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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.126 OF 2016

Hasanbin Saale s/o Saalebin Amar
 Age - 68 years, Occ - Agriculture
 R/o Chaus Galli, Nr. Dr. Khaled,
 Gangapur, Taluka - Gangapur,
 District - Aurangabad

APPLICANT

VERSUS

1. Syed Quader s/o Syed Nooruddin
 Age - 44 years, Occ - Agriculture
 R/o Bada Takiya, Gangapur
 Taluka - Gangapur, District - Aurangabad
2. The Chief Executive Officer,
 Maharashtra State Board of Wakf,
 Panchakki, Aurangabad
3. Tahsildar, Gangapur,
 Tahsil Office, Gangapur,
 Taluka - Gangapur, District - Aurangabad

RESPONDENTS

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Mr. Shaikh Faruk Patel, Advocate for the applicant
 Mr. Mobin H. Shaikh, Advocate for respondent No.1
 Mr. H. I. Pathan, Advocate for respondent No.2
 Mr. S. W. Munde, AGP for respondent No.3 State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th FEBRUARY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally.

2. Waqf Application No.77 of 2013 had been moved by the applicant before Waqf Tribunal, Aurangabad seeking reliefs as prayed for therein. The application has been moved after order had been passed by Chief Executive Officer, Maharashtra State Board of Waqf, Aurangabad pursuant to section 54 (4) of the Wakf Act, as had been subsisting before amendment in 2013.

3. It appears that the Waqf Tribunal initially had passed an order of remand, sending the matter for reconsideration to the Chief Executive Officer, Waqf Board. Said order of remand had been before this court under a revision at the instance of present respondent No.1. The High Court while deciding revision application No.28 of 2016 vide order dated 17th June, 2016, has observed thus -

“ 2. In view of section 83 of the Act power to decide such point is also with the Tribunal and the things can be expedited by holding that there is also original proceeding. The Wakf Tribunal can also give opportunity to the applicant to show that it is Madad Mas land and so the Chief Officer ought to have made such order.

3. In view of these circumstances, this Court holds that instead of sending the matter back to the Chief Officer, the Tribunal can decide the point about the propriety of the order in the presence of both the sides. For doing that exercise, the judgment of the Tribunal is set aside and the matter is remanded back to the Tribunal for deciding the application on merits. The parties are to appear before the Wakf Tribunal on 15th July, 2016. The Tribunal is to decide the matter within two months from the date of receipt of this order. ”

4. Accordingly, the present applicant was prosecuting the matter further before the Waqf Tribunal and had filed application Exhibit-64 seeking an opportunity to adduce evidence. Thereafter, the applicant filed affidavit of examination in chief before the Waqf Tribunal and had filed an application Exhibit-65 seeking permission to give oral evidence. Application Exhibit-65 had been resisted by the respondents herein.

5. Waqf Tribunal, under its order dated 12th August, 2016 rejected the application considering that having regard to the provisions of section 54 of the Wakf Act, 1995 before the amendment, a person aggrieved by order made by Chief Executive Officer of the Waqf Board pursuant to sub section (3) of section 54 of the Wakf Act had a right to institute a suit. It appears, since the proceedings have been instituted before the amendment, as an application and not as a suit, the Waqf Tribunal found it difficult to allow the applicant to adduce oral evidence, as required under the Rules of procedure of the Civil Procedure Code. The Waqf Tribunal has further observed that the applicant would be entitled to file affidavit to support his case and documents.

6. Learned advocate for the applicant has argued, while

considering revision on earlier occasion this court had observed that the Waqf Tribunal also has power to consider grievance of the applicant and that proceedings before the Waqf Tribunal are of original nature, the Tribunal has fallen in error in going by technical nomenclature of it being an application and not a suit. He submits that almost all the requirements of a plaint would be satisfied by contents of the application as had been filed and as such, caption of the proceeding ought not to have mattered at all. He further submits that looking at the contents of the application and the intention underlying prosecution of proceedings before the Waqf Tribunal, the application is in the nature of a suit and as such, only on the technical grounds, the request ought not to have been refused to let the applicant adduce oral evidence.

7. On the other hand Mr. Mobin Shaikh and Mr. H. I. Pathan, learned advocates appearing for respondents No.1 and 2, respectively, contend that Wakf Application No. 77 of 2013 has its genesis in the order passed by the Chief Executive Officer, Waqf Board, which is stated to have been passed without letting proper opportunity to the applicant and the application had been moved seeking redressal against the same. As such, the character of the application before the Tribunal would be a

matter challenging original order passed by the Chief Executive Officer and as such, the Tribunal may not be said to be dealing with original proceedings. In view of aforesaid, it is contended that since the application is being prosecuted arising out of aforesaid background, order passed by the Tribunal is proper and suffers no infirmity.

8. It may be pertinent to refer to provisions of section 54 (4) of the Wakf Act, 1995, as were subsisting prior to amendment of 2013, reading thus -

“ 54 (4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf. ”

9. Looking at the nature of controversy and circumstances hitherto, it appears that no serious prejudice would be caused to the parties appearing in the civil revision application, if treatment to the proceedings as contemplated under amended provision of the Waqf Act is allowed to be given.

10. Though learned advocates for the respondents resist, learned advocate for the applicant states that the proceedings

which have been filed purporting to be an application be allowed to be converted into a suit, since contents of the application satisfy requirements of a plaint and matter is being prosecuted accordingly by the applicant.

11. In the circumstances, in order to give fair opportunity to the parties, it would be expedient that the request made on behalf of the revision applicant is acceded to.

12. Waqf Application No. 77 of 2013 is allowed to be converted into a suit. All the necessary formalities in respect of suit be complied with by the applicant in right earnest. Waqf Tribunal to proceed with the matter accordingly.

13. In the circumstances, impugned order dated 12th August, 2016 on Exhibit-65 in Waqf Application No.77 of 2013 stands set aside. Request under application Exhibit-65 would have to be allowed, and accordingly stands allowed.

14. Under earlier order the matter was directed to be disposed of within a specific time frame, it would be expedient that the Wakf Tribunal decides the proceedings as early as possible and dispose it of preferably within a period of six months from the date of receipt of writ of this order.

15. Civil Revision Application, as such, is allowed in aforesaid terms. Rule is made absolute accordingly. Civil Revision Application, as such, stands disposed of.

[SUNIL P. DESHMUKH, J.]

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