

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

50 CRA/70/2012

ATMARAM SONAJI GAIKWAD

VERSUS

**MASJID KANHERGAON NAKA
THR PRESIDENT AND ORS.**

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Mr. S.K.Adhikari, Advocate for Appellant.

Mr. P.S.Agrawal, Advocate for R – 1.

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CORAM : T.V.NALAWADE, J.

DATE : 1st AUGUST, 2016

ORDER :-

. Revision is filed by defendant No. 1 of Wakf Suit No. 76/2006 which was pending before the Wakf Tribunal, Aurangabad. The Suit was filed by the respondent – Masjid for relief of declaration and mandatory injunction. The decree is given and present applicant is directed to deliver vacant possession of the space which is in his possession to the Masjid. Heard both sides.

2. It is the case of the plaintiff – Masjid that it is registered institution and the Masjid is constructed on the space having size 80 x 36 feet and besides it, there is open space of Masjid and in some open space, 3 shops are constructed. It is contended that the property of Masjid is given house No. 324 in the record of Village Panchayat, Kanhergaon Naka [defendant No. 3].

3. The plaintiff has given the hand sketch map of the aforesaid house property to show the location of Masjid and the shops in possession of defendant Nos. 1 and 2. It is contended that middle portion in dilapidated condition is in possession of the plaintiff. It is contended that the portion marked as 'C' which is on southern side is in possession of defendant No. 2 [it is contended that this portion is surrendered by defendant No. 2 to the Masjid]. It is contended that initially the villagers were managing the affairs of Masjid and at that time defendant Nos. 1 and 2 were forcibly in possession of portion shown as 'A' and 'B'.

4. It is the case of the plaintiff that on 15/03/2005, application was given by Masjid to the Chief Officer of Wakf Board and request was made to take action u /s 54 of the

Wakf Act against the defendants and accordingly notices were given. It is contended that the defendants are trying to misuse the circumstance that in house property recorded in the record of Village Panchayat, the shops are not shown and Village Panchayat has joined hands with defendant Nos. 1 and 2. With these contentions, aforesaid reliefs were claimed.

5. Defendant No. 1/present applicant opposed the Suit by filing Written Statement. He admitted that there is such Masjid in existence but he denied that 3 shops belong to the Masjid. It is contended that there was only one shop belonging to Masjid and it was with defendant No. 2 as tenant. It is contended that other 2 shops collapsed in rainy season and there were only dilapidated structures.

6. It is the case of the defendant No. 1 that his shop is situated towards northern side of Masjid and his possession was regularized on 12/05/1981. It is contended that he is paying rent to the Village Panchayat.

7. It is the case of the defendant No. 1 that in the past the Suit was filed by Mutawalli bearing R.C.S. No.

171/1990. It is contended that the Suit was initially decreed but the District Court set aside the decision and so present Suit is not tenable.

8. Defendant No. 3 – Village Panchayat filed Written Statement. It contended that defendant No. 1 had made encroachment over the Govt. land and in the past notice was issued and then the encroachment was regularized by the Village Panchayat and it is receiving rent from defendant No. 1.

9. On the basis of aforesaid pleadings, issues were framed. Both sides gave evidence.

10. It is not disputed that in Govt. Gazette aforesaid house property is notified as wakf property belonging to Masjid of Kanhergaon Naka and said Gazette was published on 11/07/1974. The reasoning given shows that in the Gazette, the space covered by Masjid was shown as 38 x 80 feet, but 3 shops were shown as property of Masjid in notification. As per record and reasoning given, defendant No. 2 had surrendered the space which was with him to Masjid by accepting the claim of Masjid. The Tribunal

considered the assessment record prepared by Village Panchayat showing that land situated towards eastern side of Hingoli - Washim road belongs to Masjid and there is structure of Masjid on eastern side of the road. Admittedly, there is no record whatsoever to show that this space was given different number in the record of Village Panchayat or that the space covered by shops was shown to be belonging to the Govt. or Village Panchayat.

11. The Govt. Gazette was published in the year 1974 and after 1980, some record was created in favour of defendant No. 1. Even if it is presumed that Village Panchayat is accepting the rent from defendant No. 1, this circumstance would make much difference and it shows that his possession is permissive against Village Panchayat. At the relevant time, village committee was taking care of Masjid. In view of these circumstances, not much can be made out from the record of so called regularization of encroachment made by defendant No. 1.

12. Copy of Judgment of the previous Suit instituted by so called Mutawalli of Masjid is on record. Copy of the Judgment of the appellate Court shows that no authority was

given by the Wakf Board to file Suit and on that ground Appeal was allowed and the decision was set aside. Wakf Act, 1995 was in existence when the First Appeal was decided by the District Court and such dispute could have been decided by the Tribunal. In view of these circumstances, it can be said that present Wakf Tribunal has the jurisdiction to decide the Suit filed by Masjid.

13. The aforesaid discussion shows that there is no right with defendant No. 1 to keep possession of the disputed property. As Masjid is the owner on record and no other probability is created in favour of defendant No. 1 or Village Panchayat, this Court holds that Wakf Tribunal has not committed error in giving decree in favour of Masjid. Nothing is made out on which Revision can be admitted.

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

[T.V.NALAWADE, J.]