

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

914 CA/13281/2014 IN RAST/269/2014 WITH CA/13279/2014 IN
RAST/269/2014 IN CRA/200/2004

NARAYAN APPASAHEB CHALGE
VERSUS
GULAB MEHBOOB ABDUL KHALIQ AND ORS

...
Advocate for applicants : S.P. Shah
Advocate for Respondent 1 : Shaikh Mujtaba Gulam Mustafa
...

CORAM : T.V. NALAWADE, J.
DATED : 15th July, 2016.

ORDER :

1. Civil Application No. 13279/2014 is filed for condonation of delay of 186 days caused in filing review application. In view of the contents of the application and submissions made, this Court holds that sufficient cause is shown. The application is allowed. Delay is condoned.

2. Civil Application No. 13281/2014 is filed by one Narayan Chalge for review of the judgment and order delivered by this Court in CRA No. 200/2004 (decided by other Hon'ble Judge). Both the sides are heard.

3. The aforesaid Civil Revision Application was filed by original plaintiff of Waqf Suit No. 33/2003, which was pending

before the Waqf Tribunal, Aurangabad. The suit was filed in respect of land Survey No. 326/B situated at Jalna. The plaintiff had contended that he was temporary Mutawalli appointed by Waqf Board and in that capacity, he was entitled to recover the property of waqf and the suit property was a waqf property. He had contended that the property belongs to Jama Masjid, Jalna. One Abdul Sattar was defendant No. 1 in the said suit. Waqf Board was also party to the suit in addition to Nanbai Misaria. The suit was dismissed by Waqf Tribunal. Waqf Tribunal considered one Muntakhab. In Muntakhab, at one place, the property was described as Madatmash. In in same Muntakhab, it was mentioned that the property was given for rendering services to one Dargah and for Maujani.

4. In revision, the aforesaid decision was challenged by the original plaintiff. The copy of oral judgment delivered by the Hon'ble Judge shows that notices of the proceeding were duly served on respondent like Abdul Sattar. The revision was filed in the year 2004. This Court (Other Hon'ble Judge) considered the Muntakhab and other circumstance like Government Gazette of 1973 in which the property was notified as waqf property. The record in respect of appointment of plaintiff as temporary Mutawalli was also considered and then this Court held that the

description given in Muntakhab was sufficient to infer that it was Service Inam Land, it is a waqf.

5. Present applicant has contended that in the year 2007, he purchased the property from aforesaid Abdul Sattar under registered sale deed for consideration of Rs. 15.9 lakh. It was contended and submitted for the present applicant that Abdul Sattar died in the year 2011, but this circumstance was not brought to the notice of this Court when the matter was decided by this Court on 13.9.2013 and so, the decision of the revision is not binding on the present applicant, as it was decision against dead person, the vendor of the applicant. The learned counsel submitted that there was apparent collusion and there is circumstance to show that other revision filed by the same plaintiff was subsequently withdrawn and the matter was compromised with defendants of that suit. In respect of this submission, the learned counsel for original plaintiff submitted that the matter was compromised as the defendants admitted the nature of property as waqf property and handed over possession of the property to plaintiff. He produced copy of one order made by this Court (Other Hon'ble Judge) dated 23.9.2010 and it is taken on record.

6. The learned counsel for applicant submitted that there is arguable case to him and he can show that the property was declared as evacuee property and so, Abdul Sattar was in a position to transfer the ownership of the property to the present applicant. On this contention, the learned counsel for original plaintiff submitted that this point is already dealt with by this Court in C.R.A. No. 128/2008 and the same Muntakhab was under consideration of this Court. A copy of the decision given by this Court in C.R.A. No. 128/2008 is produced on the record and it shows that the point which applicant wants to raise was considered and this Court held that the property could not have been allotted under the Evacuee Property Act in view of the provisions of section 11 of the said Act as it was waqf. The said decision was given by this Court on 30.8.2015.

7. The learned counsel for present applicant makes a statement that this decision given in C.R.A. No. 128/2008 is stayed by Hon'ble Apex Court. The aforesaid circumstances show that Abdul Stattar was duly served with the notice of the revision proceeding and he preferred to remain away from the Court and he sold the property to the present applicant in the year 2007. In view of the aforesaid voluminous record, nothing can be achieved by reopening the matter.

8. The learned counsel for applicant placed reliance on the cases reported as **(2000) 3 Supreme Court Cases 581 [United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors.] and (2003) 8 Supreme Court Cases 319 [Ram Chandra Singh Vs. Savitri Devi and Ors.]**. The learned counsel submitted that fraud was played on the court and only due to fraud, the decision in revision was given in favour of plaintiff by this Court. The facts and circumstances of each and every cases are always different. This Court had taken care to see that initial notice of revision was served on respondent Abdul Sattar. The report shows that he refused to accept the notice. Then for final hearing also notice was again issued and it appears that the said notice was posted on the doors of residential place of Abdul Sattar. This Court decided the matter on the basis of record which is already quoted and it cannot be said that there is something new or something which is missed by this Court which can be used for considering the case of the applicant. It is clear that after having knowledge of the nature of property, in view of the aforesaid record which includes the notification in official gazette, the present applicant took the risk and made the transaction. This Court has already considered the record in respect of the property and some relevant incidents.

Nothing can be achieved by reviewing the decision given by the other Hon'ble Judge. So, the application stands rejected.

[T.V. NALAWADE, J.]

SSC/