

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

914. CIVIL REVISION APPLICATION NO. 23 OF 2021

Shaikh Dadamiya S/o Shaikh Hussain and 10 others
...Applicants

VERSUS

The Maharashtra State Board of Wakf
Through its Chief Executive Officer,
Office at Panchakki, Aurangabad and three others
...Respondents

Mr. M.V. Ghatge, Advocate for applicants

CORAM : N.J. JAMADAR, J.

DATE : 16th March, 2021

ORDER :

1. The challenge in this revision application is to an order below an application for temporary injunction (Exh.5) in Wakf Suit No. 39 of 2021 instituted by the applicants-plaintiffs before the Wakf Tribunal seeking perpetual injunction against defendant No.2-Municipal Council, Purna, and defendant No.3-the Collector, Parbhani, from causing obstruction to the possession of the plaintiffs-applicants over the shop premises situated at survey No. 6 village Purna and from demolishing the said shops. By the impugned order, the Wakf Tribunal was persuaded to reject the application holding, inter-alia, that the applicants/plaintiffs had no

prima-facie case, neither the balance of convenience was in favour of the plaintiffs nor they would suffer irreparable loss in the event of refusal of injunction.

2. The plaintiffs instituted the above numbered Wakf Suit with the assertion that the land survey No. 6 admeasuring 4 hectares 4 R situated at village Purna is the *wakf* property of *Jama Masjid* and *Dargah Mastan Shah Wali* (Rh), Purna. The said *Wakf* is registered vide registration No. MSBW/PBN/50/2011. The plaintiffs and their predecessors-in-title are running shops in the said *wakf* property. They have been paying rent to the *Wakf institution*-respondent No.4.

3. Initially, the rent was collected by respondent No.2-Municipal Council, which laid claim of ownership over the *Wakf* property. In the year 2015, an application came to be filed before the Chief Executive Officer, Maharashtra State *Wakf* Board, Aurangabad, seeking declaration that the aforesaid property is the property of the respondent No.4-*Wakf* institution. Since then, the respondent No.2-Municipal Council desisted from collecting the rent.

4. In the month of February 2021, the respondent No.2-Municipal Council again threatened to demolish the suit shop and

evict the plaintiffs-applicants there-from without any legal right, title and interest in the suit property. Hence the plaintiffs-applicants instituted the above numbered *Wakf* Suit before the Tribunal for perpetual injunction.

5. In view of imminent threat of dispossession and demolition of the suit shops, an application for temporary injunction (Exh.5) was moved. The Tribunal rejected the application by the impugned order. Hence this revision.

6. Heard Mr. M.V. Ghatge, learned Counsel for the applicants. An endeavour was made to demonstrate that the suit property being a *Wakf* property, action of respondents No.2 & 3 to evict the applicants and demolish the suit shops, is wholly unsustainable and beyond the province of their authority. Indisputably, an application for registration of the suit property as a *Wakf* property under Section 40 of the Waqf Act, 1995 is filed. In the circumstances, the Tribunal could not have declined the interim relief on the premise that the applicants were not entitled to equitable relief as there was, in the view of the Tribunal, suppression of facts.

7. The failure to refer to previous proceedings, by itself,

according to the learned Counsel for the applicants, does not necessarily lead to an inference of suppression of facts in all the cases. To lend support to this submission, the learned Counsel for the applicants placed reliance on the judgment of the Supreme Court in the case of **S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors.** [AIR 2004 SC 2421]. In the said case, it was held that the failure to mention the fact that a suit had already been filed by the appellant therein was not such a fact, suppression of which could have affected the final disposal of the writ petition on merits.

8. I find it rather difficult to accede to the aforesaid submissions. The suppression of the previous proceedings, especially the stand of the plaintiffs-applicants as regards the ownership over the suit land and their status *qua* the suit property is not the sole ground on which the Tribunal refused to grant the discretionary relief. On a careful analysis, the Tribunal recorded a clear finding, *albeit prima-facie*, that the suit property is not a *Wakf* property. The reliance placed by the applicants on the Gazette Notification, wherein property admeasuring 44' X 41' and 25' X 25' feet was shown to be the property of the *Wakf Masjid Ganj* and *Dargah Mastan Shah Wali*, was held to be of no assistance to the applicants as the suit property, which the plaintiffs-applicants claim

to be a *Wakf* property allegedly admeasures 4H.04R. The contrast in area is simply stark.

9. The Tribunal recorded following reasons to decline the interim relief.

- (i) The property bearing Gat No. 6 admeasuring 4H.04R has not been mentioned as the property of the *Wakf* institution in *Jod-patra*.
- (ii) The suit property is not shown as a *Wakf* property in the Government Gazette of the year 1974.
- (iii) The plaintiffs-applicants' claim that they had paid the rent of the suit shops to defendant No.2-Municipal Council constitutes an admission of the ownership of defendant No.2 over the suit property.
- (iv) Some of the plaintiffs-applicants instituted suits, being Reg. Civil Suits No. 61 of 2015 to 68 of 2015, before the Civil Court and applications for temporary injunction, therein preferred by those plaintiffs-applicants, were rejected and appeals their-against were also dismissed by the District Court.
- (v) In the said suits, the plaintiffs-applicants did not assert that the suit property was the *Wakf* property and, instead, claimed ownership over the suit property.

(vi) In the aforesaid backdrop, the suppression of those facts disentitles the plaintiffs-applicants to the equitable relief.

10. In the backdrop of aforesaid reasons, this Court does not find that the Tribunal exercised the discretion in an unreasonable or perverse manner. It seems that in their desperate efforts to protect possession, the plaintiffs-applicants have taken diverse pleas as to the character of the suit property and the nature of their possessory right over the suit property. Thus, the Tribunal was well within its rights in recording a finding that no *prima-facie* case was made out for grant of interim relief. There is neither a jurisdictional error nor such defect in procedure as to warrant exercise of revisional jurisdiction.

11. For the foregoing reasons, the revision application does not deserve to be entertained.

12. Hence the revision application stands dismissed.

(N.J. JAMADAR)
JUDGE