

(2014) 05 BOM CK 0072

In the Bombay High Court

Case No : Civil Revision Application No. 57 of 2014

Maharashtra State Board of Wakf

APPELLANT

Vs

Digvijay, through its G.P.A.

RESPONDENT

Date of Decision : 03-05-2014

Acts Referred:

Waqf Act, 1995 — Section 3(I), 51, 83(9)

Citation : (2014) 4 ABR 305 : (2016) 1 ALLMR 282 : (2014) 6 MhLj 757

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : Y.B. Pathan, Advocate for the Appellant; R.N. Dhorde, Senior Advocate, holding for Shri V.R. Dhorde, Advocate for the Respondent

Final Decision : Allowed

Judgement

T.V. Nalawade, J.—Admit.

2. Notice after admission made returnable forthwith by consent. Both sides are heard for final disposal.

3. The proceeding is filed u/s 83(9) of the Wakf Act, 1995 to challenge the order made by the Wakf Tribunal Aurangabad on Exhibit 5 of Wakf Suit No. 15/2013. The Tribunal has refused the relief of temporary injunction claimed by the applicant-plaintiff.

4. The plaintiff, Wakf Board, has filed suit for relief of possession, permanent injunction etc. against the respondent. It is in respect of property bearing Survey No. 103 admeasuring 28 acres 9 gunthas and situated at Osmanabad. It is the case of the Wakf Board that the suit property is public wakf property, it is dedicated permanently to render services to Jama Masjid of Osmanabad. It is contended that, the property is registered as wakf property under the provisions of Wakf Act, 1954 and notification in that regard was published in official gazette dated 27-3-1980.

5. It is the case of the plaintiff that the property was dedicated long back and in the record of Inams also entry was made that the property was given in Inam for rendering services to aforesaid religious institution. It is contended that entries were made on the basis of Muntakhab No. 169/1296 Fasli. It is the case of the plaintiff that the defendant is in illegal possession of the suit property.

6. It appears that many proceedings were going on in respect of the suit property, between Inamdars, Muntakhab holder and Wakf Board under Land Revenue Code and also Hyderabad Abolition of Inams and Cash Grants Act, 1954 (hereinafter referred to as "Inam Abolition Act"). Revenue proceeding was started between plaintiff and defendant in view of the mutation made in favour of the defendant on the basis of sale deed executed in his favour by one of the Inamdars. It is the case of the plaintiff that in view of the orders made under Inam Abolition Act, further orders were sought by the defendant and on the basis of those orders the defendant has started making development of the property which is agricultural land dedicated to Masjid. It is the case of the plaintiff that Inam could not have been abolished and occupancy rights could not have been given in favour of Muntakhab holder. It is contended that the defendant has taken possession of the suit property from Muntakhab holder and he is not ready to give possession to Wakf Board even when it is wakf property.

7. In the suit, relief of temporary injunction was claimed to prevent the defendant from changing the nature of the property and to prevent him from alienating the property as he is claiming title under registered sale deed executed by Inamdar in his favour.

8. The defendant, respondent, has filed written statement. The defendant has denied that the property was public wakf. It is contended that the property was Madad Mash Inam granted for Kazat services and it was given to Kazi people, the Muntakhab holder. It is contended that the dispute is finally decided under the provisions of the Inam Abolition Act and it is held that the property was Madad Mash Inam and the Inam was already abolished. It is contended that in view of these circumstances occupancy rights were given to the vendor and the matter was decided in favour of the vendor on 29-3-1994. It is contended that the decision given by the authority under the Inam Abolition Act is binding on the Tribunal and that operates as res judicata to the dispute between him and Wakf Tribunal.

9. It is the case of the defendant that in the past there was dispute between Inamdar and tenant and compromise had taken place between them in a writ petition which was pending in the High Court (Writ petition No. 3428/1997). It is contended that the defendant has purchased the property by paying huge amount to Inamdar and the defendant has spent huge amount for making construction of Function Hall. It is contended that the property is converted for Non Agricultural use. It is contended that there is bar of estoppel against the plaintiff as the plaintiff did not take steps when the aforesaid proceedings were going on.

10. It is the case of the defendant that his name has been entered in the revenue record in view of the sale deed executed in his favour and the construction of Wedding Function Hall is almost complete. It was submitted that the defendant has spent amount of Rs. 2 crores by taking loan and so he cannot be prevented from enjoying the property as the owner. It is contended that as Inam was abolished, the entry in respect of nature of the property as wakf in record has no meaning.

11. The Tribunal has observed that there is genuine dispute in respect of nature of property and it needs to be decided as to whether it is public wakf or not. Even after making such observations the Tribunal has refused relief of temporary injunction due to the orders made by the authority under the Inam Abolition Act. It is observed that In the Inam Pahani Patrak of 1977-78 the land was not shown as service Inam and so it cannot be presumed that it was service Inam land.

12. For getting relief of temporary injunction the plaintiff-Wakf Board is expected to make out prima facie case in respect of nature of the property. It appears that only due to order made by the authority under the Inam Abolition Act, the Tribunal has held that it is not possible for the plaintiff to make out prima facie case in this regard. The pleadings from the written statement show that the defendant knew that property is Inam land though the defendant is not admitting that it is service Inam land and it was dedicated for religious purpose, rendering service to Jama Masjid Osmanabad. It appears that the Tribunal has not considered the Muslim law and even the provisions of Inam Abolition Act which show that the said Act is not applicable to the religious trusts.

13. There is copy of Muntakhab of 1288 Hizri (1296 Fasli) bearing No. 159. It shows that Muslim Ruler had made the last order in respect of some property given under this Muntakhab in 1296 Fasli. By this order some modification was done in respect of grant of land for service but the cash grant was continued. Copy of its translation in Marathi was supplied by the Wakf Board to this Court.

14. There is extract of Inam Register, Namuna No. 9 of 1354 Fasli (1943-44 AD) showing that, Survey No. 103 was registered as Khidmad Mash and entry in the Inam register was made on the basis of Muntakhab No. 159 of 1296 Fasli. Due to this circumstance, prima facie it can be said that Survey No. 103, disputed property, was given under the aforesaid Muntakhab. In the entry there is mention that Inamdar was Pesh Imam and Khidmati Inamdar. Extract for the year 1977-78 was produced before the Tribunal. It appears that survey numbers of lands were not legible and xeroxing was not properly done. Certified copy came to be produced before this Court and it shows that even for the year 1977-78 the suit land was shown as Khidmati Mash. In this extract there is endorsement of the authority to the effect that the property was registered as Inam property in view of Muntakhab No. 159 of 1296 Fasli. There is mention that the land was given for rendering services to Dargah and for the management of the Dargah. It is further noted that Inamdar was not rendering the expected services.

15. There is copy of Khasra Pahani Patrak for the year 1954-55 showing that land Survey No. 103 was registered as service Inam land. In that order four persons like Afzaloddin, Rafiyoddin, Sirajoddin and Gulam Dastgir were shown in possession of four Anna portion each. In that order, name of Inamdar was written as Akbar Hussaini Mira Hussaini. In Pahani Patrak the land was described as Mafi Inam and Khidmati Inam land.

16. The aforesaid record and particularly Muntakhab, shows that the suit land was given by Muslim Ruler and it was for rendering services described in the Muntakhab which were Pesh Imami and Bang. Such services are rendered in Masjid and they are religious services. During trial, for deciding the dispute on merits this record will have to be considered by the Tribunal.

17. Extract of register of Wakf maintained under the provisions of the Wakf Act, 1954 is produced along with the list of the properties shown to be owned by the registered wakf. The wakf is described as Masjid and grave yard. Name of Mutawalli is mentioned as Azgar Hussaini s/o Akbar Hussaini. The properties belonging to the wakf institution are mentioned in this record and they include Survey No. 103. As per the record the date of registration of wakf is 7-7-1981. Copy of Government Gazette dated 27-3-1980 is produced and it shows that the suit property and other properties of this wakf institution were notified as wakf properties. It is Sunni Wakf and the name of wakf is given as Jama Masjid and grave yard of Osmanabad.

18. The aforesaid record shows that name of Akbar Hussaini was there in the record not only as Inamdar but also as Mutawalli in the year 1954-55. It appears that in the year 1981 name of his son Azgar Hussaini was shown as Mutawalli when the wakf was registered. It needs to be kept in mind that, the person rendering such religious services and managing the property can be treated as Mutawalli and on that line the record of 1954-55 needs to be considered at least prima facie.

19. The Inam was described as Khidmat Mash, which is public wakf under Muslim Law. Though other words like Mafi Inam can also be found in the afore said record, in view of the description of the property as Khidmat Inam and in view of nature of services which were to be rendered by the Inamdar, prima facie, the entire property needs to be treated as Khidmat Inam land, a public wakf.

20. Wakf Act 1954 was applicable to Marathwada region of Maharashtra including Osmanabad where the property is situated. Definition of wakf was given in Section 3(l) of the Wakf Act, 1954 and in the subsequent legislation, Wakf Act, 1995, definition of wakf given in section 3(r) is similar. Grants including of mashrut-ul-khidmat (khidmat inam) for any purpose recognized by Muslim law, as pious, religious or charitable are included in the definition of wakf.

21. In the year 1980 the suit property was notified in Government Gazette as wakf property belonging to the aforesaid Masjid and grave yard. The wakf also came to be registered in the year 1981 under the Wakf Act 1954. The suit

property was shown to be belonging to the afore said institution.

22. Even if for the time being it is presumed that the vendor is not accepting that he was Mutawalli also, even as Inamdar it was necessary for him to challenge the entry of the suit property made in the Government Gazette as wakf property, the registration of the wakf and inclusion of the suit property as property belonging to aforesaid wakf. The vendor of the defendant did not challenge these entries. As the defendant, the purchaser is claiming through the Inamdar, he cannot say that he is a stranger. Inamdars, Mutawallis are certainly the persons interested in the wakf for such purpose and so it was necessary for them or the Inamdar to challenge the aforesaid entries made in the register of wakf. Like the provisions made in the Wakf Act, 1995 there were similar provisions in the Wakf Act, 1954. Under Chapter II survey was expected and Tribunal (if Tribunal was not there, Civil Court) was expected to decide the disputes regarding wakf. u/s 27 power was there to Board to decide whether property is wakf and it was possible to challenge the decision in Civil Court.

23. For the respondent-defendant reliance was placed on a case reported as Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, . In this case the Apex Court has laid down that u/s 6(4) of the Wakf Act, 1954, stranger is not covered and so the stranger is not under obligation to file suit within period of one year as prescribed in the provision. There cannot be any dispute over this proposition. In the present case, there is question of determination of rights of Inamdar, Mutawalli and as the defendant is claiming through such person, this proposition cannot be used for the defendant.

24. It appears that the proceeding was started by one of the successors of Muntakhab holder, vendor of the defendant under the Inam Abolition Act. It is contended that under the provisions of the Inam Abolition Act, Inam was abolished on 1-7-1960. If the vendor wants to say that Inam was abolished on that date, there was record of aforesaid nature showing prima facie that dedication was for religious purpose, for rendering services to Masjid. Whether the property was dedicated to Masjid or it was given to Inamdar is a question which will be decided by the Tribunal. Section 1(2)(i) of the Inam Abolition Act 1954 shows that if Inam was held for benefit of the charitable and religious institutions, such Inam is exempted from application of this Act. Thus, prima facie even if property was handed over to Inamdar, but for the benefit of religious institution then the Inam could not have been abolished. Further, proceeding was not started by the vendor, Inamdar for getting occupancy rights immediately. The proceedings were started many years after publishing of the list of wakfs and after registration of the institution in the register of wakfs along with the property.

25. From the contents of the written statement, it can be said that the vendor obtained order from the authority created under the Inam Abolition Act on 29-3-1994. This order was challenged before the appellate forum. Statement was made that the State Government has remanded the matter back to the authority

for reconsideration as one of the Inamdars had challenged the said order. Even if it is presumed that there was no further challenge to the order made in favour of the Inamdar in 1994, after registration of wakf and publication of the property as wakf property in official gazette, prima facie the things cannot change in favour of the vendor or the defendant.

26. In the case reported as AIR 1988 SC 972 (Sayyed Ali v. A.P. Wakf Board, Hyderabad) it is laid down that Wakf Tribunal can decide the nature, character of wakf property and the authority under Inam Abolition Act cannot adjudicate upon character of wakf property. In view of the powers given to the authority under the Inam Abolition Act, which are subject to the limitations mentioned in section 1(2)(i), prima facie the decision of the authority created under the Inam Abolition Act cannot come in the way of the Wakf Tribunal to decide the character of the suit property. In view of the observations made in the said case the suit filed by the Board can be held to be tenable. In the case reported as Mohammad Khairuddin Vs. Moinuddin Shaikh, Fattu Shaikh, Subabai Shinde and Marathwada Wakf Board, similar observations are made by this Court.

27. In the case reported as Chhedi Lal Misra (Dead) through LRs. Vs. Civil Judge, Lucknow and Others, it is laid down by the Apex Court that in view the provisions of U.P. Muslim Wakf Act, 1936, once a wakf is created it continues to retain such character which cannot be extinguished by any Act of the Mutawalli or anyone claiming through him. In view of the record from prior to the year 1954-55 already mentioned, it can be held prima facie that the Muntakhab holder was also Mutawalli. Even as Mutawalli, as per the provisions of Muslim law he had no power to alienate the property. Under the provision the Wakf Act, 1954 and the Wakf Act 1955 alienation of wakf property is illegal and void (Section 51 of Wakf Act, 1995).

28. The learned Senior Counsel for the respondent has placed reliance on the case reported as Punjab Wakf Board Vs. Gram Panchayat @ Gram Sabha, . The facts of this case were altogether different. In the present case only due to so called rights of Muntakhab holder, the defendant is claiming his rights. In view of the observations already made, this Court holds that the dispute between the plaintiff and the defendant needs to be decided by the Wakf Tribunal.

29. The learned Senior Counsel for the respondent drew attention of this Court to some proceedings which were started by Muntakhab holder in the past and which reached up to the High Court. It appears that there was dispute between the tenant and Muntakhab holder and then there were proceedings under the provisions of the Inam Abolition Act. There were also proceedings in respect of mutation made in favour of the defendant. Nothing was shown to this Court due to which it can be said that the property cannot be treated as Wakf property and the jurisdiction of the Tribunal is barred. Submission made by the learned Senior Counsel for the respondent that huge amount is spent by the defendant/purchaser for purchasing the property and for making construction loan of rupees two crore is taken cannot make any difference. Only due to these circumstances

he cannot be allowed to enjoy the property as owner. He cannot be allowed to change the nature of the property on this ground.

30. The learned counsel for the applicant has placed reliance on the case reported as Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, . The Apex Court has laid down that ordinarily status-quo of the property needs to be maintained during pendency of litigation. It is observed that the ground that legal proceeding is likely to take long time cannot be an exceptional circumstance to allow changes by imposing conditions. There cannot be any dispute over this proportion. Further in view of the provisions of the Muslim Law and the provisions of the Wakf Act, the property cannot be allowed to be used for the purpose other than the purpose for which the property was dedicated. When the defendant, purchaser, purchased the property even when there was record of aforesaid nature, he must blame himself for finding himself in the present situation. This Court has no hesitation to hold that the Wakf Tribunal has committed error in refusing to grant relief of temporary injunction as claimed. The said order needs to be set aside by allowing the present civil revision application.

31. In the result, the civil revision application is allowed. The order made by the Wakf Tribunal on application Exhibit 5 in Wakf Suit No. 15/2013 is hereby set aside. The application filed for temporary injunction by the Wakf Board in the suit is allowed. Relief of temporary injunction is granted in favour of Wakf Board in terms of prayer clause (B) from Exhibit 5 till the decision of the suit. The defendant, his agents are restrained from making construction on the suit site and making development of any kind on the suit property. He is also restrained from creating third party interest of any kind including alienation in any form of the suit property.

32. Learned counsel for respondent/defendant requested for stay of the order. As prima facie it is wakf property, there cannot be any stay of the nature as claimed by the respondent. Stay is refused.