IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 97 OF 2019

1. Mehmood Khan Sartaj Khan Pathan
age 49 years, occ. Business
r/o House No. 562, Ganjipeth Road,
Nagpur, Tq. & Dist. Nagpur

2. Farukh Khan Yusuf Khan
age 40 years, occ. Business
r/o Bhaldarpura, Nagpur
Tq. & Dist. Nagpur Applicants

Versus

1. The Maharashtra State Board of Waqf
Aurangabad
Through its Chief Executive Officer,
Panchakki, Aurangabad.

2. Mohsin Raja Ahmed
age 70 years, occ. Retired
at present Secretary Baba Sufi Ali Trust
Heti Tekdi, Katol, Tq. Katol, Dist. Nagpur
r/o 268/269, New Colony
Sadar Nagpur, Tq. & Dist. Nagpur.

3. Sheikh Noor Shahebaj Sheikh
age 61 years, occ. Service
r/o Katol, Tq. Katol, Dist. Nagpur

4. Sheikh Rashid Sheikh Rahman Patel
age 72 years, occ. Business
r/o Katol, Tq. Katol, Dist. Nagpur

5. Abdul Kuddus Bashir Sheikh
age 34 years, occ. Service

r/o Katol, Tq. Katol, Dist. Nagpur

6. Firoj Khan Babbu Khan
age 40 years, occ. Business
r/o Bhaldarpura, Nagpur.

7. Sayyad Rahemat Ali Jamshed Ali
age 61 years, occ. Business
r/o Lakhani, Dist. Bhandara Respondents

Mr. S. S. Kazi, Advocate for the applicants.
Mr. A. T. Kanwade, Advocate holding for Mr. N. S. Deshmukh, Advocate for respondent No. 1.
Mr. R. A. Haque, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.
RESERVED ON : 11th APRIL, 2023.
PRONOUNCED ON : 4th MAY, 2023.

JUDGMENT :

1. This revision is filed under Section 115 of the Code of Civil Procedure taking exception to the order dated 26th March, 2019 passed by the Waqf Tribunal in Waqf Application No. 43/2017. The parties are referred by their nomenclature in the original application.

2. Facts leading to this revision application are narrated in brief as under :-

It is the case of applicant before the Tribunal that respondent No. 2 Mahemood Khan Sartaz Khan Pathan had filed application on 4th August, 2009 for registration of Waqf instittution in the name “Mohammed Shafi Sufi Mohammed Siddiqui Quadri Dargah, Katol” by claiming that the same came into existence in the year 2007-2008 under the management of 11 trustees of which he was the Chairman. The Chief Executive Officer of Waqf Tribunal, after conducting enquiry, passed order dated 16th September, 2011, whereby he registered the Waqf institution vide registration No. MSBW/NGP/150/2011 under Section 36 of the Act and accordingly issued registration certificate. An application was also moved for enquiry for constitution of Management Committee of the said Waqf institution. Said application was objected by the applicant on the ground that the Waqf institution in the name of ‘Baba Sufi Ali Trust, Heti Tekdi, Katol’ was constituted by late Hazrat Shah Sufi Ali Mohammed Shafi Hussaini Quadri in the year 1986, and said Waqf is managed by the trustees appointed in the Trust Deed dated 21st October, 1974. It is also claimed that out of 21 trustees appointed by the trust, 7 trustees were alive and rest of the trustees died. As per scheme settled, surviving trustees, by holding meeting on 13th May, 2012, appointed new trustees including the applicant and filed their objection on the application filed by respondent No. 2 for registration of Waqf institution.

3. It is further contended that the Chief Executive Officer of the Board has rejected the objection of the applicant and allowed change report of respondent No. 2 acknowledging 11 trustees of the Waqf institution which was subject to challenge by filing application before Waqf Tribunal.

4. The learned Tribunal, by passing impugned order has held that the order dated 11th February, 2013 passed by the Chief Executive Officer of the Board is not legal and proper and the said order was interfered with. Change report filed by respondent No. 2 was rejected and the change report of applicant was accepted. Being aggrieved by the said order, present application is filed by respondent No. 2 on the grounds specifically mentioned in the application.

5. Learned counsel for respondent No. 2 states that the Waqf institution has been registered on application of respondent No. 2 and till date the said registration is not challenged or set aside by any competent authority and in such circumstances, applicant has

no *locus standi* to manage affairs of registered Waqf. It is also argued that the Waqf institution claimed to have been registered by the applicant is not registered under the Bombay Public Trust Act and hence, it is not Waqf under the Waqf Act, 1995. It is contended that both institutions claimed by applicant and respondent No. 2 are different having no concern with each other and Tribunal has committed error in not taking into consideration this aspect, while passing impugned order. It is contended that the Tribunal cannot assume power of the Board and this is a case where Tribunal exceeded its powers. In reply to objection for mantainability of revision on ground of territorial jurisdiction, reliance is placed on judgment in the case of Pandit Gulam Dastagir vs. Ashfaq Ul Haque Khan and others, **AIR Online 2019 Bom 2023**. To support his submissions, reliance is placed on following judgments :-

(i) Javed Ahmed Khatif & others vs. Mahammad Arif Shafeeq Ahmed Patel & others
2015(1) Mh.L.J. 199

(ii) M. P. Wakf Board vs. Subhan Shah (D) by Lrs & others
2006 AIR SCW 5540

(iii) Manohar Bapurao Khargade & others vs. State of Maharashtra
2019(1) Bom.C.R. 699

6. Per contra, learned counsel for the applicant has supported the impugned order. At the outset, he raised objection to the maintainability of the revision application before this Court on the ground that it is beyond the territorial jurisdiction of this Court to entertain the present application. On merit, it is submitted that in view of Section 43 of the Act, any Waqf institution which is registered under any law is deemed to be registered under the Waqf Act. Thus, according to him, trust deed which was registered under the Registration Act is sufficient compliance to become a deemed Waqf registered under the Waqf Act. It is further sought to be argued that the Waqf property was belonging to the settler of the 'Baba Sufi Ali Trust' and in respect of the said property respondent No. 2 could not have registered the trust. It is also stated that there is non-compliance of the mandatory requirements of Section 36 of the Act and in complete ignorance of these provisions, application of respondent No. 2 for registration of Waqf was allowed by the Board. Said registration is contrary to the law and hence the Tribunal has rightly allowed the change report submitted by the applicant and rejected the one filed by respondent No. 2. it is stated that there is no evidence to show that respondent No. 2 had conducted the affairs of the said trust including the rituals performed thereunder and on

the other hand, the applicant has produced on record sufficient evidence to show that the trust is being managed by the trustees appointed by the settler. In this connection, he drew attention of this Court to various documents filed on record. It is also submitted that the settler's intention should be given foremost consideration over any other thing for the purpose of decision In the case like one in hand.

7. At the outset, this Court would like to deal with the objection raised by original applicant to the maintainability of the revision application before this Court. In this regard, respondent No. 2 has placed on record judgment of this Court in the case of Pandit Gulam Dastagir (supra) wherein similar objection was raised regarding maintainability of the revision on the ground of territorial jurisdiction. It is held therein that since the order impugned in the revision application is passed by the Waqf Tribunal, Aurangabad, it has to be held that the cause of action for filing revision application has arisen within the territorial jurisdiction of Aurangabad bench of this High Court. Consequently, it was held that the bench at Aurangabad has jurisdiction to entertain the revision application. This Court finds no reason to take any different view than the one

taken in the judgment by Co-ordinate Bench. Hence, the objection regarding maintainability of the revision application stands rejected.

8. Before adverting to the controversy in question, it would be relevant to take note of the provisions relating to registration of Waqf and change in the management of auqaf. Section 36 of the Act provides for the procedure for registration of Waqf whether created before or after commencement of the Act. Sub-section 8 of the Act makes provision that in case of auqaf created before commencement of this Act further application for registration shall be made within three months from such commencement. Section 37 mandates Waqf Board to maintain a register of auqaf which shall contain the particulars as provided under sub-sections (a) to (f). Section 42 pertains to the change in the management of auqaf to be notified. Sub-section (1) provides that in case of change in the management of a registered Waqf due to death or retirement or removal of Mutawalli, the incoming Mutawalli shall forthwith, and any other person may notify the change to the Board. Sub-section (2) provides that in case of any other change in any of the particulars mentioned under Section 36, the Mutawalli shall within three months from the occurrence of the change, notify such change to the Board.

9. The aforesaid provisions make it abundantly clear that even in case any auqaf is created before commencement of this Act, an application shall be made for its formal registration within three months. Section 43 only declares any Waqf registered under any other law for time being in force to be a deemed Waqf. For practical purpose it requires an application for formal registration followed by recording of details in the register of aquafs. This becomes more clear in view of provisions of Section 37 which requires the information of such Waqf to be recorded in the register maintained by the Board.

10. In the light of aforesaid provision, if the application filed by the applicant is considered then the same is filed under Section 42(1) and (2) of the Act in the form of change report. Name and address of the Waqf is mentioned as Baba Sufi Ali Trust, Heti Tekdi, Katol, Tq. Katol, Dist. Nagpur. Application does not show registration number. This application seeks acceptance of change in the management of the said trust. Application was opposed by respondent No. 2. It was heard by the Chief Executive Officer, Waqf Board, under Section 25 of the Act and application for change

submitted by applicant was rejected whereas application of respondent No. 2 came to be allowed.

11. Having regard to the fact that Baba Sufi Ali Trust is not formally registered under the Waqf Act and the particulars as contemplated by Section 37 of the Act are not entered in the register of auqaf maintained by the Board, a question arises as to whether Section 42 of the Act would have application in such case. Change in the management of a registered Waqf contemplates that the name of the Mutawalli is recorded in the register maintained by the Board is sought to be changed or any other information recorded therein. Admittedly, the trust in respect of which change report is filed is not registered nor entry is taken in the register of Waqf under Section 37 of the Act and hence, question of submission of any change report and acceptance thereof by the Board does not arise.

12. Apart from this, it is also relevant to take note of the fact that change in the management of the auqaf is to be notified to the Board meaning thereby the Board would be authorised to take decision in respect of such change. Herein this case, order is passed by Chief Executive Officer of the Board. Section 25 of the Act

provides for duties and powers of the Chief Executive Officer which reads as follows :-

25. Duties and powers of Chief Executive Officer :-

(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include -

(a) investigating the nature and extent of auqafs and waqf properties and calling whenever necessary, an inventory of waqf properties and calling, from time to time, for accounts, returns and information from mutawallis;

(b) inspecting or causing inspection of waqf properties and account, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of auqafs.

(2) XXXX

(3) XXXX

13. Provisions of sub-section 1(a) to 1(c) of Section 25 do not show any power being vested with Chief Executive Officer for acceptance of change report. In view of Sub-section 3, the Chief Executive Officer can exercise the powers and perform duties as may be assigned to him or delegated to him under this Act. Thus, only when there is delegation of powers by the Board, it would be within the jurisdiction of the Chief Executive Officer to decide an application under Section 42 of the Act. There is nothing on record to show that powers are delegated to the Chief Executive Officer for determination of issue covered by Section 42 of the Act.

14. In any case, the Chief Executive Officer has rejected the application of applicant for change report and accepted the application filed by respondent No. 2. The Tribunal, while setting aside the said impugned order, has accepted the change report of applicant on the ground there already existed Waqf as contemplated by Section 43 of the Act as being deemed registered. The question however, has not been dealt with as where such change of the management would be recorded in absence of said Waqf being formally registered with the Board, the particulars of which are not recorded in the register maintained under Section 37 of the Act.

15. Be that as it may, even if Tribunal was of the view that the change report of respondent No. 2 ought not to have been accepted by the Chief Executive Officer, it was not open for the Tribunal to allow the change report of applicant considering the fact that the said change could not have been recorded anywhere for want of registration under the Act and mentioning of the particulars in the register maintained in respect of auqaf under Section 37 of the Act.

16. In paragraph No. 19 of the judgment, it is held by Tribunal that Chief Executive Officer has committed error in exercising the power under Section 25 of the Act in respect of charge report, which vests with Board. After holding that order of Chief Executive Officer is without authority and Board is competent to decide the issue, it was incumbent for the Tribunal to refer the said issue to Board for appropriate consideration. Tribunal however assumed power of Board and allowed change report of applicant. Tribunal does not have inherent powers and impugned order is in transgression of power of Tribunal. Thus, it is a fit case to cause interference in the judgment impugned.

17. In the result, civil revision application deserves to be allowed. Judgment and order dated 26th March, 2019, passed by the Chairman & Member of Maharashtra Waqf Tribunal, Aurangabad in Waqf Application No. 43/2017 stands quashed and set aside. Waqf application is disposed of with direction to the parties to appear before the Board for hearing of the application filed under Section 42(1) and (2) of Act by applicant. Board to decide application in accordance with law.

18. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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