

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.34/2022

Nasir Hussain s/o Abdul Rashid and others

...Versus...

Amravati Camp Masjid, Amravati through its Secretary and another

WITH

CIVIL REVISION APPLICATION NO.35/2022

Mumtaz Ahmed Shaikh Jamal

...Versus...

Amravati Camp Masjid, Amravati through its Secretary and another

WITH

CIVIL REVISION APPLICATION NO.36/2022

Waseemullah s/o Naseemullah

...Versus...

Amravati Camp Masjid, Amravati through its Secretary and another

WITH

CIVIL REVISION APPLICATION NO.37/2022

Mohammad Firoz s/o Abdul Karim

...Versus...

Amravati Camp Masjid, Amravati through its Secretary and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri E.N. Quazi, Advocate for applicants in all revisions
Shri Mohammad Ateeque, Advocate for respondent no.1 in all revisions

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/08/2022

1. Heard Shri Quazi, learned counsel for the applicants and Shri Mohammad Ateeque, learned counsel for the respondent no.1 in all applications.

2. All the revision applications challenge the judgments dated 11/02/2022, passed by the Maharashtra State Waqf Tribunal, Aurangabad, whereby the suits filed by the Waqf Board/plaintiff have been partly decreed and the defendant no.1 in all the matters have been directed to deliver the vacant possession of the suit shops to the plaintiff within three months from the date of the judgments. A further relief of the defendant no.1 to pay amounts towards arrears of rent for the period indicated in each judgment has also been granted and further enquiry under Order XX Rule 12 of the Code of Civil Procedure is also ordered.

3. Shri Quazi, learned counsel for the applicants taking exception to the aforesaid judgments contends that all the applicants had an indefinite lease from the erstwhile *mutawalli* of the respondent – Waqf Institution and therefore it was not permissible for the learned Tribunal to have directed delivery of possession.

4. Shri Mohammad Ateeque, learned counsel for the respondent no.1 submits that an indefinite lease is prohibited by the provisions of the Waqf Act, 1995, for which, he invites my attention to Section 56 of the Waqf Act. He submits that all the applicants claim an indefinite lease of more than 15 years ago, considering which, the matter would be governed by the provision of Section 56 (1) of the Waqf Act, as it stood then. which prohibited lease beyond a period of three years and therefore the learned Tribunal was correct in passing the impugned judgments.

5. A perusal of Section 56 of the Waqf Act indicates that a lease in excess for a period of three years was not permissible prior to 01/11/2013, as against which, the present applicants claim an indefinite lease in their favour more than 15 years prior to 01/11/2013. It is thus apparent that such a claim, is clearly prohibited by Section 56 of the Waqf Act and is specifically declared to be void and of no effect. It is not disputed that in all these revision applications the applicants claim entitlement to occupy the premises under a written document of lease, for an indefinite period, which even otherwise is impermissible under section 56 (1) of the Waqf Act.

6. In this context, definition of an encroacher as enumerated in Section 3 (ee) of the Waqf Act would

substantiate this position, as it defines an encroacher to mean a person occupying waqf property without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by the *mutawalli* or the Board.

7. In the instant case as the lease which is claimed for an indefinite period is prohibited by Section 56 (1) of the Waqf Act, which in such cases declares such lease to be void and of no effect, the occupation of the applicants of the individual premises cannot be termed anything but as encroachers. That being the position, the protection of law, is clearly not available. A perusal of the impugned judgments would indicate that a finding has been rendered in light of the provisions of Section 3 (ee) r/w Section 56 of the Waqf Act that the occupation of the applicants could not be related to any legality and therefore was that of encroachers, which in light of what has been discussed above, is in consonance with the above said provisions of law. That being the position, I do not see any reason to interfere with the impugned judgments. The civil revision applications are therefore dismissed with no order as to costs.

8. At this juncture, Shri Quazi, learned counsel for the applicants seeks six months' time to vacate the premises. Though it is opposed by Shri Mohammad Ateeque, learned counsel for the respondent no.1, however, considering the fact

that the applicants are in occupation of the premises since long, it is obvious that they would require some time to search for alternate premises, considering which, time of six months for vacating the premises is granted.

9. Needless to mention that in case the premises are put to auction under the Waqf Properties Lease Rules, 2014, the applicants shall have a right to participate in such auction.

(AVINASH G. GHAROTE, J.)

Wadkar