

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 97 OF 2022

Shabnaz Akbar Shaikh and Ors. ... Appellants
Versus
Sattar Khalil Khan Pathan and Ors. ... Respondents

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Mr. Shaikh Ashraf Patel h/f. Mr. Shaikh Faruk Patel – Advocate for Appellants
Mr. S.S. Kazi – Advocate for Respondent Nos.1 and 2
Mr. Y.B. Pathan – Advocate for Respondent Nos.3

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CORAM : GAURI GODSE, J.
DATE : 5th January, 2023

PER COURT :

1. The present Civil Revision Application arises out of order dated 6th April, 2022 passed by the Maharashtra State Waqf Tribunal, Aurangabad below Exh. 5 in Waqf Suit No. 181 of 2018.
2. By this application there is an order of temporary injunction granted against appellants from creating third party interest with respect to the suit property. In the plaint, the suit property is described as CTS No. 5017 situated at survey No. 102, Noor Mohalla, Moulana Azad Road, Nehru Nagar, Pimpri, Tq. Haveli, Dist. Pune.
3. On making query with respect to the suit property, learned counsel appearing for respondent nos.1 and 2 – original

plaintiffs state that, the said description is by an inadvertent error and the suit property being C.T.S. No. 5017 was originally in survey No. 102.

4. It is submission on behalf of applicants that, original owner of the suit property has executed registered sale-deed in favour of applicant no.1 and as per sale-deed the name of the applicant no.1 is recorded in the Revenue Record pursuant to the sale-deed dated 29th December, 1999. It is submitted that, out of survey no. 102, land admeasuring 100 Sq. Meter is transferred in the name of applicant no.1. Hence there could not have been any injunction order against the applicants with respect to the said area as applicants are owners of that part of the suit property and in possession of the same. The sale-deed in favour of applicant no.1 is not challenged by any party. In such circumstances, it is submitted that, since applicant no.1 is owner of part of the suit property, there cannot be any injunction against owner of the property.
5. It is submitted on behalf of respondent nos.1 and 2 - original plaintiffs that, original survey no. 102 was a property shown registered belonging in the name of Noorani Masjid under the

Bombay Public Trust Act, 1950. Hence, there is deemed registration of the Waqf Act, 1995 and this entire survey no. 102 becomes trust property and in view of Section 51 of the Waqf Act alienation of waqf property without sanction of board shall be void *ab initio*.

6. I have perused schedule-1 of the record of the Trust in the name of Noorani Masjid registered under the Bombay Public Trust Act. It is rightly submitted on behalf of the applicants that, the registration under the Bombay Public Trust Act with respect to property shown registered in the name of Noorani Masjid was only Masjid on property survey no. 102 and not the entire land. Hence, in such circumstances, respondent nos.1 and 2 could not have claimed any prohibitory injunction against the appellants who are owners of part of the suit property and therefore the impugned order needs to be quashed and set aside.
7. After hearing both the parties and perusal of the documents as well as impugned order I find that, issue with respect to ownership rights of the appellant no.1 pursuant to sale-deed dated 29th December, 1999 as well as entitlement of Noorani Masjid on the basis of original registration under the Bombay

Public Trust Act with respect to survey no. 102 needs to be decided during the trial in the suit. *Prima-facie* it appears that there is some dispute with respect to the exact description of the property of the Masjid as registered under the Bombay Public Trust Act. However, since the registration is there with survey no. 102 under the Bombay Public Trust Act and there is also a sale-deed registered with respect to part of survey no. 102, I find it appropriate to grant liberty to the applicants to make an application for modification of the impugned order, in the event the appellants intend to create any third party interest with respect to part of the suit property claimed to be owned by them. In the event such application is made to the Waqf Tribunal, same shall be decided uninfluenced by the observations in the impugned order as well as observations in the present order.

8. For the reasons stated above, the Civil Revision Application is disposed of in above terms.

[GAURI GODSE]
JUDGE