

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

CIVIL REVISION APPLICATION NO. 138 OF 2016

M/s Prafulla Investments Pvt. Ltd.,
through Shri Dilip Shantaram Dahanukar,
authorised vide Resolution dated
24-06-2010, Resident of village Sherawalli,
Tal. Vasai, District Thane, Now Palghar .. Applicant

versus

01. Chief Executive Officer,
Maharashtra State Board of Wakfs,
Panchakki, Aurangabad
02. Madarsa Faukatiya Trust,
Shakar Mohala Masjid, Sopara (W),
Tq. Vasai Dist. Thane
through Shoeb Ismail Chawre
03. Shoeb Ismail Chawre,
Age 40 years, occupation business,
R/o At Navayat Nagar, Nalasopara,
Tq. Vasai, Dist. Thane
04. Najeeb Mustafa Chawre,
Age 44 years, occupation : Business,
R/o at Navayat Nagar, Nalasopara,
Tq. Vasai, Dist. Thane
05. Mohammed Ali Ritmore,
Age 48 years, occupation : Business,
R/o At Navayat Nagar, Nalasopara,
Tq. Vasai, District Thane .. Respondents

WITH

CIVIL REVISION APPLICATION NO. 139 OF 2016

Shri Pankaj Kishor Shah,
Resident of village Sherawalli,
Tq. Vasai, District Thane,
Now Palghar .. Applicant

versus

01. Chief Executive Officer,
Maharashtra State Board of Wakfs,
Panchakki, Aurangabad
 02. Madarsa Faukatiya Trust,
through Shakar Mohala Masjid,
Sopara (W), Tq. Vasai Dist. Thane
through Shoeb Ismail Chawre
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Age 40 years, occupation business,
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R/o at Navayat Nagar, Nalasopara,
Tq. Vasai, Dist. Thane
 05. Mohammed Ali Ritmore,
Age 48 years, occupation : Business,
R/o At Navayat Nagar, Nalasopara,
Tq. Vasai, District Thane .. Respondents
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- Mr. Faij J. Khan, Advocate for applicants
Mr. M. A. Khan, Advocate for respondents no. 3 to 5
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- CORAM : SUNIL P. DESHMUKH, J.
DATE : 28th September, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties by consent finally.
2. Applicants in both the civil revision applications are aggrieved by common order passed by the District Judge /

Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad, rejecting Wakf Application No. 87 of 2010 [filed by applicant in present civil revision application no. 138 of 2016], along with other companion applications filed under section 83 (2) of the Maharashtra State Wakf Act, 1995 ("The Wakf Act") challenging the order dated 21-05-2010 passed by the Chief Executive Officer, Maharashtra State Board of Waqfs, Aurangabad allowing application bearing case No. 54/100/2009 moved by present respondent no. 2 seeking removal of encroachment by applicant in present civil revision application no. 139 of 2016 and others on wakf properties mentioned in said order dated 21-05-2010.

3. Factual position not largely in dispute is that the applicants stress their right of title to the lands in question as have been referred to in the order impugned through a person who had claimed to have derived the same under some tenancy proceedings. It further transpires that the lands in question were recorded as trust properties since at least 1930 onwards. Said lands, in the proceedings under the Wakf Act, 1995 particularly under section 4, have been considered to be wakf properties referring to that the concerned lands have been recorded as trust properties under

the erstwhile Bombay Public Trusts Act and subsequently have been duly registered as wakf properties. This particular aspect has been referred to in the record as had been adduced before the authorities. Upon such background, the tenancy proceedings and the issuance of declaration pursuant to Tenancy Act, have been considered not to have efficacy and affect the title of the trust over the concerned properties.

4. The Chief Executive Officer – respondent no. 1 herein under order dated 21-05-2010, under section 54 of the Wakf Act, after hearing the parties, had come to a definitive conclusion with reference to the record and provisions of law that the properties concerned are the wakf properties and further that the tenancy proceedings and the certificates issued in the same are of little consequence in the face of exemption being enjoyed by the trust properties under section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948. He as such had passed order, directing eviction of the applicants.

5. It appears that there were around fourteen such orders passed in respect of fourteen different persons / entities. All of them had approached the Wakf Tribunal by filing

applications under section 83 of the Wakf Act challenging the orders passed by the present respondent no.1-Chief Executive Officer, Wakf Board. Said applications have been dismissed by the Tribunal under its order dated 29-04-2016 impugned in present civil revision applications.

6. Learned counsel for the applicants fairly refers to that from fourteen applicants before the wakf tribunal, Aurangabad, twelve had approached the principal seat of high court in Mumbai under civil revision applications no. 425 of 2016 and 426 of 2016 whereas two applicants have lodged revision applications in Aurangabad bench. Civil revision applications no. 425 and 426 of 2016 have been decided by a common judgment rendered by honourable single judge (Smt. R. P. SondurBaldota, J.) under order dated 26-07-2016.

7. Learned counsel for the applicants purports to contend that although there may be argument on the other side that aforesaid two civil revision applications which had been preferred in the principal seat at Mumbai have been decided against the interest of the applicants, yet, this court may have a different view point.

8. Learned counsel for respondents no. 3 to 5, however, contends that the factual situation not being in dispute and the present applicants not being dissimilarly situated and particularly looking at that the wakf tribunal has passed an elaborate order taking into account all the aspects involved in the matter, the findings recorded by the tribunal stand endorsed by order dated 26-07-2016 passed by honourable single judge at principal seat of high court in two civil revision applications referred to hereinbefore and submits, although it is being sought to be contended on behalf of the applicants that different view be taken, yet looking at the factual position and legal exposition the situation does not call for any different treatment being meted out to the present applicants.

9. Learned counsel for the applicants although is reluctant to concede to the factual position is not in a position to overcome the effect of the concerned properties being the trust/wakf properties all along and further that the same being exempted from operation of the Tenancy Act. He has not been in a position, as to why and how, the decision dated 26-07-2016 rendered by honourable single judge at principal seat at Mumbai referred to above, is liable to be

distinguished, and reasons given thereunder would not apply to the present applicants.

10. As such, it does not appear to be a case that indulgence be given to the request being made by learned counsel for the applicants, in view of emerging factual and legal position that the properties in question are the trust properties and being exempted from the operation of tenancy law as considered in the decision dated 26-07-2016 in civil revision applications no. 425 of 2016 and 426 of 2016 delivered by honourable single judge (Smt. SondurBaldota, J.).

11. Having regard to aforesaid, I am not inclined to interfere with the order passed by the tribunal.

12. Civil revision applications, as such, stand dismissed. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd