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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.148 OF 2004
WITH
CIVIL APPLICATION NO.6 OF 2005**

Abdul Gaffar Abdul Qadir and Ors. ... Petitioners

Versus

Superintendent, Public
Trust Registration Office and Ors. ... Respondents

Mr. A.N. Mulla for the Petitioners.
Mr. A.B. Vagyani, Government Pleader a/w Mr. Manish Pabale, AGP for
the Respondent – State.
Ms. Heena Rathore i/by Mr. R.M. Momin for the Respondent No.2.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 20th OCTOBER, 2016

ORAL JUDGMENT (Per A.S.Oka, J.)

1 Heard the learned counsel appearing for the Petitioners and the learned Government Pleader for the Respondents. This Petition on final hearing board was adjourned till today for further hearing. There are three prayers in this PIL. The first prayer is as regards show cause notice, a copy of which is annexed at Exhibit – A. The said show cause notice records that in view of the provisions of the Wakf Act, 1995 (for short “the said Act of 1995”) the entire record and proceedings of Wakfs

under the Bombay Public Trusts Act, 1950 will have to be transferred to the Maharashtra State Board of Wakf (for short “the Board”) established under the said Act of 1995. Therefore, a show cause notice was issued to a trust of which the Petitioners are claiming to be the Trustees to show cause as to why the records of their Trust should not be transferred to the Board. It is stated that such notices have been issued to several Wakfs Registrars under the Bombay Public Trusts Act, 1950. As far as this issue of transfer is concerned, it is sub judice before the Apex Court. Hence, we are not dealing with the said prayer.

2 Prayer (c) in this Petition is for directing the Superintendent, Public Trust Registration Office to hold an inquiry into the nature and establishment of Public Trusts created by the Muslims as per Bombay Public Trusts Act, 1950 and the Wakfs created as per the Muslim Personal Law. Even this issue cannot be gone into in the light of pending proceedings before the Apex Court.

3 What survives for consideration is the prayer clause (b), which reads thus :-

“(b) That, this Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction under Article-226 of the Constitution of India, directing the Respondent No.3 to

constitute Wakf Tribunal for the determination of dispute questions or other matters relating a Wakf of wakf property under the Acts and define the local limits and jurisdiction under this Act or each of such Tribunals as per the necessity and requirement of each and every district of Maharashtra.”

4 On this aspect, we may note that an order dated 20th February, 2015 was passed by this Court wherein a suggestion was incorporated to give powers of the Tribunal constituted in accordance with Sub-section (1) of Section 83 of the said Act of 1995 to the District Judges. At that stage, the amendment made to Sub-Section (4) of Section 83 of the said Act of 1995 by Act No.27 of 2013 was not brought to the notice of this Court.

5 Section 83 of the said Act of 1995 reads thus :-

“83. Constitution of Tribunals, etc.- (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;]

(2) Any mutawalli, person interested in a Waqf or any other person aggrieved by an order made under this Act, or rules

made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Waqf.

- (3) Where any application made under sub-section (1) relates to any Waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction of the mutawalli or any one of the mutawallis of the Waqf actually and voluntarily resides, carries on business or personally works for gain, and where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the Waqf or any other person interested in the Waqf or the Waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such Waqf or Waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the tribunal is of opinion that it

is necessary in the interests of justice to deal with the application afresh.

(4) [Every Tribunal shall consist of —

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) [The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the code of Civil Procedure, 1908(5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

- (7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court.
- (8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
- (9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such order as it may think fit.”

6 In view of the amendment made by Act No.27 of 2013, the Tribunal constituted under Sub-Section (1) of Section 83 consists of three Members as provided in amended Sub-Section (4) of Section 83.

7 There is an affidavit dated 18th March, 2015 filed by Shri Ainul C. Attar, Joint Secretary, Minorities Development Department of the State Government. The affidavit discloses that there were two

Tribunals established at Nagpur and Aurangabad. Reliance was placed in the said affidavit on the decision of the Kerala High Court dated 8th July, 2014. There is an additional affidavit filed by Shri Sandesh C. Tadvi, Deputy Secretary, Minorities Development Department of the Government of Maharashtra which is dated 17th October, 2016. In the said affidavit, reliance is placed on the notification dated 3rd August, 2016 relating to the reconstitution of the Tribunal under Sub-Section (1) of Section 83 in terms of amended Sub-section (4) of Section 83. The notification provides for creating a separate establishment for the Tribunal established at Aurangabad by appointing various staff members such as Stenographers, Assistant Superintendent, Senior Clerk, Accountant, Clerk-cum-typist, Drivers, Bailiffs, etc. The Government Resolution provides for appointment of 3 Stenographers, 3 Drivers, 5 Peons, 2 Senior Clerks. The pay scales admissible to the posts have been also mentioned. In the said affidavit, reliance is placed on the Maharashtra State Wakf Tribunal (Appointment and Condition of Service of Chairman and Member) Rules, 2015 which have been gazetted on 29th December, 2015. The learned Government Pleader on instructions states that the Tribunal will be re-constituted in terms of Sub-Section (4) of Section 83 within a period of six months from today. To the said affidavit, a statement of cases instituted, disposed of and pending before the Wakf Tribunal has been annexed. It shows that there

are total 1453 pending cases. There are 362 cases arising out of Aurangabad District, 216 cases arising out of Mumbai District, 88 cases arising out of Ahmednagar District and 86 cases arising out of Pune District. On page 3 of the said affidavit, the State Government has stated thus :-

“After formation of the tri member Tribunal, the State Government will give necessary directions to the Tribunal to hold their sittings for hearing of the matters Division wise and or District wise as per pendency of the cases. The said sittings would be preferably taken Quarterly for speedy disposal of the cases.”

(Underline supplied)

8 The learned counsel appearing for the Petitioners submits that constituting a Tribunal under Sub-Section (1) of Section 83 of the said Act of 1995 only at Aurangabad will virtually amount to denial of remedy as poor people who are associated with Wakfs cannot afford luxury of travelling to Aurangabad for attending to their cases. He urged that if the Tribunals are not established in each District, it will amount to violation of fundamental rights of the Petitioners. Inviting our attention to Sub-Section (1) of Section 83, he submits that the same contemplates establishment of multiple Tribunals. He submitted that the figures in the table attached to the affidavit dated 17th October, 2016 may not be fully correct. The learned counsel appearing for the Petitioners further urged that multiple Tribunals will have to be

established in all Districts as indicated in the order of this Court dated 20th February, 2015 and unless multiple Tribunals are constituted, the very object of providing the Tribunals will be frustrated.

9 We have given careful consideration to the submissions. It is true that under Sub-Section (1) of Section 83, a power is conferred on the State Government to constitute as many Tribunals as it thinks fit. As pointed out earlier, the table annexed to the affidavit dated 17th October, 2016 of Shri Sandesh C. Tadvil records that there are total 1453 cases pending before the Wakf Tribunal in the entire State. The maximum number of cases (362) are pending pertaining to Aurangabad District and 216 cases pertaining to Mumbai District. There are 120 cases pertaining to Beed District. The cases pertaining to all the other Districts are less than 100.

10 In ideal circumstances, the learned counsel appearing for the Petitioners would have been justified in suggesting establishment of a Tribunal at each District place. As seen from the notification dated 3rd August, 2016 apart from three Members of the Tribunal, each Tribunal will require staff of 17. As of today, it is not possible to dispute correctness of the figures set out which are part of Exhibit 1 to the affidavit dated 17th October, 2016. Considering those figures,

establishing Tribunals at each District will not be viable at all. As per the present norms fixed for the State judiciary, each Court should have at least 500 cases. However, inconvenience to the litigants can be minimized by taking recourse to what is suggested in the affidavit of Shri Sandesh C. Tadvī which is quoted above in paragraph 7. In case of those Districts where there is a pendency of more than 100 cases, camps can be held of the Tribunal at the District headquarters. The Tribunal which will be established at Aurangabad will have jurisdiction extending to the entire State. Therefore, it will be within the four corners of law if the Tribunal holds camps either at District headquarters or at Divisional headquarters of each Revenue Division. Whenever the sittings of the Tribunal are held at Divisional headquarters, the cases of the Districts falling within that particular division can be heard by the Tribunal.

11 If in future, the filing of cases and pendency substantially increases, the State Government will have to take steps to constitute additional Tribunals by exercising powers under Sub-Section (1) of Section 83.

12 Though Sub-Section (4) of Section 83 was amended by Act No.27 of 2013, even as of today, the Tribunal has not been constituted

by the State Government. The State Government will have to constitute the Tribunal by appointing the staff as provided in the Government Resolution dated 3rd August, 2016 and by providing all the infrastructure to the Tribunal at Aurangabad.

13 Needless to add that whenever the Tribunal holds camps either at the District headquarters or at the Divisional headquarters, all facilities will have to be extended to the Members of the Tribunal and members of the staff such as travelling allowance, daily allowance. Needless to add that appropriate accommodation will have to be provided to the Members of the Tribunal in Government guest houses whenever camps are held in District places or in places of Divisional headquarters.

14 We propose to grant time to the State Government till the end of February, 2017 to constitute the Tribunal at Aurangabad by appointing three Members and 17 staff members as provided in the aforesaid Government Resolution dated 3rd August, 2016. The State Government will have to ensure that the entire infrastructure is provided on or before 28th February, 2017 so that the Tribunal starts effectively functioning from 1st March, 2017.

15 Hence, we dispose of the Petition by passing the following
order :-

ORDER

- (i) We direct the State Government to establish the Tribunal under Sub-Section (1) of Section 83 of the said Act of 1995 at Aurangabad by making appointment of the 3 Members and by appointing 17 other staff members on or before the end of February, 2017;
- (ii) We direct the State Government to make available all necessary infrastructure for the said Tribunal at Aurangabad considering the fact that a Judicial Officer will be heading the Tribunal;
- (iii) The State Government shall complete the process of appointments and process of providing adequate infrastructure by the end of February, 2017 and ensure that the Tribunal starts functioning from 1st March, 2017;
- (iv) We direct the State Government to ensure that the process of filling in vacancies of the Members of the Tribunal/s likely to be caused by the retirement of the Members or by

expiry of the term of the Members, as the case may be, shall be commenced at least six months before the date on which the vacancy is likely to occur. The State Government shall ensure that no post of a Member of the Tribunal remains vacant;

- (v) Considering the pendency of the matters in Mumbai and Mumbai Suburban Districts and Beed District, we direct that the Tribunal shall hold camp sittings at the District headquarters of these Districts for such duration as may be decided by the Chairperson of the Tribunal;
- (vi) We direct that the Tribunal shall hold sittings at regular intervals for sufficient duration at Divisional Headquarters of each Revenue Division of the State. While holding the sittings at Divisional Headquarters, the Tribunal shall hear the cases arising out of the Districts which are part of that particular Revenue Division;
- (vii) Needless to add that the State Government shall make available all the infrastructure for holding of sittings at District places or at district headquarters as provided in paragraph 13 of this Judgment;

- (viii) As and when the filing of cases increases or the pendency increases, on a recommendation being made by the Chairperson of the Tribunal, the State Government shall consider of establishing additional Tribunals by exercising power under Sub-section (1) of Section 83 of the said Act of 1995;
- (ix) With the above directions, the Petition is disposed of;
- (x) Rule is made partly absolute on above terms;
- (xi) For reporting compliance with the directions, the Petition shall be listed under the caption of “Directions” on 9th March, 2017;
- (xii) Civil Application No.6 of 2005 does not survive and the same is disposed of accordingly.

(A.A. SAYED, J)

(A.S. OKA, J)