
(2012) 08 BOM CK 0121

In the Bombay High Court

Case No : Civil Revision Application No. 48 of 2012

Abdul Qayyum Khan and Others

APPELLANT

Vs

The Additional Collector, Nanded, Dist. Nanded, The Tahsildar,
Tahsil Office, Nanded, Dist. Nanded and The Maharashtra
State Wakf Board, Office at Panchakki, Aurangabad.

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Waqf Act, 1995 — Section 14, 36, 51, 52, 52(1)

Citation : (2012) 5 BomCR 5 : (2012) 114 BOMLR 2863 : (2013) 1 MhLj 449

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : M.G. Mustafa, for the Appellant; K.M. Suryawanshi, A.G.P. for respondent Nos. 1 and 2. Mr. Y.B. Pathan, Advocate for respondent No. 3., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. By consent heard finally. This Civil Revision Application is filed challenging the judgment and order dated 2nd February, 2012 in Appeal No. 4 of 2008 passed by the Maharashtra Wakf Tribunal, Aurangabad. It is the case of the revision applicants that, on 22nd September, 2003 the District Wakf Officer, Nanded, wrote a letter to the Chief Executive Officer of Maharashtra State Board of Wakf for inquiry regarding the land Gat Nos. 432 and 443 situate at village Kiwla, Taluka Loha, District Nanded. On the basis of said letter, the Chief Executive Officer issued a notice u/s 51 and 52 of the Wakf Act, 1995 read with Rule 20(3) of Wakf Rules. It is the case of the revision applicants that, the revision applicants did not receive notices and the notices are not served upon them.

On 19th January, 2005 the Chief Executive Officer passed the order u/s 52(1) of the Wakf Act, 1995. On the basis of order, letter was issued by the District Wakf Officer, Nanded to District Collector (Atiyat) District Nanded for taking possession

of land Gat Nos. 432 and 443.

On 25/28th March, 2007 the Additional Collector\\ issued notice/order for taking possession of the above mentioned lands. Being aggrieved by the judgment and order of the Additional Collector and the Chief Executive appeal before the learned Wakf Tribunal at Aurangabad bearing Appeal No. 4 of 2008. The respondents herein, filed say in the said appeal. On 2nd February, 2012 said appeal came to be dismissed. Hence, this Civil Revision Application.

2. The learned Counsel appearing for the revision applicants submits that the Chief Executive Officer, Maharashtra State Board of Wakf is having no jurisdiction to try and decide the matter u/s 51 and 52 of the Wakf Act, 1995 as there is no resolution regarding delegation of power by the Wakf Board to the Chief Executive Officer in the present matter. It is further submitted that, the document relied by the Wakf Tribunal i.e. Exhibit-1, is not the sale deed but it is a lease deed, which also finds place in the judgment of the Wakf Tribunal in paragraph-46, where the reference is made to the documents as lease deed and Sauda Pauti, and therefore, the provisions of Section 51 of the Wakf Act, 1995 are not attracted. It is submitted that, this Court in the case of Abdul Kadar vs. Masjid Juma Darwaja reported in All.M.R. 2009(2) 148, and the Hon'ble Supreme Court in the case of Ramesh Gobindram vs. Sugra Humayun Mirza Wakf reported in 2010 (4) AIR SC 2897, has held that, the Wakf Tribunal is having no jurisdiction to try and decide the matter regarding tenancy rights. It is the contention of the revision applicants that, remedy provided under the Maharashtra Rent Control Act is applicable to the present case. It is submitted that, the Tribunal has not considered that, the land was granted for Kazat (madadmash) as per muntakhab, therefore, the provisions of Wakf Act, 1995 are not attracted. It is further submitted that, notice of the said proceedings was not properly served to the revision applicants and therefore, they could not defend their case before the Chief Executive Officer and the Collector, Nanded.

The learned Counsel for the revision applicants invited my attention to the provisions of Sections 51 and 52 of the Wakf Act, 1995 and submitted that, the Chief Executive Officer, Wakf Board is having no power to conduct the inquiry under Sections 51 and 52 of the Wakf Act, 1995. It is submitted that, u/s 52 of the Wakf Act, 1995, transfer of wakf property if is in contravention of Section 51, then after satisfaction of the Board and after making inquiry that, immovable property of wakf entered in the register of wakf maintained u/s 36, has been transferred without the previous sanction of the Board and in contravention of the provisions of Section 51, then only Board can send requisition to the Collector for obtaining delivery of the possession to the Board. It is submitted that, in the present case, the matter claimed is not gift, sale, exchange or mortgage of any immovable property. Thus, the case does not fall within scope and ambit of Section 51 of the Wakf Act, 1995. It is submitted that, the provisions of Section 52 of the Wakf Act, 1995 are not attracted to the present case. The provisions of Section 52 of the Wakf Act, 1995 cannot be invoked and

no requisition can be sent to the Collector for obtaining delivery of the possession. It is only in the cases of sale, gift, exchange or mortgage only provisions of Section 51 are attracted and if contravention is found then only provisions of Section 52 of the Wakf Act, 1995 are attracted. It is submitted that, in the present case, there is a lease and therefore, provisions of Section 51 and 52 of the Wakf Act, 1995 are not applicable. Therefore, the order under challenge is liable to be set aside.

3. It is submitted that, even after there is any contravention still the power vests to the Board. The Board is required to be as per provisions of Section 14 of the Wakf Act, 1995. In the State of Maharashtra, in fact, there is no properly established Board as per law, as it is held in the following cases by the Bombay High Court. (1) Sayyed Jameel Ahmed s/o Sayeed Janimiya vs. State of Maharashtra and others reported in 2009(5) All M.R. 722 (2) Quamber Jeevaji s/o Sk. Hatim Jeevaji and others vs. State of Maharashtra and others reported in 2010(4) All M.R. 529.

Therefore, it is submitted that, when there is no properly established Board, question of the satisfaction and inquiry by the Board and sending requisition to the Collector does not arise. Moreover, there is no delegation of power vested with the Chief Executive Officer of the Wakf Board for invoking provisions of Sections 51 and 52 of the Wakf Act, 1995. Thus, order under challenge is without jurisdiction and without power which is liable to be quashed and set aside. It is submitted that, even the learned Tribunal did not appreciate the medical certificate filed by the petitioner regarding illness of appellant No. 2, who ultimately died. Therefore, relying upon the averments in the Civil Revision Application, annexures thereto, the learned Counsel appearing for the revision applicants submits that, this Civil Revision Application deserves to be allowed.

4. The learned Counsel appearing for the respective respondents submitted that, the Wakf Tribunal has considered all aspects of the matter and recorded the detailed findings on each aspects and those findings are not perverse in any manner, therefore, this Court may not interfere in the impugned judgment and order of the Wakf Tribunal. It is submitted that, the suit property is wakf property, same is notified in the official gazette. Before taking any action against the revision applicants, the principles of natural justice are followed and to that effect, the findings are recorded by the Tribunal. It is submitted that, the point whether the Chief Executive Officer was authorized to pass the order or not, was not raised before the Wakf Tribunal and therefore, this Court may not consider the said argument of the Counsel for the revision applicants. It is submitted that, the respondents are relying upon the findings recorded by the Wakf Tribunal. Therefore, the Counsel for the respondents submits that, the Civil Revision Application is devoid of any merits, same may be dismissed.

5. I have given anxious consideration to the rival submissions. I have carefully perused the grounds taken in the Civil Revision Application, annexures thereto and contentions raised by the revision applicants. Upon perusal of the impugned

judgment, I find that, the Wakf Tribunal has recorded the findings on each aspect of the matter. The Wakf Tribunal in paragraph-8 of the impugned judgment has made reference to the inquiry u/s 51 read with Rule 20 sub-rule (3) of the Wakf Rules, said inquiry was commenced and notices were issued to the sellers on 22nd October, 2003 and the purchasers i.e. revision applicants herein vide Outward No. 1980-1983/2003. The Tribunal has observed that, after holding inquiry and perusing the documents such as Government Gazette dated 13th March, 1975 and the registered instruments the Board came to the conclusion that, the properties are service Inam lands of Jama Masjid, and are illegally alienated by the persons who have no concern with Masjid or properties. Therefore, upon recording satisfaction that, it is necessary to take steps for recovery of the wakf property through the Collector u/s 52 of the Wakf Act, 1995, an order u/s 52(1) came to be passed on 19th January, 2005. Accordingly, on 15th June, 2006 the Chief Executive Office, Wakf Board issued requisition to the Collector, Nanded u/s 52(1) vide letter No. MSBEW/Enq/3566/2006 for taking possession of the land and handing it over to the Wakf Board. In paragraph-9 the Tribunal has observed that, the revision applicants are properly served. The Wakf Tribunal has framed as many as six points for its determination, which are in paragraph-22 of the impugned judgment. Upon appreciation of the document i.e. Muntakhab, Wakf Tribunal held that, Muntakhab specifically mentions that, Inams are for conjoint services of Kazat, Imamat and Moazzani of Jame Masjid. The Muntakhab thus is a composite Muntakhab and it is not only for services of Kazat, as contended by the original appellants. It is further observed by the Tribunal in the said paragraph that, every grant burdened with service of religious, pious or charitable object even if granted in the name of an individual person is a permanent dedication for wakf institution and it is a wakf in the eye of law. The Tribunal further in paragraph-26 has observed that, the Chief Executive Officer of the Wakf Board in his order has observed that, the suit property is declared as wakf property and is published so in the official gazette dated 13th March, 1975. It appears that, the Tribunal has also perused the copy of the said gazette which was placed on record wherein it is shown that, Survey No. 94 situated at Kiwla village admeasuring 90 Acres is Inam of Jame Masjid Mohamad Sultanuddin s/o Mohd. Sardaroddin, Mohammed Majiduddin s/o Sultanoddin and others shown as Mutawali. The Tribunal has further observed that, if the lands situated at Kiwla i.e. suit lands were not service inam but were persona Inam granted for exclusive services of Kazat, then these Mutawali or their successors ought to have challenged the entry of Kiwla property in the said Gazette as property of Masjid, within one year u/s 6 of the Wakf Act, 1954. If these entries of the Government Gazette dated 13th March, 1975 are not challenged by the Mutawali or any person interested in the wakf, then the entries in Gazette became final and conclusive.

(emphasis supplied).

6. In paragraph-34 of the impugned judgment, the Tribunal has dealt with the alleged transaction between the original appellants and Inamdars. It is observed

that, the said transaction of hand loan by the original appellants in favour of Inamdars, if it was really a transaction of hand loan, there was no necessity to execute registered agreement to sell, as evident from the copies of the documents filed on record by the respondents with list Exhibit-21 and referred by the Chief Executive Officer in his order. It is further observed that, the registered lease deed at Exhibit-B on the record dated 18th January, 1993 is executed for a period of 99 years between the original appellants and Inamdars in lieu of Rs. 79,200/-, which is bogus and sham document. The Tribunal has observed that, the copies of two registered documents filed with list Exhibit-21 shows that, in fact all the rights of an owner are transferred forever in favour of the appellants including the right to get their names mutated in revenue record as owners by these documents. In fact, the documents initially were drafted as sale deeds but by correction the word "sale deed" is struck off and the word "Saude chithi" is replaced. Subsequent lease deed for 99 years i.e. beyond the life of Mutawali is nothing but a camouflage and in fact transaction is out and out sale under the garb of very long lease in order to defraud the law itself because even the transfer of an abolished personal Inam under Inam Abolition Act without prior permission of the Government is void. The nomenclature of document cannot affect the real nature of transaction is trite law. The Tribunal reached to the final conclusion that, the transaction is out and out sale and neither security for loan or Saudechiti nor a lease deed in real sense but is intended to transfer the absolute ownership.

Paragraph-35 of the impugned judgment reads thus :

35. The dishonesty of appellants vis a vis the shikmidars is again writ large on record. The registered Lease Deed was dated 18.9.1993 for Rs. 79,200/- only. But the so called Saude Kararnama were already registered on 3/8/92 for total consideration of Rs. 1,50,000/-. Thus, the actual amount paid to the shikmidars is also concealed from the Registering authority in order to steal the stamp duty.

7. Therefore, the Tribunal has recorded the findings of facts, on the basis of the material available before it and held that, the said transaction between the appellants and Inamdars is out and out sale and neither security for loan or Saude chiti nor a lease deed in real sense but is intended to transfer the absolute ownership. The Tribunal in paragraph Nos. 36 to 43 has discussed about how the principles of natural justice have been followed while concluding the proceedings against the appellants, how the service of notice is effected upon the appellants.

Therefore, upon perusal of the aforementioned findings, it is abundantly clear that, the principles of natural justice have been followed throughout the proceedings before the respondents.

8. Upon careful perusal of the impugned judgment of the Tribunal, there is no manner of doubt, that the Tribunal has dealt with each and every aspect of the matter in detail and recorded the findings upon appreciation of the evidence brought on record and after appreciating the rival contentions. The said findings

recorded by the Tribunal appears to be reasonable and in consonance with the evidence brought on record. The contention of the revision applicants herein, that the Chief Executive Officer, Maharashtra State Board of Wakf is having no jurisdiction to try and decide the matter u/s 51 and 52 of the Wakf Act, 1995, as there is no resolution regarding the delegation of power by the Wakf Board was not raised before the Wakf Tribunal. From the grounds taken in appeal memo before the Tribunal, no sch point was raised and the respondents have no opportunity to rebut the said point before the Tribunal. That apart, the Counsel for the respondent No. 3 has vehemently submitted that, the powers were delegated to the Chief Executive Officer and he has rightly exercised the power vested in him. The learned Counsel has also invited my attention to the relevant provisions of Wakf Act, 1995, which enables the Wakf Board to pass resolution authorizing the Chief Executive Officer to exercise the powers and pursuant to such delegation of power, the powers are exercised by the Chief Executive Officer in the facts of this case. Therefore, there is no substance in the arguments of the Counsel for the revision applicants that, the Chief Executive Officer, Maharashtra State Board of Wakf was not empowered to pass the order. The another contention of the Counsel appearing for the revision applicants that, the transaction between the appellants and Inamdars in respect of the suit land is "lease deed" and not "sale deed", has been considered by the Tribunal, after appreciating the documents which are placed on record. As already observed, the Tribunal in paragraph Nos. 34 and 35 of the impugned judgment has dealt with in detail, with the said aspect and recorded the findings that, the transaction is out and out sale and neither security for loan or Saude chiti nor a lease deed in real sense but is intended to transfer the absolute ownership. The Tribunal observed that, there cannot be lease agreement for more than three years. Therefore, aforesaid findings of facts recorded by the Tribunal, needs no interference. The another contention of the Counsel appearing for the revision applicants that, the Tribunal has no jurisdiction to decide the matter regarding tenancy right, the remedy under Maharashtra Rent Control Act are applicable to the facts in hand, is devoid of any merits. The Wakf Tribunal in so many words has observed in the impugned judgment that, the said property is wakf property and there is document on record to suggest that, the said property is wakf property. Therefore, the said contention is devoid of any merits and needs no consideration. The another contention of the Counsel for the revision applicants that, the land was granted for Kazat (Madadmash) as Muntakhab, therefore, provisions of Wakf Act are not attracted, is devoid of any merits. Said document i.e. Muntakhab has been perused by the Tribunal and as already observed in the aforesaid paragraph of this judgment, the Tribunal in paragraph-26 has dealt with the said aspect in detail. The said findings are on appreciation of the documents and facts involved in the case and therefore, correctness of those findings needs no interference, since those are not perverse. The Tribunal has also dealt with the contention of the appellants that, they are not properly served. However, from the findings recorded by the Tribunal, this Court is satisfied that, there was proper service upon the original appellants. Therefore,

viewed from any angle, the findings recorded by the Tribunal cannot be said to be perverse, rather those are in consonance with the evidence brought on record. The said property is wakf property. The said property is notified as wakf property in the official gazette way back in the year 1975. It is not necessary to burden this judgment by reproducing the findings recorded by the Tribunal. Suffice it to say that, this Court is in agreement with the findings recorded by the Wakf Tribunal. No interference is called for in the impugned judgment and order. The Civil Revision Application is devoid of any merits, same stands dismissed, Rule stands discharged. No order as to costs.