

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

WRIT PETITION NO.6629 OF 2018

**CHAND ABBASALI SHAIKH
VERSUS
THE CHIEF EXECUTIVE OFFICER MAHARASHTRA
STATE WAKF BOARD AND OTHERS**

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Advocate for the Petitioner : Shri Shaikh Mobin H.
Advocate for Respondent 1 : Shri A.D. Pawar h/f Shri N.E.
Deshmukh

Advocate for Respondent 3 : Shri S.A.P. Quadri

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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 14th December, 2021

Per Court :-

1. We have briefly heard the learned counsel for the respective sides and have perused Section 83 of the Waqf Act, 1995. The petitioner obviously is not the Mutawalli. He is a person, who claims that the donations dropped in the donation box at the “Dargah Sayyada Khairunisa Begum alias Sarkar Nani Maa”, situated at Naldurg, Taluka Tuljapur, District Osmanabad, are being siphoned off and therefore, CCTV camera should be installed. By the order dated 17.05.2018, the Chief Executive

Officer of the Maharashtra State Waqf Board, Aurangabad granted such permission. The petitioner spent about Rs.64430/- for purchasing equipment. However, the Chief Executive Officer suo moto passed an order on 25.05.2018 withdrawing the earlier order.

2. We find that there are disputed questions raised before us as regards the locus of the petitioner. The question as to whether, the Chief Executive Officer has the power to review, is also raised.

3. There can be no debate that specific Tribunals have been created for dealing with all grievances and for considering challenges to any order that may be passed under the Waqf Act or the Rules. Section 83(1), (2) and (3) of the Waqf Act, 1995 read as under :-

“83. Constitution of Tribunals, etc.—

[(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.]

(2) Any mutawalli person interested in a [waqf] or any other person aggrieved by an order made under this Act, or rules made

thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the [waqf].

- (3) *Where any application made under sub-section (1) relates to any [waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the [waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter: Provided that the State Government may, if it is of opinion that it is expedient in the interest of the [waqf] or any other person interested in the [waqf] or the [waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such [waqf] or [waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.”*

4. The learned advocate for the petitioner has placed reliance upon the judgment delivered by the Honourable

Supreme Court in *Magadh Sugar and Energy Limited vs. The State of Bihar and others*, 2021 SCC Online 801. The principles culled out by the Honourable Supreme Court are set out in paragraph 19, which read thus :-

“19. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in *Whirpool Corporation v. Registrar of Trademarks*, Mumbai, (1998) 8 SCC 1 and *Harbanslal Sahni v. Indian Oil Corporation Ltd.*, (2003) 2 SCC 107. Recently, in *Radha Krishan Industries v. State of Himachal Pradesh and others*, a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion;

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Assistant Commissioner of State Tax v. M/s Commercial Steel Limited. In State of HP v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499, this Court has held that a writ petition is maintainable before the High Court if the taxing authorities have acted beyond the scope of their jurisdiction. This Court observed:

“23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. ITO, AIR 1971

SC 33 that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.”

5. It is apparent that where a statutory remedy by creation of a specific tribunal is provided and when there are disputed questions of facts, the High Court can decline to exercise its jurisdiction in a writ petition. The Honourable Supreme Court has ruled in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin Education Society, 2019 SCC Online SC 1292 (Civil Appeal No.7764/2019, decided on 30.10.2019)*** and ***Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and others, (2019) 419 ITR 440*** that if there is a statutory remedy available, the High Court should not entertain the petition filed directly by bypassing such statutory remedy.

6. In view of the above, we are not inclined to entertain this petition. This Writ Petition is disposed off.

7. We are relegating the petitioner to the statutory remedy available in law and as such, the time spent by the

petitioner in this Court from 14.06.2018 when the petition was instituted till the passing of this order, shall stand excused if the petitioner approaches the Tribunal on or before 31.12.2021.

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(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)