
(2014) 02 BOM CK 0065

In the Bombay High Court

Case No : Civil Revision Application Nos. 184 of 2012, 188 and 123 of 2013

Sayed Naser Kadri Moiuddin

APPELLANT

Vs

Maharashtra Wakf Board

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Waqf Act, 1995 — Section 52, 52(1), 52(2), 52(4)

Citation : (2014) 02 BOM CK 0065

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

Bench : Single Bench

Advocate : Vivek Vasantrao Bhavthankar, Advocate for the Appellant; M.B.W. Khan, S.S. Kazi and Shaikh Mohd. Naseer, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—Present Revision Applications are admitted and heard finally with consent of learned counsel for Petitioners and Respondent Wakf Board.

2. These Revision Applications arise out of common order passed by the Maharashtra Wakf Tribunal in Wakf Appeal Nos. 3 of 2006, 11 of 2006 and 13 of 2006. For the sake of convenience, documents are being referred to from the record of Civil Revision Application No.184 of 2012. Common submissions have been made by counsel for both the sides.

3. In brief the grievance raised in the Revisions is that the Maharashtra Wakf Board - Respondent No.1 had filed application before the Collector, Beed, for attachment of service inam lands on the plea that the same are in possession of unauthorized persons i.e. Petitioners. Such application was filed on 29th June, 1999. On 16th August 2000, Additional Collector, Beed closed the matter on the ground that the same is not within time and that sufficient Court fee had not been paid. Appeal was preferred by the Wakf Board to District Judge, Beed and the same was allowed and the order of Additional Collector was set aside and matter was remanded back directing the Collector to decide the same according

to law. The Additional Collector Beed dealt with the matter and passed orders directing Tahsildar to seize the properties concerned and give the lands on EKSALA LAVNI i.e. yearly lease. Against such orders dated 2nd February, 2006, appeal was filed to the Wakf Tribunal u/s 52(4) of the Wakf Act. The Wakf Tribunal held that the properties concerned are Wakf properties but rejected the appeal on the ground that the appeal concerned was not u/s 52(4) of the Wakf Act, 1995. Thus, the present Revisions.

4. I have heard counsel for Petitioners and the learned counsel for Wakf Board. Learned counsel for Petitioners based his arguments referring to the documents from Civil Revision Application No.184 of 2012. He pointed out application dated 29th June, 1999 (Exhibit A) which was addressed to the Collector, Beed by the Office of Marathwada Wakf Board, Panchakki, Aurangabad (now "Maharashtra Wakf Board"). The application was for the attachment of service inam lands pertaining the Dargah Hazrat Syed Shah Ibrahim Sheh, Neknoor, Dist-Beed as the same were in unauthorized possession. The application gave list of various survey numbers. Attachment of the properties was sought to safe-guard the Wakf properties. Exhibit B is the order dated 16th August, 2000 passed by the Additional District Collector, Beed rejecting the case which was registered as 2000CD/I/Appeal -10, on the ground of delay and non payment of Court fees. Learned counsel for Petitioners then referred to the Regular Civil Appeal No.149 of 2000 which was filed before the District Court, Beed (Exhibit C). The appeal was carried u/s 36(B) of the Wakf Act, 1954. The District Judge, after considering the provisions of Section 52 of the Wakf Act, 1995, took a view that only Collector was empowered and orders passed by the Additional Collector were improper.

? Learned counsel for Petitioners submitted that inspite of such order of the District Judge, the application filed by the Wakf Board u/s 52 of the Wakf Act, 1995 was taken up by the Additional Collector, and passed orders, as can be seen at Exhibit D, directing the Tahsildar to attach the properties concerned and to cancel the illegal mutation entries. Counsel submitted that against such orders, the Petitioners had filed Wakf Appeals, mentioned above. It is his argument that the Wakf Tribunal came to the conclusion that the orders passed by the Additional Collector were not u/s 52 of the Wakf Act and so the appeal was not maintainable. Submission of the counsel is that if the Tribunal was finding that it was not an appeal u/s 52(4) of the Wakf Act, then it was not necessary for the Tribunal to decide that the 14 properties were Wakf properties. The Tribunal held that the Additional Collector had decided the matter u/s 5 of the Hyderabad Atiyat Inquires Act, 1995 ("Atiyat Act" in brief). According to the counsel, order dated 2nd February, 2006 of the Additional Collector nowhere mentions that it was under the Atiyat Act. According to the counsel for Petitioners, Exhibit F filed by the Petitioners shows that Petitioner Paryagbai (of Civil Revision Application No.188 of 2013) and Balbhim (Petitioner No.13 of Civil Revision Application No.184 of 2012) were granted permission u/s 6(3) of Hyderabad Abolition of Inam Lands Act, 1954 to purchase the properties

mentioned in the document treating the property as MADATMASH land i.e. personal inam. Counsel submitted that the impugned orders of the Tribunal need to be set aside, as according to him the Additional Collector could not have passed the orders due to directions of the District Judge that Collector himself should decide the matter.

5. Learned counsel for the Wakf Board submitted that if the orders passed by the Additional Collector are perused, the same shows that the concerned survey numbers 12, 15, 623, 21, 22, 50, 51, 274, 275, 276, 323 to 330 were found to be KHIDMATMASH i.e. service inam lands, which could be retained as long as service was being given. These lands were not MADATMASH i.e. personal inam (which can be transferred by taking permission). According to the learned counsel, the proceedings started in view of the application of the Wakf Board, as the properties mentioned in the application dated 29th June, 1999 were in unauthorized possession. According to the learned counsel, when the application came up before the Additional Collector, in the order dated 2nd February 2006, the Additional Collector found that the properties had been taken in Government possession on 20th July, 1955 and still there were wrongful transactions in the mutation entries. Learned counsel submitted that although the Wakf Board had applied u/s 52(1) of the Wakf Act, requesting Collector to take over the properties and deliver possession to the Wakf Board, the Additional Collector took rather lenient view and passed the orders to attach the properties and keep it under EKSALA LAVNI (yearly lease) and the income was to be appropriated to the Dargah Hazrat Syed Ibrahim Saheb Wakf.

? According to the learned counsel for Wakf Board, the Additional Collector passed such orders u/s 5 of the Atiyat Act instead of passing the orders u/s 52(2) of the Wakf Act, 1995 and the orders of the Tribunal need to be maintained. According to the learned counsel, the Petitioners have not been able to prove that the properties concerned are MADATMASH i.e. personal inams.

6. If the impugned orders passed by the Wakf Tribunal are perused, it can be seen that Wakf Tribunal framed two issues. First was, whether the disputed properties are Wakf properties and the second issue was, whether the appeal was maintainable. The Wakf Tribunal in details examined the contentions raised by the appellants before it and found that there was ample material before the Additional Collector establishing that the properties were dedicated for benefit of religious institution and as such the same were Wakf properties. The Tribunal found that the disputed lands except survey Nos. 274 and 275, were Wakf properties. Although the learned counsel for Petitioners has taken me through the observations of the Wakf Tribunal with reference to the first issue regarding the properties to be Wakf properties, nothing is shown that the findings recorded are not on the basis of record. The contention of the learned counsel for Petitioners is that while remanding the matter, the District Judge has directed that only Collector should decide the matter. The learned counsel was unable to show that this ground was raised when the appeal was carried to the Wakf

Tribunal. It is the argument of learned counsel for Respondent No.1 Wakf Board that the Atiyat Act permits even Additional Collector to decide such matters and when the order passed was keeping in view Section 5 of the Atiyat Act, no fault could be found with the order of Additional Collector.

7. At the time of arguments, learned counsel for Petitioners was unable to show as to how the order of the Additional Collector could be treated as u/s 52(2) of the Wakf Act, 1995 as said provision requires the Collector to take over the possession of the property and deliver the same to the Wakf Board. Learned counsel was unable to show that there was any such order directing to take over possession of the property and to deliver the same to the Wakf Board. He, however, maintained that the order of the Additional Collector dated 2nd February, 2006 itself mentions in the title that it was an appeal u/s 52 of the Wakf Act, 1995. He accepted that under old Section 36(B)(1) of the Wakf Act, 1954 which is now Section 52(1) under the Wakf Act 1995, it is an application and not appeal. According to the learned counsel for Petitioners, as the Additional Collector himself mentioned in the title that he was proceeding u/s 52 of the Wakf Act 1995, the Wakf Tribunal could not have treated the order as under the Atiyat Act. The submission has no force. The Tribunal rightly observed that the order concerned will have to be looked into for its substance and not format.

8. Learned counsel for both sides agreed that under the Atiyat Act there are separate procedures regarding hierarchy of forums and appeal in case the party was aggrieved. The Wakf Tribunal in order to deal with the Order of Additional Collector looked into the nature of properties to find that those are Wakf properties. Wakf Tribunal has power to examine if given property is Wakf property. But examining the operative Orders of Additional Collector the Tribunal rightly observed that the orders passed by the Additional Collector are actually u/s 5 of the Atiyat Act, and the Wakf Tribunal was not the appellate authority and so did not entertain the appeal.

9. There does not appear to be anything illegal or irregular in the impugned orders of the Wakf Tribunal. There is no substance in the Revision Applications.

10. All three Civil Revision Applications are rejected. No order as to costs.