



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH : AURANGABAD

CIVIL REVISION APPLICATION NO.222 OF 2012

- 1) Hazrat Peer Raje Bagsar, Peerwadi,
A Wakf Registered under the
provisions of Wakf Act, 1995 its office
at Peerwadi, Taluka & Dist. Satara,
Through its Trustees
- 2) Nazir Chand Mujawar,
Age: 65 years, Occu. Pensioner
- 3) Ramchandra Dagdu Ittekar **(Dead)**
Age: 78 years, Occu. Agriculture
- 4) Dilawar Babu Mujawar,
Age: 50 years, Occu. Business,
- 5) Bashir Chand Mujawar,
Age: 62 years, Occu. Pensioner
- 6) Vinayak Mahadev Uttekar,
Age: 55 years, Occu. Agril.
- 7) Bipin Ramchandra Uttekar,
Age: 47 years, Occu. Agril
- 8) Ashpak Noormohammad Sayyad,
Age: 35 years, Occu. Service
- 9) Salim Sayyad Mujawar,
Age: 45 years, Occu. service,
Nos. 2 to 9 R/o Pirwadie, Tal. & Dist.
Satara
- 10) Ashok Govindrao Naik,
Age: 58 years, Occu. Agril. R/o.
Pantacha Got, Satara
- 11) Smt. Ruksana Rashid Mulani,

Age: 52 years, Occu. Agril.

- 12) Smt. Minaj Rashid Mulani,
Age: 48 years, Occu. Agril.
Nos. 11 & 12 R/o. Nazia Selection,
Krushna Nagar, Satara
- 13) Sunil Shamrao Chavan,
Age: 54 years, Occu. Agril.
- 14) Mrs. Sarita Sunil Chavan,
Age: 49 years, Occu. Agril.
Nos. 13 & 14, R/o. Irrigation Colony,
Krushna Nagar, Satara
- 15) Abhay Govindrao Katkar,
Age: 50 years, Occu. Agril.
- 16) Mrs. Sulbha Govindrao Katkar Age :
50 years, Occu. Agril.
Nos. 15 & 16 r/o Jagatap Wadi, Shahu
Nagar, Satara
- 17) Chandgani Badshah Attar,
Age: 50 years, Occu. Agril.
R/o. Raviwarpeth, Satara

.... Applicant(s)

// VERSUS //

- 1) Maharashtra State Board of Wakf
having office at Panchakki, Aurangabad
- 2) The Chief Executive Officer,
Maharashtra State Board of Wakf,
Having Office at Panchakki,
Aurangabad,
Dist. Aurangabad

.... Non-applicant(s)

Mr. Amol K. Gawali, Advocate for the applicants/s
Mr. Y.B. Pathan, Advocate for the non-applicant Nos.1 and 2
Mr. C.K. Shinde, Advocate for the intervenors

CORAM: SANDIPKUMAR C. MORE, J.
DATED OF RESERVING THE JUDGMENT : 27.08.2024
DATE OF PRONOUNCING THE JUDGMENT : 18.11.2024

JUDGMENT :

1. The present applicants, who are the original applicants in Waqf Application No.13/20111, have preferred this Revision Application for challenging the order dated 21.06.2012 passed by the learned Presiding Officer, Maharashtra Waqf Tribunal (hereinafter referred as “the learned Tribunal”). As per the impugned order, the learned Tribunal has dismissed the application of the applicants, challenging the legality and correctness of the Resolution of Waqf Board bearing No.15/2010 dated 08.02.2010 and the consequent communication to them by the Chief Executive Officer (CEO), bearing No. MRVM/SNT-456/3510/2010 dated 17.06.2010.

2. The background facts of the case are as under:

The present applicant Nos.2 to 9 are the Mutwalli of the applicant No.1 Waqf property. Whereas, the applicant Nos.10 to 17 are the prospective purchasers of the Waqf property.

3. The applicant No.1 is an old Waqf, consisting of Darga and Masjid registered under the Bombay Public Trust Act, 1950 at PTR B-196/Satara. After commencement of the Walf Act, 1995 (hereinafter referred as “the Act”), the same is deemed to be registered under Section 43 of the Act and entered in *Kitabul Awkaf* maintained under Section 37 of the said Act. Thus, the non-applicant No.1 is under general supervision of the Waqf Board.

4. The applicants are claiming that the property, the subject matter of the original application, is a Waqf property, which is the agricultural land bearing old Survey No.110/A (new Survey No.16/A), admeasuring, 4 Acres 29 Gunthas. The non-applicant No.2-CEO is bound to follow the directions of the Waqf Board.

5. Since the aforesaid Waqf property was not generating any income, the applicant Nos.2 to 9 being Mutwalli applied to Waqf

Board for selling the said property. Then, the Waqf Board under Resolution No.20, dated 28.04.2005 also granted sanction for selling the said Waqf property. The applicant Nos.10 to 17 offered highest bidding at the rate of Rs.90,000/- per Guntha and accorded their willingness to purchase the property. The then CEO vide order dated 19.05.2005 permitted the Mutwalli to sell out the property at aforesaid rate with certain safeguards. The CEO also directed the Mutwalli to apply to the Collector, Satara for levying full land revenue as the land ceases to be utilized for any religious and pious purpose. Vide resolution dated 11.12.2005, the Board of Mutwalli of the Waqf decided to enter in to an agreement of sale with the applicant Nos.10 to 17 and by accepting earnest money of Rs.3,00,000/- executed the agreement of sale in favour of the applicant Nos.10 to 17 in respect of the said property for total consideration of Rs.59,40,000/-. The remaining amount of the consideration was to be paid at the time of execution of the registered sale-deed within a period of three months from the date of the order of full assessment of land revenue.

6. Accordingly, the applicants-Mutwalli applied to the Collector, Satara for full assessment of land revenue and to delete the land from Alienation Register, as the land was entered in the said Register as Class-III Inam. The proposal to that effect was forwarded to the Ministry of Revenue, Maharashtra Government by letter dated 05.01.2006 and the concerned Ministry asked the Waqf Board as to whether the provisions of Section 51 of the Act were complied and selling of such Waqf property was possible. The then CEO of the Waqf Board vide letter dated 18.01.2006 informed the Ministry that procedure prescribed under Section 51 of the Act was followed and the Waqf Board had permitted the Mutwalli to sell the Waqf property. Accordingly, the Ministry issued final notice to the Waqf Board for taking possession in respect of conversion of the land to the full assessment of the land. However, in the meanwhile the earlier CEO got transfer and one Mr. Shaikh took over the charge of the said post.

7. Thereafter, on 12.02.2008 the new CEO issued letter to the Revenue Ministry, mentioning that the earlier resolution No.20

dated 28.04.2005 was not passed by 2/3rd majority of the Board as required under Section 51 of the Act and therefore, the matter was placed before the forthcoming meeting of the Waqf Board for cancellation. Then on 09.07.2008, the concerned Ministry on the basis of the reports of the Collector, Divisional Commissioner, Satara and the letters of the then CEO, Mr. Patel, passed order for levying full assessment and deleting the said land from Alienation Register. Then, the matter was again put up before the Waqf Board in the meeting and the impugned resolution was passed and communicated to the present applicants. The applicants thereafter, challenged the said impugned resolution under the Waqf Application No. 13 of 2011, but the same was rejected under the impugned order passed by the learned Tribunal and hence, this revision application.

8. The learned counsel for the applicants submitted that the learned Tribunal has not considered the documents on record in proper perspective. According to him, the permission for purchase of the property in dispute was already granted by following due

process of law. Even the institution had appointed the surveyor for demarcation. According to him, each and every fact was put up before the concerned Charity Commissioner by seeking permission to sell vide application dated 21.07.2001. He further pointed out the concerned Revenue Ministry had also removed the said land from Class-III. He further pointed out that the Waqf Board was not having any power to review earlier permission which was already acted upon. He submitted that when the earlier order to purchase the land was granted by majority, then whether it could have been set aside by two members/persons. He raised the question that when one CEO granted permission, the then CEO could not have been sent it for verification again. According to him, there was no prohibiting provision for alienating the property. He pointed out that the first resolution was not challenged at all. According to him seven members were required as per Section 14 of the Act to constitute the Board and the CEO did not give any reason as mentioned in Section 26 of the Act for reconsideration of the proposal for grant of permission to purchase. He referred Section 83 of the Act and submitted that the learned Tribunal *Suo*

Motu cannot take any action, especially when the earlier resolution remained unchallenged till today. Thus, in short he pointed out that without having power to review, it was not open for the learned Tribunal to discard the first resolution and therefore, the second resolution has to go, being illegal. He has prayed for setting aside the impugned order. In support of his submission, he relied on the following judgments :

- (i) *S. V. Cheriya Koya Thangal vs. S. V. P. Pookoya and Ors.*, 2024 SCC OnLine SC 1586,
- (ii) *Bachhaj Nahar vs. Nilima Mandal and Anr.*, (2008) 17 SCC 491,
- (iii) *Messrs. Trojan and Co. vs. RM. N. N. Nagappa Chettiar*, AIR 1953 SC 235
- (iv) *Miss. Hill Education Society vs. Neeti Bhan and Ors.*, (2004) 13 SCC 378,
- (v) *Shankarlal Nadani vs. Sohanlal Jain*, 2022 SCC OnLine SC 442; and
- (vi) *Kalabharati Advertising vs. Hemant Vimalnath Narichania and Ors.*, (2010) 9 SCC 437.

9. On the contrary, the learned counsel for the non-applicant Nos.1 and 2 strongly opposed the submissions made on behalf of the applicants and by relying upon the chronological events, he submitted that the Act commenced from 01.01.1996 and after such commencement, the earlier process was not maintainable. He referred Section 112 of the Act and submitted that the earlier proceeding had already repealed. In respect of the intervenors, he submitted that the Tenancy Act is not applicable to the Waqf property and therefore, no interference is required in the impugned order passed by the learned Tribunal, as it has dealt with all the legal aspects in proper manner. The learned counsel for the non-applicant Nos.1 and 2 also relied on the following judgments :

- (a) *Hanifsha Baba Darga E. Darbar vs. Salimkhan Karimkhan and Ors., 2009 (2) ALL M. R. 338,*
- (b) *Mansoor s/o Kasam Mulla vs. Guddu Saheb Ibrahim Mugale and Anr., Civil Revision Application No.104 of 2008, decided on 29.04.2010. (Aurangabad Bench)*

- (c) *Mohammadia Co-operative Building Society Limited vs. Lakshmi Srinivasa Co-operative Building Society Limited and Ors., 2008 (6) Mh.L.J. 5,*
- (d) *Arjun s/o Bhimaji Lakare (deceased) through L.Rs & Anr. vs. Hindustani Momin Banarasi Jaatich Panch Mandali and Anr., 2014 (3) Mh.L.J. 870,*
- (e) *Abdul Hamid Shaikh Safdar vs. Darushifa Masjid Farmanpura & Anr., Civil Revision Application No.116 of 2008 decided on 03.07.2009 (Nagpur Bench);* and
- (f) *Sayyad Ali and Ors. vs. A. P. Wakf Board, AIR 1998 SC 972.*

10. On the other hand, the learned counsel for the intervenors filed written submission along with the relevant documents. According to him, the intervenors from Inamdar family became tenant of the said property on 01.04.1957 and therefore, his rights need to be protected.

11. Heard the rival submissions and also perused the documents on record along with the record and proceedings of the learned

Tribunal and the Board, in the light of the submissions and citations relied upon by rival parties.

12. It is to be noted that the background facts as mentioned above in respect of earlier proceedings related to the various resolutions and correspondence are not in dispute. Moreover, the disputed property i.e. Survey No.110/A is also belonging to Waqf Hazrat Peer Bagesar Dargah and Masjid and also recorded in the record of the Assistant Charity Commissioner and the Waqf Board as well as the Government Gazette dated 31.07.2006. Thus, there is no dispute regarding the said property being a Waqf property. The status of the applicant Nos.2 to 9 is also not in dispute. It is the main contention of the applicants that the permission granted by the earlier CEO in respect of sale of the property, could not be reviewed by subsequent CEO and he was not having power to verify the same again by placing before the Board. The applicants have contended that the resolution No.20, dated 28.04.2005 accepted by the then CEO, has not been set aside and therefore, the Subsequent CEO was not empowered to verify it again, by placing

the same before the Board for reconsideration. It is to be noted that the CEO is not a supervisor to the Board though the Act has given some special powers to him under Section 25 of the Act. The CEO is under obligation to follow the directions given by the Board through its resolution. If such resolutions are not beneficial to the Board or any Waqf, then the CEO before implementing such orders or earlier resolutions, may place the same before the Board for reconsideration as per Section 26 of the Act. Thus, it seems that the Waqf Board itself can rectify the earlier Acts or set aside the earlier orders by a subsequent resolution.

13. Further, the learned counsel for the applicants raised a question that when the earlier resolution is still intact, then the second resolution which is not passed by 2/3rd majority of the total members of the Board, cannot be upheld. However, under Section 51 of the Act, even an interested person can challenge the permission granted by the Board for alienation of the Waqf property by way of appeal and therefore, even if the earlier resolution remained unchallenge, but that would not mean that the

subsequent resolution which is contrary to the earlier resolution became invalid. It is to be noted that the legality and validity of each and every resolution is subject matter of independent scrutiny in the different appeals to that effect. Thus, there is no force in the submissions made on behalf of the applicants that merely because earlier resolution remained intact, the subsequent resolution needs to be set aside.

14. In the instant matter, the learned Tribunal has already observed in the impugned judgment that intended sale of the Waqf property was not in the interest and for betterment of the Waqf. The learned Tribunal by discussing the documents on record has also observed that no proper procedure was followed while granting earlier permission of sale and has thoroughly discussed as to how the applicant Nos.2 to 9, for their own benefits, tried to sell the property of Waqf. Not only this, but the learned Tribunal has also deprecated the conduct of the aforesaid applicants by observing that they were only entitled for remuneration and not the share in the property. It is specifically observed by the learned Tribunal that

the aforesaid applicants tried to sell the property, as if they were having hereditary share in the property of the Waqf. It is also observed by the learned Tribunal that the tenant of Waqf property is also not entitled to any compensation as no Tenancy Laws are applicable to such properties of the Waqf institution. This will take care of the contention of the intervenors, since they have also prayed for protection of their tenancy rights over the Waqf property. Thus, the intervenors cannot be benefited in the instant matter.

15. The learned counsel for the applicants vehemently argued that the earlier resolution, by which the permission to sell out the Waqf property granted in favour of the applicants, cannot be reviewed by the Board itself. However, this Court in the case of *Mansoor s/o Kasam Mulla* (supra), relied upon by the non-applicants, has observed that there is no express provision under the Act which bars the CEO to review/recall his own order. Further in the same judgment, it is observed by the Hon'ble Apex Court that the CEO/Waqf Board is definitely empowered to review or recall its

earlier order. Thus, there appears no force in the aforesaid submission of the learned counsel for the applicants regarding review of the earlier order.

16. Further on going through the record as well as the impugned judgment, it is clearly evident in the impugned resolution that the Board has considered each and every aspects and given reasons for declining to grant sanction. Further, the learned Tribunal appears to have resorted to provisions of the Act in detail by considering the rights of the Board as well as the CEO and has come to conclusion that the Board can set aside the resolution, if not passed in accordance with law or it is likely to cause financial loss to the Waqf. The learned Tribunal has also recorded various Rules to that effect. Moreover, it was also observed that the subsequent CEO had ample right to place the earlier resolution before the Board for reconsideration, as it was hit by flagrant breach of the mandatory provisions of the Act.

17. The learned Tribunal has also upheld the competency of the Board to reconsider the said resolution. It is to be noted that in the

case of *Mohammadia Co-operative Building Society Limited* (supra), certain procedure prior to the sale of Waqf property, is discussed by the Hon'ble Apex Court and it is observed that prior to sale of the property, such property has to be published in the Gazette. Thus, the observation of the learned Tribunal that the subsequent resolution which was granted after earlier resolution for permission to sell the property was according to the procedure laid down in the Act, is absolutely correct. The judgments relied upon by the learned counsel for the applicants are in respect of the general settled principles and therefore, the same cannot be made applicable in light of peculiar facts of this case.

18. Thus, considering all these aspects, it appears that the learned Tribunal, by considering each and every aspects, has properly come to the conclusion that the Waqf Application No.30 of 2011, preferred by the present applicants, was liable to be dismissed. On independent searching and the materials on record, this Court has also come to be same conclusion and therefore, no interference in the impugned judgment is required.

19. Accordingly, the present revision application stands **dismissed** along with pending Civil Application No.7095 of 2018 for intervention.

SANDIPKUMAR C. MORE, J