



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 102 OF 2007

Kailash Babasaheb Nalwade

Age : 30 yrs, occ : agri.,

R/o Shahunagar, Beed.

Petitioner

Versus

1. Ahmadi Begum w/o Mohammad
Habibuddin
Age : 65 yrs, occ : household
R/o Nalband Galli, Beed.
2. Mohiuddin s/o Habibuddin Inamdar
Age : 50 yrs, occ : business
R/o Bari Colony, Aurangabad.
3. Mujubuddin Habibuddin Inamdar
Age : 49 yrs, occ : service
R/o Nalband Galli, Beed.
4. Najibuddin Habibuddin Inamdar
Age : 45 yrs, occ : business
R/o Nalband Galli, Beed.
5. Sk. Babu Sk. Kutubuddin
Age : 32 yrs, occ : agri.,
R/o Paneki Taki, Islampur,
Taluka and District Beed.
6. Marathwada Wakf Board, Through
its Secretary, MWB Panchakki,
Aurangabad.
7. Sakharam Bapurao Naikwade
(Application dismissed against
him as per order dt. 6.6.2007).

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Mr. S.S. Kazi, Advocate for the petitioner.

Mr. Gulam Dastgir, Advocate for respondent Nos.1 to 4 (Absent).

Mr. H.V. Tungar, Advocate for respondent No.5.

Smt. A.N. Ansari, Advocate for respondent No. 6.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 18.06.2024

Judgment Pronounced on: 05.07.2024.

Judgment :

1. The petitioner, who is the original defendant No.1 in Wakf R.C.S. No. 4/2002, has challenged the judgment and order passed by the Maharashtra Wakf Tribunal, Aurangabad (hereinafter referred to as “the learned Tribunal”) dated 13.01.2004 in the said suit. Under the aforesaid impugned order, the learned Tribunal has declared that the suit property i.e. Survey No.170 situated at Wasanwadi, Taluka and District Beed to the extent of 19 Acres 12 Gunthas is a Wakf property being ‘mashrutul khidmat’. Further, the learned Tribunal has also restrained the present petitioner and present respondent No.5, who are the original defendant Nos.1 and 2, from causing any sort of obstruction or interference to the possession of present respondent Nos.1 to 4, who are the successors of original plaintiff Mohammad Habibuddin, over the aforesaid land.

2. Brief facts are as under :

The original plaintiff Mohammad Habibuddin of whom the present respondent Nos.1 to 4 are legal

representatives, had filed the aforesaid suit bearing Wakf R.C.S. No. 4/2002 before the learned Tribunal for declaration that agricultural land bearing Survey No.170 admeasuring 22 Acres 38 Gunthas situated at Wasanwadi, Taluka and District Beed is a Wakf property being a conditional service Inam land i.e. Mashrutul Khidmad Mash belonging to Wakf namely Diwanwada Masjid, Beed Respondents/plaintiffs also claimed perpetual injunction against original defendant Nos.1 and 2 for not to obstruct their possession over the suit land to the extent of 19 Acres 12 Gunthas which is hereinafter referred to as the "suit land". According to the original plaintiff, he was Mutawali of the aforesaid Diwanwada Masjid and after his demise, the present respondent Nos.1 to 4 are claiming Mutawalis of the aforesaid Wakf.

3. On the contrary, the present petitioner and respondent No.5, who are the original defendant Nos.1 and 2 resisted the suit under their written statement (Exh.25) by contending that the suit land is not a conditional service Inam land, but in fact it is a Madad Mash Inam land which is already abolished as per the provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954. They contended that the suit land was in possession of one Shri

Sahebrao Tukaram and entries to that effect were recorded in the revenue record of the land from 1950 to 1976. The suit land was given in possession of Sahebrao Tukaram by the original Inamdar Mohammad Ataulla for the purpose of cultivation. As such, the original defendant Nos.1 and 2 contended that the suit land is not a Khidmad Mash land, but it is in fact Madad Mash land and the sons of Sahebrao Tukaram have given all the rights in respect of the suit land to them by relinquishing their claim in their favour. Thus, on the basis of the said deed, they filed proceedings before the concerned Authority for declaration of suit land as Madad Mash land and for declaring themselves to be the owners of the suit land. They also contended that since they are in actual possession of the suit land to the extent of 19 Acres 12 Gunthas, the plaintiffs are not entitled for perpetual injunction.

4. On the other hand, original defendant No.4 i.e. the present respondent No.7 also filed his written statement at Exh.87 by contending that the suit land to the extent of 3 Acres 25 Gunthas was allotted to one Pawandas Diomal under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act as per Sanad No. HL/BR/17 dated

02.12.1960 granted by the Assistant Settlement Commissioner, Bombay. Accordingly, mutation entry was also certified to that effect. Thereafter Pawandas sold the said portion of suit land on 11.01.1971 to one Awatrai Gagandas Tekwani for the consideration of Rs. 3,000/- vide sale deed of the same day. Accordingly, mutation entry No. 361 was certified. Thereafter defendant No.5 purchased the aforesaid portion of land from Awatrai for consideration of Rs.16,000/- vide sale deed dated 18.06.1974 and mutation entry No.27 to that effect was certified. As such, defendant No.4 has contended that the suit land to the extent of aforesaid portion of 3 Acres 25 Gunthas is not a Wakf property.

5. In view of the pleadings of parties, learned Tribunal, by framing appropriate issues, conducted trial and decreed the suit as mentioned above. Hence, this Civil Revision Application.

6. Learned Counsel for the petitioner as well as learned Counsel for respondent No.5 vehemently argued that the learned Tribunal has wrongly held that the suit land to the extent of 19 Acres 12 Gunthas, is a Wakf property. According to them, the entire land Gut No. 170 was declared as evacuee property by the Government of India, and

therefore, how it became a Wakf property without any supporting document. They claimed that when the entire land was claimed as Wakf property by the plaintiffs, but why the land of defendant No.4 was excluded as a evacuee property. They pointed out that the original defendant Nos.1 and 2 had in fact filed appeal before the concerned Ministry for declaring the suit land as 'Madad Mash Inam' land and despite pendency of such revenue litigation, the learned Tribunal declared the suit land as Wakf property. They also claimed that the plaintiff himself had admitted that the suit land was under supervision of Government, and therefore, the Wakf Officer was not empowered to give the same in possession of plaintiff. According to them, appropriate Authority i.e. the Collector, Atiyat declared the suit land as Madad Mash Inam and further proceedings arising out of the said order are still pending.

7. Learned Counsel for respondent No.5 i.e. original defendant No.2 produced on record copies of documents in respect of subsequent proceedings against the order of Deputy Collector, Land Reform, Beed in File No. 2001-Inam-273 dated 16.07.2001. According to him, the aforesaid documents clearly indicate that the matter is pending before

this Court vide Writ Petition No. 7510 of 2016 in respect of the decision as to whether the suit land is Madad Mash Inam. Thus, according to him, the order of the learned Tribunal or the subsequent order of the concerned Revenue Officers are illegal when further proceedings in this respect are stayed by this Court vide order dated 26 July 2016 in the aforesaid Writ Petition. According to him, the Deputy Collector, Atiyat is in fact having jurisdiction to decide the present dispute.

8. Learned Counsel for respondent No.6 i.e. Marathwada Wakf Board supported the case of the present petitioner.

9. Heard rival submissions. Also perused documents on record.

10. It is to be noted that the original plaintiff had claimed that the suit land is a Wakf property being Mashrutul Khidmat Mash belonging to Wakf in the name of Diwanwada Masjid, Beed. As against this, the present petitioner and respondent No.5 who are the original defendant Nos.1 and 2, have come with the case that it is in fact Madad Mash Inam land which was abolished as per the provisions of Hyderabad Abolition of Inams and Cash Grant Act, 1954 and thereafter

they were declared as occupants of the suit land vide order dated 16.07.2001 in File No.2001-Inam-273 passed by the Deputy Collector, Land Reform, Beed. On the contrary, respondent No.7 i.e. the original defendant No.4 had come with a case that he became absolute owner of the suit land to the extent of only 3 Acres 25 Gunthas being purchaser of the same under registered sale deed. Learned Counsel for the petitioner and also learned Counsel for respondent No. 5 vehemently argued that when it was declared Madad Mash Inam by the competent Authority, then how the suit land can become Wakf property. They also raised question about jurisdiction of the Tribunal. However, in the suit before learned Tribunal, the original plaintiff had sought declaration that the suit land be declared as Wakf property. It is to be noted here that as per Section 7 of Wakf Act, 1995 it has been provided that after commencement of the said Act, any question arises, whether a particular property specified as Wakf property in a list of Wakfs is Wakf property or not, then the decision of this Tribunal shall be final. Thus, it is clearly evident that the learned Tribunal was definitely having jurisdiction to decide the claim of plaintiff for declaring the suit land as Wakf property. Therefore, the observation of the learned Tribunal which is supported by legal provision that

the learned Tribunal has jurisdiction to entertain the present dispute, definitely appears proper.

11. It is significant to note that the petitioner as well as respondent No.5 have claimed occupancy right over the suit land on the basis of the order dated 16.07.2001 passed by the Deputy Collector, Land Reform, Beed. Admittedly, on going through the said order, it is evident that the suit land to the extent of 19 Acres 12 Gunthas was declared as 'Madad Mash Inam' land as per Hyderabad Abolition of Inams and Cash Grant Act, 1954 and thereafter it was given into occupation of petitioner and respondent No.5 to the extent of half share each. Learned Counsel for the petitioner pointed out that against the aforesaid order the plaintiffs had preferred appeal before the concerned Ministry and during pendency of that appeal, how the learned Tribunal decided the nature of suit land being a Wakf property when it was held by the order of Deputy Collector that it was Madad Mash Inam land. However, learned Counsel for respondent No.5 placed on record documents in respect of subsequent proceeding challenging the aforesaid order of Deputy Collector dated 16.07.2001. On going through the order passed by Collector, Beed dated 13.10.2009, it is evident that the appeal

before Revenue Minister filed by the plaintiffs was transferred to Collector, Beed in view of amendment in Section 2A of the Hyderabad Abolition of Inams and Cash Grants Act, 1954. Thereafter Collector, vide aforesaid order, rejected the appeal of the appellants and confirmed order dated 16.07.2001 whereby the suit land was declared Madad Mash Inam land. Then the plaintiffs preferred File No. २०११/मशाका/भुसू/इनाम/सिआर—५१ against the said order before the Deputy Commissioner (Revenue), Aurangabad and vide order dated 29.02.2016 the said Deputy Commissioner (Revenue), Aurangabad cancelled both the orders of Deputy Collector as well as Collector, Beed and remanded the matter back to Deputy Collector, Beed for deciding the nature of suit land afresh. Against the said order dated 29.02.2016, the present petitioner alongwith respondent No.5 preferred Writ Petition No. 7510 of 2016 wherein this Court, vide order dated 26 July 2016, issued notice to then respondents and in the meantime further proceedings pursuant to the said remand order were kept in abeyance. It is to be noted here that the said writ petition is still pending before this Court.

12. However, it is surprising that even after the proceedings were kept in abeyance by this Court in the

aforesaid Writ Petition, the Deputy Collector (General Administration), Beed implemented the order passed by Deputy Commissioner, Aurangabad dated 29.02.2016 in Proposal No. 2018/Gen./Appeal/KAVI-28 and vide judgment dated 06.03.2020, decided the nature of suit land to the extent of 19 Acres 20 Gunthas area being Madad Mash Inam. It was also declared that under Hyderabad Abolition of Inams and Cash Grants Act, the said land was forfeited and some other persons were declared as owner of the suit land. Therefore, the present petitioner again challenged the said judgment dated 06.03.2020 passed by the Deputy Collector (General Administration), Beed before Additional Collector, Beed who allowed the appeal of petitioner vide order dated 02.02.2022. The Additional Collector, Beed not only set aside the order dated 06.03.2020, but also directed the Revenue Authorities to act as per final decision of this court in Writ Petition No. 7510 of 2016 and till that time, the proceeding before them be kept dormant.

13. Thus, on going through the aforesaid subsequent proceedings in respect of the first order dated 16.07.2001, it is evident that no order declaring the suit land as Madad Mash Inam is in existence and the dispute to that effect is ordered

to be decided by this Court in the aforesaid Writ Petition No.7510 of 2016. As such, there is no order in existence at present showing the suit land as Madad Mash Inam.

14. It is significant to note that though the aforesaid Writ Petition No. 7510 of 2016 is still pending and dispute between the parties in the said Writ Petition is in respect of nature of the land, whether Mashrutul Khidmat Mash or Madad Mash Inam land, but it is a disputed question which can be decided only on the basis of evidence. As such, it is doubtful whether this Court under the writ jurisdiction can decide such disputed question. By that as it may, the learned Tribunal is definitely having jurisdiction to decide the nature of suit land being Wakf property, as mentioned above. On going through the impugned judgment, it is clearly evident that the learned Tribunal has considered each and every aspect in deciding the nature of suit land and that too by relying on various documents. While declaring the suit land as Wakf property, the learned Tribunal has also considered the evidence and contention of petitioner and respondent No.5 and discarded their claim that the suit land is Madad Mash Inam. It has been observed by the learned Tribunal that Wakf in the name of Diwanwada Masjid, Beed is duly

notified as 'Wakf' in the Government Gazette dated 24.01.1974 at Sr. No.25 i.e. long back before the order dated 16.07.2001 passed by the Deputy Collector, Land Reform, Beed. Moreover, as many as 5 agricultural lands at proper Beed Taraf Khod, including the suit land are shown as Wakf properties in the said Gazette. The aforesaid Gazette Notification also indicates the Mutakhab dated 16th Dai 1323 Fasli about the Wakf Deed under which the Wakf is created. Moreover, the learned Tribunal has also relied on certified copy of Namuna-9 for the year 1976 at Exh.58 whereby the Wakf in question was shown holding as many as six lands. Column No.2 of Namuna-9 clearly indicated that nature of those properties except land Survey No. 161 was Khidmat Mash. Thus, it appears that only Survey No. 161 out of the aforesaid lands was shown to be Madad Mash Inam. Thus, there is sufficient evidence on record that the present suit land was Mashrutul Khidmat Mash i.e. conditional service Inam land.

15. Not only this, but the learned Tribunal appears to have considered the contention of original defendant No.4 also and by discussing the various provisions of Administration of Evacuee Property Act, 1950, it has been observed that long

back prior to coming into force of Wakf Act, 1995, the suit land was declared as evacuee property and acquired by Central Government. But under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, certain part was given to the then displaced persons which in turn purchased by defendant No.4 vide registered sale deed. Further, it appears that the learned Tribunal has also considered the legal provisions of the Administration of Evacuee Property Act, 1950 and finally came to the conclusion that the suit land to the extent of 3 Acres 25 Gunthas only was declared as evacuee property and thereafter Section 28 of the Administration of Evacuee Property Act, 1950 came into picture which laid down that every order made by the Custodian shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding. The learned Tribunal appears to have considered each and every relevant provisions of the aforesaid Act and finally come to the conclusion that in absence of any special provision with respect to the property of Mashrutul Khidmat Mash land, the suit land only to the extent of 19 Acres 12 Gunthas is a Wakf property excluding the land of defendant No.4 having area of 3 Acres 25 Gunthas.

16. Further, it appears that the learned Tribunal has also considered the contention of present petitioner and respondent No.5 that the suit land was Madad Mash Inam land as per the order dated 16.07.2001 passed by the Deputy Collector, Land Reform, Beed. However, I have already discussed earlier as to what happened in the proceedings challenging the aforesaid order. At present no such order is in existence which indicates that the suit land is declared as Madad Mash Inam. On the contrary, the learned Tribunal appears to have considered the case of the petitioner and respondent No.5 and observed that practically there was no evidence on record to show that the suit land was Madad Mash Inam land at any point of time. It is also observed that there was no declaration of occupancy rights in the name of Sahebrao Tukaram nor there was any order of succession in favour of his three sons through whom the present petitioner and respondent No.5 are claiming right. It is also observed by the learned Tribunal that there is no documentary evidence to show that the suit land was Madad Mash Inam land and they were occupants thereof.

17. Learned Counsel for the petitioner also pointed out that stay order was in fact granted in favour of the present

petitioner against the plaintiffs in revenue proceeding. However, the learned Tribunal, by considering the documentary evidence in respect of the suit land, such as 7/12 extract, came to the conclusion that the said order granted by Deputy Collector in favour of the petitioner in respect of entry in the column of cultivation of the suit land to the extent of 19 Acres 12 Gunthas, was without any supporting documentary evidence. It is to be noted here that except that stay order the revenue records were in favour of the plaintiffs and on the basis of the same, the learned Tribunal has drawn inference about their possession over the suit land. As such, it is evident from the impugned judgment that the present petitioner or respondent No.5 could not establish their claim that the suit land is Madad Mash Inam land. On the contrary, learned Tribunal has declared the suit land as Wakf property on the basis of documentary evidence, and therefore, there is no need of interference in the impugned judgment passed by the learned Tribunal. In the result, present Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)