

(2012) 09 BOM CK 0118

In the Bombay High Court

Case No : Civil Revision Application No. 172 of 2012

Shaikh Aziza Parveen and Shaikh Hafeez

APPELLANT

Vs

Mohd. Qusro and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Citation : (2013) 2 BomCR 294 : (2013) 2 MhLj 379

Hon'ble Judges : A.V. Nirgude, J

Bench : Single Bench

Advocate : Anand P. Bhandari, for the Appellant; A.D. Kasliwal, Advocate for Respondent Nos. 1 to 5 and 7, for the Respondent

Judgement

A.V. Nirgude, J.—This civil revision application is challenging the order dated 28th May, 2012 passed by the Presiding Officer, Maharashtra Wakf Tribunal, Aurangabad allowing the Respondents' application for temporary injunction in Wakf Suit No. 54 of 2011. It is common ground that property bearing City Survey No. 2543 at Aurangabad is a Wakf property. City Survey map is produced on record at Page No. 65, which shows its position. It is a rectangular plot of land on which there are two structures. One structure standing on South-East part is utilized as Ashurkhana and the other structure of North side is used for residence in which the Petitioners / Defendant Nos. 1 and 2 or their family members reside. It is also an admitted fact that this house property situated on the suit plot of land, is in residential use of the Petitioners / Defendant Nos. 1 and 2 and their family members for quite some time. There is an open space on the suit plot, which is lying on the Western side of Ashurkhana.

2. The Respondent Nos. 1 to 7 - original Plaintiffs- filed this suit and inter-alia prayed for an order of injunction for preventing the Petitioners / Defendant Nos. 1 and 2 from erecting further construction on the suit plot. It is an admitted fact that on the day of filing of the suit i.e. on 29th June, 2011, the Petitioners had commenced construction on the open space. The construction was being made in cement concrete. By the time, order of temporary injunction was passed against

the Petitioners, they took the construction work upto the ground floor ceiling. As stated above, after hearing all the sides, the impugned order was passed preventing the construction work of the Petitioners.

3. The learned Judge discussed the facts quite elaborately and held that since the suit plot and the open space behind Ashurkhana is a public property, no construction on the same should be permitted. In order to appreciate this preposition, one must go through the facts.

4. The Respondent Nos. 1 to 7 are the members of one family and all along, it is their claim that their ancestors were Mutawalli of the Ashurkhana and therefore, they are concerned with the suit property. Admittedly, so far none of them is appointed and recognized as Mutawalli of this Trust. Probably litigation on this point is pending. The Respondent Nos. 1 to 7 do not use the suit plot for their residence. It is the Petitioners / Defendant Nos. 1 and 2, who are always present on the suit property because they use part of the suit plot as their residence. The open plot of land thus, is quite close and adjacent to their residential house. It is quite natural that the Petitioners / Defendant Nos. 1 and 2 would be interested in using the open space which is quite sizable for expanding their residence or for erecting a new house etc. Having regard to the thickly populated area where the suit plot is situated and the need for residential buildings for adjoining residents, it was quite natural that they would try to get control of the open space.

5. The Petitioners / Defendants Nos. 1 and 2 approached the Wakf Board to get the open space leased out to them. The District Wakf Officer, Aurangabad to obliged them and has been giving this open space to the Petitioners on lease from time to time. He, admittedly, executed the lease-deeds of eleven months duration from time to time. The last of such lease-deed is executed on 13th December, 2011. A copy of which is already on record. The District Wakf Officer mentioned in this document that the Maharashtra State Wakf Board, Aurangabad has given their permission for this transaction. The area of the open space is shown to be 1297 square feet. One of the condition imposed on the Petitioners in this document is that they would not erect construction on the plot without prior permission of the Wakf Officer. In the agreement, there is a mention of certain order passed by the Chief Executive Officer of the Maharashtra State Wakf Board, Aurangabad dated 12th December, 2011, but its copy is not annexed to the agreement. It is mentioned that the Lessee would be bound by the terms and conditions imposed on him vide order dated 12th December, 2011. The Chief Executive Officer of the Maharashtra State Wakf Board, Aurangabad on 1st December, 2011 i.e. ten days prior to the execution of the lease-deed, permitted the Petitioners to erect construction on the suit open space. Accordingly, it seems, the one of the petitioners submitted an application under the provisions of the Maharashtra Regional and Town Planning Act, 1966 to the Aurangabad Municipal Corporation seeking permission for erecting construction on the suit open space on 6th July, 2011. However, the Petitioners apparently do not rely on a commencement certificate, which could have been issued pursuant to their

application dated 6th July, 2011. They placed on record a commencement certificate issued in favour of Tahera Begum, who is not a party to the suit and the commencement certificate is admittedly not of the suit open space.

6. In this background, let me examine correctness and legality of the impugned order. The learned Judge, in my view, rightly appreciated the facts of the case. He rightly did not give any importance to locus of Respondent Nos. 1 to 7. He rightly held that any one who is interested in the Wakf could have filed the suit. The learned Judge rightly observed that in this manner, if the Wakf property is affected by the permanent structure, which would belong to a private party, it would amount to serious loss to the Wakf and its property. As stated above, the Petitioners do not claim that they are owners. They also admitted that the construction, which they commenced, is of permanent nature done in cement concrete. It is also admitted that they are not given the plot on long lease. They are given from time to time lease for limited period of eleven months and when such a lease is given, generally the landlord would not permit erection of permanent structure on the property. The reason is obvious that it would be difficult to remove such structure after expiry and resumption of leased plot. But, it is surprising that the Chief Executive Officer of the Maharashtra State Wakf Board, Aurangabad and the District Wakf Officer agreed to the proposal of the Petitioners that they would erect a permanent structure on the suit open space. On the face of it, the decision is not in the interest of Wakf and its property. But, instead of taking steps for protecting Wakf property, they apparently joined hands with the Petitioners to usurp the Wakf property for personal use of the Petitioners. If this development is allowed, the suit open space would be permanently lost to the Wakf. In my view, this would amount to irreparable loss to the Wakf and its property. The learned Judge realized this and therefore, passed the impugned order. The learned Judge in very clear words observed his anguish while appreciating the dubious role played by the Officers of the Wakf Board and their support to the Petitioners" case. I am also in agreement with the feelings expressed by the learned Judge on this aspect.

7. Another glaring anomaly in the case of the Petitioners is that they have so far not secured commencement certificate from the Municipal Corporation for the construction work and in spite of that they commenced the work as stated above, a few days prior to filing of the suit. On the fact of it, they submitted their application for construction permission as a gloss over for their illegal activity. No sooner they submitted their application for construction permission without waiting for further correspondence, they commenced the construction work unauthorizedly. I am also surprised that this work is not stopped by the Municipal Corporation. It is only the Respondent Nos. 1 to 7, may be because of their personal interest in the property- approached the competent court in the nick of time.

8. The learned Judge, who appreciated the gravity of the unauthorized and illegal activity commenced by the Petitioners, rightly passed the impugned order. I

propose to send a copy of this order to the Department of Awkaf so that it would prompt them to take some action in this case. Civil Revision Application stands rejected.