

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

CIVIL APPLICATION NO. 11270 OF 2017
IN
CIVIL REVISION APPLICATION NO.25/2015

AYYUBKHABN S/O MERUDDIN PATHAN
AND OTHERS.

VERSUS.

HAZI SALIM JINDAWALI CHOWDHARI
AND OTHERS.

.....

Mr. A. S. Bajaj, Advocate, for the Applicants.
Mr. M. R. Sonwane, Advocate for the respondent No.1.
Mr. Sameer Patel, Advocate for the respondents No.2
& 3.
Mr. M.B.W. Khan, Advocate H/f Mr. S.B. Khan, Advocate
for respondent No. 5.
Mr. D.P.Palodkar, Advocate for Applicants in CA No.
11856/17.
Mr. Mukul Kulkarni, Advocate for Intervenor in CAST
31213/17.

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CORAM : K.L. WADANE, J.

RESERVED ON : 18.09.2017.
PRONOUNCEMENT ON : 22.09.2017.

ORDER :-

1. This application is filed by the revision

applicants/applicants to stay the operation and execution of the order dated 13.08.2014 passed by the Wakf Tribunal Aurangabad in Wakf Application No. 33/2014.

2. It is contended by the applicants that by the order dated 13.08.2014 the Wakf Tribunal allowed the application filed by the respondent no. 1 by quashing panchnama of handing over possession to the Trustee on record for conducting election and directed the Regional Wakf Officer to take charge of Management from Trustee on record and to finalize the election programme with the help of the trustees on record.

3. It is further contended that, during the pendency of the Wakf Application No. 71/2012 and 33/2014, the Wakf Tribunal pursuant to the order dated 07.12.2012 in Wakf Application No. 35/2011, the election programme was prepared and published by the Wakf Board and elections were conducted by the Trustees on record and the change report of newly elected trustees was filed before the Wakf Board and

the same is still pending.

4. It is further contended that, on 06.07.2013 the elections of trustees were conducted and on 08.07.2013 the election report was submitted to the Wakf Board by the election committee and on 26.07.2013 the change report came to be submitted by the applicants.

5. By the notification dated 09.11.2015 the State Government directed the Wakf Board in exercise of its power under section 97 of the Wakf Act, 1955, either to approach Civil Court for execution of the said order or wait till disposal of Civil Revision Application No. 24 and 25 of 2015.

6. It is further contended that, after the notification dated 09.11.2015, surprisingly on 02.08.2017 another notification came to be issued by the Government of Maharashtra, thereby directing the Wakf Board under section 97 of the Wakf Act to conduct the election of Ambarnath Masjeed Trust

(hereinafter referred as "wakf institution") within a period of two months and complete the election procedure within the aforesaid period. The applicants were not aware of the such proceedings before the Government and came to know of the directions only when the news appeared in the news paper dated 13.08.2017.

7. So according to applicants, after issuance of the notification dated 02.08.2017, a fresh cause of action to file the stay petition, hence this application.

8. I have heard Mr. Bajaj, learned counsel appearing for the applicants, Mr. Sonwane, learned counsel appearing for the respondent No. 1, Mr. Sameer Patel, learned counsel appearing for the respondents No. 2 and 3, Mr. M.B.W.Khan learned counsel appearing for respondent No. 5, Mr. Palodkar, learned counsel appearing in Civil Application No. 11856/2017 in Civil Revision Application No. 25/2015 for addition of the party and Mr. Kulkarni, learned

counsel appearing for the intervenor (CAST No. 31213/2017).

9. Looking to the facts and circumstances of the case and on perusal of the record, it appears that two groups of the persons belonging to the Mohammedan community trying to establish their claim over the wakf property. According to present applicants, as per the programme issued by the election officer, the election committee has conducted the election and trustees are elected on 06.07.2013. Whereas; it is the contention of the respondent No. 1 that, after 1992 there was no election of the wakf institution. Therefore the respondent approached the Wakf Board and as per the direction given by the Wakf Board the elections were declared. But due to stay granted by the State Government, no further election programme was carried out by the election officer and now as per the order of the Wakf Tribunal the elections are to be taken in accordance with law.

10. Mr.Bajaj, learned counsel, submits that, as

per the clause in the scheme particularly 17 (a)(b) (c)(d) and (e), the elections were conducted and the trustees are duly elected. After the election, the election committee has reported the election to the Wakf Bord and the change report is submitted, which is still pending. So, according to Mr. Bajaj, learned counsel, the applicants are the validly elected trustees of the wakf institution.

11. Mr. Sonwane, learned counsel, appearing for the respondent No. 1 has claimed that for some time respondent was appointed as an ad-hoc committee and they were looking after the affairs of the wakf institution, as per the order passed by this Court in Writ Petition No. 3008/2005.

12. Mr. M.B.W. Khan, learned counsel, has argued that, for the better management of the wakf institution and in the interest of the wakf institution there should be a fair election, since no elections were held since long.

13. Mr. Palodkar, learned counsel appearing for the applicants in Civil Application No. 11856/2017 has argued that the applicants in the aforesaid civil application are duly elected trustees and therefore they are necessary party to the Civil Revision Application.

14. Mr. Palodkar, learned counsel, also submits that, the applicants in the aforesaid Civil Application were duly elected trustees and now the State Government cannot give direction to take the elections.

15. Considering the averments of both the sides, it is material to refer certain orders passed by the Wakf Tribunal as well as by this Court in reference to the election of the trustees. From the orders passed by the Wakf Tribunal in Wakf Application No. 24/2009, it appears that, the Tribunal has directed the Wakf Board to take the election of the Wakf within a period of six months and transfer the administration to the newly elected body of

Mutawallis. This order was passed on 11.08.2010. It was assailed by way of filing Civil Revision Application No. 178/2010 and this Court by the order dated 15.04.2011 has dismissed the civil revision application.

16. In another Wakf Application No. 35/2011, again the Wakf Tribunal by the order dated 07.12.2012 has directed to take election within two months as per the provisions in the Scheme. As per the order, the Chief Executive officer of Wakf Board appointed one Mr. S.K. Mulla, Advocate, as a election officer to conduct the election of the Wakf Institution, as per the Scheme Clause No. 17(a)(b)(c)(d) and as per the enclosed approved programme. By the letter dated 10.06.2013 the copy of approved programme of the election was also communicated to advocate Mr. Mulla.

17. By another letter issued by the Chief Executive Officer, Maharashtra State Board of Wakf, Aurangabad, addressed to advocate Mr. S.K. Mulla, it was directed that the election should be conducted on

06.07.2013. Mr. Mulla then published the election programme starts from 01.07.2013 to 06.07.2013. However, there is no evidence to show that in fact Mr. Mulla had in fact conducted the election and submitted its report to the Wakf Board or to the election committee and then the election committee reported the elected trustees.

18. Looking to the documents herein above, it is material to note that it is the case of the applicants that already elections were held and change reports were pending before the Wakf Board. In this behalf, it is material to know whether actually the elections were held on 06.07.2013 or not.

19. Reference can be made to the document i.e. letter addressed to one Lalubhai Shaikh by Chief Executive Officer of the Wakf Board, in which it was informed to Lalubhai Shaikh in reference to his change report dated 26.07.2013 that, the election which was to be held on 06.07.2013, the State Government has issued stay order to the election on

04.07.2017 and such stay order was communicated to Advocate Mr. S.K. Mulla, Election Officer. Therefore, no election was held on 06.07.2013. Consequently, the change report submitted by Lalubhai Shaikh has been rejected. In this background, it is very material to note that, there is no communication by Advocate Mr. S.K.Mulla whether he has received this communication, whether he has conducted the election and whether he has stayed the election process. Therefore, the documents produced by the Election Committee about the so-called election raises grave suspicion.

20. The applicants are claiming that the change report is pending before the concerned authority. As against this, the respondent No.1 contends that, there was no change report pending before the concerned authority. To substantiate the contention of the applicants about the pendency of the change report they relied upon the copy of the letter dated 01.12.2015 filed at Exh. 'C1' (in Civil Application No. 11856/2017). Looking to the contents of this

letter issued by the Joint Chief Executive Officer of Wakf Tribunal addressed to the Information officer, Maharashtra State Wakf Board, Aurangabad, it appears that, while answering the query under Right to Information Act, it was communicated that the elections of the Ambarnath Masjid Trust were held and change report is pending before the Wakf Board.

21. From the another communication addressed to the same authority dated 29.06.2016 it appears that, in reply to the query under Right to Information Act it was communicated that no elections were held through the Wakf Board and no change report is pending. Further it is communicated that since 2014 to 2016 no change report is produced before the Wakf Board and there is specific reference about the outward number of the letter dated 01.12.2015 i.e. 5222/2015 and it has been specifically mentioned that the Joint Chief Executive officer had not signed the letter No. 5222/2015. Therefore, basically whether the change report is pending or not is also doubtful. For the reasons stated above, prima-facie it appears

that the applicants have failed to establish that there was election of the trustees on 06.07.2013 and consequently there was change report, which is alleged to be pending before the Wakf Board.

22. Admittedly, the election programme is started and the learned counsel for the respondents have strong objection to stall the election process.

23. Mr. Bajaj, learned counsel appearing for the applicants has relied upon the observations in case reported in A.I.R. 1981 Karnataka, 37 (Jamia Masjid Magadi Town Vs. Karnataka Board of Wakfs, Balgalore and others). By relying upon the observations, Mr. Bajaj, learned counsel, argued that, under the provisions of Section 97 of the Wakf Act, the State Government has no authority to direct election of the Wakf Institution. The powers vested under Section 97 are the powers in regard to the general administration and the State Government have no power to direct the election of the Wakf Institution.

24. As against this, Mr. Sonwane, the learned counsel appearing for the respondent No. 1 has relied upon the observations in case reported in (1) 2001 (12) LJSOFT (S.C.) 89 (Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. V/s. State of Maharashtra, (2) (2016) 4 Supreme Court Cases 429 (Shaji K. Joseph V/s. V. Vishwanath and others).

25. Herein the present matter, admittedly, the election process is already started pursuant to the notification issued by the State Government. In such circumstances and in view of the observations in case cited supra, I am of the opinion, such process cannot be stalled.

26. Another development in the matter is that the applicants in Civil Application No. 11856/2017 have filed Writ Petition No.11452/2017 before the Division Bench of this Court and challenged the Government notification dated 02.08.2017 directing the election of Wakf Institution and the Division Bench of this

Court (Coram : R.M. Borde & Vibha Kankanwadi, JJ.)

have passed following order :

- "1 Issue notice to the respondents returnable on 25.09.2017.
- 2 AGP appears for respondent No. 1.
- 3 Liberty to petitioners to serve the respondents No. 2 and 3 by alternate mode of service i.e. by fax, e-mail etc. and file affidavit of service.
- 4 The process of election already initiated shall be subject to the decision of instant writ petition."

27. In view of the order passed by the Division Bench of this Court, proposed election is subject to the decision of the writ petition. Therefore, now, it is not necessary to stall the election.

28. Civil Application is rejected.

(K.L. WADANE, J.)

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