

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

CIVIL REVISION APPLICATION NO. 207 OF 2018

1. Berar Muslim Education
Conference & Osmaniya Masjid
Public Trust, Through its
Managing Trustee Syed Azizul
Hasan, Age : 72 years, Occ:
Retired, R/o. Shelter, Behind
Circuit House, Venkaiyapura,
Haji Complex, Camp Amravati,
Tq. & Dist. Amravati.
2. Anique Ahmed Khan,
Age : 61 years, Occ: Business,
R/o. Bhagyashri Colony,
Near Circuit House Camp,
Amravati, Tq. & Dist.
Amravati.
3. Sayeed Ahmed Khan Gulam
Mustafa Khan,
Age : 63 years, Occ: Retired,
R/o. Wimco Tower, near Camp
Masjid, Amravati, Tq. &
Dist. Amravati.
4. Owesoddin Ziuddin Basit,
Age : 47 years, Occ: Builder,
R/o. 18, Rana nagar, Congress
Nagar, Amravati, Tq. & Dist.
Amravati.
5. Mustq Khan Wahid Khan,
Age : 46 years, Occ: Builder,
R/o. Gulshan Plaza,
Amravati, Tq. & Dist.
Amravati.
6. Riyazuddin Gayasuddin
Deshmukh,
Age : 60 years, Occ: Retired,
R/o. Aseer Colony, Amravati,

Tq. & Dist. Amravati.

7. Abdul Rafeeq Abdul Gafoor,
Age : 56 years, Occ: Mechanic,
R/o. Behind A-1 Kirana,
Paradise Colony, Amravati, Tq.
& Dist. Amravati.
8. Mirza Nadeem Baig Mirza Naseer
Baig, Age : 49 years, Occ:
Business,
R/o. Suvidha Traders, Jail
Road, Camp, Amravati, Tq. &
Dist. Amravati.
9. Shaikh Ibrahim Shaikh Gulzar
Mansuri,
Age: 51 years, Occ: Business,
R/o. Itwara Bazar,
Amravati, Tq. & Dist.
Amravati.
10. Efazullah Khan Ejazullah Khan,
Age : 43 years, Occ: Nil,
R/o. Taj Nagar No. 2,
Amravati, Tq. & Dist.
Amravati.
11. Mohd. Sohail Mohd. Zafar,
Age : 41 years, Occ: Business,
R/o. Jameel Colony,
Amravati, Tq. & Dist.
Amravati.
12. Sarfaraj Khan Nawaz Khan,
Age : 53 years, Occ: Service,
R/o. Milat High School, Akot
File, Akola. Tq & Dist. Akola.
13. Syed Asrar Ahmed Syed Majeed,
Age : 43 years, Occ: Builder,
R/o. Asrar Colony, Walgaon
Road, Amravati, Tq. & Dist.
Amravati.

14. Shaikh Rahim Shaikh Mohammad,
Age : 69 years, Occ: Retired,
R/o. Bagwanpura, Washim,
Tq. & Dist. Washim.

...Applicants

Versus

1. Abdul Mannan S/o. Abdul
Gafoor, Age : 68 years, Occ:
Retired, R/o. Near Perfect
Dharam Kanta, Walgaon Road,
Amravati, Tq. & Dist.
Amravati.
2. Dr. Waqur-ul-Haq-Khan,
Age : 51 years, Occ: Business,
R/o. Ziya Colony, Khamgaon,
Dist. Buldhana.
3. Maharashtra State Board of
Wakf, Panchakki, Aurangabad.
Through its Chief Executive
Officer.

...Respondents

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R.
Sapkal, Advocate for the Applicants.
Mr. S. S. Kazi, Advocate for Respondent Nos. 1 and 2.
Mr. Y. B. Pathan, Advocate for Respondent No. 3.

CORAM : R.M. JOSHI, J.

RESERVED ON : 20th March, 2023
PRONOUNCED ON : 12th April, 2023

JUDGMENT

1. Applicants / Orig. Defendants being aggrieved
by the order dated 29.09.2018 passed by Waqf Tribunal
in Waqf Suit No. 4 of 2017 has preferred this Revision
Application under Section 115 of the Code of Civil
Procedure.

2. Application No. 4/2017 came to be filed with allegations that the Respondents are mismanaging the trust. The allegations are made against the trustees for the misappropriation and complaints in this regard were made to the Waqf Board, but no enquiry is conducted therein. It is further averred that the Respondents declared election without following proper procedure, and hence grievance was made with the Waqf Board about the manner in which elections were conducted. By order dated 12.08.2016 Waqf Board stayed the said election. The Respondent No. 1 herein approached the Nagpur Bench of this Court by filing Writ Petition No. 4280 of 2016, wherein the election process was allowed to be proceeded further. In the meantime, Respondent No. 3 - CEO of Waqf Board passed order dated 21.11.2016 holding that it has no jurisdiction and authority to entertain the complaints and the parties were directed to approach the appropriate Court. There is also averment to the effect that Writ Petition No. 4280 of 2016 filed by the Applicant No. 1 is disposed by this Court with direction to the Waqf Board to decide the complaints as early as possible.

3. By passing the impugned order dated 29.09.2018, the Tribunal has directed the Waqf Board to consider the complaints made by the Applicants and to hold an enquiry into the same. During the pendency of the enquiry, Ad hoc Committee for the management of Respondent No. 3 is also appointed.

4. At the outset, learned Counsel for the Respondent placed on record order dated 17.01.2023 passed by the Waqf Board wherein the change report in respect of election conducted in the year 2016 was approved and the objection raised by the Applicants herein are rejected. He, therefore, contends that in view of the said order, present Revision has become infructuous.

5. Learned Counsel for the Applicants opposed the said contentions stating that the Tribunal has exceeded its jurisdiction by issuing directions in question and therefore, this Revisions needs to be decided on merit. By referring to the relevant provisions of the Waqf Act, it is contended by the Counsel for the Applicants that the Waqf Tribunal cannot assume the power of Superintendence over the Waqf Board and that the powers

specifically entrusted by the Act can only be exercised by the Tribunal. In the regard, he drew attention of this Court to the several provisions of the Act which provides for the situations wherein Applications and Appeals can be filed before Tribunal. By placing reliance on the judgment of the High Court of Calcutta in the case of Board of Augaf, West Bengal Vs. Golam Mustapha and Ors, it is argued that the Tribunal has no inherent powers to exercise except for the one provided under the Act. Thus, it is his contention that in the present case the Tribunal has exceeded its jurisdiction by issuing directions to the Board to conduct an enquiry into the complaints of Applicants and further committed error in appointing Ad hoc Committee.

6. Learned Counsel for the Respondents opposed the said contention by stating that as regards powers of Tribunal to entertain an application, Hon'ble Apex Court in case of Board of Wakf West Bengal Vs. Anis Fatma Begum and Another, (2010) 12 SCALE 323, has held that even if no order has been passed under the Act, the parties could approach Waqf Tribunal for determination of any question or other matters relating

to Waqf or Waqf property in view of language of Section 83(1) and 84.

7. In order to appreciate the issues involved herein, it is necessary to take note of the relevant provisions of Waqf Act, 1995 where under the Tribunals are established in order to entrust exclusive jurisdiction upon it to decide the matters pertaining to the Waqf or Waqf property. By virtue of the provision under Section 83(5), the jurisdiction of Civil Court in this regard is explicitly barred.

8. The following provisions of the Act indicate as to the jurisdiction and powers entrusted upon the Tribunal which can be exercised in the manner as prescribed therein.

Section 6	:	Suit in respect of Disputes regarding Auqaf,
Section 7	:	Power of Tribunal to determine disputes regarding Auqaf,
Section 35	:	Conditional attachment by Tribunal, on applications of C.E.O. of Board.
Section 38(7)	:	Appeal against the order of appointment of Executive Officer.
Section 40 (2)	:	Decision of Board is final unless it is revoked or modified by Tribunal regarding decision if a property is Waqf property.

Section 52(4)	:	Appeal to the Tribunal against the order of Collector in respect of recovery of waqf property.
Section 64(4)	:	Appeal by Mutawalli to Tribunal against the order of his removal.
Section 67(6)	:	Proviso Appeal against removal of Member of Committee.
Section 69 (3)	:	appeal against framing of Scheme for administration.
Section 73(3)	:	Appeal against order of payment against bank or any person.
Section 94	:	Power to make application in case Mutawalli fails to discharge his duties.

9. The aforesaid provisions make it abundantly clear that jurisdiction of the Tribunal has been specified by the aforesaid provisions. The moot question is as to whether the Tribunal can exercise the powers akin to a Civil Court or not. No doubt, section 83(5) of the Act declares the Tribunal deemed Civil Court and it shall have same powers as exercised by the Civil Court. This provision whether would make the Tribunal as a Civil Court to enable it to exercise inherent jurisdiction/power like of the Civil Court as contemplated by Section 9 of CPC. Section 9 of the CPC reads thus:

Section 9. Courts to try all civil suits unless barred.:-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

10. Section 9 of CPC provides that any suit of civil nature can be entertained by the Civil Court unless expressly or impliedly barred. Converse thereto jurisdiction of the Civil Court is barred in respect of Waqf and Waqf property in view of Section 83 of the Waqf Act and the same is allotted to the jurisdiction of the Tribunal. Thus, the Tribunal though is deemed Civil Court, cannot be said to have inherent jurisdiction more particularly in respect of matters not specifically entrusted to it by the Act.

11. There cannot be any dispute about the proposition that the Tribunal has no power of Superintendence over the Waqf Board. Section 32 of the Act prescribes power and functions of the Board and the power of Superintendence over the Waqf is vested in the Waqf Board. This provision indicates that wherever necessary specific provision is made with regard to superintendence. The power of Superintendence cannot be assumed by the Tribunal unless it is so expressly

provided in the statute. Thus, neither Waqf Tribunal has inherent jurisdiction nor power of superintendence over the waqf board.

12. It would also be material to take note some other relevant provisions of the Act, having bearing on the application, such as :

67. Supervision and supersession of committee of Management.-

(1) *****

(2) Notwithstanding anything contained in this Act, and in the deed of the waqf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the waqf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the waqf, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling

upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

*(3) ******

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal. (Emphasis supplied)

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

*(6) ******

13. This provision clearly indicates that it is within the jurisdiction of the Board to appoint any Committee of Management in supersession of the committee elected. Though power is vested with Tribunal to entertain appeal against such order of appointment of committee superseding committee elected but in view

of proviso to sub-section (4), Tribunal has no power to suspend operation of order made by Board pending appeal. This indicates that Tribunal cannot exercise power of appointment of the committee superseding elected committee and its power is restricted to the decision of validity of order passed by Board.

14. Similarly, Section 70 and 71 provides for enquiry relating to the Administration of the Waqf, which reads thus:

70. Inquiry relating to administration of waqf.— Any person interested in a waqf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the waqf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the waqf are being mismanaged, it shall take such action thereon as it thinks fit.

71. Manner of holding inquiry.— (1) The Board may, either on an application received under section 70 or on its own motion,—

- (a) hold an inquiry in such manner as may be prescribed; or
- (b) authorise any person in this behalf to

hold an inquiry into any matter relating to a waqf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

15. These provisions are not subjected to jurisdiction of Tribunal as no remedy has been provided before Waqf Tribunal with regard to the matter covered by these Sections. Unlike, other provisions, as indicated above, which provide either for application or appeal against the orders passed by the Board as well as in the contingencies as provided therein, no such provision finds place in the Act, empowering Tribunal to exercise jurisdiction on this subject.

16. The question, therefore, arises as to whether it is open for the original Applicants to prefer an application under Section 70, 71 or 67 of the Act in order to seek any directions. The scheme of Waqf Act and powers entrusted upon Tribunal, leave no room for

doubt that it can only exercise functions and powers enumerated in the Act and cannot assume any inherent powers or power of superintendence over Board. It is pertinent to note that the Orig. Applicants had preferred the Writ Petition before this Court Bench at Nagpur being Writ Petition No. 4280/2016 wherein this Court had issued directions to the Board to decide the complaints as early as possible. This fact shows that the Applicants have also subjected themselves to jurisdiction of High Court on the subject matter.

17. Reliance placed by the Counsel for the Respondent to the judgment of Hon'ble Apex Court in case of Board of Wakf, West Bengal (supra) in respectful view of this Court, does not support impugned order. In the said case it was clarified by Hon'ble Apex Court that the party can approach Waqf Tribunal even if no order has been passed under the Act against which he is aggrieved. In this regard, reference is made to Sections 83(1) and 84 of the Act which do not confine the jurisdiction of the Waqf Tribunal to the determination or correctness or otherwise of an order passed under the Act. This was

observed considering the facts of the said case wherein an application was filed in connection with the Waqf property and the same was objected on the ground that no order was passed under the said act for invoking the jurisdiction of the Waqf Tribunal. In the light of these facts, it was observed that even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Section 83(1) and 84 indicates. This however cannot be construed to entrust jurisdiction which is lacked inherently by the Tribunal.

18. In the instant case, however, question posed for consideration of this Court is whether the Tribunal can assume inherent powers akin to the powers of Civil Court to entertain any application and exercise power of superintendence over waqf board. There is no dispute about the fact that for the purpose of an application or suit under Section 6 & 7, there is no question of any passing of the previous order which can be subjected to the challenge before the Tribunal.

Similarly, an application can be filed by the CEO of the Board against a Mutawali under Section 94 of the Act. It is thus, clear that in the contingencies provided under the Act only an application can be moved which can be entertained by the Tribunal and not otherwise.

19. In the present case, though an application is sought to be made by invoking provisions of Section 70 of the Act and while entertaining said application the Tribunal has assumed powers under Section 67 of appointing Ad hoc Committee during the pendency of the enquiry under Section 70. The scheme of the Act is clear to state that wherever the remedy is made available before the Tribunal, an express provision is made in this regard which can be seen from the relevant provisions reproduced herein above. In absence of any corresponding provision of application, or appeal in connection with Sections 67, 70 and 71, no direction could have been issued by Tribunal, in this regard.

20. Above discussion shows that this case is of exercise of jurisdiction by Tribunal not vested in it, and hence this is a fit case to cause interference in

the impugned order under Section 115 of CPC.
Resultantly, the application stands allowed in terms of
prayer clause 'C'.

(R.M. JOSHI, J.)

Malani