

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 39 OF 2016

Saleha Parveen w/o. Muzammil
Ahmed

....Applicant.

Versus

Farooq Ahmed s/o. Faiz Ahmed

....Respondent.

Mr. R. L. Chabda, Advocate for applicant.

CORAM : T.V. NALAWADE, J.
DATED : 10th March, 2016.

ORDER :

1. The proceeding is filed to challenge the decision of Civil Judge, Senior Division, Corporation Court, Aurangabad given in R.C.S. No. 134/2015. The application filed under section 9A of Civil Procedure Code by present applicant, original defendant is rejected by the Trial Court. Heard the learned counsel for applicant.

2. The suit is filed in respect of plot No. 62 (area of 30 x 17.5 = 525 Sq. Ft.) situated at Asifiya Colony, Aurangabad. It is the case of plaintiff that Masjid is owner of the suit property and the property was given on lease basis to his mother by Waqf Board in the year 1970. It is contended that since then, he has been in possession of the property. The mother of plaintiff died

on 9.1.2005. His father is also dead. It is contended that in the record of Local Body, his name was entered and he was paying rent in respect of the property to Waqf Board. It is his case that defendant is trying to make encroachment by using force over the property. It is contended that on 4.1.2016, defendant started making construction illegally. It is contended that the plaintiff approached the Corporation, but the Corporation did not take any action against the defendant and so the suit was required to be filed.

3. Defendant No. 1 filed say to the temporary injunction application and contended in the application that the Civil Court has no jurisdiction. Application was also moved to take decision on the point of jurisdiction in view of the provisions of Waqf Act, 1995. The defendant admitted that mother of plaintiff by name Rabiya was given property by the waqf institution. It is contended by the defendant that Rabiya has left behind two sons like Farookh Ahmed and Fahim Ahmed. It is contended that the total area of the property, which was with Rabiya, was around 1050 Sq. Ft. and during her lifetime, she had partitioned the property between her two sons. It is contended that property bearing 62/A was given to plaintiff and property No. 62/B was given to Fahim Ahmed. It is contended that the defendant has purchased the property described as 62/B from Fahim for

valuable consideration under sale deed dated 21.1.2016 and since then the defendant is in possession.

4. The defendant had filed application at Exh. 20 for framing preliminary issue on the point of jurisdiction. On this application, issue was framed and both the sides were heard. Civil Court has held that Civil Court has jurisdiction to decide the dispute between the parties to the suit.

5. The learned counsel for applicant took this Court through the provisions of section 83 (1), 84 and 85 of Waqf Act, 1995. He placed reliance on some reported cases like **2015 (12) CPSC 39 [Lal Shah Baba Dargah Trust Vs. Magnum Developers and Ors.]**, **2015 (3) Mh.L.J. 456 [Ishtaque Ali Sayyad Ali Vs. Maharashtra State Wakf Board & anr.]**, **2011 ALL SCR 1547 [Syed Mohideen & Anr. Vs. Ramanathpura Peria Mogallam Jamath & Ors.]** and **2010 ALL SCR 2690 [Board of Wakf, West Bengal & Anr. Vs. Anis Fatma Begum & Anr.]**.

6. Provision of section 85 of the Waqf Act, 1995 is as under :-

"85. Bar of jurisdiction of Civil Court, revenue Court and any other authority.- No suit or other legal proceeding shall lie in any Civil

Court, revenue Court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal."

This provision has two parts. The first part shows that to give jurisdiction to Waqf Tribunal, the dispute must be in respect of waqf property and the second part shows that such dispute needs to be necessarily covered by Waqf Act, 1995. In the present matter, the parties are not disputing that the disputed property is waqf property. However, relief claimed by the plaintiff against defendants is of different nature and it is as under :-

"The Defendant No.1 as well as the Defendant No. 2 be directed to demolish the illegal construction raised on the suit property described in para no. 1 of the Plaint by issuance of Mandatory Injunction and oblige."

7. To get the aforesaid relief, the plaintiff will be required to show that construction of defendant made over the suit property is made illegally, without taking permission of Corporation. Plaintiff also needs to show that he is in possession as successor of aforesaid lady and so, the defendants have no right to make construction. The issues which need to be decided can be decided by the Civil Court. The issue in respect of necessity of pulling down the construction by the Municipal Corporation cannot be decided by Waqf Tribunal and even without involvement of such issue in litigation, Corporation can

take proper steps. The dispute between plaintiff and Fahim needs to be decided by Civil Court and such dispute in which the parties are not disputing the nature of property and the rights of religious institution cannot be decided by the Waqf Tribunal. On this point, the Trial Court has placed reliance on the case reported as **AIR 2010 Supreme Court 2897 (1) [Ramnath Gobindra (Deceased by LRs.) Vs. Sarga Humayun Mirza]**. The decision on the aforesaid issue will not be touching the interest of the waqf institution. The plaintiff is claiming that he is leasee of waqf institution and in that capacity, he wants relief as against the defendants. In view of these circumstances, Civil Court has jurisdiction. In view of the provision of section 90 of Waqf Act, even in such case, the Court needs to take steps to see that Waqf Board is made party defendant in the suit and that needs to be done at the cost of plaintiff. With these observations, this Court passes following order.

O R D E R

The proceeding stands dismissed.

[T.V. NALAWADE, J.]

ssc/