

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

CIVIL REVISION APPLICATION NO. 31 OF 2016

Jama Masjid, Taklibhan
& Anr.

..... **APPLICANTS**

V E R S U S

Maharashtra State Board of
Waqfs & Ors.

..... **RESPONDENTS**

.....

Mr. Sachin S.Deshmukh, Advocate for Applicants.

Mr. S.A.G.Qureshi, Advocate for R.Nos. 3 to 8.

.....

CORAM : T.V.NALAWADE, J.

DATE : 10th MARCH, 2016

ORDER :-

. The proceeding is filed to challenge the order dated 14/01/2016 made by the Presiding Officer, Maharashtra State Waqf Tribunal, Aurangabad in Waqf Application No. 12/2013. By the order, the Waqf Tribunal has dismissed the application filed by present petitioners to challenge the order made by the Chief Officer made in proceeding No. 42/86/2007 dated 11/10/2012. By the order, Chief Executive Officer has accepted the change report filed by present respondents in respect of the election of trustees, Mutawallies, of one waqf institution [Jama Masjid,

Taklibhan, Tahsil Shrirampur, district Ahmednagar]. Both sides are heard.

2. The aforesaid Trust was registered under the provisions of Bombay Public Trust Act in the year 1962, as at the relevant time the provisions of the Trust Act were applicable to that area. One Smt. Karimabee was to work as trustee during her life time and as per the scheme, minimum number of 5 trustees were to manage the institution and the number can be increased up to 9. There was no dispute with regard to the management of the trust till the year 2012. As there was some dispute, in March, 2012, application was made to the Chief Officer and the dispute was brought to his notice. The Chief Officer made order to hold election under the supervision of District Waqf Officer. When such order was made by the Chief Officer, the change report came to be submitted by the previous managing body on 27/03/2012 to inform that in the meeting dated 16/03/2012 of the members, new trustees were elected. The names of 7 trustees were informed to the Chief Officer as in the past this institution was registered under Waqf Act, 1995 also. The name of one successor of aforesaid Karimabee was also informed though Karimabee was alive on that day. As per the order made by the Chief Officer in the month of March, 2012 election was held after making new members on 18/07/2012 and the change report was submitted on 09/08/2012. The names of present respondent Nos. 3 to 8 and the name of Karimabee was also informed in the report as the new trustees. After making enquiry, the Chief Officer accepted the report dated 09/08/2012 and so the election of

respondents is held to be legal by the Chief Officer.

3. Said decision of the Chief Officer was challenged by present petitioner No. 2 Abdul Karim Akbar Deshmukh. He contended that he was representing the waqf institution. Other trustees, whose names were informed in the Change Report dated 27/03/2012 were not made parties to the proceeding. It is the contention of petitioner No. 2 that the decision on the Change Report submitted by his body dated 27/03/2012 was not taken when the Change Report was filed first in time. It is also the contention that while accepting the Change Report submitted by the other side, opportunity was not given to him though he was trustee in the past and principles of natural justice were not followed.

4. The Tribunal has held that the election of the present respondent was as per the order made by the Chief Officer and as per the procedure given in the scheme of the Trust and so the Chief Officer has not committed any error in accepting the Change Report.

5. This Court has gone through the reasoning given by the Tribunal and also some record which this court had directed to both sides to produce. The record includes the scheme registered with the office of the Assistant Registrar under Bombay Public Trust Act. It is not disputed that the waqf institution is now registered under the provisions of the Waqf Act, 1995 also and in the past petitioner No. 2 was shown as one of the trustees. It is not disputed that as per the scheme of Trust, the tenure of the trustees was 5 years

and as elections were not held, direction was given by the Chief Officer to hold elections and the District Waqf Officer was to supervise the said election. Even when there was such direction given by the Chief Officer, the previous trustees, as per the record, called meeting and in the meeting, according to them, new trustees were elected on 16/03/2012. When as per the scheme, Karimabee was to remain as trustee till her death, the names of 2 persons from her family were informed as trustees [Mustafa and Riyaz].

6. It is the grievance of the petitioner No. 2 that Mohammad [respondent No. 3] was bent upon to take control of the institution and for that in the past he had even filed Suit bearing 99/2007. It appears that the Suit was filed to prevent the trustees from alienating the property. This circumstance can not be considered against the respondent if the necessary procedure was followed for election and the Chief Officer has made enquiry before accepting the Change Report. Though it is the contention of the petitioner No. 2 that no such election was held, there is record to show that the procedure was followed as per the direction given by the Chief Officer and during the procedure, new members were made, election programme was declared, the applications of candidates were invited for the election and then the election was held. Only respondent Nos. 3 to 8 filed their nomination forms and so they were declared elected unopposed on 18/07/2012 as per the record. Respondent No. 3 Mohammad was elected as Chairman and Election Officer issued Certificate accordingly. Though it is the case of petitioner No. 2 that he learnt about the election only on 17/07/2012

when there was news in news-paper about election, this contention is not acceptable in view of the circumstance that the District Waqf Officer supervised the election and aforesaid procedure was followed. The record shows that notice was affixed in the premises of waqf institution [Jama Masjid] and record viz. taking photographs of this incident was created. Petitioner No. 2 preferred not to contest the election. It appears that he filed Objection Petition before the Chief Officer on 26/07/2012 to contend that no meeting and no election was held, but there is sufficient record to show that such election was held under supervision of the District Waqf Officer. In clause 11 of the scheme approved by the Assistant Charity Commissioner under Trust Act, the procedure is given when the elections are not held within the period prescribed in this clause. In view of this clause, power was exercised by the Chief Officer under the provisions of Waqf Act, 1995.

7. There is one more grievance of petitioner No. 2 that when there was no consent of Karimabee, her name was informed and she had not given thumb impression on the Change Report. There was no question of making application by Karimabee or contesting election by her. As per the scheme approved by the Assistant Charity Commissioner, she was to remain as trustee during her life time and as per the record of the trust office, her name is still there as a trustee though attempt is made to show that she had tendered resignation. As per the scheme, she was not expected to contest the election and so there is no force in the grievance made with regard to the information of the name of Karimabee as one of the trustees. She died after filing of the

report. It can not be said that the order made by the Chief Officer is illegal or improper. The Tribunal has not committed any mistake in dismissing the challenge made against the order of the Chief Officer in view of the aforesaid circumstances.

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

[T.V.NALAWADE, J.]