

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

CIVIL REVISION APPLICATION NO. 182 OF 2017

1. Govind S/o Sahebrao Wanwe,
Age : 55 years, Occ: Business,
R/o. Opp. Police Headquarter
Balepeer, Ahmednagar Road,
Beed, Tq. & Dist. Beed.

2. Dr. Rajendra S/o. Sahebrao
Wanwe, Age : 50 years, Occ:
Medical Practitioner,
R/o. As above.

...Applicants

Versus

1. Mirza Asif Baig S/o Yasin Baig
Age : 42 years, Occ: Business,
R/o. Azizpura, Beed.
Tq. & Dist. Beed.

2. Afsroddin Fasiuddin Ansari,
Age : 50 years, Occ: Business,
R/o. Ansari Automobiles,
Dharuru Road, Majalgaon
Tq. Majalgaon, Dist. Beed.

3. Maharashtra State Board of
Wakf, Through its Chief
Executive Officer.
Panchakki, Aurangabad.

...Respondents

Mr. M. K. Deshpande, Advocate for the Applicants.

Mr. S. S. Kazi, Advocate for Respondent Nos. 1.

Mr. N. E. Deshmukh, Advocate for Respondent No. 3.

CORAM : R.M. JOSHI, J.

**RESERVED ON : 28th March, 2023
PRONOUNCED ON : 06th APRIL, 2023**

JUDGMENT

1. The Applicants are the Orig. Defendant Nos. 2

and 3 in Waqf Suit No. 64/2012 filed by Respondent No. 1 herein under Waqf Act for declaration that lease deed executed by Respondent No. 2 in favour of Applicant No. 2 on 31.10.1995 is null and void and further direction to take possession of the suit property and being aggrieved by the impugned judgment and order dated 28.09.2016 passed by Waqf Tribunal decreeing the suit have preferred this Revision Application under Section 115 of Code of Civil Procedure, 1908 (for short '**the Code**'). Parties are referred to their nomenclature in original proceeding.

2. In short case of the Orig. Plaintiff before the Waqf Tribunal is that the suit property bearing Survey Nos. 29, 41, 42 and 207 situated at Taraf Giram Beed belonging to Dargah, Masjid, Ashurkhana, Khankha and graveyard is Waqf institution and these lands are service Inam land dedicated for the service of Dargah Peer Bale situated at Beed and all propertied are mentioned in Government Gazette dated 24.01.1975 and are registered with Defendant No. 4 – Waqf Board. It is further case of the plaintiff that Defendant No. 1 executed lease deed dated 31.10.1995 in respect of land

bearing survey no. 42/A to the extent of 6000 Sq.ft for a period of 99 years under a registered instrument in favour of defendant no. 3. It is further specifically averred that the said transfer is contrary to the provisions of Section 56 of the Waqf Act, as there could not be lease in respect of the Waqf Property without consent of the Waqf Board beyond the period of three years. With these averments, suit for declaration and possession is filed.

3. In the said suit, the Applicants though were served with notice, failed to appear and hence, the suit proceeded *ex parte* against them.

4. Learned Counsel for the Applicants/defendant nos. 2 and 3 states that in the proceedings held before the Deputy Collector in respect of determination of status of the suit land it is held to be *Madatmash Inam Land* and the said order is confirmed by the Deputy Commissioner and Divisional Commissioner. It is his further submission that the original owner has executed the sale deed in respect of suit land in favour of the Applicant No. 1 after obtaining due permission from the competent authority. Thus, it is his contention that

the impugned judgment if his allowed to be retained on record, the same can be used against present Applicants. On these amongst other ground specifically set out in the application, the validity of the impugned judgment is questioned.

5. Learned Counsel for the Respondent No. 3 – Waqf Board opposed the said contention by stating that no such plea was raised before the Waqf Tribunal by the Applicants/defendant nos. 2 and 3 and though they were duly served with the summons but chose not to appear before the Tribunal. It is also pointed out that even in the present application, there is no explanation as to the reason for non appearance. With regard to the other submissions raised by the Counsel for the Applicants, it is stated that admittedly the suit land is included in the Government Gazette published on 24.01.1975 and that the period for objection to the said Gazette and inclusion of the properties therein has already expired. Thus, it is not permitted for the Applicants now to question correctness thereof and consequently fact that the suit land is Waqf Property cannot be denied. It is further argued that there is

bar of the jurisdiction of Civil Court as well as Revenue Court under Section 85 of the Waqf Act for determination of the status of the Waqf property except by the Waqf Tribunal and hence orders passed under Hyderabad Inam Abolition Act, 1954, determining status of property which is a waqf property, are without justification.

6. This application is under Section 115 of the Code and in exercise of its jurisdiction High Court can call record from any subordinate Court in order to ascertain whether such Court has exceeded or failed to exercise jurisdiction or has acted illegally or with material illegality. Unlike appeal, in exercise of this jurisdiction this Court cannot re-appreciate the evidence on record nor can substitute the findings of facts. Such interference is however permissible if gross injustice has been caused in the process of adjudication or the order in question leads to miscarriage of justice.

7. In the present case, the Applicants were duly served with the summons of the suit. They however chose not to remain present before the Tribunal and to put

forth their defence. Pertinently in this Revision Application also there is no whisper about as to what prevented them to appear before the Tribunal. Any party chose not to appear before the Court is responsible for the consequences thereof. In absence of any explanation and justification for non appearance, it is not open for this Court to concede request made during arguments for remand of the case. Non diligent litigant can never be allowed to take the process of law for ride at his convenience. For want of any sufficient cause being shown by defendant nos. 2 and 3 for non appearance in no proceeding before Tribunal, no case is made out for remand of suit for retrial.

8. In order to support the application, it is sought to be contended that the status of the suit property has been decided by the revenue authorities as *madatmash inam* under the provisions of Hyderabad Abolition of Tenancy Act, 1954. The said contention however, sans merits in view of bar created by Section 85 of the Waqf Act, which is reproduced thus,

85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding shall lie in any civil court in respect of any dispute,

question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

9. There is no dispute about the fact that the suit land is included in the list of Auquafs published in the Government Gazette dated 24.01.1975 and therefore, there is evidence to show that it is waqf property. Section 85 creates bar to the suit or other legal proceedings in respect of any dispute, question or other matters relating to any waqf property. The status of the waqf property, therefore, would be a subject matter in respect of such bar would apply. Therefore, there is no propriety in taking into consideration the said orders as the same would not have any bearing upon the suit before the Tribunal. Moreover, the status of the suit land as waqf property now cannot be gone into in view of embargo created by Section 6, which states that no suit shall be entertained by the Tribunal after expiry of one year from the date of publication of list of Auquafs. It is also relevant to note that the material now sought to be relied upon was never placed before the Tribunal

and as such, validity of impugned judgment cannot be determined on the basis of the same.

10. In view of the above discussion, no case is made out by the Applicants for relegating matter back to the Tribunal for reconsideration on this count.

11. Apart from this, perusal of the judgment of the Tribunal shows that the issue before it was about the validity of the lease executed by the owner in respect of the suit land. Section 56 of the Act provides for the restriction on the power to grant lease on Waqf property. It is not in dispute that no permission was obtained by the owner for leasing out of the suit land. Thus, for want of permission for lease for the period of 99 years, it is rightly held to be invalid. The findings recorded by the Tribunal on the basis of material available before it cannot be faulted with.

12. The contention of the Applicants that now sale deed has been executed by the owner of suit land in favour of the Applicant No. 1 in respect of the suit property but said fact is inconsequential to the

determination of suit and to ascertain legality of the impugned judgment. Thus, Applicants have failed to make out any case to cause interference in the impugned judgment. Resultantly, the Application stands dismissed with cost.

(R.M. JOSHI, J.)

Malani