

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12705 OF 2018

Dudadhari @ Kathada @ Kagzipura Masjid

Trust, Nashik and Ors.

... Petitioners

Versus

Uttam Nabhaji Mahale and Ors.

... Respondents

ALONG WITH
CIVIL APPLICATION NO. 996 OF 2019
IN
WRIT PETITION NO. 12705 OF 2018
ALONG WITH
CIVIL APPLICATION (L) NO. 32905 OF 2019
IN
WRIT PETITION NO. 12705 OF 2018

Mr.S.B.Talekar a/w. Ms. Madhavi Ayyappan i/b. Talekar and Associates for the Petitioners.

Mr.Y.H.Muchhala, Sr.Adv. a/w. Mr. G.D.Shaikh, Mr.Musaddique Momin i/b. Akhalque M.S. Solkar for Respondent Nos. 1 to 6.

Mr.Girish Godbole a/w. Mr.Sagheer Khan, Mr.Sharique Nachan i/b. Judicare Law Associates for Respondent No. 7 in above Writ Petition / Applicant in CAW No. 996 of 2019.

CORAM : AKIL KURESHI &

S.J. KATHAWALLA, JJ.

DATE : 12TH JUNE, 2019

P.C.:

1. The Petitioners have filed the above Writ Petition seeking following reliefs against the Maharashtra Board of Waqfs, Aurangabad ('the Board') :

"(a) To direct the Maharashtra Board of Waqfs, Aurangabad to continue the interim order dated 13th December, 2013 in Special Leave to Appeal (Civil) No. 34727 of 2013 till four weeks after decision on the Application under Section 40 of the Wakf Act, pursuant to the Judgment and Order dated 16th October, 2018 in Appeal No. 1 of 2016, by issuing mandamus or any other Writ or Order or directions as the case may be.

(b) To continue the interim order dated 13th December, 2013 in Special Leave to Appeal (Civil) No. 34727 of 2013 till four weeks after decision on the Application under Section 40 of the Wakf Act, pursuant to the Judgment and Order dated 16th October, 2018 in Appeal No. 1 of 2016 pending hearing and final disposal of this Petition."

2. Civil Application No. 996 of 2019 is filed by the Applicant (Respondent No. 7) in the above Writ Petition seeking following reliefs :

"(a) This Court be pleased to dismiss the above Petition as infructuous.

(b) In the event of this Court is disinclined to grant prayer Clause (a) hereinabove, this Court be pleased to vacate all interim orders passed in the above Petition."

3. The circumstances, which have led to filing of the above Writ Petition by the Petitioners are as under :

- 3.1. An Order dated 4th February, 2016 was passed under Section 40 of the Wakf Act, 1995 ('**the Act**') by the Chief Executive Officer, Maharashtra Board of

Waqfs, Aurangabad .

3.2. Being aggrieved by the said Order, the Petitioners in the Writ Petition impugned the said Order before the Waqf Tribunal ('**the Tribunal**') being Appeal No. 1 of 2016.

3.3. The Tribunal by its Order dated 16th October, 2018, set aside the Order dated 4th February, 2016 passed by the Board through Chief Executive Officer and remanded the matter back to the Board.

3.4. On 30th October, 2018, the Petitioners above named filed the above Writ Petition for reliefs set out hereinabove on the ground that the Board is dysfunctional and the incharge Chief Executive Officer of the Board has no jurisdiction to pass an Order in the said case under Section 40 of the Act.

3.5. On 4th January, 2019, this Court directed the parties to maintain status quo till the next date.

4. Since the Board has now started functioning, on 18th February, 2019 the Board extended the interim relief granted on 4th January, 2019 till further orders.

5. The learned Advocate appearing for the Applicant has submitted that since the Board has started functioning and has passed an order, which sufficiently protects the Petitioners, the ground on which the above Petition is filed namely that the Board has not started functioning and hence there was a need to grant interim reliefs as a stop gap arrangement till the Petitioners could approach the Board, does not survive and the above Petition has become infructuous. It is submitted that the Petitioners are

using the pendency of the Petition as a ploy to contend before the Board that since this Court has passed an Order dated 18th February, 2019, which is in operation, the said Order dated 18th February, 2019, cannot be questioned in accordance with law. It is also submitted that the Applicant has challenged the said Order dated 18th February, 2019 by filing Wakf Application No. 34 of 2019 before the Tribunal. However, the pendency of the Writ Petition and continuation of the interim orders granted by this Court, are being used to prevent a challenge to the same in accordance with law. The Applicant has therefore submitted that the above Writ Petition be disposed off and all orders passed therein be vacated.

6. We have perused the above Writ Petition, Civil Applications and have heard the learned Advocates appearing for the parties.

7. Admittedly, the above Writ Petition was filed by the Petitioners since the Board had not started functioning and there was need to grant interim relief as a stop gap arrangement till the Petitioner could approach the Board. The Board has now started functioning. In fact, the Board by its Order dated 18th February, 2019 has extended interim order until further orders. The Advocate for the Applicant has submitted that since the Petitioners are sufficiently protected by the said Order dated 18th February, 2019 passed by the Board, which will continue until further orders, the above Petition has become infructuous and all orders passed therein be vacated. This submission of the Applicant appeals to reason. In view thereof, the following Order is passed :

- i. The above Writ Petition is dismissed as infructuous. Since the Waqf Board has by its order dated 18th February, 2019 granted / extended interim relief till further orders, interim orders passed in the above Writ Petition stands vacated.
- ii. This Court has not gone into the merits of the case. All contentions of the parties before the Waqf Board and / or before the Waqf Tribunal are therefore kept open.
- iii. The above Writ Petition and Civil Applications are accordingly disposed off.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)