

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO. 197 OF 2016

1. Mr. Naushand Latif Shaikh,
age Major, occup. Business,
R/o C.T.S. No. 174, Narayanpeth,
Pune - 411 004
2. Mr. Farooq Latif Shaikh,
Age : Major, occupation: Business,
R/o C.T.S. No. 174, Narayanpeth,
Pune - 411 004 .. Applicants

versus

1. The Chief Executive Officer,
Maharashtra State Board of Waqfs,
Panchakki, Aurangabad
2. Haji Makke Shah Masjid Trust,
Pune, Reg. No. 52/2007
R/o C.T.S. NO. 744, Deccan Gymkhana,
Shivaji Nagar, Pune -411 004
3. Mr. R. N. Khan,
Age: major, occup. Business,
R/o Shivaji Nagar Pune,
4. Mr. Waghchaore,
Age: Major, occupation : Business,
R/o C.T.S. No. 744, Shivajinagar,
Pune - 411 004
5. Mr. Sameer Mahboob Shaikh,
Age : Major, Occupation : Business,
R/o C.T.S. NO.744, Shivajinagar,
Pune- 411 004
6. Smt. Indubai Rakshe,
Age : Major, occupation : Business,
R/o C. T. S. No. 744, Shivajinagar,
Pune - 411 004

6.A] Kamlakar Maroti Rakshe,
Age : major, occupation : Business,
R/o Mumbai, Ladu Samrat,
Dukan No. 1, Habib Teres,
Dr. B. A. Road, Lalbaugh,
Mumbai - 400 012

7.A] Mr. Asif Tajpeer Shaikh,
Age : Major, occupation : Business,
R/o C.T.S. No. 744, Shivajinagar,
Pune - 411 004

7.B] Shakeel Tajpeer Shaikh,
Age : Major, occupation : Business,
R/o C.T.S. No. 744, Shivajinagar,
Pune - 411 004

.. Respondents

Mr. Gaurav L. Deshpande, Advocate for applicants

Mr. R. R. Mantri, Advocate i/b Mr. Z. M. Pathan, Advocate for
respondent no. 2

Mr. Mohammad Wasemullah, Advocate for respondents no.3 & 5

Smt. Sanjivani Ghate-Deshmukh, Advocate for respondent no. 4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 29th March, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned
counsel for appearing parties.

2. This civil revision application takes exception to order
dated 25-10-2016 passed by the Presiding Officer,
Maharashtra Wakf Tribunal, Aurangabad in proceedings
bearing Wakf application no. 29 of 2014, directing eviction of
present applicants from C.T.S No. 174 situated at Narayan
Peth, Pune.

3. It is being informed that a few of the occupants of property at C.T.S. No. 774 against whom proceedings were initiated before the Chief Executive Officer and orders of their eviction have been passed, have approached the principal seat of this court at Bombay challenging their eviction. Thus, the matter is being considered only in respect of present applicants. As such, scope of present revision would be confined to the claim of the applicants, in respect of C.T.S. No.174.

4. Mr. Gaurav Deshpande states that some proceedings were initiated by Wakf Institution Haji Makke Shah Masjid Trust [HMSMT] for eviction of some persons from C.T.S. No. 744 situated at Shivaji Nagar, Deccan Gymkhana, Pune before the Chief Executive Officer, Maharashtra State Board of Wakfs, Aurangabad. Said proceedings culminated into an order/communication dated 29-4-2014/03-05-2014 by the Chief Executive Officer, Wakf Board whereunder eviction of the persons occupying C.T.Ss. No. 744 and 174 had been contemplated and the matter in pursuance of the provisions of section 54 (3) of the Wakf Act, 1995 had been referred to the Wakf Tribunal.

5. Learned counsel Mr. Deshpande vehemently contends that no notice had been received by applicants pursuant to section 54 (2) of the Wakf Act at their end although the tribunal has purportedly observed that notice appears to have been issued by the chief executive officer to the applicants. He further contends that as a matter of fact, originally while the proceedings were initiated, those appear to be only against occupants of C.T.S. No. 774 and not the occupants of C.T.S. No.174. However, intriguingly, the matter has also been proceeded with before the chief executive officer, wakf board, against the present applicants who are occupants of C.T.S. No. 174.

6. Learned counsel Mr. Deshpande further submits that notice before making application to the tribunal is mandatory and non issuance of the same has caused serious prejudice to the applicants. He further submits that mother of the applicants had been occupant of C.T.S. No. 174 and some legal proceedings had been initiated against her. Material aspects could not be brought before the chief executive officer for want of notice and in such a case, an application to the tribunal for applicants' eviction could have been prevented had opportunity come their way.

7. He submits that while originally order had been passed by the chief executive officer, it was limited only to occupants of C.T.S. No. 744 and had not at all covered occupants of C.T.S. No. 174. He further submits that while certified copy of the order had been obtained by the applicants, after they had received notice from the tribunal about the application for their eviction, they could notice that it did not bear reference to C.T.S. No. 174 in the same, yet while passing impugned order, the tribunal has ignored said vital aspect and has passed eviction order against them. He further submits that tenor of order by Chief Executive Officer shows while order was being passed, chief executive officer had considered only C.T.S. no. 744 and not at all C.T.S. no. 174. It is submitted by him that it is being claimed that sometime after application for C.T.S. No. 744 had been made, under another application, action against persons in occupation of C.T.S. No. 174 had also been mooted.

8. He further purports to submit that there is no application which can be said to have been made by the chief executive officer against alleged encroachers present applicants insofar as C.T.S. No. 174 is concerned. The tribunal purportedly acted upon a communication from the

chief executive officer in respect of C.T.S. No. 174 made soon after the order has been passed in respect of C.T.S. No. 744. In the circumstances, the order passed by the tribunal is a defective order and legally unsustainable. Mr. Deshpande, therefore, submits that the two orders do not adhere to the noble principles of natural justice and deserve to be set aside.

9. Learned counsel Mr. Deshpande, appearing on behalf of applicants submits that the whole procedure as referred to under the relevant provisions of the Wakf Act has been followed only in breach and the same has caused grave prejudice to the applicants and their longstanding possession over property bearing C.T.S. No. 174 situated at Narayanpeth, Pune, has been put under peril.

10. Countering aforesaid submissions, Mr. Mantri, learned counsel appearing on behalf of respondent no. 2 contends that the objection being taken about no order in respect of C.T.S. 174 was passed is a run away submission being made at the behest of the applicants. He purports to point out order passed by the chief executive officer indicates that the order had, in fact, been passed also in respect of C.T.S. No.174. He submits that omission occurring in the certified

copies is an omission which was by mechanical work of the machine. He submits that the chief executive officer had, in fact, corrected the order by incorporating C.T.S. No. 174 by hand in the original order passed. He purports to submit that the notices as required under the provisions of section 54 of the Wakf Act, 1995 were issued to the applicants and accordingly the order came to be passed by the chief executive officer making reference to the tribunal. He submits that on merits, the applicants have very weak legs to stand on, for, the tribunal has considered relevant provisions, particularly sections 51 and 56 of the Wakf Act which show that any period of lease beyond three years without permission of the wakf board is not possible under the Wakf Act, 1995. In the circumstances, occupation of C.T.S. No. 174 by the applicants is not legally sustainable and the impugned order on that ground can seldom be said to be defective. He submits that no prejudice can be said to have been caused to the applicants, for, they did have another opportunity before the tribunal which they could have availed of, and to a large extent, they appear to have availed of the same. In the circumstances, the allegations being made about the orders having been passed without following the

principles of natural justice do not appear to bear substance.

11. It appears, property bearing C.T.S. No. 744 situated at Shivaji Nagar, Pune and C.T.S. No. 174 situated at Narayan Peth, Pune, are claimed to be properties of said Wakf.

12. It appears, the Wakf Tribunal, Aurangabad had proceeded with wakf application no. 29 of 2014 pursuant to section 54(4) of the Act and passed an order on 25-10-2016 allowing said application with directions for eviction and removal of encroachments over properties of HMSMT, including property occupied by applicants bearing C.T.S. No. 174 situated at Narayan Peth, Pune. It is against this order of the tribunal, present civil revision application has been moved by the applicants who are occupants of C.T.S. No. 174 at Narayan Peth, Pune.

13. It would be worthwhile to consider section 54 of Wakf Act, 1995, reading thus;

" 54. Removal of encroachment from wakf property. (1) Whenever the Chief Executive Officer consider whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property, and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a

notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an enquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property, and there has been an encroachment on any such wakf property, he may, make an application to the Tribunal for grant of order of eviction for removing such encroachment and deliver possession of the land, building, space, or other property encroached upon to the mutawalli of the wakf.

(4) The Tribunal, upon receipt of such application from the chief executive officer, for reasons to be recorded therein, make an order of eviction directing the wakf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the wakf property:

PROVIDED THAT the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order

under sub-section (2), the Chief Executive Officer or any other person duly authorized by him in this behalf may evict that person from, and take possession of, the wakf property. "

14. During the course of submissions, learned counsel Mr. Deshpande had pointed out that the record is deficient about issuance of notice pursuant to section 54 from the office of the chief executive officer to the applicants. In the circumstances, while the applicants, it appears, could not make it before the chief executive officer before he had arrived at a conclusion to apply for their eviction which appears to be the object and intention underlying section 54(1) and 54 (2) of the Wakf Act, 1995. The order does appear to be deficient in respect of consideration of the imperative aspects and is thus rendered unsustainable.

15. Though the tribunal has purportedly observed that notice appears to have been issued to the applicants by the chief executive officer yet the record would show that there does not appear to be corresponding material of postal department indicating that notice had, in fact, been issued. The consideration by the tribunal on that count, *inter alia*, is not appropriate. Observations of the Tribunal in respect of notice to applicants appear to be rather infirm.

16. It has been further adverted to that while applicants could not make their stand clear about their status and rights over C.T.S. No. 174, as what they could find that summons is in respect of C.T.S. no. 174 only. The tribunal appears to have acted upon intimation under covering letter from the chief executive officer after he had passed order. Opportunity to bring forth relevant material, *inter alia*, important aspects appear to have dodged the applicants in the process. Learned Advocates during the course of hearing purport to point out relevant material from the record and proceedings from the office of chief executive officer, wakf board. Perusal of the order of the chief executive officer may as well, appear to be suggestive of infusing streak of some relevance to the submissions on behalf of the applicants about non application of mind to the case of C.T.S. no. 174.

17. In the circumstances, it appears, the applicants deserve an opportunity under the provisions of section 54 of the Wakf Act, 1995 before the chief executive officer of wakf board as the same would be expedient. Such an opportunity, in the circumstances would, to a large extent, meet with applicants' grievance about loss of opportunity.

18. In the circumstances, opportunity pursuant to section 54 (1) and 54 (2) of the Wakf Act would have to be made available to the applicants looking at the language employed by legislature in the enactment.

19. Learned counsel for respondents, on instructions, submit that it would be expedient in such a case if the matter is to be remanded to the authority with directions to deal with it in accordance with applicable provisions, it may be confined to C.T.S. No 174 only concerning applicants with further directions to dispose of the same as expeditiously as possible.

20. As such, the order passed by the chief executive officer dated 29-04-2014/03-05-2014 and the one passed by the Tribunal dated 25-10-2016 in Wakf application no. 29 of 2014 relating to the applicants' occupation over C.T.S. No. 174 at Narayan Peth, Pune, to that extent, stand set aside. The matter is remitted to the chief executive officer in respect of the proceedings which are purportedly initiated upon an application dated 14-09-2013 by Haji Makke Shah Masjid Trust – a wakf institution. The parties accordingly to appear before the chief executive officer on 12-06-2017. The proceedings be further prosecuted by following the procedure

under the applicable provisions. As the parties are to appear before the chief executive officer on 12-06-2017, formal notice by the chief executive officer to the parties, including the applicants herein, would be redundant. Further proceedings be taken up as expeditiously as possible and may be disposed of preferably within a period of six months from date of appearance i.e. 12-06-2017 after giving opportunity to the parties.

21. Civil revision application to aforesaid extent stands allowed. Rule made absolute accordingly.

SUNIL P. DESHMUKH,
JUDGE

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