1998 SC 472**. He has placed reliance upon the observations made in the said judgment so as to urge that the revenue authorities are not empowered to give finding as regards the status of the property as to whether it is the inam land or whether it should be termed as wakf property. He has also placed reliance upon the judgment of this Court in the matter of **Mohammad Khairuddin Mohd.Habibuddin Vs. Moinuddin s/o Pachulal Shaikh and anr.**, reported in **2008 (2) B C J 642**, so as to canvass that once it is brought to the notice of the

authority that the property in question is wakf property, as is notified in the official gazette, the said property is not governed by inam but are governed by Hyderabad Atiyat Inquiries Act, 1954. He would further urge that in case there is dispute as regards whether the part of the property is a wakf property and the part of the same as service inam land and if there is no notification of such property qua the service inam and *Khalsa* property, the entire land is required to be termed as wakf property and as such, sought support from the judgment of this Court in the matter of **Abdul Qayyum s/o Abdul Hamid Khan others Vs. Additional Collector, Nanded and others**, reported in 2013 (1) Mh.L.J.449. According to him, the orders impugned are not sustainable.

4. Mr Jadhav, learned Counsel for the respondent no.7 would urge that the Inamdar, who has transferred the property in question to the father of the respondent has not raised any objection to the issue as to whether the property in question is wakf property or *Khalsa* property and he has sought to place reliance upon the order of the Additional Collector, passed in proceedings No.94/CD/Appeal/CR-103 on 28th July 1997 under the provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954 in exercise of powers under Section 11 so as to canvass that lands in question are already declared as *Khalsa* lands. He would urge that the said order was subject-matter of erroneously challenged before the Maharashtra Revenue Tribunal which has held that the Maharashtra Revenue Tribunal has no jurisdiction.

5. According to Mr Jadhav, the said order still governs the field as not upset in any of the proceedings. In addition to above, he would urge that all the authorities till date have answered the entire issue in favour of the respondent and submits that even the perusal of *Muntakhab* would reflect that the property in question is not named as the service inam lands. In addition to above, he has placed reliance upon the judgment of the Apex Court in the matter of **The Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and others**, reported in **AIR 1979 SC 289** so as to canvass that if the property is in possession of a stranger and is form of list published under Section 5 sub section (2) of the Wakf Act, such stranger is not under obligation to file suit within the stipulated period of one year, as the list is not conclusive against him. According to him, even if the property is gazetted as wakf property, however, same is not binding on the respondent, particularly having regard to the order of Atiyat Collector.

6. While countering the above referred contentions, the learned Counsel for the petitioner would urge that after the matter was not entertained by the Maharashtra Revenue Tribunal against the order passed under the Atiyat Inquiries Act, the same was taken up before the State Government which has relegated it to the Commissioner, (Atiyat) and the order of the Commissioner, Atiyat is subjudice before this Court in writ petition at the behest of petitioner - Board. According to him, as said matter is subjudice before this Court and having regard to the gazette notification and transfer of property subsequent to issuance of gazette notification in favour of the respondent, the petition is liable to be allowed.

7. Having considered rival contentions of the parties and having perused the orders impugned, it is not in dispute that the order passed under the Atiyat Inquiries Act by the Collector (*Atiyat*) on 28th July 1997 declaring the lands in question as *Khalsa* lands, is not upset till today and the same is governing the field. Once order of Collector (*Atiyat*) though under adjudication at the behest of the petitioner is still holding the field, in my opinion, it will not be appropriate for this Court to entertain the present petition at the behest of the petitioner questioning the legality and validity of the orders impugned.

8. It is also required to be noted that though there is a gazette notification as is brought to the notice of this Court declaring the property in question as wakf property, however, in the wake of the judgment of Apex Court, as is rightly relied upon by the learned Counsel for respondent No.7 in the matter of Board of **Muslim Wakfs, Rajasthan Vs. Radha Kishan and ors.** (cited supra), the said gazette notification is not binding on the respondents herein particularly in view of the orders passed by the Collector (*Atiyat*). It is also required to be noted that the property in question cannot be identified upon plain reading of the *Muntakhab* which is sought to be placed on record, however, the *Muntakhab* is sought to be read along with the gazette notification, which in my opinion, is not permissible.

9. It is further required to be noted that the authorities, based on the earlier order of Collector (*Atiyat*) have proceeded to decide the issue raised by the petitioner for declaration of lands as service inam

lands and being property of the Wakf. The said authorities, for the cogent reasons have reached to a conclusion that once the issue as regards property in question as *Khalsa* property is already decided, the said issue cannot be reopened at the behest of the Board, particularly having regard to the statement made by the learned Counsel for the petitioner that the same is subjudice before this Court in writ petition which is admitted and pending for hearing.

10. The reliance placed by the learned Counsel for the petitioner on the judgment of Apex Court and this Court (cited supra), so as to canvass that once the property in question is notified as wakf property, it is not open for the revenue authorities while deciding the issue as regards nature of the property is concerned, it is required to be noted that there is no dispute as regards applicability of Atiyat Inquiries Act to the entire land. Once it is an admitted position, the said application of law which is sought to be relied upon by the learned Counsel for the petitioner will be hardly of any assistance to the petitioner, as such, the said contention of the petitioner is liable to be rejected.

11. So far as the judgment of this Court, so as to determine the nature of the property as to whether it is a *Khalsa* land or the wakf property and in case of dispute, the entire land could be termed as wakf property is concerned, in my opinion, the same cannot be an issue to be gone into in this case, as under the Atiyat Inquiries Act, Collector has already declared the land in question as *Khalsa* land,

which is subject matter of challenge in a separate writ petition, as stated herein above.

12. So far as the applicability of the provisions of Hyderabad Tenancy and Agricultural Lands Act, 1950 in regard to exemption is concerned, the said issue has hardly any bearing over the present case, as the Collector (*Atiyat*) has already declared the land in question as *Khalsa* land.

13. As such, in my opinion, no case for interference is made out. Writ Petition being devoid of merits, is dismissed.

14. While parting with the present order, it is required to be observed that in case the petitioner - Board succeeds in its challenge to the order passed by Collector (*Atiyat*), on 28th July 1997, the consequences thereof will follow.

(N.W. SAMBRE, J.)

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