

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO. 458 OF 2021

Syed Afzal Pasha Quadri,
S/o Syed Peer Pasha Quadri,
Age 43 years, Occu. Legal Professional/
Sajjada Nashin and Mutawalli,
R/o Mehboobpura, Taluka Udgir,
District Latur

.. Petitioner

Versus

1. Anis Shaikh,
Chief Executive Officer,
Maharashtra State Waqf Board,
Panchakki, Aurangabad,
Taluka and Dist. Aurangabad
2. Ahmed Khan Manzoor Khan,
District Waqf Officer, Latur,
Taluka and District Latur
3. Syed Shah Yousufulla (Yousuf Jani
Quadri) s/o Syed Shah Mohammad
Quadri, Age 65, Occu. Agri.,
R/o Near Dargah Hazrat Peer Pasha
(RAH), Nilanga, Taluka Nilanga,
District Latur

.. Respondents

Mr Parag V. Barde, Advocate for petitioner

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 13.01.2022

PRONOUNCED ON : 18.01.2022

ORDER :

1. It is a motion for contempt moved by the petitioner by taking aid of Article 215 of the Constitution of India and Section 12 of the Contempt of Courts Act, 1971.

2. It is necessary to have a look on brief facts for deciding this petition.

3. One Syed Aslam s/o Syed Muntajibuddin Quadri and others had filed Wakf Suit No.210 of 2017 against present petitioner and others for the relief of declaration, injunction and apportionment of income derived from Dargah Hazrat Nooruddin Noorulhaq Issak Quadri @ Syed Peer Pasha Aljilani (RAH), Nilanga, District Latur. That suit was compromised between the parties after obtaining sanction from the Maharashtra State Wakf Board. The compromise decree came to be passed on 1.10.2018 by the Wakf Tribunal, Aurangabad. In view of terms of compromise decree passed in abovesaid Wakf suit, the petitioner is permitted to perform religious rites, rituals and share offerings before Dargah along with five persons. According to the petitioner, respondent no.1/Wakf Board permitted respondent no.3 to perform religious rites, rituals and share offerings before Dargah vide its order dated 26.11.2020. It is encroaching on the rights of the petitioner. The petitioner has pointed out such facts to respondents no.1 and 2, but respondents no.1 and 2 are acting in collusion with respondent no.3 thereby disobeying the compromise decree passed in Wakf Suit No.210 of 2017. According to the petitioner, respondents no.1 to 3 are willfully disobeying the judgment and decree passed in abovesaid Wakf Suit and, therefore, it is necessary to initiate contempt proceedings against the respondents.

4. Heard Mr Parag Barde, learned Counsel for the petitioner on the point of maintainability of this petition. According to Mr Barde, instant contempt petition is maintainable in view of Article 215 of the Constitution

of India and Section 12 of the Contempt of Courts Act, 1971. He submitted that compromise decree came to be passed in Wakf Suit No.210 of 2017 after obtaining sanction from the Wakf Board. The Wakf Board is aware about such terms of the compromise arrived between the parties in Wakf Suit No.210 of 2017. The petitioner is permitted to perform religious rites, rituals and share offerings before the Dargah along with five persons. He submitted that respondent no.1 has granted permission to respondent no.3 to perform religious rites, rituals and share offerings before the Dargah vide order dated 26.11.2020. Respondents no.1 to 3 have committed willful disobedience of compromise decree passed in abovesaid Wakf suit.

5. Mr Barde, learned Counsel for the petitioner also invited my attention to the terms of the compromise arrived between the parties in Wakf Suit No.210 of 2017 and various communications between the parties. He submitted that respondents no.1 and 2 are statutory authorities and as such, they have to obey the compromise decree passed in Wakf Suit No.210 of 2017. He submitted that respondents no.1 and 2 in collusion with respondent no.3 are acting contrary to the terms of the compromise decree. He submitted that respondents no.1 and 2 cannot act contrary to the terms of the compromise decree passed in Wakf Suit No.210 of 2017 by issuing administrative orders. Respondents no.1 and 2 are deliberately causing disobedience of compromise decree passed in abovesaid suit. Respondents no.1 to 3 are liable to face the consequences provided under the Contempt of Courts Act, 1971.

6. Mr Barde, learned Counsel for the petitioner has placed his reliance in case of **Kanwar Singh Saini Vs. High Court of Delhi**, reported in **(2012) 4 SCC 307**. By placing his reliance on the abovesaid citation, Mr Barde submitted that instant contempt petition is maintainable apart from execution proceedings.

7. Maharashtra Wakf Tribunal is constituted under Section 83 (1) of the Wakf Act, 1995. The Tribunal is empowered to determine any dispute, question or other matter relating to wakf or wakf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property under the Wakf Act. According to Section 83 (5) of the Wakf Act, the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order. Section 83 (7) of the Wakf Act further provides that the decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court. Section 83 (8) of the Wakf Act provides that the execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

8. Having regard to the abovesaid provisions of the Wakf Act, 1995, the Tribunal is clothed with all the powers to execute its orders and decrees as provided under the provisions of Code of Civil Procedure, 1908.

9. According to the contention of the petitioner, compromise decree passed in Wakf Suit No.210 of 2017 is deliberately disobeyed by the Maharashtra State Wakf Board and its officers, by appointing respondent no.3, thereby allowing him to perform religious rites, rituals and share offerings of the Dargah. On perusing the papers, it is found that the parties to Wakf Suit No.210 of 2017 arrived at settlement and accordingly, compromise had taken place and it is stamped by the Wakf Board by according sanction to the said compromise. Accordingly, compromise decree came to be drawn in Wakf Suit No.210 of 2017. According to Section 83 (7) of the Wakf Act, the compromise decree passed by the Tribunal is binding upon the parties and it shall have the force of a decree made by a Civil Court. As such, compromise decree passed in Wakf Suit No.210 of 2017 is executable. The petitioner can raise his grievances by way of filing execution proceedings. The contempt proceedings cannot be initiated immediately without resorting to the execution proceedings.

10. I have gone through the citation in case of **Kanwar Singh Saini Vs. High Court of Delhi** (supra). It is held by the Honourable Supreme Court that "in case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order 21 Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross examine the witness as opposed to the proceedings in contempt which are summary in nature. It is further held that the law does not permit to skip the remedy available under Order 21 Rule 32 CPC and resort to the

contempt proceedings for the reason that the court has to exercise its discretion under the Act of 1971 when an effective and alternative remedy is available to the person concerned”.

11. In case of **R.N. Day and Ors. Vs. Bhagyabati Pramanik and Ors.** reported in **(2000) 4 SCC 400**, it is held by the Honourable Supreme Court as under :

“... the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law.”

Furthermore, it has also said that:-

“... the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree.”

12. There is no dispute on legal proposition that all the decrees and orders passed by the Wakf Tribunal are executable under the Code of Civil Procedure. Consent decrees or orders are also executable. But merely because an order or decree is executable, would not take away the Courts jurisdiction to deal with a matter under the Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice.

13. In case of **Rama Narang Vs. Ramesh Narang and Ors.**, reported in **(2006) 11 SCC 114**, the Honourable Supreme Court has held as under :

“All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the Courts jurisdiction to deal with a matter under the Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice.”

14. In the said decision in para no. 27, the Hon'ble Supreme Court has observed as under:-

“27. This decision reinforces our view of the law. It does not in any way run contrary to our opinion as expressed earlier on the interpretation to be put on Section 2(b) of the Act. On the other hand the Court repelled the submission of the respondents that the petitioners remedy lay in executing the decree in the following words:-

" The fact that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents."

15. In the present case, the petitioner without exercising the appropriate remedy for execution of compromise decree passed in Wakf Suit No.210 of 2017, straightway initiated the contempt proceedings, which cannot be entertained in view of legal position

made clear by the Honourable Supreme Court in case of **Kanwar Singh Saini Vs. High Court of Delhi** and **R.N. Day and Ors. Vs. Bhagyabati Pramanik and Ors.** (supra).

16. The consent decree can be executed in view of provisions of Order 21 of Code of Civil Procedure which is an efficacious remedy for execution. As such, Contempt Petition cannot be entertained.

ORDER

The Contempt Petition stands disposed of with liberty to the petitioner to file execution proceedings before the concerned Court/Tribunal/Executing Court.

(SHRIKANT D. KULKARNI, J.)

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