

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.341 OF 2010

Hazrat Nalpeer, Garpeer Dargah Trust/Wakf,
Through its Mutawalli
Karimshah Ladamshah Makandar ... Applicant

Vs.

Madarsha Abdulsha Makandar & Ors. ... Respondents

with

CIVIL REVISION APPLICATION NO.342 OF 2010

Hazrat Nalpeer, Garpeer Dargah Trust/Wakf
Through its Mutwalli
karimshah Ladamshah Makandar ... Applicant

Vs.

Nursha Abdulsha Makandar & Ors. ... Respondents

Mr.I.M. Khairdi for the Applicant in both CRAs
Mr.Anilkumar Patil for Respondent No.1
Ms.Najma Sharif i/b R.M. Momin for Resp. Nos.2 and 3

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 10, 2017**

P.C. :

1. In these two Civil Revision Applications, the judgment and decree dated 1.2.2010 passed by the Presiding Officer of the Maharashtra Wakf Tribunal, Aurangabad in Application No.49 of 2009 as also in Application No.48 of 2009 are challenged.

2. The applicant / Wakf had filed an application u/s 54 of the Wakf Act, 1995 (for short, hereinafter referred to as 'the Act') against the two respondents herein against encroachment in the year 2006 and prayed that though the respondents were given the tenanted premises earlier by the Wakf, they have encroached upon additional land of the Wakf and hence, it was prayed that the respondents are in illegal occupation and they be evicted u/s 54 of the Act as they have committed breach of the provision of Wakf Act. As the said application was allowed by the CEO, Maharashtra State Board of Wakfs, Aurangabad, vide order dated 15.5.2009 whereby the CEO directed the respondents to hand over the possession of the encroached portion admeasuring 30/35'. Against the said order, the respondents filed application u/s 83(2) of the Act and the Wakf Tribunal allowed those applications and the order of the CEO dated 15.5.2009 was set aside and hence, these Civil Revision Applications are filed.

3. Learned Counsel for the applicant/Wakf has submitted that the respondents are the tenants of the Wakf and they were running a grocery shop and paying rent to the applicant earlier. However,

they encroached upon the land admeasuring 19/35' and thus, they are in possession of a total area of 30/35' and thus, they are not paying the rent of the said land. He submitted that the order passed by the Tribunal is illegal and is to be set aside and the order passed by the CEO is to be restored. He also objects that the appeal or any application can be filed against the order u/s 54 (4) of the Act. The learned Counsel further submitted that the Tribunal erroneously held that the mode of succession of trustees of the wakf is hereditary and the respondents in both the Civil Revision Applications are the sons of the deceased trustees. He submitted that even they are the legal heirs of the trustees, yet, they can encroach upon the wakf property and to that extent, the order is illegal.

4. The learned Counsel for the respondents has submitted that there is no encroachment. The respondents are ready to pay the rent and they were put in possession of the entire tenanted premises i.e., 30/35' in the year 1995 and the Wakf Act came into force on 1.1.1996 and hence, it is not applicable.

5. After hearing the submissions of both the learned Counsel for the parties and going through the applications and the respective orders, it is found that the facts not disputed are as follows:

- i) The property belongs to Wakf.
- ii) The respondents were put in possession of a particular portion of the premises as tenants.
- iii) They continued to be on the premises as tenant for some period and they were paying the rent to the wakf.

6. In the application against encroachment, it is necessary for the applicant/plaintiff to show encroachment. In the present matter, after going through the orders and the applications u/s 54, there are pleadings of encroachment, however, it is necessary for the applicant to show how much portion was tenanted and how much it is encroached upon. The respondents have denied that there is any encroachment but have contended that the total premises handed over to them as tenants is not 19/35' but 30/35'. thus, this is only word against word and no other evidence is brought before the Court. The Wakf Tribunal has considered many

other aspects also, however, it appears that the fact of encroachment itself is not proved and hence, the applications shall fail.

7. However, it is be noted that as the respondents, it appears as per the submissions of the learned Counsel for the applicant, are the tenants and they are occupying the premises admeasuring 30/35' for a considerable tie, without paying any rent. If it is so, before this Court also, no proof is produced in respect of payment of rent by the respondents and thus, if at all the applicant has any claim against the respondents in respect of payment of rent or any other relief, the Wakf wants to claim on the ground of non-payment of rent, it is open for the applicant to take necessary and required legal recourse.

8. Civil Revision Applications are accordingly dismissed.

(MRIDULA BHATKAR, J.)