



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (CRA) NO.151 OF 2023

Syed Nisar Badesaheb Jahagirdar

...Applicant

Versus

1. The Maharashtra State Board of Wakf,
through Chief Executive Officer,
Panchakki, At Aurangabad.

2. Sayed Iliyaz Isamuddin Jahagirdar
(Peerzade).

...Respondents

WITH
CIVIL REVISION APPLICATION (CRA) NO.103 OF 2024

1. Syed Zuber Abdul Sattar Hundekari,

2. Shaikh Shakur Aziz Ahmed,

3. Syed Dastagir Badesaheb,

4. Khan Nazir Gulam Mohammad.

...Applicants

Versus

1. The Maharashtra State Board of Wakf,
through Chief Executive Officer,
Panchakki, At Aurangabad.

2. Sayed Iliyaz Isamuddin Jahagirdar
(Peerzade).

...Respondents

Adv. S. S. Kazi for Applicant in CRA/151/2023.

Adv. S. S. Kazi h/f. Adv. A. M. Inamdar for Applicant in CRA/103/2024.

Adv. N. R. Deshmukh for Respondent No.1.

Ms. S. R. Rajput for Respondent No2.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 2nd DECEMBER 2024.

JUDGMENT:-

1. Both the aforesaid civil revision applications impugn an order dated 11th July 2023 passed by learned Chairman and Member of Waqf Tribunal Aurangabad in Waqf Application No.3 of 2023, by which an order passed by Maharashtra State Board of Waqf in File No.42/119/2020 is set aside.

2. Mr. S. S. Kazi, learned Advocate appearing for the Applicant submits that Waqf Institution, namely Peer Hazrat Imaam Saheb Dargah situated at Kothla, District Ahmednagar has been registered as public trust vide Registration No.B-116 (Ahmednagar). The Applicant's father was founder trustee/Mutawalli of institution. The trust is run as per the scheme framed for management and administration of the trust, which has been approved by the Competent Authority. The Clause 9 of the Scheme provides for mode and manner for appointment of new trustees. The vacancy of the trustees arose on account of death or resignation of founder trustees. Therefore, on 14th January 2020, a resolution appointing new trustees was passed. Eventually, on 3rd July 2020, change report was submitted under Section 42 of Waqf Act, 1995. The Respondent No.2 had also filed a Change Report No.42/115/2020, which was objected by the Applicant. Finally, Respondent No.1-Waqf

Board passed an order dated 28th December 2022, accepting change report submitted by Sayed Bade sahab Papamiya Jahagirdar i.e. father of Applicant while rejecting change report submitted by Respondent No.2, observing that Respondent No.2 had no authority to file change report as per Section 42. The order dated 28th December 2022 was assailed by Respondent No.2 before Waqf Tribunal vide Waqf Application No.3 of 2023 which came to be allowed, thereby setting aside order of Wakf Board regarding acceptance of Change Report No.42/119/2020.

3. Mr. Kazi, learned Advocate appearing for the Applicant submits that change report filed by Applicant was based on the resolution dated 14th January 2020. The Applicant along with other four trustees; namely, Shaikh Zubair Abdul Sattar Hundekari, Shaikh Shakur Aziz Ahmed, Sayed Dastagir Bade Saheb and Khan Nazir Gulam Mohammad were appointed as trustees as against death of three founder trustees and resignation of one of the trustees. The appointment of all trustees was made by the founder trustee as per Clause No.9 of the Scheme. The change report was rightly accepted by Waqf Board. However, Waqf Tribunal pleased to set aside order of Waqf Board on erroneous count. He would submit that Respondent No.2 while raising challenge to the order of Waqf Board, only added present Applicant party Respondent in Waqf Application No.3 of 2023 but other

trustees who were appointed as per Change Report No.42/119/2020 were intentionally omitted from array of party in Waqf Application. He would submit that in absence of all trustees being party, learned Tribunal should not have entertained application.

4. Mr. A. M. Inamdar, learned Advocate appearing for the Applicants in Civil Revision Application No.103 of 2023 also raises the same grievance that the Applicant was appointed as trustees in respect of whom, the Change Report No.42/119/2020 was accepted by Waqf Board. They were not heard by learned Tribunal before passing the impugned order. Consequently, he urges to quash and set aside the impugned order and remit matter back to the Tribunal for reconsideration after granting opportunity of hearing to the Applicants.

5. Per contra, Ms. S. R. Rajput, learned Advocate appearing for Respondent No.2 would submit that the Change Report No.42/119/2020 was submitted by the Applicant-Syed Nisar Badesaheb Jahagirdar, i.e., Applicant in C.R.A. No.151 of 2023 before the Waqf Tribunal under Section 42 of the Waqf Act, 1995. The Waqf Board had passed order accepting change report. The order of Waqf Board was assailed before the Waqf Tribunal under Section 83(2) of the Waqf Act, 1995. The parties were added as per title clause of the change report. The Waqf Tribunal observed that the appointment of trustees indicated

in Change Report No.42/119/2020 was not in accordance with mode and manner prescribed under scheme. Further appointment was not within stipulated time, i.e., within three months from the date of vacancy. The sole surviving trustee could not have exercised powers beyond the scope of Clause 9 of the Scheme. Consequently, Learned Tribunal quashed and set aside order of Waqf Board. The trustees sought to be appointed as per the change report were not before Waqf Board nor they approached Tribunal in Waqf Application No.3 of 2023 by filing intervention application. The Waqf Tribunal passed impugned order considering legal and factual aspect of the matter. No prejudice is caused to the proposed trustees. She would, therefore, urge to maintain order passed by the Tribunal.

6. Having considered submissions advanced, it can be gathered that Waqf Institution – Peer Hazrat Imaam Saheb Dargah has been registered under Bombay Public Trusts Act, 1950. The one Badesaheb Papamiya Jahagirdar was the founder trustee and Mutawalli of the Waqf Institution along with other founder trustee; namely, Yaseen Khan Bashir Khan, Shaikh Abdul Saudagar and Sayed Baliuddin Peerzade, who expired long back and another trustee; namely, Shaikh Iqbal Ahmed Bilal had also resigned. The Badesaheb, who was old aged trustee/Mutawalli, appears to have appointed applicant and others as trustees vide resolution dated 14th January 2020. The Change Report

No.42/119/2020 was submitted based on such resolution under Section 42(1)(2) of the Waqf Act, 1995 to Chief Executive Officer, Maharashtra Waqf Board. The said application came to be allowed vide order dated 28th December 2022. It appears that Respondent No.2, aggrieved by order dated 28th December 2022 filed Waqf Application No.3 of 2023 before Waqf Tribunal at Aurangabad. Wherein, Applicant Nisar Badesaheb Jahagirdar was added as Respondent No.2, whereas Waqf Board was added as Respondent No.1. The other four trustees, who were appointed under Change Report No.42/119/2020 were not added as parties. The Tribunal entertained Waqf Application No.3 of 2023 reserved order of Board and rejected Change Report No.42/119/2020.

7. It is trite that a public trust is not the body corporate. The change report in respect of addition or deletion of any trustee would create certain rights individually in favour of such trustees. Consequently, in present case, Waqf board was pleased to accept the change report in respect of in all five trustees, who are Applicants before this Court. However, while assailing the order of Waqf Board, Sayed Nasir Badesaheb Jahagirdar was only added as contesting Respondent along with Waqf Board. The other trustees, who are Applicants in C.R.A. No.103 of 2024 were neither added as party, nor they were noticed about Waqf Application No.3 of 2023. The Learned

Tribunal quashed and set aside order of Wakf Board without hearing or granting opportunity of being heard to trustees, except Sayed Nasir.

8. In that view of the matter, the impugned order cannot be sustained in law for non-adherence to principles of natural justice. Hence, it would be in fitness of things to grant opportunity to all trustees, who were party to the Change Report No.42/119/2020. Consequently, civil revision applications succeeds and disposed as follows:-

ORDER

- (i) C.R.A. Nos.151 of 2023 and 103 of 2024 are partly allowed.
- (ii) Impugned order dated 11th July 2023 passed by Maharashtra State Waqf Tribunal, Aurangabad in Waqf Application No.3 of 2023 is hereby quashed and set aside.
- (iii) The matter is remitted back to the Waqf Tribunal in Waqf Application No.3 of 2023. The Applicants in C.R.A. No.103 of 2024 be added as party Respondents in Waqf Application No.3 of 2023 on its re-registration.

- (iv) The Waqf Tribunal shall reconsider the Waqf Application No.3 of 2023 after granting opportunity of hearing to the added Respondents and pass afresh order in accordance with law.

(S. G. CHAPALGAONKAR, J.)