

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

911 CIVIL REVISION APPLICATION NO. 255 OF 2013

SURYABHAN TUKARAM BHAWAR (DIED) LRS SUKHDEO
SURYABHANBHAWAR AND ORS

VERSUS

THE CHIEF EXECUTIVE OFFICER, MAHARASHTRA STATE BOARD OF
WAKFS AND ORS

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Advocate for Applicants : Shri V. B. Garud
Advocate for Respondent No.1 : Mr. Sameer S. Patel
Advocate for respondent No.5: Mrs. Fatima Kazi h/for
Mr. S.S. Kazi

CORAM : T. V. NALWADE, J

DATE : 26th April, 2016

O R D E R:

1. The revision is filed to challenge the judgment and order of Wakf Suit No.74/2006 which was pending before the Wakf Tribunal, Aurangabad. The suit was filed by the present applicants. Both the sides are heard.

2. The suit was filed in respect of the land Survey No. 26, Gat No. 126, admeasuring 8 acres 39 gunthas situated at village Shekta, Ta. Paithan Dist. Aurangabad. It is the case of plaintiffs that the suit property was taken for cultivation on Batai basis by their predecessor Tukaram in or about the year 1950 and since then Tukaram was in possession. After

Tukaram, the plaintiffs are in possession of the suit land. It is contended that Tukaram was declared as protected tenant under provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950 and so under the provisions of section 37 of the same Act, Tukaram and after him, plaintiffs have become owners of the suit property.

3. It is the case of plaintiffs that their possession over the suit property is of more than 60 years and it is continuous and as owners. It is contended that during the lifetime of Shaikh Husain who had given the land for cultivation to Tukaram, the consideration was paid to him. It is contended that Shaikh Husain died in the year 1970 and defendants have no concern whatsoever with the suit land. It is contended that by joining hands with the revenue authority, the defendants have entered the name of Masjid in the revenue record and the land is shown as Inam land. It is contended that to recover the possession illegally, proceeding was started by defendants under section 54 of the wakf Act, 1995. It is contended that proper procedure was not followed by the Chief Officer and order of removal of encroachment was made by the Chief Officer. With these contentions,

the plaintiffs had prayed for declaration that they are the owners of the suit property and they had prayed for declaration that the order made by the Chief officer is null and void. Relief of injunction was also claimed.

4. Defendant No.1 Chief Officer filed written statement and contended that the proceeding was decided by him on the basis of record and the suit property is wakf property. He contended that in the record, the property was mentioned as service Inam land and even in the Government gazette, the property was notified as wakf property. The Chief Officer contended that provisions of the Hyderabad Inam Abolition Act and also the Hyderabad Tenancy Act were not applicable to the suit land as it is a wakf property and that is why no proceeding was started under the Tenancy Act or Inam Abolition Act and no certificate of ownership was given to the plaintiffs. It is contended that the suit property needs to be used for rendering service to the Masjid and as the possession of the plaintiff is of encroacher, the order was made.

5. Defendant Nos. 2, 3, 5 and 6 filed written statement. They contended that Shaikh Husain was not the owner of the land and they contended that one Syed

Husain Syed Amin was original Inamdar on record and he died in the year 1991. They contended that Syed Husain died leaving behind him two sons by name Syed Gani (Def.No. 6) and Syed Nabi (he is not made party to the suit). It is contended that defendant No.2 is real brother of Syed Husain and it can be said that a mistake was committed by mentioning the name of their predecessor as Shaikh Husain. They contended that the predecessors could not have transferred the land to any body and no tenancy rights could have been created as it is the service Inam land, wakf property. It is contended that they are the successors of original Inamdar and such succession was granted under the Hyderabad Atiyat Enquiries Act in their favour. It is contended that somewhere in the year 1991-92, the plaintiffs made encroachment over the suit property and then they filed suit in civil court to protect the possession. It is contended that the plaintiffs are prolonging the decision of the said suit when the civil court has no jurisdiction to decide the said suit. It is contended that the possession needs to be taken as the income from the land needed to be used for rendering services to the Masjid.

6. On the basis of aforesaid pleadings, issues were

framed. Both the sides gave evidence.

7. There is oral evidence but revenue record needs to be given importance in view of the rival contentions. At Exh. 82, there is a copy of entry of register prepared under the Tenancy Act and it shows that survey No. 26 was Inam land given for Masjid and one Tukaram was in possession on Batai basis. He was expected to give half crop share to one Shaikh Husain. Shaikh Husain was described as Pattedar. At Exh. 84, there is copy of mutation showing that name of Tukaram was then entered as a tenant but the name of Masjid was still there. There is a record like 7/12 extract for the year 1958-59 onwards and it shows that in other rights, name of Suryabhan s/o Tukaram was entered and Suryabhan was shown in possession. The name of Masjid was continued and the name of Shaikh Husain was then removed from the occupancy column. From 1990-91 onwards, in the revenue record, Exh. 81, it was specifically mentioned that land was belonging to Masjid and its transfer was not permissible. Names of Suryabhan Tukaram and Shripati Tukaram were however continued in crop cultivation column.

8. On the basis of aforesaid record, it can be said

that there is probability that the person, whose name was shown in occupancy column and who was predecessor in title of defendant Nos. 2 and 3 of the suit, had probably given the land for cultivation to Tukaram on Batai basis. His name was not correctly described but subsequent record of mutation is sufficient to infer that these defendants are the successors of the said man. The case of the defendants that the name mentioned was of fictitious person is also not acceptable as they had applied for entering the name after the death of the original occupant, Inamdar. There is no other person claiming any interest or right as Inamdar of this land.

9. The Wakf Act, 1954 was made applicable to this area and it appears that during survey, the nature of this property was ascertained and it was declared as a wakf property. In the revenue record, from prior to 1954, the property was described as service Inam land and Inamdar, Mutawalli are not disputing such nature of the property. In view of this circumstance, the benefit of the provisions of Hyderabad Tenancy Act could not have been given to the successors of Tukaram and they could not have been declared as deemed purchasers. Similarly, the benefit of the provisions of

the Inam Abolition Act could not have been given to the Inamdar and due to this circumstance also, Tukaram or his successors could not have claimed rights as tenant in respect of the property. The relevant provisions like provisions of section 2 of the Hyderabad Inam Abolition Act and Section 102A of the Hyderabad Tenancy Act can be referred in this regard. The record also shows that due to nature of the property, Inam was never abolished and occupancy rights were not granted in favour of aforesaid persons whose names were shown in column of occupancy rights. Similarly, the procedure as required by the Hyderabad Tenancy Act, was not followed and no rights were given to the persons like Tukaram or his successors whose names were shown as tenants of the land. Admittedly under the provisions of the new Act of 1995 also, the property came to be shown as Wakf property.

10. The learned counsel for the applicants placed reliance on the decision of Apex Court in the case of **The Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and others, reported in AIR 1979 SC 289.** He submitted that as the property was in possession of Tukaram, it was not necessary for Tukaram to file suit under the provisions of section 6 of the Wakf Act, 1954

within one year to challenge the inclusion of the property in the list of wakf property prepared under the Act. The proposition made by the Apex Court cannot be disputed but the nature ought to have been challenged by the so called Inamdars to whom the lands were given. In any case, such entry was there in the revenue record and Tukaram and his successors never challenged the description of the property given in revenue record as Inam of Class III, Service Inam. Due to this circumstance, they could not have become owner under the provisions of the Hyderabad Tenancy Act.

11. The record and submissions made show that Tukaram and his successors did not give crop share which could have been used for rendering services to Masjid, however they are not disputing that their possession was permissible in nature. Now, they are claiming the right of ownership. As the property is wakf property, even the lease of period for more than three years could not have been made in favour of plaintiffs and after expiry of such period, the persons in possession need to be treated as trespassers or encroachers. In view of the nature of property, the rights of lessee are not inheritable and for that reason also, the plaintiffs can be treated as

encroachers.

12. In view of these circumstances, there was no other alternative before the Chief Officer to make order under section 54 of the Wakf Act, 1995. The Wakf Tribunal has considered all the aforesaid record and has held that the plaintiffs cannot be treated as owners of the property and they are the encroachers. The Tribunal has jurisdiction to decide the aforesaid points raised by the applicants. No error can be found in the decision of the Wakf Tribunal and also in the order made by the Chief Officer. In the result, the revision stands dismissed.

(T. V. NALAWADE, J.)

JPC