

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

CRA NO.65 OF 2021

MOHAMMED ZUBAIR CHOUHAN
VERSUS
OOSMAN JAMALL SANITARIUM CHARITABLE TRUST THR. TRUSTEE ARIF
BANATWALLA AND ANOTHER

...
Advocate for Petitioner : Mr. Ali Zeeshan Zaidi
Advocate for Respondent No.1 : Mr. Mohammad Atique h/f. Ms. Fatema Kazi
Advocate for Respondents No.2 : Adv. Najam E. Deshmukh

...
CORAM : MANGESH S. PATIL, J.

DATE : 25.03.2022

PER COURT :

This is the revision under Section 83 (2) of the Waqf Act, 1995 by a person who was arrayed as respondent No.2 in Waqf Application No.18/2018 whereby the Maharashtra State Waqf Tribunal (hereinafter the Tribunal) by the judgment and order dated 02.05.2019 has allowed the Application of the respondents and quashed and set aside the order passed by the Chief Executive Officer of the Maharashtra State Board of Waqf (hereinafter the Board) dated 17.06.2014 directing registration of the respondent No.1 Trust as a waqf institution.

2. The learned advocate for the petitioner vehemently submits that the inquiry was conducted by the Tribunal behind his back. He was not extended any opportunity of being heard. There was no proper service. The will of the testator on the basis of which the Trust was registered dated 21.04.1912 was for the benefit of only Khoja Muslims. The Trust was

created for religious and charitable purposes and there was no error committed by the Chief Executive Officer in allowing his application filed under Section 43 and registering it as a Waqf. Had an opportunity being extended to him he could have satisfied the Tribunal about legality in registering the respondent No.1 as a Waqf.

3. The learned advocate for the respondent No.1 vehemently submits that the person who had settled the charity by the Will specifically dedicated the property for charitable purposes of the persons belonging to Khoja Muslim Community. There was no whisper about dedication of the property to almighty which is a precondition for registration of a waqf. Merely because a charitable trust was created, may be for religious purposes, would not be sufficient to register it as a waqf. He would submit that without any notice to the trustees, on a mere application filed by the revision petitioner under Section 43 and without undertaking any scrutiny in spite of the fact that the chief executive officer was expected to undertake a quasi judicial inquiry he allowed the application and readily registered the Waqf. All these facts and circumstances were noted by the Tribunal in cancelling the registration. The learned advocate would further submit that the revision petitioner was duly served with the notice of the inquiry before the Tribunal. Even a notice was published in the newspaper. No prejudice is caused to him and no purpose would be served by remanding the matter.

4. The learned advocate for the respondent No.2 Board submits that going by the reasoning given by the Tribunal, if the property was not at

all dedicated to the almighty, the Waqf could not have been registered.

5. I have carefully gone through the papers.

6. There is no dispute about the fact that an individual by name Mr. Oosman Jamall by his Will dated 21.04.1912 created the Trust apparently for the benefit of only Khoja Muslims. There was no whisper about dedication of the property to the God which is a *sine qua non* for constituting a Waqf as is explicitly set out by the Supreme Court in the matter of **Maharashtra State Board of Wakfs Vs. Shaikh Yusuf B. Chawla and Ors.; AIR 2010 Supreme Court 2362**, a passage from which has been relied upon by the Tribunal in the judgment under challenge. Once it is found that the settler of the Trust had never intended that his property would vest in the almighty, it was apparently a trust created by a muslim rather than a waqf. Consequently for this reason alone, no fault can be found with the judgment and order passed by the Tribunal cancelling the registration of Waqf.

7. *Ex facie* the order passed by the Tribunal cannot be said to be either perverse, arbitrary or capricious so that this Court can cause any interference while exercising the power of revision. Assuming for the sake of argument that the petitioner was not duly served before passing the order under challenge, remand in the peculiar facts and circumstances would merely be an exercise in futility. When even according to the petitioner he has nowhere mentioned in the petition that the settler had vested the property in the almighty but had created the Trust for the religious and

charitable purposes for a specific community, no purpose would be served by remanding the matter.

8. The revision is dismissed.

(MANGESH S. PATIL, J.)

habeeb