

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 699 OF 2014

M/s. Moazzam Enterprises, through its
Proprietor Mohammed Ibrahim Mithaiwala ... Applicant

Vs.

Maharashtra State Board of Waqf (through
its Chief Executive Officer) & Ors. ... Respondents

Mr. Y.H. Muchhala, Senior Advocate i/b. Javed R. Patel, for the
applicant.

Ms. Saima Ansari i/b. R.M. Momin, Advocate for respondent nos. 1
and 2.

Mr. Uday D. Dalvi i/b. Jahangir A. Khan, Advocate for respondent
nos. 3 and 4.

Mr. Javed R. Shaikh, Advocate for respondent nos. 5 and 6.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **30th July, 2018.**

P.C.:

The learned counsel for respondent nos. 1 and 2 produces the
original resolutions of Maharashtra State Board of Waqf dated 21st
November, 2008 and 26th July, 2009.

2. The learned counsel for the applicant submitted that the order
dated 14th February, 2014 passed by the Presiding Officer,
Maharashtra Waqf Tribunal, Aurangabad thereby setting aside the No
Objection Certificate dated 5th November, 2009, Resolution No. 92 of
2008 dated 21st November, 2008 and Resolution No. 30 of 2009

dated 26th July, 2009 passed by respondent No. 1-Maharashtra State Board of Waqf and respondent No. 2-CEO of Maharashtra State Board of Waqf, Aurangabad in respect of development of Waqf property bearing CTS No. 1/1764 Byccylla Division belonging to “Bai Aminaboo Abdul Rahim Waqf” Byculla be set aside.

3. Heard the submissions of the learned senior counsel for the applicant and the learned counsel for the respondents.

4. The original Application No. 33 of 2012 was preferred by present respondent nos. 3 and 4, who are original applicants/tenants of the building, challenging the action of the trust of redevelopment of the said building. The action is based on the first resolution dated 21st November, 2008 and second resolution dated 26th July, 2009. By virtue of first resolution dated 21st November, 2008, the trust of the Waqf Board have accepted that the building needs redevelopment and the trust gave contract of redevelopment of the property on the basis of quotations to one of the bidders, i.e., Grais Developer. Grais Developer could not carry out development and backed out. So, by the second resolution dated 26th July, 2009, the contract of redevelopment was given to the second highest bidder of the tender,

i.e., the present applicant. Before the Tribunal, while framing issues, though the issue of validity of resolutions was framed, it is answered in negative by the Tribunal. However, the Tribunal has observed that those original two resolutions were never produced by the Waqf Board before the Tribunal. Therefore this Court has directed respondent no.1-Waqf Board to produce the original first and second resolutions and they are produced before this Court. Thus, it shows that original resolutions are in existence and available with Waqf Board. These first and second resolutions are to be produced before the Tribunal.

5. Secondly, the Tribunal held that respondent nos. 5 and 6, who are original respondent nos. 3 and 4, were not trustees at the relevant time when the resolutions were passed. If at all the status of respondent nos. 5 and 6 was disputed at the relevant time, then it was necessary for the Waqf Tribunal to frame a separate issue about their status. On perusal of the issues, it is found that no such separate issue is framed and thus, the parties are deprived of leading their evidence on this point. Under such circumstances, the order dated 14th February, 2014 passed by the learned Presiding Officer, Maharashtra Waqf Tribunal, Aurangabad is quashed and set aside.

The matter is remanded to the Presiding Officer, Maharashtra Waqf Tribunal, Aurangabad. The Tribunal is directed to decide the matter taking into consideration the order passed by this Court. The evidence which is tendered earlier is saved. However, if the issue of trusteeship is disputed by both the parties, then that issue is required to be framed as additional issue and the parties will be allowed to lead evidence to that extent only. The Tribunal to endeavour to decide the matter on or before 31st March, 2019.

6. The original resolutions of Maharashtra State Board of Waqf dated 21st November, 2008 and 26th July, 2009 which are produced before this Court is returned back to the learned counsel for the respondent nos. 1 and 2/Waqf Board. These resolutions are to be produced before the Maharashtra Waqf Tribunal.

7. Civil Revision Application is allowed.

(MRIDULA BHATKAR, J.)