



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 19 OF 2022

1. Nazir Shah s/o Yakub Shah
Age : 65 yrs, occ : agri.,
R/o Hirapur, Achalpur,
District Amravati
2. Kadir Shah s/o Yakub Shah
(Died) through LRs
- 2A. Rafique Shah s/o Kadir Shah
Age : 35 yrs, occ : agri.,
R/o Hirapur, Achalpur,
District Amravati
- 2B. Asif Shah s/o Kadir Shah
Age : 25 yrs, occ : agri.,
R/o as above
- 2C. Hameeda Bi w/o Kadir Shah
Age : 60 yrs, occ : household
R/o as above
3. Majid Shah s/o Habib Shah
Age : 44 yrs, occ : agri.,
R/o as above.
4. Wahid Shah s/o Habib Shah
Age : 30 yrs, occ : agri.,
R/o as above
5. Aziz Shah s/o Habib Shah
Age : 28 yrs, occ : agri.,
R/o as above
6. Javid Shah s/o Habib Shah
Age : major, occ : agri.,
R/o as above
7. Najmabee w/o Shahdullah Shah
Age : 32 yrs, occ : household
R/o Pathrud Angangaon,
District Amravati
8. Alimunbee w/o Zubershah
Age : 25 yrs, occ : household
R/o as above

9. Jaibunbee w/o Habib Shah
Age : 60 yrs, occ : household
R/o Hirapur, Taluka Achalpur,
District Amravati
10. Sapurabi w/o Ayyubshah
Age : 45 yrs, occ : agri.,
R/o Balapur, Vazirabad at Post
Balapur, District Akola
11. Sagirabee w/o Moinuddin Shah
Age : 50 yrs, occ : agri.,
R/o Ghatladki, Tal. Chandurbazar,
District Amravati

Petitioners

Versus

1. Thadi Masjid, Bundelpura,
Achalpur City
Through Mutawalli,
Syed Salimuddin s/o Syed Naziruddin
Age : 64 yrs, occ : agri.
R/o Ashrafpura, Achalpur,
District Amravati
2. The Chief Executive Officer,
Maharashtra State Board of Wakfs,
Panchakki, Aurangabad

Respondents

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Mr. M.G. Mustafa, Advocate for the petitioners.

Mr. Moinpasha Shaikh Farid, Advocate for respondent No.1.

Mr. N.E. Deshmukh, Advocate for respondent No.2.

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CORAM : **SANDIPKUMAR C. MORE, J.****Judgment Reserved on : 09.09.2024****Judgment Pronounced on : 26.11.2024****Judgment :**

1. The present petitioners, who are the original applicants in Waqf Application No. 11/2012, have filed this

Civil Revision Application challenging the judgment and order passed by the learned Chairman, Maharashtra State Waqf Tribunal, Aurangabad i.e. the learned Tribunal in the aforesaid application on 20.12.2021. Under the impugned order, the learned Tribunal has confirmed the order dated 21.01.2012 passed by the present respondent No.2 in Case No.54/109/2009 in relation to the claim of present respondent No.1 Thadi Masjid, a Waqf Institution. Under that order the application of respondent No.1 filed for possession of the suit land i.e. Survey No. 142 admeasuring 2 H 85 R, Pot Kharab area 00.16 R at Khelatupmandi, Taluka Achalpur, District Amravati from the petitioners, has been allowed alongwith grant of the damages.

2. The background facts are as under :

The present respondent No.1 Masjid had filed application before respondent No.2 - Chief Executive Officer, Maharashtra State Board of Waqfs (for short, "the Board") bearing Case No. 54/109/2009 against the present petitioners and also claimed damages of Rs. 3,00,000/-. Respondent No.2-Board, after hearing the parties, allowed the same and under an order dated 21.01.2012, directed the petitioners to hand over possession of the suit land to respondent No.1. Against the said order, the petitioners

had preferred Waqf Application No. 11/2012 before the learned Tribunal. Though the learned Tribunal granted interim relief in the said application below Exh.5, but finally dismissed the same under the impugned order. Hence, this Civil Revision Application.

3. Learned Counsel for the petitioners/applicants submits that the learned Tribunal has definitely erred in passing the impugned order by ignoring tenancy right of the petitioners. According to him, the father of applicant Nos.1 and 2 was tenant in the suit land and under the provisions of Bombay Tenancy and Agricultural Land Act (**B.T.A.L. Act**) purchase certificate was also issued in their favour. However, thereafter the learned Tribunal, by ignoring the provisions of law as well as definition under Section 3(ee) of the Waqf Act in respect of encroacher, directed the petitioners to hand over possession of the suit land. According to learned Counsel for the petitioners, the tenancy should have been terminated first and thereafter the learned Tribunal could have passed the order of possession. He relied on the following judgments :

- (i) ***P. V. Nidhish & ors vs Kerala State Wakf Board & anr (Criminal Appeal No. 309 of 2023, Supreme Court)***
- (ii) ***Laxminarayan Temple, Kothure, vs Laxman Mahadu Chandore, 1968 LawSuit (Bom) 52***

(iii) Eknath Bhiku Yadav & anr vs Shri Ganpatrao Shankarrao Dhawan & ors, (2006) 3 Mh L J 288

(iv) Nivruttinath Yatra Khajur Donation Trust, Nashik vs Sub-Divisional Officer, Dahanu, 2004 LawSuit (Bom) 1398.

4. On the contrary, learned Counsel for respondent Nos.1 and 2 strongly resisted the submissions made on behalf of the petitioners and supported the impugned order. According to them, under Section 129-B of the B.T.A.L. Act for Vidarbha Region, exemption to the suit land from the provisions of Tenancy Act is already granted, and therefore, Tenancy Act is not applicable to the present proceeding. They submitted that the amendment in the definition under Section 3(ee) of the Waqf Act in respect of encroacher has come subsequently, and therefore, it is not applicable to the proceeding which took place in the year 1993-94. They submitted that tenancy was terminated long back in the year 1998 and the purchase order initially made by concerned Tahsildar has already been set aside by the Sub-Divisional Officer. They also submitted chronology of facts and relied on following judgments :

(i) Judgment of Bombay High Court in the Case of Abdul Hamid Sk. Safdar vs Darushifa Masjid and others in C.R.A. No. 116 of 2008

(ii) Shri Ram Mandir Sansthan @ Shri Ram Sansthan

Pusda vs Vatsalabai & ors, 1991 (1) Mh.L.J. SC 321

***(iii) Shri Maroti Sansthan vs Gulab Haribhau Jirapure
2007 (2) Bom.C.R. 875***

***(iv) Ishtaque Ali Sayyad Ali vs Maharashtra State Waqf
Board & ors, 2015 (3) Bom.C.R. 633***

5. Heard rival submissions. Also perused documents on record alongwith record and proceeding of original Case No. 54/109/2009 before respondent No.2 - Board.

6. It is not in dispute that respondent No.1 Thadi Masjid i.e. Waqf Institution was initially registered as Public Trust under Bombay Public Trust Act with the office of the Charity Commissioner under registration No. B-29. Further, after coming into force of the Waqf Act, it has been registered with respondent No.2 - Board under registration No. M.S.B.W./13/2006. The ownership over the suit land by respondent No.1 Institution is also not in dispute. Certified copy of Schedule - I indicates that name of respondent No.1 is mentioned therein. Further, 7/12 extracts for the years 1986-1987 to 1999-2000 indicate that name of respondent No.1 is recorded in ownership column.

7. The petitioners are claiming that father of petitioner Nos.1 and 2 i.e. Yakub Shah was tenant in the

said land and concerned Tahsildar had also granted purchase certificate in respect of the suit land in his name. Admittedly, the record shows that Tahsildar – President and Agricultural Land Tribunal, Achalpur on 11.01.2001 in R.C. No. 1/59 (3) Khel Tapmali/2000-2001 had directed to enter the name of purchasers in the ownership column of 7/12 extract of the suit land for the year 2003-2004. The said Tahsildar had fixed purchase price of the suit land at the rate of Rs. 408/- and after that the sale certificate was to be issued to them. However, it appears that respondent No.1 Masjid had challenged the said order before Sub-Divisional Officer, Achalpur in Tenancy Appeal No. 1/59 (13) 2001-2002 of Khel Tapmali and under an order dated 04.07.2002 the learned Sub-Divisional Officer had set aside the order of Tahsildar in relation to fixing purchase price and issuance of sale certificate of the suit land. Thus, it is clearly revealed that order of issuance of said purchase certificate is not at all in existence.

8. The learned Counsel for the petitioners further submitted that tenancy of the petitioners over the suit land is not at all terminated, and therefore, they are not the encroachers as held by the learned Tribunal. For that purpose he relied on the judgment in the case of **P.V.**

Nidhish & ors vs Kerala State Wakf Board (supra). He pointed out that as per Section 3 (ee) of the Waqf Act, definition of 'encroacher' is as follows :

“encroacher means any person or institution, public or private, occupying wakf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board”.

Thus, the learned Counsel for the petitioners is claiming that the Tribunal has not considered this aspect and directed possession of the suit land to be delivered by ignoring the fact that the tenancy of the petitioners over the suit land is not yet terminated. However, on going through the impugned judgment, it appears that the learned Tribunal has clearly held that the land is exempted under Section 129-B of B.T.A.L. Act from the applicability of the provisions of Tenancy Act, and therefore, treated the petitioners as 'encroachers'. It is specifically submitted by the learned Counsel for respondent No.2-Board that the amendment in definition of encroacher under Section 3 (ee) of the Waqf Act has come in force from 01.11.2013 and prior to that a person whose tenancy was expired or terminated, was not included in the same. The learned Tribunal has already discussed in it's judgment impugned and ultimately held

that prior to 2013 amendment there could not be any tenancy in relation to the property belonging to Waqf. Thus, the claim of the petitioners that even after death of Yakub Shah they continued the tenancy by sending certain amount to respondent No.1, is definitely illegal. It is specifically held by this Court in the case of Abdul Hamid Shaikh Safdar vs Darushifa Masjid Farmanpura in Civil Revision No. 116 of 2008 that after coming into force of Waqf Act, lease for a period of exceeding three years cannot at all be created and cannot exist. Under such circumstances, continuation of possession of the property by the petitioners without any lease, even for a period of less than one year by the Trust, would be of an encroacher.

9. Thus, considering all the aforesaid aspects and from the documents on record, it appears that the provisions of Tenancy Act cannot be made applicable to the present suit land which is a waqf property. Moreover, grant of compensation can be justified since the petitioners are in possession of the suit land since long and they are taking crops from it. As such, it appears that respondent No.2 Board as well as the learned Tribunal has rightly considered all the provisions of law and after that issued direction to the petitioners to deliver possession of the suit land to

respondent No.1 Masjid alongwith compensation awarded. Therefore, the judgments relied upon by the petitioners are not helpful to them and no interference is required in the impugned judgment and order passed by the learned Tribunal. Accordingly the present Civil Revision Application stands dismissed and interim relief, if any, shall stand vacated. The Civil Revision Application is disposed of.

(SANDIPKUMAR C. MORE, J.)