

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

CIVIL REVISION APPLICATION NO. 101 OF 2011

Shaikh Jamal s/o Sk. Ismail,
Age : 48 Years, Occ. Business,
R/o. C.T.S. No. 611/1,
Pune-2

.. Applicant
(Original Plaintiff)

VERSUS

1. Maharashtra State Board of Wakf,
Through Chief Executive Officer,
Office at Panchakki,
Aurangabad.
2. The Chief Executive Officer of
Maharashtra State Board of Wakfs
Having its office at Panchakki,
Aurangabad.

.. Respondents
(Original defendants)

**WITH
CIVIL REVISION APPLICATION NO. 102/2011**

1. Smt. Meherunnisa Begum Shaikh,
Age : 46 Years, Occ. Household,
R/o. C.T.S. No. 611/1, Pune-2.
2. Smt. Shamsunnisa Shaikh Ismail,
Age : 42 Years, Occ. Household,
R/o. C.T.S. No. 611/1, Pune-2.
3. Smt. Qamrunnisa Shaikh Ismail,
Age : 38 Years, Occ. Household,
R/o. C.T.S. No. 611/1, Pune-2.

.. Applicants
(Original Plaintiffs)

VERSUS

1. Maharashtra State Board of Wakf,
Through Chief Executive Officer,
Office at Panchakki,
Aurangabad.
2. The Chief Executive Officer of
Maharashtra State Board of Wakfs
Having its office at Panchakki,
Aurangabad.
3. Mehboob Babumiya Shaikh,
Age : Major, Occ. Business,
R/o. C.T.S. No. 611/1, Pune-2.
4. Ibrahim Naseeruddin Shaikh,
Age : Major, Occ. Business,
R/o. C.T.S. No. 611/1, Pune-2
5. Chandbee Shabuddin Shaikh,
Age : Major, Occ. Business,
R/o. C.T.S. No.611/1, Pune-2.
6. Shaikh Chandbee w/ Abdul Razzak
7. Syed Ishaq Badruddin. (Abated vide Order of
Registrar, dtd. 7.4.2014)
8. Smt. Banu w/o Ramzan Shaikh,
Age : Major, Occ. Business,
R/o. C.T.S. No. 611/1, Pune-2.
9. Gulab Khan s/o Ismail Khan,
Age : Major, Occ. Business,
R/o. C.T.S. No. 611/1, Pune-2. .. Respondents
(Original defendants)

...

Mr. Ajit D. Kasliwal, Advocate for the Applicants;

Mr. N. E. Deshmukh, Advocate for Respondent Nos. 1 and 2

CORAM : S. G. MEHARE, J.

Reserved on : 28.08.2023

Pronounced on : 09.11.2023

JUDGMENT :-

1. The applicants who were plaintiffs in Wakf Suit Nos.81 of 2004 and 82 of 2004 have impugned the judgments and orders of dismissal of suit of the learned Presiding Officer, Maharashtra Wakf Tribunal, Aurangabad, dated 19.03.2011.
2. The plaintiffs, who are relatives, had filed suit after the order of Wakf Board holding the suit property as a wakf property before the Wakf Tribunal.
3. The brief facts of the case were that the suit property described in the suit was CTS No. 611/1, situate at Nana Peth Pune. One Chand Tara Masjid Trust, Pune had filed an application under Section 54 (4) of the Wakf Act 1995 before Wakf Board for eviction of the plaintiffs. The Chand Tara Masjid Trust had claimed that the suit premises was taken on rent; however, they were not vacating the premises. After holding the enquiry and hearing the present applicants, the Chief Executive

Officer, Maharashtra Wakf Board, Aurangabad ordered the present petitioners to vacate the suit premises within one month. After the said order the suit was filed.

4. The case of the plaintiffs/present applicants before the Wakf Tribunal was that Chand Tara Masjid Trust was registered under the Bombay Public Trusts Act. The suit premises was owned by their forefathers. There were litigations between the father of the plaintiffs and the Chand Tara Masjid Trust. The dispute between them was settled and it was clarified that CTS No. 611/2 was the property of Masjid Trust and CTS No. 611/1 is their private property. Beside this suit before the Charity Commissioner, there were other suits filed by the father of the plaintiffs bearing Regular Civil Suit No.684 of 1978. In a nut-shell, they had claimed that the suit premises is their own property; hence, the trust has no concern with the same. These aspects were to be considered.

5. Plaintiff, namely, Mehrunnissa Shaikh Ismail had led the evidence before the learned Wakf Tribunal. Both parties to the

suit heavily relied upon the bunch of the documents including their earlier litigations.

6. The objection was raised that the Chand Tara Masjid Trust who was instrumental to file the eviction proceeding was deleted though arrayed as a defendant. Therefore, the suit is bad for non- joinder of the necessary party.

7. Evaluating the oral as well as documentary evidence, the Wakf Tribunal held that the order of Wakf Board dated 01.01.2010 is not proved to be null and void. The plaintiffs/ present applicants failed to prove that the suit premises is their private property. The suit is maintainable for want of notice under Section 89 of the Wakf Act. The suit is bad for non-joinder of the necessary party i.e. the Trust.

8. The learned counsel for the applicants/plaintiffs reiterated the history of earlier litigations between their father of the applicants and the Chand Tara Masjid Trust. He submits that in the earlier Suit No. 371/1998 it has been held that the applicants were the owner of the suit premises. Chand Tara Masjid Trust had filed that suit under the

Rent Act. In the said proceeding it was held that the Chand Tara Masjid Trust is not the owner of the suit property. Since the issue of title was decided long back, the application under Section 54(4) of the Wakf Act is hit by the doctrine of *res judicata*. The impugned judgment and order is without considering the earlier suit and non-application of mind. The Chief Executive Officer must be satisfied that the property in question was the Wakf property and there has been encroachment on any such property before passing an order under Sub-Section (4).

9. In the facts and circumstances of the case, the applicants can not be branded as encroacher. If the plaintiffs were held tenant, then also proceeding under Section 54 of the Wakf Act (Old) would not attract. The learned Presiding Officer of the Wakf Tribunal, without considering the documents placed on record, has illegally recorded the finding as to the estoppel.

10. He further argued that the documents were taken on record on the day of pronouncement of the Judgment and without giving an opportunity, the impugned Judgment was passed. Those documents were photostat copies; hence, not admissible. In his

notes of written arguments, he has reiterated the facts of the case and argued in the similar way as he has advanced the oral arguments.

11. To bolster his argument, he relied on the case of *T. Kaliamurthi and Another Versus Five Gori Thaikal Wakf and Others*, AIR 2009 SC 840. This case law is filed in support of his argument that the learned Tribunal did not consider Section 107 of the Wakf Act, 1995 in view of which the proceedings were barred by limitation. He further relied on the case of *Punjab Wakf Board v. Tarlochan Singh (Dead) Through L.Rs. and another*, AIR Online 2020 SC 351. It was a case dealt with under Punjab Wakf Board Act. It was on the point of jurisdiction of the Civil Court. He further relied on the case of *Bastar Transport and Trading Co. Jagdalpur and another vs. Court of Wards, Bastar and another*, AIR 1975 Nagpur 78.

12. He also relied on the case of *Vasudev Danajibhai Modi vs. Rajabhai Abdul Rehman and others*, AIR 1970 SC 1475, in which it has been held that the Court executing the decree cannot go behind the decree between the parties or between the

representatives. It must take the decree according to its declaration and cannot entertain any objection that the decree was incorrect in law or on facts.

13. He has also relied on the case of Committee of Management, Ratan Muni Jain Inter College and another vs. III Additional Civil Judge, Agra and others, AIR 1995 Allahabad 7, in which it has been held that the Court can direct joining of any such party at any stage of the proceeding. The theory of *dominus litus* should not be over stretched in the matter of impleading the parties because it is duty of the Court to ensure that if for deciding real dispute a person is necessary party, the Court can order such person to be impleaded him. Lastly he relied on the case of ***Maharashtra State Board of Wakfs vs. Yusuf Bhai Chawala and others, (2012) 6 SCC 328***, wherein it has been held that where the validity of incorporation of the Maharashtra *State Board of Wakfs* and its impact upon wakfs created by Muslims was the subject matter of Writ Petitions before the High Court. In the High Court directions that till the Wakf Board was properly constituted Charity Commissioner under 1950 Act should continue to administer Muslim Wakf properties including the

properties registered as trust properties with him under the Bombay Act, was erroneous. He prayed to allow the applications.

14. Per contra, the learned counsel for the Wakf Board has vehemently argued that the father of the plaintiff had filed Suit No.106 of 1959. The Charity Commissioner, Pune had decided that suit on 30.06.1961. In an appeal against the said judgment, the learned Joint Charity Commissioner had remanded the application back on 18.10.1962. Then a compromise took place. Right was granted to his father for collecting the rent of super structure for 25 years. The father of the applicant had challenged the said compromise in the year 1978 before the Civil Court. However, on 04.09.1988, the father of the plaintiffs died and the plaintiffs were brought as legal representatives. However, they withdrew that suit. In the year 1996, the applicants/plaintiffs had filed a partition suit against Chand Tara Masjid and real brother. The said suit was dismissed on 09.05.2016. The appeal preferred against the said judgment and decree was also dismissed. It is true that the trust was registered with the Charity Commissioner, then under Section 43 was applied whereby the property became the property of the trust. Section

43 of the Wakf Act would come into play. No leave to file an application was taken from the Court while withdrawing the suit with a liberty to file a proceeding before the competent Court. The suit property became the Wakf property. Leave from Charity Commissioner was not obtained. Section 108 of the Wakf Act prevails over the other laws, Maharashtra Revenue Code cannot be applied procedure under Section 54 was to follow. Section 33(e) of the Wakf Act defines the encroacher in the civil suit the Chand Tara Trust was deleted. The trust was necessary party. Section 29 of the Maharashtra Rent Control Act bars the jurisdiction of the civil Court. As regards the title, he relied on the case of *Rashid Wali Beg vs Farid Pindari, (2022) 4 SCC 414*, and prayed to dismiss the revision applications.

15. Before advertng to dispute over the title of the suit land it would be appropriate to discuss first as argued whether the suit property was Wakf property.

16. Admittedly, the trust was registered under the Bombay Public Trusts Act. The Tribunal has appreciated the public document and has observed that Exhibit-107 of Suit No.81/2004

is a certified copy of the Schedule-I which show that CTS No. 611/2 consisting of Masjid and Kabrastan is included in the list of the properties of the Wakf. Exhibit-110 placed on record was the certified copy of the judgment of Assistant Charity Commissioner, Pune in application No. 106 of 1959 filed under Section 22 (A) of the Bombay Public Trusts Act. The suit property i.e. CTS No. 611/1 was the subject-matter of that enquiry. After hearing both the parties, the learned Assistant Charity Commissioner concluded in his judgment dated 30.06.1961 that CTS No. 611/1 belongs to the trust. The Assistant Charity Commissioner, based upon a pursis Exhibit-42 in a judgment dated 20.01.1970, held that CTS No.611/1 was the property of the public trust i.e. Chand Tara Masjid. That order was challenged before the Charity Commissioner, Bombay. The learned Joint Charity Commissioner, Bombay, by his Judgment dated 08.10.1962, set aside the order of Assistant Charity Commissioner and remitted the matter for fresh enquiry. During the pendency of that enquiry, the parties had arrived at compromise and the compromise pursis Exhibit-42 was executed. The learned Assistant Charity Commissioner, in its judgment dated 20th January 1970, declared that CTS No. 611/1

is the property of the trust. The recital of that document reflects that the father of the plaintiff in both the suits Shaik Ismail Shakut Dilssa has given right to enjoy the possession and collect the rent from the tenant in both chawls for 25 years with effect from 01.02.1972 as a lessee of the said trust. It was also agreed that on the date of expiry of the lease, the chawl shall become the Chand Tara Masjid Trust.

17. The present applicants have heavily claimed in view of the compromise, the suit property was their father's property. The source of title derived to the plaintiffs, as per their case was that CTS No. 611/1 was the property of their father. The father had filed Regular Civil Suit No.684 of 1978 against the Trust, in which the Trust had admitted that the father of the plaintiffs was the owner of CTS No. 611/1. In fact, it is a suit for declaration that the compromise decree obtained from the Assistant Charity Commissioner was null and void and his signature was obtained under the influence. However, before the suit was decided, the plaintiff's father died on 04.09.1988. The plaintiffs were brought on record as legal heirs. However, they did not proceed with the suit and withdrew it with a leave to file a fresh suit on the same

cause of action. Record reveals that after seeking the leave, no suit impugned in the compromise decree of the Assistant Charity Commissioner was filed.

18. Plaintiff Meherunnisa and her sister had filed Special Civil Suit No.2108 of 1996 for partition of the suit property against Chand Tara Trust and their brother, namely, Shaikh Jamal who is the plaintiff in Wakf Suit No.81 of 2004. By judgment dated 09.05.2006 the said suit was dismissed holding that the cause of action in that suit was not similar to the suit withdrawn by the plaintiff and the property is not ancestral property and has not inherited share therein. The previous litigation with the last judgment claiming the title passed in Special Civil Suit No.2108 of 1996 had settled the issue of title of the suit property in favour of the trust. The trust has filed a eviction suit before the Small Causes Court bearing Civil Suit No.371 of 1988; however, it was dismissed. Against the said dismissal, the appeal was pending and no further progress has been brought to the notice of this Court. The Maharashtra Wakf Tribunal discussed the various documents and oral evidence of the plaintiff and correctly

recorded the findings that the suit property was not the private property of the plaintiff but it was the trust property.

19. Admittedly, Chand Tara Masjid Trust was registered under the then Bombay Public Trusts Act.

20. The Wakf Act 1995 was brought into operation in all States by Notification No. SO 1007 (E) dated 27.12.1995 with effect from 01.01.2006. The question has been raised that before passing order by the Chief Executive Officer of the Wakf Board he has to satisfy that the property in question is a Wakf property. The learned Wakf Tribunal, bearing in mind the compromise between father of the plaintiff and Chand Tara Masjid Trust before the learned Assistant Charity Commissioner, held that in view of the said compromise, it was finally agreed that his father was appointed *Mutational* for a specific period and allowed to collect the rent for 25 years commencing from 01.02.1970 and after expiry of the said period he would be ceased to have an interest in the Chawl existing on the suit land as the property belongs to the Masjid and Masjid does not belong to anybody but the God. The land and structure over the suit property was shown

in the *hopscotch* of the Wakf; hence, the suit property became the Wakf property.

21. It appears that the learned Wakf Tribunal has applied the test to determine the nature of the property. The father of the plaintiff himself long back compromised the dispute and admitted that the suit property is the trust property. However, to compensate him for the structure raised by him was allowed to collect the rent for 25 years. 25 years were over on 1st February, 1995. Since then he lost the right to claim any interest over the suit land and structure thereon. The finding recorded by the learned Tribunal is correct and proper.

22. The Chand Tara Trust was the instrumental to file an application under Section 54 of the Act. The reason is best known to the applicants/plaintiffs why they removed him. Chand Tara Trust was the necessary party. Indirectly, admitting this fact, the learned counsel for the applicants has tried to convince the Court that wherever the Court thinks it appropriate that certain person is a necessary party may exercise his power under Order I Rule 10(2) of the Code of Civil Procedure may join such party at

any stage of the proceeding. In this case, the applicants/plaintiffs themselves had removed the Trust as a party which was instrumental to eviction proceeding before the Chief Executive Officer. So, the case of *Committee of Management (supra)* would not help the applicants/plaintiffs. Apart from non-joinder of necessary party, after right to recover the rent conferred upon the father of the plaintiffs for 25 years, their status was nothing but a trespasser.

23. After the marathon discussion on the documents and evidence, Wakf Tribunal has correctly recorded the findings that the applicants are stopped from claiming the title in view of the earlier proceeding/suits between the parties in respect of the suit property.

24. Since the applicants/plaintiffs lost the interest in the suit property, they cannot be treated as tenants; therefore, correctly covered under Section 54(4) of the Wakf Act 1995. In such circumstances Section 89 of the said Act would not come in their way. Hence, this Court concurs with the findings on the issues recorded by the Wakf Tribunal.

25. The evidence produced by the parties has been discussed elaborately and considered each and every objection raised by the applicants before the Tribunal. Considering the entire material on record, this Court is of the view that the order of learned Chief Executive Officer, dated 01.10.2004, was legal proper and correct. The reasons recorded by the learned Tribunal are correct and proper. There is no *prim face* error on the face of the record nor the Tribunal has exceeded its jurisdiction or not exercised the jurisdiction conferred upon it. The case laws relied upon by the parties, as discussed above, are not applicable to the case in hand. Hence, this Court is of the view that the revision applications deserve to be dismissed.

ORDER

- (i) Both revision applications stand dismissed.
- (ii) No order as to costs.
- (iii) Record and proceedings be returned to the learned Wakf Tribunal, Aurangabad.

(S. G. Mehare, J.)

26. Learned counsel for the applicants states that *interim* relief was running in favour of the applicants during these revision applications. Applicants want to impugn the order of this Court before the Hon'ble Supreme Court. Hence, *interim* relief be continued for further eight weeks.

27. None present for the respondent.

28. In the facts and circumstances of the case, the effect of this order is stayed for six weeks from today and the interim *relief* is restored till that period.

(S. G. Mehare, J.)

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