
(2015) 02 BOM CK 0358

In the Bombay High Court

Case No : Civil Revision Application Nos. 149 and 183 of 2014

Municipal Council, Pathri and Others

APPELLANT

Vs

Mohammad Noor and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Waqf Act, 1995 — Section 25, 51

Citation : (2015) 02 BOM CK 0358

Hon'ble Judges : A.I.S. Cheema, J.

Bench : Single Bench

Advocate : N.B. Khandare and M.P. Tripathi, Advocates, for the Appellant; S.S. Kazi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.I.S. Cheema, J.—Both these Civil Revisions Applications have been filed against order dated 30.8.2014, below Exhibit 5 in Wakf Suit No. 47/2014, passed by the Maharashtra Wakf Tribunal, Aurangabad, restraining the Municipal Council, Pathri from doing construction on suit property. Against the orders, the Municipal Council (original defendant No. 1) has filed Civil Revision Application No. 149/2014 while the defendant No. 2 Maharashtra State Board of Wakfs has filed Civil Revision Application No. 183/2014. I will refer to the documents from Civil Revision Application No. 149/2014.

2. Before the Wakf Tribunal, the suit has been filed by respondent No. 1 Mohammad Noor as plaintiff against the Municipal Council, arrayed as defendant No. 1 and the Wakf Board, arrayed as defendant No. 2. I will refer to the parties as arrayed in the suit.

3. Plaintiff Mohammad Noor has filed the suit with reference to service inam land 1 Hectar 46 R, Survey No. 11, at Maliwada, Taluka Pathri as belonging to Wakf namely Masjid Karanja and Graveyard. According to plaintiff, he is one of the Musalli and is interested in the Wakf. Defendant No. 1 Municipal Council, to grab

suit property, planned to construct Function/Marriage Hall at the suit property. In 7/12 extract, the property stands on the name of Wakf and it is also recognised in Government gazette. On 27.3.2014, the Municipal Council started digging pits at suit property to construct the Function/Marriage Hall. Plaintiff objected, but the work was not stopped. There is no permission for construction from Wakf Board. The Wakf Board has information about the illegal attempts of the Municipal Council, but is silent, hence the plaintiff filed the suit claiming permanent injunction. In the suit, application exhibit 5 was filed for temporary injunction till disposal of the suit.

4. In response to the temporary injunction application, the Wakf Board filed say in the suit claiming that the plaintiff had not approached the Court with clean hands and had suppressed material facts. On 7.5.2013, consent of whole Muslim community residing at Zodka, Hussaini Alam Mohalla, Murtuja Colony, Karanja Mohalla, Quresh Mohalla, Guljar Nagar, Bekar Mohalla was obtained. The consent for construction of Shadikhana and Library was given by the plaintiff also as well as his son. The present conduct shows the ill intention of the plaintiff with intention to blackmail the authorities. According to the Wakf Board, before sanctioning the plan for construction of Shadikhana and Library for welfare of Muslim community, permission had been sought from the defendant by letter dated 16.5.2013; that there was resolution passed by General Body meeting of the Municipal Council on 15.5.2013. District Wakf Officer also filed report regarding construction of the Shadikhana and Library for benefit of Muslim community. After considering the resolution of the Municipal Council and report of the Wakf Officer, this defendant had granted conditional permission on 23.5.2013. According to this Defendant- Wakf Board, through Chief Executive Officer, plaintiff had not shown any bonafides as to how he was aggrieved by the construction which was for the sake of welfare of Muslim community.

5. The Municipal Council did not file reply. The Tribunal heard the arguments and considered documents which were placed before it with reference to the resolution of the Municipal Council and permission given by the Chief Executive Officer regarding construction, and recorded reasons that the resolution No. 23 of the Municipal Council did not show that it was for the minority community; the District Wakf Officer had informed on 12.6.2014 that after the construction of the building for Library was completed, the books and furniture for the Muslim community will be provided by the Municipal Council. However, the resolution No. 23 did not reflect this. It observed that, the Chief Officer of the Municipal Council wrote such letter on 9.6.2014, is mentioned, but the copy of letter is not filed. As long as the Municipal Council does not pass resolution to that effect, the Chief Officer cannot write such letter. The Chief Officer cannot on his own say that the income would be given to the Wakf. Before the Tribunal, when the matter was reserved for orders, the Wakf Board filed copy of agreement between the Chief Officer of Municipal Council and Assistant Chief Executive Officer of Wakf Board that the building and the income from the building would remain of the Wakf Board. The Tribunal observed that the photo copy of the agreement dated

22.8.2014 was filed and it was not the original document and cannot be considered. The said agreement was not done soon after the resolution No. 23 dated 15.5.2013 and thus, the Wakf Board was trying to fill up lacunae as were being noticed. The agreement was not signed by the Chief Executive Officer of the Wakf Board and the Assistant Chief Executive Officer has no right. If the Municipal Council construct the building spending Rs. 59 Lakhs, the Wakf property will completely get consumed, which is for inam Masjid and graveyard. There is no legal agreement that after the construction the building would remain of the Wakf Board. The Tribunal observed that the construction was illegal, and passed the temporary injunction order.

6. Against the said order, the Municipal Council, Pathri has filed Civil Revision Application No. 149/2014 claiming that there was no dispute about the fact that the property concerned is Wakf property. There were attempts to encroach over the Wakf property and, therefore, residents of the locality had made representation for establishment of Shadikhana. Copy of the representation addressed to the Municipal Council has been filed at Exhibit A. In the General Body meeting dated 15.5.2013, resolution No. 23 (Exhibit B) was passed to construct library at the place. The Municipal Council filed application dated 16.5.2013 to the Chief Executive Officer (Exhibit C) for no objection in view of the resolution No. 23. Even the district Wakf Officer made proposal (Exhibit D) on 16.5.2013 to Chief Executive Officer that the Masjid is situated at Survey No. 11, having area of 3 acres 24 gunthas and from this, 7 R land was to be used for construction from M.L.A. Fund and special scheme for use of Muslim community to construct Marriage Hall/Library. He also requested for no objection. It was mentioned that, Shaikh Ahmed Shaikh Abdullah is the Mutawalli of the Wakf.

7. According to the Municipal Council, Chief Executive Officer gave no objection dated 23.5.2013 (Exhibit E) and the construction was started. More than 40% of the work was already completed. The counsel is relying on document Exhibit F in support. The plans for construction were obtained in June 2013 and District Collector had accorded funds for development activity as per Exhibit G. The Municipal Council has claimed that, it informed the District Wakf Officer that the council is having no right over the income from Library (Exhibit H).

8. Referring to the suit filed, the counsel submits that, in view of the suit, General Body modified terms of resolution and incorporated clause stating that the income from Library will be given to the Wakf Board and 5% of the funds were being reserved for books, furniture and other periodicals. Reference is also made to the agreement dated 26.8.2014 and according to the Municipal Council, the Wakf will be entitled to income from the Shadikhana and Library. The Municipal Council claims that the temporary injunction passed needs to be set aside. The construction should be allowed instead of letting the property being encroached as the Wakf will be benefited from the construction.

9. In Civil Revision Application No. 183/2014, the Wakf Board has raised similar contentions and sought quashing and setting aside of the impugned order of

temporary injunction.

10. I have heard counsel for both sides. The counsel for Municipal Council as well as Wakf Board have pressed the respective revision applications. The argument is that, the property of the Wakf was being encroached and there was representation from the members of the Muslim community from the area concerned to protect the property of the Wakf from encroachment, and due to the representation, Municipal Council passed resolution and had sought permission from the Chief Executive Officer. The District Wakf Officer also had supported the construction and the Chief Executive Officer, after considering the material, under Section 25 of the Wakf Act, 1995 had given conditional permission, which insisted that the ownership of the property will remain with the Wakf Board. It is submitted by the Advocate for Municipal Council that the necessary permission was taken from the Collector for utilising the funds and the construction which was taken up, was for the welfare of Muslim community. The Tribunal wrongly approached the subject and observed that the Wakf Board was trying to fill up lacunae instead of appreciating that the Municipal Council, looking to the suit, had even passed further resolution that the property will remain of the Wakf and even the income would be of the Wakf, and the structure would be used only for the welfare of the Muslim community. It has been argued by the counsel for the Municipal Council and the Wakf Board that the construction was almost over and that the plaintiff had not filed the suit bonafide. He was one of the signatories who had asked for the structure in the area concerned on the ground that the land was getting encroached, and after the construction had substantially progressed, he filed the suit seeking injunction. Learned Advocate for the Municipal Council submitted that the Tribunal approached the subject as if it was a matter between two individuals forgetting that the Municipal Council is a statutory body and resolutions passed by it and letter written by the Chief Executive Officer was binding on the Municipal Council. The observations of the trial Court were not correct that the property of the Wakf would get consumed if the construction is done as according to the learned counsel, the property of the Wakf was 3 acres 14 R and from this, only 7 R portion was being used for the construction.

11. Advocate for the Municipal Council submitted at bar that he had instructions to make a statement that ownership of the structure put up by the Municipal Council and control of the same on completion will remain of Wakf Board.

12. Against this, the learned counsel for original plaintiff submitted that the no objection given was by the Chief Executive Officer and not by the Wakf Board. According to him, the Chief Executive Officer had no authority under Section 25 of the Wakf Act to give such permission. The Advocate submitted that the question of development of property is referred only in proviso below Section 51 of the Wakf Act for which the Board has to take the decision and the Chief Executive Officer has no authority. Referring to the agreement between Municipal Council and Assistant Chief Executive Officer, it is argued that there is no such

post of Assistant Chief Executive Officer and the agreement was not legal. At the time of arguments before this Court, the learned counsel for original plaintiff stated that the plaintiff was denying that he had signed the representation dated 7.5.2013 said to have been given by the citizens of the area. It is argued that, the Municipal Council has no legal right to construct, and the construction should be stopped. Relying on the judgment in the matter of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, , the learned counsel submitted that, status quo of the property during the pendency of litigation should not be allowed to be changed.

13. After the arguments of the learned counsel for original plaintiff, the counsel for Wakf Board submitted that the Wakf Board has delegated various powers under the Wakf Act to the Chief Executive Officer. The counsel took time and filed minutes of the meeting dated 10.6.2011. According to the learned counsel for the Wakf Board, the Chief Executive Officer was delegated various powers and he was justified in giving no objection to the construction in view of powers under Section 25 of the Wakf Act, which permits the Chief Executive Officer to do generally such acts as it would be necessary for the control, maintenance and superintendence of Wakf. According to the counsel, Section 51 of the Wakf Act deals with alienation and the proviso relating to development has to be read in that context.

In reply, the counsel for plaintiff submitted that the resolution relied on delegating powers does not include Section 51 and so, the Chief Executive Officer was not authorised. The same minutes, in different resolutions, dealt with giving of no objection certificates for various other constructions by Board and so, in present matter also the Wakf Board should have taken the decision.

14. Point for consideration is :

"Whether the impugned order is correct, legal or proper?"

15. Although various disputes are being raised regarding the powers of Chief Executive Officer of the Wakf Board and Chief Officer of the Municipal Council, the first consideration is whether the plaintiff is entitled to temporary injunction as sought by him. Granting or declining of temporary injunction is a discretionary relief. It has to be judiciously exercised in favour of a plaintiff, who should approach the Court with clean hands and show his bonafides, while making out prima facie case. Although at the time of arguments before the High Court the learned counsel stated that the plaintiff had not signed the representation submitted by the residents of the area on 7.5.2013, no such stand appears to have been taken in the trial Court as the Wakf Board in its say had clearly pointed out that the residents of the area had made such a representation and not only the plaintiff, but even his son has signed the same. On such basis, the Wakf Board has claimed in the Revision that the plaintiff had not approached the Court with bonafides.

16. When the Civil Revision Application No. 149/2014 had come up before this

Court on 15.1.2015 and stay to the impugned order was passed, the counsel for Wakf Board had submitted that the plaintiff had also applied for Tender of construction but could not get the same and so, subsequently he changed his stand. This is not borne out from the record. However, there is copy of another resolution passed by the Municipal Council, dated 4.7.2014, which has been filed at Page 55 of Civil Revision Application No. 149/2014, which shows that taking permission from the Collector for the construction on 27.12.2013, tenders were invited which were published in newspaper dated 28.12.2013 and from the tenders received, work approval was given to one Ansari Construction on 10.2.2014. Now if the copy of the plaint (Exhibit I) and copy of the temporary injunction application (Exhibit J) are perused, at the place of prayers and signature of the plaintiff and his Advocate, there was column of date as "Date:-- ___/11/2013". The temporary injunction application shows that, above such typed date, another date by hand was written of "3/4/2014". Suit was filed in 2014. It is not clear if it was to wait and watch the developments for filing of the suit. Prima facie, there are reasons to doubt the bonafides of the plaintiff.

17. The resolution No. 23 of the Municipal Council (Exhibit B) mentioned that the construction was to be done of Library and it would yield income. It mentioned that Survey No. 11 was in possession of the Nagar Parishad. This resolution of course did not mention that the construction was to be done of the Library and Marriage Hall for the welfare of the Muslim community in the area concerned. But the Chief Officer of the Municipal Council wrote letter dated 16.5.2013 and even the district Wakf Officer on the same day wrote letter to the Chief Executive Officer of the Wakf Board, both referring to the resolution No. 23 and sought No Objection Certificate for construction to save the place from encroachment and to construct the Marriage Hall/Library for the Muslim community. Vide letter dated 23.5.2013 (Exhibit E), Chief Executive Officer gave No Objection Certificate with condition that the Wakf property would continue to remain of the Wakf. The contractor appears to have informed the Council on 16.4.2014 that 40% of the work was already over, but there were thefts taking place. There is letter of the Chief Officer of Municipal Council, dated 9.6.2014 to the District Wakf Officer (Exhibit H), informing that after the construction is done, necessary furniture and religious books will be provided by the Municipal Council free of charge and the Municipal Council will have no right over the income from the Library and all the rights will remain with the Wakf. The plaintiff no doubt is questioning the authority to write such letter claiming that there was no resolution and the trial Court also appears to have got impressed by these reasonings. However, the Municipal Council appears to have passed resolution dated 4.7.2014 (Page 55 in Civil Revision Application No. 149/2014) which took stock of the developments and shows that the funds were being approved for providing books and furniture for the Library which was being constructed. In the resolution, reference was made to the suit filed by the plaintiff and that in view of the suit, the contractor had been asked to stop the work, but he informed that, 40% of the work was over and his articles were being stolen and in this context, the Municipal Council

resolved that, after the work is completed, the building and the land for maintenance and repairs would be in possession of the Wakf Board and that, from the building and Library, whatever income is received, the same shall be of the Wakf Board and in the structure, furniture, books and other material would be supplied, for which 5% amount was being set aside.

18. Even if the plaintiff prefers to decline that he signed the public representation dated 7.5.2013, there is no reason to ignore the wishes of so many other residents of the area who were worried about the encroachments. Looking to the subsequent developments as noticed above, and the statement being made at bar by the Advocate for the Municipal Council noted in para 11 (supra), I do not find that there was reason to doubt the bonafides of the Municipal Council that it started the construction for the welfare of Muslim community of the area, and to save the land from encroachments. Rather, the bonafides of the plaintiff are doubtful and in the circumstances, the plaintiff fails to make out a prima facie case for injunction. I do not think it is necessary at this stage when the suit is only at the point of temporary injunction, to go into the technicalities whether or not the Chief Executive Officer was duly authorised to give No Objection Certificate dated 23.5.2013 and the other provisions referred to by the counsel for both sides. The proviso of Section 51 of Wakf Act relied on by learned counsel for plaintiff regarding "development of property", even otherwise is part of amendment of 2013, brought into force w.e.f. 29.10.2013. Fact remains that, construction was already going on when the suit was filed and plaintiff did not approach the Tribunal with clean hands. As such, the plaintiff is not entitled to the injunction. When prima facie case is not made out, balance of convenience also is not in favour of the plaintiff and plaintiff cannot claim that he would suffer irreparable injury. Rather, after the construction done with the help of public money has substantially developed, leaving it half done would be destroying it.

19. In the facts and circumstances of the matter, the impugned order cannot be said to be correct, legal or proper. The same deserves to be quashed and set aside. I pass the following order:--

"(I) Both the Civil Revision Applications are allowed with costs, to be paid by the respondent No. 1 Mohammad Noor S/o. Shahabuddin.

(II) The impugned order dated 30.8.2014 of the Wakf Tribunal is quashed and set aside."