

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

CIVIL REVISION APPLICATION NO.639 OF 2015

Rafiq Qhauthbuddin Mulla : Applicant.
versus
Sunnat Jamat Maner Masjid
Kolhapur
Through Abdul Masjid Haji Kader Maner & ors. : Respondents.

Mr. Sachin Chavan i/by Mr. S S Tambekar for the Applicant.
Mr. Abdul R Shaikh for the Respondent No.1.
Mr. S H Kankal, AGP for the Respondent No.14

CORAM : R. M. SAVANT, J.
DATE : 07th February 2017

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 19/09/2015 passed by the learned District Judge/Presiding Officer, Maharashtra State Waqf Tribunal, Aurangabad by which order the application filed by the Applicant herein came to be dismissed and resultantly the order dated 06/06/2012 passed by the Chief Executive Officer of the Waqf Board, Aurangabad came to be confirmed.

2 The Applicant herein is in occupation of two rooms on the first floor of the building which is of the ownership of Sunnat Jamat Maner Masjid which is a waqf,. On the ground that the Applicant is an encroacher, that the

proceedings under Section 54 of the Waqf Act 1995 came to be initiated against the Applicant. It was the case of the Respondent No.1 in the said proceedings that there is no agreement of tenancy between the said Maner Masjid and the Applicant as also that the Applicant has not paid any rent. In fact the said case was urged by the Respondent No.1 against all the encroachers. The Respondent No.1 therefore sought the eviction of the Applicant and handing over of the rooms in occupation of the Applicant to the said Maner Masjid. The Applicant herein appeared along with other similarly situated persons and the Applicant took up a defence that he is a tenant in respect of the said premises in support of which he relied upon certain rent receipts which were in the name of one Maulavi Imamuddin Gorwade who at the relevant time was the Pesh Imam of the said Maner Masjid.

3 The Chief Executive Officer considered the application filed by the Respondent No.1 as also considered the material on record. The Chief Executive Officer by his order dated 06/06/2012 allowed the application and directed removal of the Applicant from the suit premises.

4 The Applicant aggrieved by the said order dated 06/06/2012 carried the matter by way of Waqf Application No.63 of 2012 under Section 83(2) of the Waqf Act, 1995 before the Maharashtra State Waqf Tribunal, at Aurangabad. The Applicant reiterated the case urged by him before the Chief

Executive Officer. The Waqf Tribunal having regard to the fact that the Applicant had not produced a single document to support his case that he was the tenant and considering the fact that under Section 56 of the Waqf Act a lease over three years requires permission of the Waqf Board held that the defences taken by the Applicant could not be accepted. The Waqf Tribunal accordingly by its order dated 19/09/2015 dismissed the said Waqf Application No.63 of 2012.

5 The learned counsel for the Applicant Shri Sachin Chavan would contend that the Applicant is a tenant and therefore could not have been evicted by taking recourse to Section 54 of the Waqf Act. It was the submission of the learned counsel for the Applicant that the documents in question i.e. the rent receipts etc. have not been taken into consideration by the Waqf Tribunal.

6 Per contra, the learned counsel appearing for the Respondent No.1 Shri A R Shaikh would support the impugned order. It was the submission of the learned counsel for the Respondent No.1 that the Applicant has not been able to produce an iota of evidence to prove that he is a tenant in respect of the said rooms. The learned counsel for the Respondent No.1 sought to draw this Court's attention to the dismissal of the declaratory suit being Regular Civil Suit No.1892 of 2012 filed by the nephew of the Applicant claiming declaration of tenancy in respect of the very same rooms. The said suit has

been dismissed by the concerned Court by the judgment and order dated 12/09/2014. It was therefore the submission of Shri Shaikh that the impugned order need not be interfered with by this Court in its revisionary jurisdiction.

7 Having heard the learned counsel for the parties, in my view, there is no merit in the above Revision. As indicated herein above though the Applicant claims to be a tenant in respect of the rooms in question from which he is sought to be evicted, the Applicant has not been able to produce any document to buttress his said case. In fact both the Chief Executive Officer as well as the Waqf Tribunal have observed that the Applicant has not been able to produce any agreement of tenancy or lease agreement to show that he has some vestige of authority to occupy the rooms in question. In the absence of any statutory protection to the Applicant, the Respondent No.1 which is a waqf was well within its right to invoke Section 54 of the Waqf Act to evict the Applicant who is an encroacher.

8 In so far as the claim for tenancy is concerned, as rightly pointed out by the learned counsel for the Respondent No.1 Shri Shaikh that the suit filed by the nephew of the Applicant in respect of the same rooms has been dismissed by the learned Joint Civil Judge, Junior Division, Kolhapur by the judgment and order dated 12/09/2014. Hence the Applicant has no legs to stand on in so far as the aspect of tenancy is concerned. In that view of the

matter there is no error of jurisdiction or any other infirmity or illegality committed by the Waqf Tribunal, for this Court to exercise its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]