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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12945 OF 2016

Gulam Abbas Hasanali Rassiwala & Anr ...Petitioners

V/s.

Magdum Bibi Wakf ...Respondent

Mr. V.Y. Sanglikar for the Petitioners.
Mr. M.A. Vaid a/w. Ms. Vidhya N. Shet i/b. Vaid & Associaetes for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 05TH FEBRUARY, 2018.

P.C. :-

1. The questions for consideration of this Court in the petition is whether Maharashtra State Wakf Tribunal, Aurangabad did have jurisdiction to entertain the proceeding i.e. Wakf Application No. 54 of 2015 filed by the respondent or not.

2. It is the case of petitioners that the tribunal misconstrued the judgement of Supreme Court in case of ***"Faseela M. Vs. Munnerul Islam Madrasa Committee reported in AIR 2014 SC 2064"***. It is the case of the petitioner that, though Supreme Court in the said judgement had construed the amended provisions of Sections 6 and 7 of the Wakf Act, 1995 and had also considered Sections 83 and 85

of the said Act and had held that Tribunal did not have jurisdiction, the Wakf Tribunal has wrongly rejected the application of the petitioner raising issue of maintainability of the said application before the tribunal.

3. The learned counsel for the respondent on the other hand invited my attention to several judgments which are part of the compilation tendered before this Court and would submit that on plain interpretation of Sections 83 and 85 and post amendment of those sections, the Wakf Tribunal only has exclusive jurisdiction to entertain an appeal which was filed by the respondent.

4. In view of this controversy, both the parties have agreed that the application filed by the petitioner as well as the main application filed by the respondent be reheard by the Maharashtra State Wakf Tribunal, Aurangabad. Statement is accepted.

5. The Maharashtra State Wakf Tribunal, Aurangabad shall reconsider the order dated 8th June, 2016 after considering other judgements proposed to be relied upon by the respondents as well as the petitioner. The Maharashtra State Wakf Tribunal shall decide the matter afresh without being influenced by the observations made in the impugned order after hearing the parties on the application filed by the petitioner as well the Wakf Application No. 54 of 2015.

6. However, after hearing both the applications, if the Tribunal

comes to the conclusion that the Tribunal did not have jurisdiction, the Tribunal would not decide the matter on merits. If the Tribunal is of the view that the tribunal has jurisdiction to entertain Wakf Application No. 54 of 2015, the Tribunal shall decide the said application also by the same order on merits. While passing the order on the application no.54 of 2015 in the aforesaid event, the Tribunal shall consider the reliefs claimed by the respondent in the Wakf Application No. 54 of 2015 after considering as to whether any part of that relief at all can be granted by the tribunal or not under the provisions of the Wakf Act 1995. The entire proceedings including the issue of jurisdiction shall be considered and decided by the tribunal within a period of four weeks from the date of communication of this order.

7. Parties are at liberty to appear before the Tribunal tomorrow and commence arguments as directed aforesaid. Parties further agree that in the event of the Tribunal at Aurangabad having already transmitted the papers and proceedings to the Tribunal sitting at Mumbai, the proceedings to be heard at Mumbai. The learned counsel appearing for the parties have informed that the matter is now placed on board before the Wakf Tribunal at Mumbai. It is made clear that for any reasons, the hearing of this matter cannot commence tomorrow before the Tribunal having sitting at Mumbai,

the parties have agreed that the matter to be heard by the tribunal sitting at Aurangabad on 17th February, 2018.

8. The parties as well as the tribunal to act on the authenticated copy of this order. Writ petition is disposed of in the aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)