
(2009) 03 BOM CK 0160

In the Bombay High Court

Case No : Civil Revision Application No. 42 of 2009 in Writ Petition No. 7880 of 2008

Farid Abdul Latif Noorani

APPELLANT

Vs

Mr. Sayed Sadiq Ali Qadri and Others

RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 18, 18(3)
Constitution of India, 1950 — Article 226, 227
Waqf Act, 1995 — Section 13, 23, 25, 25(1), 32

Citation : (2009) 3 BomCR 92

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : S.M.A. Kazmi and Snehal M. Paranjape, instructed by R.R. Mishra, for the Appellant; S.K. Mulla, for Respondent Nos. 1 to 3, S.S. Bhende, AGP for Respondent No. 4, V.A. Thorat R.A. Thorat and P.J. Thorat for Respondent Nos. 11 to 13, Anupama B. Shah and Vidya Shetty for Respondent Nos. 6 to 8 and 10 and V.V. Tulzapurkar, instructed by Madekar and Co., for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Presently, I am deciding only the issue whether the Petition pertains to the Single Judge Bench or Division Bench, with reference to the Rule 18(3) of Chapter XVII of the Bombay High Court, Appellate Side Rules, 1960. (for short, "the Rules").

2. The basic averments of the Petitioner are as under:

3. The Petitioner is the present trustee of the "Pir Bagdadi Dargah Dadar Trust", duly registered under the Regn. No. B/438 (BOM) (for short, "the said wakf"), situated at N.C. Kelkar Road, Dadar (West), Mumbai-400028. The Petitioner is a Sunni Muslim, regularly offers prayer and worship at the Dargah. The Petitioner is integrally concerned with the functioning and welfare of the Trust. The Petitioner is one of four trustees of the wakf, governed by the provisions of the

Wakf Act, 1995 (for short "the Act"), and the Scheme framed by the Bombay High Court for administration thereof. The wakf is seized of the property, inter alia, consisting of a mosque and Dargah. The mosque was built in or about the year 1888, and reconstructed thereafter in the year 1935, pursuant to the repairs sanctioned by the Bombay High Court, and further repaired in the year 1997.

4. Respondent No. 1 is the present Chief Executive Officer, appointed u/s 23 of the Act, holding office on and from 16th August, 2008, is an authority constituted under the provisions of the Act, having powers, inter-alia, to enquire into the mismanagement of any Wakf in Maharashtra and to take appropriate corrective action/s in that behalf, including resumption of Wakf property, taking over administration and management of the concerned Wakf.

5. Respondent No. 2 is the erstwhile Chief Executive Officer, who vacated office on and from 12th May, 2008, and was the Presiding Officer who had heard the Petitioner. Respondent Nos. 11 to 13 and Respondent Nos. 6 to 9, who were the parties to the subject dispute relating to the wakf on and from July, 2007.

6. Respondent No. 3 is the Wakf Board, constituted u/s 13 of the Act, and is a Body Corporate and can be sued as such.

7. Respondent No. 4 is the State of Maharashtra, through the Revenue and Forest Department, exercising jurisdiction, powers and duties conferred under the Act, inter alia, over the wakf property.

8. Respondent No. 5 is the Municipal Corporation of Greater Mumbai, acting, inter alia, through the Executive Engineer, Building Proposal (City-III), E-ward, Mumbai. The Petitioner states that Respondent No. 5 is the Mumbai Municipal Corporation, a local authority, constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, acting through its Municipal Commissioner, having his office at Mahapalika Marg, C.S.T., Mumbai-400 001, having powers, inter alia, to take appropriate action against persons violating the Building Regulations, Rules and Bye-Laws of the Corporation.

9. Respondent Nos. 6 to 8 are the other three trustees of the Wakf.

10. Respondent No. 9 is a tenant of Shop No. 1, carrying on the business of restaurant "Visawa" therefrom, located in the structure existing on the wakf property, which is adjacent to the mosque.

11. The Petitioner states that Respondent No. 6 to 8 are claiming that they have appointed an additional trustee, one Mr. Irfan Rokadiya, Respondent No. 10 herein whose whereabouts are not known nor recorded in any of the records of the wakf to the best of the knowledge and belief of the Petitioner. The Petitioner further states that Respondent No. 10 has not acted as trustee of the wakf till date thereof and was not the trustee at the relevant time but is joined since the Petitioner is seeking to set aside his appointment as being malafide to overcome the Petitioner's dissent and gain a majority in the wakf management, and the

appointing is also a fraud on the Scheme framed by the Bombay High Court.

12. Respondent Nos. 11 to 13 claim to be members of the Pir Baghdadi Khidmat Committee who were a party to the proceedings before Respondent No. 2 and were successful in obtaining grant of an Ex-parte Order dated 05/10/2007 in the Case No. 8/2007 that was before Respondent No. 2 who was the then CEO, and as more particularly set out hereinafter.

13. The relevant main prayers are as under:

67.The Petitioner will rely upon documents, a list whereof is annexed hereto.

The Petitioner, therefore, prays that this Hon'ble Court be pleased to:

(a) Issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ order or direction under Articles 226 and 227 of the Constitution of India calling for the records and proceedings of Case No. 8 of 2007 and pertaining to Peer Bagdadi Dargah Dadar Trust BWB 438 and after perusing and examining the legality/validity of the same be pleased to quash and set aside impugned order contained in the letter No. MSBW/SMT.1/F.6/3842/2008 dated 13th October, 2008, being Exhibit-A1 hereto, and the impugned Resolution No. 39/2008 passed by Respondent No. 3 Board in its Board Meeting held on 27th May, 2008, being Exhibit-A2 hereto and the impugned Roznama dated 17.11.2008 (Exhibit-A3 hereto) and the impugned NOC dated 17.11.2008 (Exhibit-A4 hereto) issued by Respondent No. 1, in respect of the wakf property, more particularly described in the Schedule, hereto annexed and marked as Exhibit-A5, and shown delineated on the Plan hereto annexed and marked as Exhibit-A6 as being null, void and/or ultra vires the provisions of the Wakf Act, 1995.

(b) In the alternative, to order and direct Respondent No. 3 Board to exercise its powers vested in the Board u/s 52 of the Wakf Act, 1995; to recover from the Respondent No. 9 such part or portion of the wakf property which is in the physical use occupation and possession of Respondent No. 9 without the previous sanction of Respondent No. 3 Board in contravention of Section 51 of the Wakf Act, 1995.

(c) In the further alternative to order and direct Respondent No. 3 Board after hearing all parties consider the issue afresh by exercising powers u/s 51 of the Wakf Act, 1995 in respect of the wakf property more particularly described in Exhibit-A5 hereto;

(d) issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate order or direction, under Article 226 and 227 directing Respondent No. 1 and/or Respondent No. 2 to forthwith cancel the purported Development Agreement dated 03.05.2004 (Exhibit F1 hereto) and purported Supplementary Development Agreement dated 22.04.2005 (Exhibit F2 hereto) along with all documents, papers, deeds, letters and/or writings of whatsoever or howsoever nature executed pursuant thereto as being null, void and/or ultra vires the

provisions of the Wakf Act, 1995;

(e) permanently restrain Respondent Nos. 5 to 8 and Respondent No. 9 from in any manner whatsoever or howsoever acting upon or in furtherance of the purported Development Agreement dated 03.05.2004 (Exhibit F1 hereto) and purported Supplementary Development Agreement dated 22.04.2005 (Exhibit F2 hereto) along with all documents, papers, deeds, letters and/or writings of whatsoever or howsoever nature executed pursuant thereto;

(f) permanently restrain Respondent No. 5 from in any manner whatsoever or howsoever granting Occupation Certificate or any other Certificate or permission or licence in respect of the impugned construction and/or development activities in to an upon the wakf property to Respondent Nos. 6 to 8 and/or Respondent No. 9;

(g) permanently restrain Respondent Nos. 6 to 8 and Respondent No. 9, by themselves, their officers, servants, agents, workers, engineers, architect, representatives whomsoever from in any manner whatsoever or howsoever carrying out any development works or construction activities of whatsoever nature in to an upon the wakf property, whether in pursuance of the purported Development Agreements (Exh.s F1 and F2 hereto) or otherwise;

(h) to order and direct Respondent No. 5 and/or Respondent No. 9 to demolish the impugned construction/structure/columns/RCC works carried out and erected by Respondent No. 9 to the existing structure in the wakf property without the prior permission of either this Hon?ble Court or Respondent No. 3 Board and to restore the status quo ante prevailing prior to the execution of the purported Development Agreements (Exhs. F1 and F2 hereto) without any damage to the Mosque and the Dargah standing thereon;

(i) permanently restrain Respondent Nos. 6 to 8 and Respondent No. 9 by themselves and through their officers, servants, agents, architect, engineers, workers, representatives whomsoever from in any manner whatsoever or howsoever dealing with, disposing of, alienating transferring or encumbering any part of the premises or creating any third party rights and interest in to upon the wakf property or any part thereof;

(j) issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate order or direction, under Article 226 of the Constitution of India directing Respondent No. 1 and/or Respondent No. 2 to forthwith implement the Direction dated 15.03.2007 (Exh. D4 hereto) issued by the Department of Revenue and Forest of the Government of Maharashtra, Respondent No. 4 herein and to forthwith resume/take possession of the wakf property described in Exhibit-A5 hereto and to administer the same in accordance with law;

(k)to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ order and direction under Article 226 of the Constitution of India ordering and directing Respondent Nos. 6 to 8 to forthwith withdraw and/or

cancel and/or this Hon''ble Court be pleased to set aside the purported appointment of Mr.Irfan Rokadiya, Respondent No. 10 herein as additional trustee of the wakf;

(I) pending the hearing and final disposal of the present Petition, this Hon''ble Court be pleased to:

14. The Division Bench of this Court by an order dated 21st January, 2009 directed the Registrar (Judicial) to examine, with reference to the Rules, to decide whether the Petition pertains to the jurisdiction of learned Single Judge.

15. By an order dated 30th January, 2009 the Office has observed as under:

Pursuant to the order dated 21/01/2009, the Petition was examined with reference to Rule 18(III), Chapter XVII of the High Court, Appellate Side Rules read with the Ratio laid down at headnote A and B in the case of Principal, Micky College v. State of Maharashtra and Ors. reported in 2005 (4) M.L.J. 1153, the petition pertains to Single Judge.

16. The said order is challenged in Civil Revision Application No. 42 of 2009 filed on 4th February, 2009.

17. Both the matters tagged together for hearing. Therefore, without going into the merits of the main Writ Petition, by consent, the present Civil Revision Application heard finally as it goes to the jurisdiction/assignment of the Bench.

18. After hearing both the parties and looking into the impugned actions and impugned orders which are arising out of the order passed by the Authorities constituted under the Act, there remained no doubt that Respondent No. 2, the Chief Executive Officer, Maharashtra State Board of Wakfs at Aurangabad, after hearing the parties and perusing the record, passed the impugned order dated 13th October, 2008. It is also clear from the record that after receipt of the complaint in the matter of alleged unauthorized construction on the premises of Peer Bagdadi Dadar Dargah Trust u/s 25(1)(c) and 32 of the Act, notices were issued against the person who initiated the said construction. The parties appeared before the concerned Officers. The detailed complaint against the said Trustees and the Developers including the material documents placed on record. All the concerned parties including the intervenors appeared and submitted their objections and grievances through their respective advocates also. The interim directions of status-quo were also issued. Various objections were raised against the Development Agreement and the Supplementary Development Agreement signed between the Trustees and the Developers.

19. The points which were raised includes the validity of those agreements; no sanction of Maharashtra State Board of Wakf for the transfer of Wakf property; no competitive bids called; improper utilization of the available FSI of the Masjid including the less costs accepted by the Trustees from the Developer. The submission was also raised that the construction has already been started on the basis of plaint which has been approved by the concerned Authorities. An

application was also filed to withdraw the consent to the Agreement by one of the Trustees.

20. All this shows that the concerned Officers of Respondent Nos. 1 and 2 who are Executive Officers appointed u/s 23 of the Act has power to enquire into the management of any Wakf in Maharashtra and to take appropriate corrective actions including resumption of the Wakf property and taking over administration and management of concerned Wakf. Therefore, he is bound to follow the principle of natural justice in all respect which includes notice and time to file objection or reply to the complaint and hearing and full opportunity to both the parties before passing any order.

21. In this case, it appears that he has followed all these proceedings and passed impugned order dated 13th October, 2008. At this stage, I am not deciding the issues as raised in the Petition. But the fact that the concerned authorities has followed the procedure which in my opinion definitely falls within the ambit of order being passed by Quasi-Judicial-Authority under the Act. In view of above itself, I am not inclined to hold that the impugned order dated 13th October, 2008 (Exhibit A1) is an order passed u/s 25(1)(c) of the Wakf Act, in the Administrative capacity and therefore, it does not falls within the purview of Rule 18(3), Chapter XVII of the Rules for the purpose of the Rule.

22. The reliance on Hindustan Lever Research Centre Employees" Union Vs. Hindustan Lever Ltd. and Others, referring to the explanation to provisions of Chapter XVII Rule 18 is of no assistance to the Petitioner because that Judgment itself makes it clear that it is not the nature of the order which is relevant but the authority who passes the order is relevant. In my view, the authority who has passed the impugned order is a Quasi-Judicial-Authority.

23. In Writ Petition No. 812 of 2007, Ajabrao Mahadeorao Choudhary v. The Principal, Kala Vanijya Mahavidyalaya, Gondpimpri, the Division Bench of this Court dated 27th August, 2008, in which I was also a party, has observed in Paragraph 7 and 11 as under:

7. The Supreme Court in the case of Pandurang v. State of Maharashtra reported in 89 Bom LR 21, has reminded us in the following words: "When a matter is required to be decided by a Division Bench of a High Court under a relevant rule of that High Court is decided by a Single Judge, the judgment would be a nullity, the matter having been heard by a Court which had no competence to hear the matter, it being a matter of total lack of jurisdiction. Even a right decision by a wrong forum is no decision. It is non-existence in the eye of law and hence, a nullity." The Registry is directed to take appropriate steps as this petition cannot be decided by a Single Bench."

11. The Division Bench in Shreemati Nathibai Damodar Thackersey (SNDT) Women's University and Anr. v. Dr. (Mrs.) Nita S. Dodd and Ors. has, in fact, dealt with the said issue by observing that merely because it is presided over by a retired Judge of the High Court, that does not put it on the higher pedestal. As

per this rule any order passed by the Tribunal need to be placed before the learned Single Judge, who presides over such Tribunal, in view of the present rule, loses its importance.

24. I am, at this stage, not concerned with the merits of those reasons but fact remains of basic elements of Judicial process deciding the applications/objections have been followed. Therefore, the said authority is Quasi-Judicial-Authority. The authority in question has in fact entrusted with a power to determine the questions or disputes and accordingly the Judicial decision has been taken and as it affects the right of the parties. In my view, this decision cannot be said to be executive or administrative decision.

25. The combined effect of Section 23/25, 52/53 of the Act shows that the function of the Chief Officer as exercised in the present case is of a Quasi-Judicial in nature.

26. Therefore, the impugned order passed by the Registrar/Office by relying on Principal, Micky School v. State of Maharashtra and Ors. 2005 (4) M.L.J. 1153, is correct in so far as impugned order is concerned.

27. However, taking all prayers into consideration and the reliefs so sought in the present Writ Petition and basically against other Respondents/local authorities, as prayed cannot be granted in the present Writ Petition by a Single Judge Bench independently, such as, prayer Clause (j) against the State of Maharashtra - Respondent No. 4, Prayer Clause (f) against the Municipal Corporation - Respondent No. 5 which includes various resolutions as sought to be challenged in the Petition Exhibit A-2, A-3 and A-4. Therefore, the Petition as stand today and taking note of all the prayer Clauses and the interlinked averments made and unless it is dissected and restricted to the basic impugned order dated 13th October, 2008 Exhibit A-1, the present Writ Petition cannot be said to be pertaining to the Single Judge Bench. It is necessary to see the pleadings and the prayers to determine and decide the jurisdiction or assignment issue.

28. Resultantly, the impugned order dated 30th January, 2009 passed by the Registrar (Judicial-I) is quashed and set aside. The Registry is directed to place the Writ Petition before the appropriate Hon'ble Division Bench as per the assignment. The Revision is accordingly allowed in terms of prayer Clause (a). No costs.