

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2649 OF 2015

Shaukat Mohammadkhan Momin & ors .. Petitioners

vs.

The President
Madhil Wada Jamat,
Abubakar Abdulkarim Kazi & ors. .. Respondents

Mr. A.B. Tajane for the Petitioners.

Mr. Owais A. Pechkar for the Respondent Nos.1 and 2.

CORAM : M. S. SONAK, J.

DATE : 05 OCTOBER 2015.

P.C. :-

1] This petition challenges the orders dated 23 September 2010 and 17 June 2014 made by the Sub-Divisional Officer (SDO) and the Additional Collector under the Maharashtra Land Revenue Code, 1966 (said Code) in relation to revenue entries in respect of properties surveyed under No. 98/0, 99/15 and 99/30.

2] There is no necessity to entertain the present petition at least for three reasons. In the first place, mere entries in a revenue record are not determinative of all rights or title of the parties in respect of properties in question. Secondly, by Certificate dated 24 November 2014 issued by Maharashtra State Wakf Mandal, Aurangabad, at least portions of the suit properties have been *prima facie*, declared as Wakf properties. The Certificate makes reference to Section 43 of

the Wakf Act, 1995 ((said Act). Section 83(1) of the said Act provides that 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 the said Act and define the local limits and jurisdiction of this Act of each of such Tribunals. There is no dispute that the Wakf Tribunal has been constituted and in fact, certain proceedings in relation to at least portions of the suit properties are already pending before the Wakf Tribunal. In any case, if there is a dispute in relation to Wakf property or property which is alleged to be Walf property, it is appropriate that such dispute is adjudicated by the Wakf Tribunal constituted in terms of Section 83(1) of the said Act.

3] The Apex Court in case of *Board of Wakf, West Bengal vs. Anis Fatma Begum & anr.*¹, in the context of the provisions contained in Section 83(1) of the said Act, has clarified that a party can approach the Wakf Tribunal, even if no order has been passed under the said Act against which he/she aggrieved. It is clarified that Section 83(1) and Section 84 of the said Act do not confine the jurisdiction of Wakf Tribunal to the determination of correctness or

1 2010 (14) SCC 588

otherwise of an order made under the said Act. No doubt, Section 83(2) of the said Act refers to the orders passed under the Act, but in the opinion of the Hon'ble Apex Court, Sections 83(1) and 84 of the said Act are independent provisions and they did not require an order to be passed under the said Act before invoking the jurisdiction of Wakf Tribunal. Hence, it is clarified by the Apex Court that it cannot be said that a party can approach the Wakf Tribunal only against the order passed under the said Act. Even if no order has been passed under the said Act, the party can approach the Wakf Tribunal for determination of any dispute, questions or other matters relating to Wakf or Wakf property as the plain language of Sections 83(1) and 84 of the said Act indicates.

4] Mr. Tajane further submitted that only a portion of suit property may have been declared as a Wakf property and in respect of the rest, this Court should examine whether the impugned orders have been validly made. Assuming that only a portion of suit property has been declared as Wakf property, it is to be noted that nothing prevents the Petitioners from instituting a suit before the Civil Court for the purposes of adjudicating upon their alleged right and title in respect of the balance portion of the suit properties,

assuming that they have such right and title to the same. In fact, it is pointed out that the Petitioner have already instituted Civil Suit NO. 230 of 2014 in the Court of Civil Judge, Senior Judge at Ratnagiri and the same is pending consideration.

5] In view of the aforesaid, there is no necessity to entertain the present petition. Further, it is clarified that mere entries in the revenue records are not determinative of title of any party in respect of properties and therefore, the Wakf Tribunal or for that the matter the Civil Court to decide the matter pending before them or which may be instituted before them on their own merits and in accordance with law, without in any manner being influenced by the non-entertainment of the present petition.

6] With the aforesaid observations, the petition is disposed of. It is once again clear that this Court has not examined the merits of the matter and therefore, all contentions of all parties are kept open for the decision by the Wakf Tribunal and/or the Civil Court.

(M. S. SONAK, J.)

CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**