

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 192 OF 2004

Anjumane Khadimul Masoomin,
Aurangabad, through its Secretary,
Syed Himayat Ali Zaidi s/o
Ashraf Ali, R/o Deodi Bazar,
Zaidi Lane, City Chowk,
Aurangabad.

..Petitioner

Versus

1. Marathwada Wakf Board,
Through its Secretary,
Panchakki, Aurangabad.

2. Jafar Hussain Kamal
Age 46 years, Occ. Business,
R/o Deodi Bazar, Aurangabad.

..Respondents

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Advocate for applicant : Shri M.M.Bhokarikar
Advocate for Respondent 2 : Smt. A.N.Ansari
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CORAM : RAVINDRA V. GHUGE, J.

Dated: June 21, 2018

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ORAL JUDGMENT :-

1. The applicant is aggrieved by the judgment of the Waqf Tribunal, by which, the Tribunal has allowed the Suit No.24 of 2001, by judgment dated 24.12.2002. It has been concluded that the Ashoorkhana is a Waqf property and the Waqf in question is a Shia Waqf. The applicant is directed to submit yearly budget in respect of the said Waqf regularly to the Waqf Board and

make the payment of the Waqf fund to the plaintiff Board. The applicant is also restrained from changing the nature of the suit property and creating third party interest without the permission of the Board.

2. This Court admitted the petition on 13.9.2004 and granted Rule on interim relief. The record reveals that no interim relief has been granted thereafter to the applicant.

3. I have considered the strenuous submissions of Shri Bhokarikar, learned Advocate for the applicant. I have gone through all the grounds formulated by him. Reliance is placed by him upon the following judgments:-

(i) Wakf Board, Andhra Pradesh Vs. Biradavolu Ramana Reddy [AIR 1999 SC 3374],

(ii) Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) By L.Rs. [AIR 2002 SC 402],

(iii) Ramesh Gobindram (deceased by L.Rs.) Vs. Sugra Humayun Mirza Wakf [AIR 2010 SC 2897],

(iv) A.P. State Wakf Board Hyderabad Vs. All India Shia Conference (Branch), A.P. and others [AIR 2000 SC 1751],

(v) Punjab Wakf Board Vs. Capt. Mohar Singh and others [AIR 1975 SC 1891], and

(vi) Maharashtra State Board of Wakfs Vs. Shaikh Yusuf Bhai Chawla and others [AIR 2012 SC 2362].

4. Having considered the submissions of the learned Advocate and the case law cited, I have gone through the R & P available.

5. The applicant was registered as a sub-body of the All India Shia Conference, Lucknow which is said to be a registered organization under the U.P. Society Act on 28.8.1998. The status of the applicant prior to August, 1998 is not divulged by the applicant in the memo of the application.

6. By an order dated 3.4.1964, passed by the High Court of Andhra Pradesh in the Application No.220 of 1963, the High Court has simply recorded that the Ashoorkhana at Aurangabad is handed over to this applicant, registered body at Aurangabad, by the L.Rs. of the Salaar Jung. There is no dispute that an Ashoorkhana is a place used for religious purposes for standing "Sawaris" in Moharram and only for religious use. The place

used as Ashoorkhana cannot be used for any other purpose except the religious functions / purposes.

8. Section 3(r) of the Waqf Act, 1995 defines a 'Waqf' to mean a permanent dedication by a person professing Islam, of any movable or immovable property for the purpose recognized by Muslim law as pious, religious or charitable and includes a Shamlat Patti, Shamlat Deh, Jumla, Malkkan, Grants including Mashrat - Ul - Khidmat, for any purpose recognized by Muslim law, as pious, religious or charitable and Waqf - Alal - Aulad for the same purpose. A Waqif is a person making such dedication.

9. The Honourable Apex Court in the matter of Karnatak Board of Waqf Vs. Anjuman-E-Ismail [(1999) 6 SCC 343], has held that the necessary ingredients for the purpose of deciding an issue, 'whether a property is a Waqf property or not', is to examine with reference to any particular property, whether there is a permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim Law as pious, religious or charitable, or not. In Maharashtra State Board of Waqfs (supra), the Honourable Apex Court (Three Judges) has held that a Waqf is different than from a trust created by Muslims. Property in case of Waqf vests in

God. It is not the case in a Muslim Trust. Paragraph Nos.28 to 31 of the said judgment read as under:-

"28. Section 112 concerns repeal and savings. By virtue of the said provision, the 1954 Wakf Act and the 1984 Wakf (Amendment) Act were repealed. Sub-section (3) specifically provides as follows:

112. Repeal and Savings.

(1) xxx

(2) xxx

(3) If immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act, that corresponding law shall stand repealed.

Although, it cannot be said that the Bombay Public Trusts Act was a corresponding law and, therefore, stood repealed, it cannot also be said that the same would be applicable to Wakf properties which were not in the nature of public charities. There is a vast difference between Muslim Wakfs and Trusts created by Muslims. The basic difference is that Wakf properties are dedicated to God and the "Wakif" or dedicator, does not retain any title over the Wakf properties. As far as Trusts are concerned, the properties are not vested in God. Some of the objects of such Trusts are for running charitable organisations such as hospitals, shelter homes, orphanages and charitable dispensaries, which acts, though recognized as pious, do not divest the author of the Trust from the title of the properties in the Trust, unless he

relinquishes such title in favour of the Trust or the Trustees. At times, the dividing line between Public Trusts and Wakfs may be thin, but the main factor always is that while Wakf properties vest in God Almighty, the Trust properties do not vest in God and the trustees in terms of Deed of Trust are entitled to deal with the same for the benefit of the Trust and its beneficiaries.

29. *In the present case, the difference between Trusts and Wakfs appear to have been overlooked and the High Court has passed orders without taking into consideration the fact that the Charity Commissioner would not ordinarily have any jurisdiction to manage the Wakf properties.*

30. *In these circumstances, in our view, it would be in the interest of all concerned to maintain the status quo and to restrain all those in management of the Wakf properties from alienating and/or encumbering the Wakf properties during the pendency of the proceedings before this Court. The order of the High Court staying the operation of its judgment has led to the revival of interim orders which have rendered such stay otiose. The said order of stay cannot also be continued during the pendency of these proceedings in its present form.*

31. *Accordingly, at this stage, we direct that in relation to Wakf properties, as distinct from Trusts created by Muslims, all concerned, including the Charity Commissioner, Mumbai, shall not permit any of the persons in management of such Wakf properties to either encumber*

or alienate any of the properties under their management, till a decision is rendered in the pending Special Leave Petitions."

9. The suit property has been consistently described as Ashoorkhana and was used only for religious purposes by the heirs of the Salarjung. It was for the said purpose, that the property at Aurangabad was handed over to the applicant.

10. While recording evidence before the Waqf Tribunal, the Secretary of the applicant specifically deposed in cross-examination that the entries in the Government Gazette dated 20.12.1973, indicate that the suit property was recognised as a Waqf Property. An application was filed by the applicant before the Municipal Corporation at Aurangabad on 17.10.1992, wherein, the Secretary mentioned that the 'Ashoorkhana Salarjung Diwan Deodi' is a religious Waqf property for Shia - Asana - Ashari Community, Aurangabad. This clearly establishes that the suit property was for religious purposes and as such, was a waqf property which vests in God Almighty (Maharashtra State Board's case (supra)). In this backdrop, the Waqf cannot be converted into a Muslim Trust and also cannot vest in a human being.

11. The applicant has tried to create a record in favour of the applicant attempting to project the suit property as a Trust. The P.R. card was obtained from the authorities at Aurangabad. The Salarjung records are available with the revenue authorities at Aurangabad. The said property meant to be used for religious purposes cannot be converted into a property so as to vest in the applicant. The legal heirs of Salarjung have dedicated the property for the purposes of using it as Ashoorkhana and thus have created a Waqf.

12. With regard to the entry made in the Government Gazette, wherein the said property was declared to be a Waqf property in 1973 itself, the applicant claims to have challenged the said entry before the State Government in 2002. For the last 16 years, there is no news about any adjudication, according to the applicant. In the orders passed by this Court on 23.4.2015, 17.6.2015, 3.7.2015 and 1.9.2015, time was granted to the applicant to inform the Court as regards the stage / status in its representation / appeal before the State Government with regard to the Government Resolution of 1973. Even today, the applicant has no knowledge as to what is happening with its representation. With the passage of 45 years from the date of

the publication of the Gazette on 20.12.1973, there can be no other inference other than accepting that the said Government Gazette has attained finality.

13. Besides the above factors dealt with by this Court, the applicant has raised issues like, the Tribunal did not cast proper issues, the jurisdiction issue was never framed, issues were not cast after considering the pleadings of the parties etc. Though on the one hand, it is obvious that the applicant has not taken any efforts in the proceedings before the Waqf Tribunal for praying that the issues be recast or that certain issues be tried as jurisdictional issues etc. Even in the eight grounds formulated by it in the memo of the Civil Revision, such grounds have not been raised before this Court.

14. It is settled law that merely because a different view could be taken in a matter, no interference can be caused in the impugned judgment. So also, the Honourable Apex Court in the matter of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], has laid down the law that unless the impugned judgment is perverse and erroneous and likely to cause gross injustice, no interference can be caused by the High Court.

15. In view of the above, this Civil Revision Application being devoid of merits stands rejected.

(RAVINDRA V. GHUGE, J.)

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