



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

WRIT PETITION NO. 1548 OF 2016

Uttam s/o. Ganpat Chabukswar,
Age 58 years, Occu. Retired Teacher,
R/o. Taklibhan, Taluka Shrirampur,
District Ahmednagar

.. Petitioner

Versus

1. The State of Maharashtra
2. The District Collector, Ahmednagar,
District Ahmednagar
3. The Sub Divisional Officer, Shrirampur,
Taluka Shrirampur, District Ahmednagar
4. The Tahsildar, Shrirampur,
Taluka Shrirampur, District Ahmednagar
5. The Chief Executive Officer,
Maharashtra State Wakf Board,
Panchakki, Aurangabad,
District Aurangabad
6. Imam s/o. Badshah Shaikh,
Age 33 years, Occu. Agriculture,
R/o. Taklibhan, Taluka Shrirampur,
District Ahmednagar
7. Kamrunnisa w/o. Badshah Shaikh,
Age 60 years, Occu. Agriculture,
R/o. Taklibhan, Taluka Shrirampur,
District Ahmednagar

.. Respondents

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the Petitioner;
Mr. A. A. Shinde, A.G.P. for Respondents No.1 to 4/State;
Mr. H. I. Pathan, Advocate for Respondent No.5

CORAM : S. G. MEHARE, J.

DATE : 04-01-2024

PER COURT :-

1. Heard the learned counsel for the petitioner, learned A.G.P. for respondents No.1 to 4 and the learned counsel for respondent No.5.

2. The petitioner has impugned the order of respondent No.5/ the Chief Executive Officer, Maharashtra State Waqf Board, Aurangabad, passed in Case No.54/28/2007, dated 25.06.2012, holding the petitioner as encroacher on the waqf land. The Chief Executive Officer hold that land Gat No.249 of village Taklibhan, Taluka Shrirampur, District Ahmednagar, was *Khidmat Mash* Inam land. The petitioner had encroached upon such land. Hence, he was directed to vacate the suit premises within 15 days.

3. The petitioner had a case that he learnt about the said order in 2016 and he immediately rushed to the Court under writ jurisdiction. Today the matter was circulated for passing interim order protecting the possession of petitioner of suit premises. However, the learned counsel for respondent No.5 raised an objection that the alternate remedy against the impugned order is available before the Waqf Tribunal as provided under Section 83 of the Waqf Act, 1995.

4. Learned counsel for the petitioner has tried his level best to convince the Court that this is an exceptional case to exercise writ jurisdiction. The petitioner is a purchaser of suit premises from

predecessor in title. The suit land on which the plots were demarcated was never the Waqf properties. Therefore, the impugned order was illegal and incorrect. In this peculiar facts of the case, the writ jurisdiction may be invoked.

5. Per contra, the learned counsel for respondent No.5 has vehemently argued that Section 83 of the Waqf Act, was specific that provides remedy against the orders of the Waqf Board. He submits that any order of the Chief Executive Officer of the Waqf Board shall be impugned before the Tribunal and no other Court has the jurisdiction.

6. Perused Sections 54 and 83 of the Waqf Act, 1995.

7. As per Section 83 of the Waqf Act, the Tribunals have been constituted. A specific provision has been made therein that any order passed by the Waqf Board, shall be impugned before the Waqf Tribunal. This is a special Act to deal with the Waqf properties and related issues. The law is crystal clear that an alternate remedy for against the impugned order before the Waqf Tribunal is provided under the Waqf Act itself. Under these circumstances, the writ jurisdiction could not be exercised.

8. *Prima facie*, the petitioner chosen a wrong forum. Admittedly, the petitioner is in possession since long. His claim is based upon the title acquired from his predecessor in title. A serious question, whether the plot demarcated was the waqf

property, has to be examined by the competent court i.e. Waqf Tribunal.

9. Barely approaching the wrong forum may not deprive the petitioner from agitating his legal rights. The Court believes that this is not the matter to be entertained under the writ jurisdiction. The issue involved in this dispute is a question of fact, that could be dealt with properly by the Waqf Tribunal. Hence, the following order:-

ORDER

- (i) Writ petition stands dismissed with liberty to the petitioner to avail the remedy as available under the Waqf Act against the impugned order.
- (ii) Time spent on this petition should be considered for condonation of delay in filing the application against the impugned orders.
- (iii) Till the learned Tribunal pass *interim* order protecting the possession, there shall be *status quo* as regards the possession of the petitioner. However, it is clarified that the petitioner shall take immediate steps to move before the appropriate Court and pray for *interim* protection.
- (iv) No order as to costs.

(S. G. MEHARE)
JUDGE