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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1957 OF 2022

Mr. Manzoor Ali Shah

.... Petitioner.

V/s

Ateeq Anwar Aboatwala

and Ors.

..... Respondents.

Mr. Aarif Ali M. Ali for the Petitioner.

Mr. Anup Surve a/w Mr. Nimish Kothare a/w Mr. Nikhil Mutha, Ms. Ashwini Sonawane i/b Nano Hormasjee & Co. for the Respondent Nos. 1 to 7.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 20, 2022

P.C.:-

1] Petitioner who is Defendant to suit being RAE Suit No.1290 of 2010 claiming suit property to be Waqf property filed an application Exhibit-60 on the maintainability of the suit, seeking dismissal on the ground that suit is barred as jurisdiction to evict the Petitioner lies with Waqf Board. So as to substantiate such claim he has drawn support from the judgment of the Apex Court in the matter of *Ramesh Gobindram (deceased by Lrs) v. Sugra Humayan Mirza Wakf* reported in **2010 SC 2897** and also judgment of the Apex Court in *Rashid Wali Beg vs. Farid Pindari and Ors* delivered on 28/10/2021 in Civil Appeal No.6336 of 2021. Drawing support from the provisions of Section 85 and 83 of the Waqf Act and also observations in the aforesaid judgment in the matter of *Rashid Wali Beg* cited supra

in para 41, he would urge that Courts below committed an error in recording finding that suit before the Small Causes Court is maintainable.

2] Counsel for the Respondents would oppose the claim as according to him position as was existing as per judgment in the matter of *Ramesh Gobindram* cited cited supra has been further fortified by amendment in 2013 to the provisions of Waqf Act whereby post 2013 jurisdiction to entertain suit for eviction in relation to suit property is held to be with Waqf Tribunal.

3] I have appreciated the said submissions.

4] In the matter of *Rashid Wali Beg* cited supra, it is quite apparent that Apex Court in para 45 clause (xix) has made following observations:-

“45. In sum and substance, the Act makes a reference, to 3 types of remedies, namely that of a suit, application or appeal before the Tribunal, in respect of the following matters:

(i) to (xviii).....

(xix) eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property (Section 83(1) after its

amendment under Act 27 of 2013”

5] As such, position of law is amply clear. Significantly, Apex Court has considered the position pre and post amendment of 2013 to the Waqf Act, whereby it is observed that post amendment even suit in relation to eviction from waqf property is held to be maintainable before Waqf Tribunal. Admittedly, in the present case, suit for eviction against the Petitioner was lodged and registered in 2010 i.e. pre-amendment. As such, by that time, law laid down by the Apex Court has clearly interpreted about maintainability of such suit and ousting the jurisdiction of Waqf Tribunal qua eviction issue. That being so, no error could be noticed in the concurrent findings recorded by both the Courts below. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)