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

CIVIL REVISION APPLICATION (ST) NO.5954 OF 2018.

Akbar Abbas Shaikh and ors ... Applicants.

V/s.

Maharashtra State Board of Waqf
and ors ... Respondents

Mr. Mayur Khandeparkar a/w Mr. Roop Basu i/by the
Law Point, for the Applicants.

Mr. Javed Shaikh with Mr. M.S. Dehlvi i/by Dehli & Co.,
for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3RD APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned
counsel for the respondent Nos. 3 to 7.

2] By this Revision Application filed under Section 115 of the
Code of Civil Procedure, the petitioners are challenging the order
dated 27.12.2017, passed by Maharashtra State Waqf Tribunal,
Aurangabad, in Waqf Application No.6 of 2017.

3] The said application was preferred by the present
applicants, being aggrieved by the order dated 2.11.2016, in Case No.
M.S.B.W/Inquiry/F.No.42-182-2011/4552/2016 passed by the Chief
Executive Officer, Maharashtra State Board of Waqfs, Aurangabad.

The application before the Tribunal was filed under Section 83(2) of the Waqf Act 1995. The specific contention that the property is not Waqf property in view of the earlier decisions, was raised in paragraph No. 10 of the application, which is as follows :-

“10. Shri. Dalvi advocate also submitted that applicants being the legal heirs of Khatijabai through Abdul Rahman are the owners of the suit properties. The respondent Nos. 3 to 7 have no right or concern with the suit properties. With intent to grab the suit properties, the respondents Nos. 3 to 7 have filed false application for appointing them as the members of the ad-hoc committee of the Khatijabai Takiya and Kasbin Masjid. The respondent No.2 the C.E.O. of the Board has not considered that the Khatijabai Takiya and Kasbin Masjid public trust was already de-registered and the suit properties are not the Waqf properties. So, there is no question of appointing the ad-hoc committee of the respondent Nos. 3 to 7 for managing the affairs of the Khatijabai Takiya and Kasbin Masjid and the suit properties. The respondent No.2 the C.E.O. of the Board has no power to appoint ad-hoc Committee under Section 69(5) of the Act. Therefore, the impugned order dated 02.11.2016, passed by the respondent No.2 the C.E.O. of the Board appointing the respondents as the members of the ad-hoc committee is contrary to the provisions of law and the same is illegal and void and needs to be quashed and set aside. He lastly prayed to allow the application

and to quash and set aside the impugned order”.

4] Specific grounds of the appeal were raised in respect of the said contention and those grounds are (vii), (viii), and (xi) and (xii).

“VII] It ought to have been considered by the Respondent No.2 that when the registration of under the provisions of the Bombay Public Trusts Act is already cancelled, then there cannot be any deemed registration.

VIII] It ought to have been considered by the learned Respondent No.2 that when the competent authority under the Act i.e. Joint Charity Commissioner has already declared that the suit properties are private property and said order is confirmed by the Hon'ble District Court, then there are no provisions under the Waqf Act which gives powers to the C.E.O. to reopen the issue and decide the matter.

XI] That the learned respondent No.2 failed to consider that as per the provisions section 112 of the Waqf Act, 1995 all the orders made under the Bombay Public Trust Act are saved and validity of the said orders are kept intact and on this count alone the impugned order is liable to be quashed and set aside.

XII] That as the impugned order is passed without considering provisions of Waqf Act,1995, the Bombay

Public Trust Act, 1950, entries of Schedule-1 and therefore the impugned order is liable to be quashed and set aside”

5] However, the observation made by the Tribunal in its impugned order goes to show that the Tribunal has not considered those grounds of appeal and has observed in paragraph No.25 that, “the applicants have not challenged or disputed the registration of suit properties of the Khatijabai Takiya and Kasbin Masjid as the Waqf institution till today”.

6] As stated above, the challenge was clearly raised by the petitioners to the registration certificate itself on the ground that in view of the earlier decisions, the suit property cannot be considered or treated as Waqf property. Despite that, as the Tribunal has confined its enquiry only in respect of appointment of Ad-hoc Committee, but not to the registration of Waqf property, it has become necessary to remand the matter back to the Tribunal, only as regards as this aspect.

7] Learned counsel for the petitioners has tried to rely upon the judgment of this Court, in the case of *Gopinath s/o Ganpatrao Penesalwar -vs- State of Maharashtra and another* [2007 (1) *Mh. L.J.819*], to submit that as the order of registration of Waqf

properties has been made contrary to the decision in the earlier proceeding, it is in fact a nullity and it is not necessary to obtain any order for its declaration as nullity. However, in my considered opinion, in this case, the Application under Section 83 (2) of the Waqf Act was filed not only for challenging the appointment of ad hoc committee but also the registration of the property as Waqf property and the Tribunal has not considered that aspect and confined its order only to the appointment Ad-hoc Committee, the said order is not complete. Hence, to that extent only, remand of the matter is necessary.

8] Therefore, the Revision Application is allowed to the extent of directing the Tribunal to decide the grounds of appeal which are referred above relating to registration of the property as Waqf property and to give its appropriate finding thereon in accordance with law. Rest of the order of the Tribunal is not disturbed.

9] The Civil Revision application is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]