

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

903 CRA NO. 193 OF 2013
WITH CA/3362/2016 IN CRA/193/2013

BHASKAR BABANRAO TEHARE AND ANOTHER
VERSUS
SAYYED MAZHARUDDIN SAYYED YAKUB AND ANOTHER

...
Advocate for Petitioners : Deshmukh Rajendra S.
Advocate for Respondent 1 : J.A. H. Deshmukh
Advocate for Respondent 2 : H.I. Pathan h/f. Mr. Sameer Patel
...

CORAM : T.V. NALAWADE, J.
DATED : 4th May, 2016.

ORDER :

1. The revision is filed to challenge the judgment and order of Waqf Suit No. 17/2009, which was pending before Waqf Tribunal, Aurangabad. The suit was filed by one Sayyed Mazharuddin, successor of original Mutawalli of waqf institution Dargah Hazrat Shekansaheb Masjid and Graveyard, Lakadmandi, Nawabpura, Aurangabad. He had contended that though succession was not granted in his favour, he was a person interested in waqf as provided in section 3 (k) of the Waqf Act, 1995. This religious institution is registered with Waqf Board under the old Waqf Act, 1954 and the suit property Survey No. 300, admeasuring 1 Acre 29 Gunta, situated at Harsul, Tahsil and District Aurangabad was notified as property of this institution in Government Gazette dated 17.5.1973 as per the provisions of

the said Act.

2. It was the case of plaintiff that the suit property was service Inam land of aforesaid Dargah and it was dedicated for the purpose of maintenance of aforesaid religious institution. It was contended that in all relevant record, this property was shown as Khidmatmash land, service Inam Land.

3. It was the case of plaintiff that defendant Nos. 1 and 2 have no concern whatsoever with the suit property and they are in possession of the property as trespassers. It is contended that they have made encroachment over the suit property by joining hands with revenue authority and they have even got mutated their names in revenue record and they want to grab the property of waqf. It was contended that the defendants were trying to make some construction and so, he had rushed to the Court. Declaration was claimed that the suit property is waqf property. Relief of possession was claimed and prayer was made to hand over the possession of the property to Waqf Board. Relief of permanent injunction was also claimed to prevent defendant Nos. 1 and 2 from making any construction and from changing the nature of the waqf property. The Chief Executive Officer of the Waqf Board was made defendant to represent the

Waqf Board.

4. Defendant Nos. 1 and 2 filed joint written statement. They denied that the property is waqf property. They denied that the plaintiff is a person interested in the waqf and they contended that he has no locus standi and the suit is not tenable. They contended that the aforesaid gazette, declaring that property is waqf, is not binding on them as they are not Muslims.

5. It is the case of defendants that plaintiff has concealed many facts like execution of general power of attorney by him and members of his family and also the execution of document like Hakkasodpatra, relinquishment deed, made by him. They contended that permission was obtained for sale of the land from the authority and as the permission is given, it needs to be presumed that it was not service Inam land, but it was Madatmash, personal Inam. They contended that they have already made some construction on the property.

6. Issues were framed on the basis of aforesaid pleadings. Waqf Board supported the case of plaintiff. Both the sides gave evidence. It appears that by making order on

temporary injunction application at Exh. 5 on 19.1.2010, the Tribunal had prevented defendant Nos. 1 and 2 from making any construction of any kind and from creating third party interest in the property.

7. On the basis of documentary evidence, the Tribunal has come to the conclusion that it is a waqf property. It is also held that the orders made by the authority like Deputy Collector of granting permission to alienate the property to defendants on the basis of application made by one Pandurang Ganorkar is void and the suit property could not have been transferred by Pandurang Ganorkar or by plaintiff and his relatives, who were apparently successors of original Mutawalli, Inamdars.

8. The learned counsel for petitioners mainly placed reliance on the order made by the Deputy Collector, authority, by which permission to alienate the property was granted in favour of Pandurang Ganorkar and also on order by which mutation was made in favour of defendants. The mutation was made on the basis of sale deed executed by power of attorney of Pandurang Ganorkar and by the same mutation, the names of Inamdars appearing in the revenue record were deleted.

9. The Tribunal has correctly held that the present dispute needs to be decided mainly on the basis of old Inam and revenue record. There is record like Namuna No. 9, copy of record of Inam at Exh. 79. This document shows that Survey No. 300, admeasuring 1 Acre 31 Gunta was shown as Khidmat Inam of Masjid. Three more properties were shown to be owned by this Masjid. This document shows that the entries are there from prior to the year 1309 Fasli (1900 A.D.). The name of persons like Bismilla were entered as Inamdar and the number of Sanad is also mentioned in the record. The previous year is mentioned as 1272 Fasli (1862 A.D.). There is Khasara Patrak of this land at Exh. 80 for the year 1953 and it shows that the suit land was shown as Khidmat Inam land and name of Bismilla Shah was shown in the occupancy column and name of one Husain was shown in possession column as tenant. There is another document at Exh. 81 showing that name of Bismilla Shah was shown as Inamdar of Khidmatmash Inam and the name of Husain was shown in possession column in the year 1955-56. Then there is 7/12 extract at Exh. 82 for the year starting from 1950-51 and it also shows that name of Bismilla Shah was shown in occupancy column. The names of other persons like Sayyad Kaisaroddin were also mentioned as successors of Bismilla Shah and it was shown as Khidmat Inam land of Devasthan. The name

of Husain Dilawar was entered in the possession column for the year 1960-61, 1961-62 and till the year 1966-67. The name of one Mohammad was entered in the crop cultivation column for the year 1967-68. From the year 1969-70, name of Pandurang Ganorkar was entered in crop cultivation column and entry in other rights column was made to show that Kaisaroddin had given land on lease basis to Pandurang Ganorkar. There is revenue record like 7/12 extract for the year 2002 to 2005 showing that name of Devasthan was shown as owner and in other rights column, the names of Bhaskar Thehare and Pramod Thehare, defendant Nos. 1 and 2 were entered and it is shown that they were in possession under lease document of 99 years.

10. The aforesaid record is very old mentioning the Sanad by which the land was given to the religious institution involved in the present matter as service Inam and Inamdars were predecessors of Bismilla Shah Murtulla Shah. For some time Husain Dilawar Shah was shown as tenant, but Pandurang Ganorkar was neither a tenant under Hyderabad Tenancy Act nor he was Inamdar of this land. Thus, there was no record at all to show that Pandurang Ganorkar was Inamdar of this land and he could have applied for abolition of Inam under Inam Abolition Act. It is already observed that Waqf Act, 1954 was applicable to

this area. Under the said Act, notification was issued in respect of the suit property in the year 1973 and copy of notification is at Exh. 78. Even prior to that year, there was the record of aforesaid nature which could not have been ignored by anybody.

11. Evidence is given by defendant Nos. 1 and 2 that present plaintiff and other relatives of plaintiff, who are successors of aforesaid Inamdar, Mutawalli mentioned in the record had given general power of attorney to one Dipak Rajpal Lahot on 27.4.2005. Execution of this document is not disputed by the plaintiff during his evidence. This document shows that it was represented by plaintiff and his relatives that they were in possession due to succession and they were giving the land in possession of Dipak Lahot to take necessary steps in respect of the land and for doing the work for them. They were giving 40% of this land to Dipak Rajpal Lahot for taking necessary steps. After taking steps, Dipak Rajpal Lahot was authorised to sell the property on behalf of these persons. They were not appointed as Mutawalli. No succession was granted in favour of any successor of previous Mutawalli. Further, even Mutawalli could not have made such transaction.

12. There is no specific pleading of defendant Nos. 1 and

2 as to whom the general power of attorney was given, as to who had executed relinquishment deed etc. and vague contentions are made in written statement at paragraph No. 3 in this regard. Even if the vagueness of this pleading is ignored and the evidence given by defendant Bhaskar is considered in favour of defendant Nos. 1 and 2, it can be said that the defendants are not using the so called authority given to Dipak Lahot by plaintiff and his relatives and defendant Nos. 1 and 2 want to use the document for transfer of the property executed by Pandurang Ganorkar. For that also, they have not produced the original documents like sale deed or so called lease deed of 1969. Relinquishment document allegedly used by plaintiff and his relatives is also not produced.

13. It was submitted by the learned counsel for petitioners, original defendant Nos. 1 and 2 that Pandurang Ganorkar was having a document of lease in his favour executed by the successors of original occupant, the predecessor of plaintiff and he was also Inamdar. It can be said that such weak attempt was made before the Tribunal also. It is already observed that Pandurang Ganorkar was never Inamdar. In 7/12 extract also, his possession was shown from the year 1969-70. In spite of these circumstances, under the provisions of Hyderabad

Inam Abolition Act, the authority, probably Deputy Collector for Collector granted permission to Pandurang Ganorkar to sell the property to defendant Nos. 1 and 2. Exh. 76, the said order shows that application was moved on 6.11.2000 and order was made on 17.11.2000. The order was made on the basis of 7/12 extracts produced which were starting from the year 1959 till the year 2000 and affidavit was filed of purchaser from defendant No. 1 and 2 in support of the contentions. This order does not show that the record of Inam, Inam register was perused. Only 7/12 extract was produced and on that also, there was entry of aforesaid nature that it was Khidmat Inam, service Inam of aforesaid religious institution. Not only surprisingly, but shockingly, the authority observed that such entry must have been made by mistake. When Ganorkar was not in possession in the year 1959 and he came in possession in 1969, in the order it is mentioned that he was in possession from 1959. It was observed that the order was being made u/s. 6 (1) of Hyderabad Inam Abolition Act. The said Act came in to force in the year 1954 and authority ought to have considered atleast the circumstance that from 1954 till the year 2000, Inam was not abolished. It is clear that due to the aforesaid entries in Inam register and also in revenue record, the Inam was not abolished. Such Inam could not have been abolished in view of section 2 of

the Hyderabad Inam Abolition Act. Further, Ganorkar was never Inamdar and on record, other Inamdars were shown in the revenue record, but conveniently this entry is ignored and the names of those persons mentioned in occupancy column were ignored. The case put up before the authority that the land was given to Bismilla Shah Murtulla Shah for cultivation, was accepted when their names were in occupancy column as Inamdars and not in crop cultivation column and they were not shown as tenants of the land. On the contrary, land was shown to be given on lease basis to defendant Nos. 1 and 2. These circumstances are really shocking and they show as to how authorities joined hands with the persons having money and influence and as to how the property of religious institution which needs to be used as per terms of Muntakhab was tried to be grabbed.

14. It can be said that after obtaining order in the year 2000, some attempt was made by the present defendants and then the record like general power of attorney was created in the year 2005 in favour of Dipak Lahot. It can be said that to make money, the plaintiff and his relatives gave their signatures on the documents, which were placed before them and they did take money. It can be said that these acts were done only to see

that Mutawallis do not come in the way of defendant Nos. 1 and 2. The property was already notified as waqf property in the year 1973. The predecessors of plaintiff had not applied for abolition of Inam and they were never disputing nature of Inam that it was service Inam. As it was waqf property, in view of even the provisions of the Act of 1954, there was no power to Mutawalli to transfer the waqf property to anybody including Dipak Lahot. In any case, defendant Nos. 1 and 2 have not produced the documents executed by Dilpak Lahot or other documents directly executed by plaintiff and his relatives in favour of defendant Nos. 1 and 2.

15. It is not disputed that in the year 1973 the property was notified as waqf property. In view of the provisions of Waqf Act, 1954, which are discussed by the Apex Court in the case reported as **AIR 1979 SC 289 [The Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan]** and the ratio was laid down, it can be said that if anybody was aggrieved by the said notification, it was necessary for the said party to challenge the notification in official gazette by filing the suit within prescribed period. The period prescribed is one year under section 6 (1). The learned counsel for petitioners submits that the defendants are non Muslims and so, this limitation is not applicable as

against them. In any case, the aforesaid record and circumstances show that they were aware of the nature of property, but they preferred not to challenge the notification and they created the record of aforesaid nature. Further, when defendant Nos. 1 and 2 are claiming through Mutawallis, who were Muslims, as per the record, it is not open to defendant Nos. 1 and 2 to say that the provision of section 6 (1) of the Waqf Act, 1954 was not applicable as against them. This notification is binding on them and for this reason also, no other option was open before the Waqf Tribunal than to hold that it is waqf property and in view of the provisions of Waqf Act, 1954 like section 36, the transfer of such property in breach of provisions of Waqf Act was void. The transactions on which reliance is placed by defendant Nos. 1 and 2 are void and no title has passed to them. The Tribunal has rightly held that in view of the provisions of Inam Abolition Act, 1950, no order could have been passed under the said Act in respect of the present property, waqf property. The said authority has no jurisdiction to make order and the power is with the Tribunal to hold that such order cannot be recognized in law.

16. It appears that present petitioners, original defendant Nos. 1 and 2 tried to create complications even after

making of the order of temporary injunction of aforesaid nature by making some construction. It is unfortunate that the persons like defendant Nos. 1 and 2 are unnecessarily trying to create tension in the society, between different communities for making some gain. Such persons need to be dealt with severely and it needs to be made clear to them that they cannot make gain of any kind by creating such complications. Further, some action needs to be taken against everybody including plaintiff and his relatives for creating false record. It is nothing, but virtually fraud and it can be said that the revenue authority had joined hands as orders were made immediately without making any inquiry and without ascertaining the real nature of property, when the record was with the authority who made the order. Such actions cannot be protected by holding that they are orders made by the public servant and action, even departmental, needs to be taken against such persons.

17. In view of the peculiar facts and circumstances of the case and as by making false contentions and using some false record, attempt is made to grab the property of waqf, it is desirable for the Waqf Board to take some action even like giving of the report to police for making investigation and filing case in respect of the incident of fraud and creation of false record. This

Court expects that such action will be taken by Waqf Board.

18. The Tribunal has jurisdiction to decide aforesaid points. This Court sees no reason to interfere in the decision given by the Tribunal.

19. In the result, revision is dismissed. Civil Application is disposed of.

20. The learned counsel for petitioners submits that he wants to challenge the decision of this Court. He submits that there is some construction made. The time is given to vacate the premises and hand over the possession to Waqf Board till 11.7.2016. Though time is given till 11.7.2016, Waqf Board is to see and take care that no further construction is made and if any construction and development is made, with the help of Collector steps are to be taken.

[T.V. NALAWADE, J.]

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