

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 6104 of 2016
Smt. Zahedabi w/o Abdul Razzaque Shete and others
Vs.
The Maharashtra State Board of Wakf, Aurangabad and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Masood Shareef and Mr. Aadil Mirza, Advocate for the petitioner
Mrs.S.S. Dhone h/f Mrs. B.P. Maldhure, Advocate for the respondent
No.1
Mrs. H.N. Prabhu, AGP for the respondents No.2 to 5.
Mr. R.L. Khapre, Mr. D. R. Khapre and Mr. R.T. Anthony, Advocates for the
respondents No. 7 to 14.

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 06, 2020

By this writ petition, the petitioners have challenged order dated 15/01/2005, passed by the respondent No.1 i.e. The Maharashtra State Board of Waqf, Aurangabad, whereby Waqf called "Hazrat Sayyad Fazle Mohammed Shah Pappal Baba Chisty" was registered. The petitioners have also challenged order dated 04/08/2016, passed by the Court of Principal District and Sessions Judge, Nagpur, whereby the petition challenging the said order passed by the respondent No.1 was dismissed.

2. It is the case of the petitioners that they as well as the contesting respondents No.7 to 14 had moved Competent Authority under the provisions of the Maharashtra Public Trusts Act, 1950, claiming that a Trust in

the form of aforesaid Dargaha existed in a property situated at Umrer, District Nagpur. During pendency of the said applications, the respondent No.7 moved an application before the respondent No.1 under the provisions of the Waqf Act, 1995, claiming on the basis of oral Waqfnama that a Waqf concerning the said Dargaha i.e. Hazrat Syiad Fazle Mohammed Shah Pappal Baba Chisty, Umrer, was created and that it was required to be registered as such under the said Act. Respondents No. 8 to 14 were consenting parties to the said application. The respondent No.1 undertook enquiry under the provisions of the said Act and directed issuance of public notice in respect of the said claim made by the respondent No.7. In pursuance of the said direction of issuance of public notice, on 04/12/2004, such a public notice was indeed issued in newspaper "Dainik Bhaskar", inviting objections within a period of seven days regarding the said claim made by the respondent No. 7 for registration of Waqf on the basis of oral Waqfnama. The respondent No. 7 had placed on record a document showing that the property where the Dargaha was located was given to the Waqf in the name of the respondent No. 7 as "Mutawalli". There is no dispute about the fact that the names of the persons were recorded in the record of rights pertaining to said property, who had executed the said document. On the basis of such material and since no objections were raised in pursuance of the said public notice, on 15/01/2005, the respondent No.1 passed order for registration of the said Waqf.

3. This order was made subject matter of challenge by the petitioners before the District Court at Nagpur, claiming that enquiry as contemplated under Section 36 of the said Act was not conducted by respondent No.1 and, therefore, order dated 15/01/2005, deserved to be set aside. The petitioners made further prayers seeking directions against the respondents No.3, 4 and 5 to the said petition not to mutate the names of the contesting respondents herein on the alleged property and a further direction to the said respondents not to create any right, title or interest on the alleged Waqf property. A further prayer was made by the petitioners to appoint them as the first Board of Managing Committee of the Waqf property.

4. By impugned order dated 04/08/2016, the Court below dismissed the petition filed by the petitioners. It is significant that before the petition was taken up for consideration for final orders, the petitioners gave up prayer Clauses No.2, 3 and 4 of their petition and pressed only the first prayer made in the petition pertaining to their claim that order of registration of Waqf dated 15/01/2005, passed by the respondent No.1 deserved to be set aside.

5. The Court below, while dismissing the petition filed by the petitioners herein challenging order of registration of Waqf, found that the enquiry contemplated under the provisions of the aforesaid Act was indeed conducted by the respondent No.1 before granting registration of Waqf and further that the application moved

by the respondent No.7 was within limitation. The Court below also observed that it was beyond the scope of the petition filed before it to decide the right, title and interest as regards the Waqf property. On this basis, the petition was dismissed. Aggrieved by the same, the present writ petition was filed by the petitioners.

6. The petitioners, *inter-alia*, raised the question of limitation before this Court and it was claimed that the said issue of limitation was covered in their favour by judgment and order passed by this Court in the case of **Mohd. Ansar Salik and ors. Vs. Shaikh Hamid Babumiya Inamadar and ors. 2010(5) Mh.L.J. 607**. Subsequently, a learned Single Judge of this Court referred the question to larger Bench as disagreement was expressed with the view taken in the said judgment of this Court in the case of **Mohd. Ansar Salik and ors. Vs. Shaikh Hamid Babumiya Inamadar and ors.** (supra). By judgment and order dated 18/12/2019, a Division Bench of this Court answered the reference by holding that judgment of this Court in the case of **Mohd. Ansar Salik and ors. Vs. Shaikh Hamid Babumiya Inamadar and ors.** (supra) did not lay down good law and accordingly, the question of limitation stands decided against the petitioners.

7. In this situation, when the writ petition was taken up for final hearing, the learned counsel for the petitioners emphasized upon the other principal ground raised in the writ petition, to the effect that enquiry as

contemplated under Section 36(7) of the aforesaid Act was not undertaken by the respondent No.1 before passing order dated 15/01/2005, for registration of the aforesaid Waqf. It was submitted that perusal of the material on record would show that only on the claim made by the respondent No. 7 about creation of the Waqf by an oral Waqfnama, without any further enquiry, the Waqf stood registered and property in question was included as Waqf property. It was submitted that the question of title pertaining to property in question was subject matter of serious dispute in Civil Suits pending before the Competent Court and in this situation, the respondent No.1 ought to have held its hands. It was submitted that order directing registration of Waqf was passed in hurry, without complying with the requirements and provisions of the aforesaid Act. It was further submitted that this aspect was not appreciated by the Court below while dismissing the petition filed by the petitioners challenging the registration of Waqf. On this basis, it was submitted that the writ petition deserved to be allowed and impugned order deserved to be quashed and set aside.

8. On the other hand, the learned counsel for the respondents No. 7 to 14 submitted that the respondent No.1 had indeed conducted enquiry as contemplated under the provisions of the said Act, by referring to relevant documents as also by visiting the site where the Dargaha is located and public notice was duly issued, to which the petitioners never responded and, therefore, no fault could

be found with the impugned order passed by respondent No.1 and the Court below. It was emphasized that in the proceedings before the Competent Civil Court, the petitioners had suffered adverse decrees and although such decrees were subject matter of challenge in appeal proceedings, that in itself would not enure to the benefit of the petitioners. It was emphasized that existence of Waqf was never seriously disputed by the petitioners and that if they were interested only in becoming Mutawalli and taking active part in the Waqf, that too could not be considered because they had expressly given up prayers No.2, 3 and 4 in the petition filed before the Court below. On this basis, it was submitted that the writ petition deserved to be dismissed.

9. The learned counsel appearing for the respondent No.1 - Board defended order dated 15/01/2005 and submitted that the Board would ensure that the Waqf in question functions strictly in terms of provisions of the said Act.

10. Heard learned counsel for rival parties and perused the material on record. The only question that needs to be addressed in the present petition is, as to whether the material on record indicates that the respondent No.1 had conducted enquiry as contemplated under the provisions of the said Act, particularly Section 36(7) thereof, before passing order dated 15/01/2005, for registration of Waqf in question.

11. A perusal of the material on record shows that respondent No.7 had submitted that the form of registration of aforesaid Waqf before the respondent No.1. The respondent No.7 placed on record assertions that by an oral Waqfnama the said Waqf was created. A document was also placed on record showing that the property of the Dargaha was given to the respondent No.7 as Mutawalli of the said Waqf and that the names of such persons who executed the document were indeed recorded in the record of rights. The material on record also shows that the respondent No.1 had conducted enquiry and in the process visited the property of the Dargaha and also took on record a bond executed by the persons claiming to be owners of the property. On the basis of such enquiry a public notice was caused to be issued dated 04/12/2004, in newspaper inviting objections, if any, before registration of the Waqf. The material on record shows that when no objections were received from any party, much less the petitioners herein, the respondent No.1 proceeded to pass order dated 15/01/2005.

12. The material on record shows that when the petition filed by the petitioners challenging the said order of registration of Waqf was taken up for consideration, prayer Clauses No.2 to 4 were specifically given up by the petitioners and only prayer Clause No.1 was pressed into service.

13. The prayer clauses in the petition filed before the Court below read as follows :

- “1. Quash and set aside the order dated 15.01.2005 passed by the respondent No.1,
2. Direct the respondent Nos.3, 4 and 5 not to mutate the names of the respondent nos. 6 to 14 on the alleged wakf property.
3. Direct the respondent nos. 6 to 14 not to assert create any right, title and interest on the alleged wakf property.
4. To appoint the Wakifs as a First Board of Manage Committee of the wakf property to manage the trust and its property during the pendency of the instant appeal,
5. Grant any other relief deemed fit and appropriate considering the facts and circumstances of the case, in the interest of justice.”

14. As noted above, the petitioners themselves gave up prayer Clauses No. 2 to 4, indicating that they intended to press only prayer Clause No. 1, pertaining to challenge to order dated 15/01/2005, passed by the respondent No.1 granting registration of Waqf. This Court has already noted above, that the nature of enquiry conducted by the respondent No.1 on the basis of material available on record appears to be detailed and sufficient and that the petitioners have not been able to demonstrate violation of Section 36(7) of the aforesaid Act. Therefore, it cannot be said that the Court below committed an error in dismissing the petition filed by the petitioners and confirming order dated 15/1/2005.

15. It is relevant that the basis of claim raised on behalf of the petitioners is right in the property in question, which is now identified as Waqf property. The material on record shows that the Civil Suits filed with regard to the nature of right of the petitioners in the suit property have resulted in adverse orders by the Competent Civil Court. It has been held that the sale deed on the basis of which the petitioners raised claim in the property in question has been held to be sham and bogus. It has been also categorically held by the Competent Civil Court in another litigation between the parties that the respondents have been able to prove the fact the Waqf in question indeed came to existence and stood registered by the order of the respondent No.1. Such positive findings rendered in favour of the contesting respondents are subject matter of appeals before the Competent Appellate Court and the result of such appeals is awaited. In this situation, it cannot lie in the mouth of the petitioners that since they are having right, title and interest in the property in question, they are entitled to challenge the impugned orders passed by the respondent No.1, as well as the Court below. Even otherwise, the material on record does indicate that the existence of Waqf is not seriously disputed on behalf of the petitioners and their main grievance appears to be inclusion of property as Waqf property and the fact that they have been deprived of any role in functioning of the aforesaid Waqf. It is surprising that in this situation, the petitioners chose to delete prayer Clauses No.2 to 4 in the petition filed before the Court below.

16. Be that as it may, as correctly observed by the Court below in the impugned judgment and order, that the question pertaining to right, title and interest in the said property registered as Waqf property, is beyond the scope of the petition filed by the petitioners challenging order dated 15/1/2005. It is an admitted position that the appeals arising out of the decrees passed by the Competent Civil Court are pending. Therefore, it goes without saying that the petitioners would be at liberty to raise their grievance at appropriate stage pertaining to inclusion of the said property as Waqf property and as to their right to be involved in the functioning of Waqf and their claim being appointed as Mutawalli in the said Waqf. All would depend upon the fate of the aforesaid appeals.

17. In view of above, it is found that there is no merit in the present writ petition and accordingly, it is dismissed.

18. It would be in the interest of justice that appeals bearing Regular Civil Appeal Nos. 436/2010, 153/2011 and 329/2010, are disposed of at the earliest because the rival parties are admittedly senior citizens and it would be in the interest of justice that the dispute is decided finally.

19. Accordingly, it is directed that the District Judge – 4 (Senior Citizen Court), Nagpur, shall dispose of the

aforesaid appeals as expeditiously as possible and in any case on or before **30th April, 2020**.

20. The respondent No.1 - Board is directed to ensure that the said Waqf functions strictly in terms of the provisions of the aforesaid Act.

JUDGE

MP Deshpande