

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

CIVIL REVISION APPLICATION NO. 35 OF 2016

Tukaram s/o Keshavrao Chavan
& Ors.

..... **APPLICANTS**

V E R S U S

The Chief Executive Officer,
The Maharashtra State Wakf Board,
Office at Panchakki, Near Ghati,
M.S. Aurangabad & Ors.

..... **RESPONDENTS**

.....

Mr. S.K.Chavan, Advocate for Applicants.

Mr. H.I.Pathan, Advocate for R.No. 4.

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CORAM : T.V.NALAWADE, J.

DATE : 10th MARCH, 2016

ORDER :-

. The proceeding is filed by the applicants of Waqf Application No. 92/2013 which was pending before the Waqf Tribunal, Aurangabad. The application was filed u/s 83 of the Waqf Act, 1995 to challenge the Judgment and Order dated 04/03/2013 of the Chief Executive Officer, Waqf Board, Aurangabad. The Chief Executive Officer has made order of eviction against the applicants by holding that they are encroachers on the disputed land. Both sides are heard.

2. There is dispute about the property, agricultural land bearing S.No. 1 admeasuring 4 Acres 35 gunthas situated at village Bavna-Pangari, Tahsil Badnapur, district Jalna. It is the case of the applicants that they have been in possession of this land from prior to the year 1958 and when the consolidation scheme was implemented in 1970, they were in possession. It is their case that their names were entered in the revenue record as they were in possession and at the relevant time the land was owned by 3 persons viz. Shaikh Miya Ahemad, Musad Dadamiya and Mohd. Yusuf. It is their case that their predecessor in title Narayan s/o Dagdu Chavan was in possession of the said land as tenant from prior to 1958 and they became owner of the land as sale deed was executed in their favour by the owners on 03/06/1978.

3. It is the case of the applicants that there was dispute between them and the previous owners and so one Suit was filed, but in Civil Appeal No. 48/1982, which was pending in the District Court, Jalna, compromise took place and the successor of previous owner admitted that present applicants had become owner in view of the sale deed executed in the year 1978 and prior to that Narayan Chavan was in possession as protected tenant.

4. It is the case of the applicants that the proceeding was started u/s 54 of the Waqf Act, 1995 by respondent No. 2 against them. It is contended that after starting of the proceeding, they realized that the aforesaid property was published as Govt. property in Govt. Gazette dated 31/05/1973. It is contended that they tried to get the

relevant record, but no record was supplied to them by the concerned office. It is contended that they wanted to show that the procedure laid down for survey of waqf under old Waqf Act, 1954 was applicable but it was not followed. By making aforesaid contentions, they prayed for relief of setting aside the order made by the Chief Executive Officer. In this proceeding it was submitted by the learned counsel for the applicants that the Suit is also filed for relief of declaration that the entry in Govt. Gazette of the suit property as waqf property is not binding on them and the Suit is still pending.

5. This Court has carefully gone through the reasoning given by the Waqf Tribunal. Opportunity was given to both sides to produce the record considered by the Waqf Tribunal. The record shows that in the year 1300 Fasli, prior to the year 1900 A.D., the aforesaid land was given as Inam for rendering services to Durgah. At that time also, the land was given S.No. 1. Initially one Abdul Rahim s/o Abdul Rasul was given the land to render services and after his death, proceeding was filed by one Mohd. Murad for getting succession certificate. He had contended that he was paternal grand-son of original Mutawali. The succession was granted in 1312 Fasli [Exh. 61]. Then there is record of 1350 Fasli showing that the land was with Mohd. Murad and he had given it to a person for cultivation, however there was no name of the predecessor in title of present applicants in that column. There is copy of Govt. Gazette of 1973 showing that Durgah Syed Sadat was a waqf and its Tomb was present on S.No. 1 and the property of this waqf was S.No. 1 admeasuring 4 Acres 35 gunthas. The annexure in respect of

the registration shows that there were 2 graves in S.No. 1. The suit property was belonging to this institution and it was service inam land. This record is of the year 1964.

6. It appears that for some time, name of Narayan Chavan was entered as tenant [not protected tenant] in the revenue record. In the application itself, it is mentioned that prior to 1958 Narayan had got possession but it is not his specific case that he was in possession from prior to 1950. So, there was no question of presuming that he was protected tenant under the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Further, in view of the provisions of the same Act [Section 102-A], such lands are exempted from the application of tenancy provisions and so Narayan and his successors could not have claimed any right as tenant in respect of this land.

7. The petitioners are relying on the sale deed of 1978 to prove their title and to show that they are not encroachers. The relevant record and undisputed circumstances show that in S.No. 1 there is Tomb and in that revenue record also the property was shown as inam land and the predecessor in title of the vendors of present applicants were the Inamdars, Mutawallies of the waqf institution. In view of these circumstances, it was not possible for the present applicants to prove that their vendors were owners of the disputed property. As per the record, they can not be treated as owners as they did not get any title and they are also not lessee in view of their contention that they are owners. In view of these circumstances, it is held

that they are encroachers.

8. Learned counsel for the applicants submitted that the waqf was not registered within the time fixed u/s 36 (8) of the Waqf Act, 1995 and so the contention that it is waqf property, is not acceptable. In support of this contention he placed reliance on one case reported in 2010 (5) Mh.L.J. [Mohd. Ansar Salik and Ors. Vs. Shaikh Hamid Babumiya Inamdar & Ors.]. In that case, this Court [other Hon'ble Judge] referred the case of Supreme Court reported as 2006 (10) SCC 696 [M.P.Wakf Board Vs. Subhan Shah (D) by L.Rs. & Ors.] and held that due to bar of Section 36 (8) of the Waqf Act, 1995, the application for registration of the waqf can not be entertained after the period fixed, 3 months from the commencement of the Waqf Act, 1995. This Court has carefully gone through the Act and also the law laid down by the Apex Court in the case cited supra. The facts of the above case were totally different. The applicant in that case wanted to establish her right to get the post of Mujawar and for that purpose such observations were made. In that case also, the institution and its property were already registered as waqf. Thus, the ratio was different. In view of the provisions of the present Act, and particularly the provision of deemed registration u/s 36 (1), there was no necessity of again registering the property as waqf. The relevant record is already referred. The provisions of old Act, 1954 were applicable to the present institution as the property is situated in Jalna district, which was part of Hyderabad State. Thus, the ratio of this case is of no help to the applicants. One more point was argued by the learned

counsel for the applicants. He submitted that the Chief Executive Officer had power to make order of removal of encroachment but there was right to the so called encroacher to file Suit u/s 54 (4) of the old Act to challenge the decision to establish his right. It was submitted that till that substantive Suit is decided, present applicants can not be evicted. This submission is not at all acceptable. On one hand the applicants are claiming that they were inducted as tenants by Mutawali and on the other hand they are claiming that they have become owner under registered sale deed. Due to their contentions and aforesaid circumstances, the order of eviction is made by the Chief Executive Officer. Further, in view of the provision of Section 83 (7) of the Waqf Act, 1995, the decision of the Tribunal has the force of decree. The applicants preferred to challenge the decision of the Chief Officer and filed application which is of the nature of Appeal. In view of these circumstances, it can be said that there remains virtually nothing in the Suit filed by the applicants and others for declaration of aforesaid nature.

9. The submission was made by the learned counsel for the applicants that there are many successors of Narayan and all of them are in possession and so the Suit filed by all of them needs to be decided. This contention is also not acceptable in view of the circumstance already discussed. Thus, it can not be said that the order made by the Chief Officer is illegal. The Tribunal has not committed any error in dismissing the challenge of the present applicants made against the order of the Chief Executive Officer.

10. In the result, Civil Revision Application stands dismissed.

11. On the request made by the learned counsel for the applicants after hearing other side, time of 5 weeks is given to them to challenge the decision of this Court. For that period, the order of the Chief Officer is not to be executed.

[T.V.NALAWADE, J.]