



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.3 OF 2021

WITH

CIVIL REVISION APPLICATION NO.4 OF 2021

1. Sayyed Moinuddin s/o Sayyed Saifoddin,
Age : 49 years, Occu : Business,
R/o. Plot No.19/P, New Aman Colony,
Mit-Mita, Aurangabad.
2. Sayyed Ejazuddin s/o Sayyed Moinuddin,
Age : 68 years, Occu : Retired,
R/o. Opp. A. K. Traders, Maqsood Colony,
Roshan Gate, Aurangabad. ... **Applicants.**

Versus

1. Pratapsingh s/o Nursing Kakarwal,
Age : 50 years, Occu : Agriculture,
R/o. Plot No.10, N-11, Shivsadan,
Behind Rashtravadi Bhavan,
Aurangabad.
2. The Maharashtra State Board of Wakf,
Through its Chief Executive Officer,
Panchakki, At Aurangabad. ... **Respondents.**

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Advocate for Applicants : Mr. S. S. Kazi.
Advocate for Respondent No.1 : Ms. Shilpa R. Rajput.
Advocate for Respondent No.2 : Mr. N. E. Deshmukh.

...

CORAM : S. G. MEHARE, J.

RESERVED ON : 20.12.2023

PRONOUNCED ON : 14.02.2024

JUDGMENT :-

1. Heard the respective learned counsels for the parties.

2. The original defendants No.1 and 2 have impugned the judgment and order of the Maharashtra State Wakf Tribunal, Aurangabad, passed in Wakf Suit Nos.4 of 2014 and 6 of 2014.

3. The "applicants" would be referred to as "defendant Nos.1 and 2" and respondent No.1 would be referred to as "plaintiff".

4. The plaintiff had filed a suit before the Maharashtra State Wakf Tribunal, Aurangabad, for a declaration that the orders of the Chief Executive Officer ("C.E.O." for short) of the Maharashtra State Wakf Board, Aurangabad ("the Board" for short), in file No.54/154/2012, dated 23.01.2013 arising out of file No. A.B.D./259/2012, including the Survey Gut No.66 of village Harsool, District Aurangabad, in the Book/register of Waqf, maintained by the Board and its registration No. MSBW/ABD/319/2012 dated 03.05.2012 passed by the C.E.O. pursuant to the so-called entry in the concerned Gazette is time-barred, hollow, inactive, in-executable, null and void and not binding on the rights of the plaintiff. The order dated 28.01.2013 arising out of the order dated 23.01.2013 in file No.54/154/2012 by C.E.O. arising out of the order dated

30.04.2012 of C.E.O. in File No. A.B.D./259/2012, including the property Gut No. 66 of village Harsool in Book/Register of Waqf maintained by the Board and its registration No. MSBW/ABD/319/2012 dated 03.05.2012 be quashed and set aside. Further, the declaration has been sought that the order of the C.E.O. of the Board directing the plaintiff to remove his possession from the suit land is bad in law. A perpetual injunction restraining the defendants from causing interference, disturbance in their ownership and peaceful possession over the Suit land Survey No.66 was also sought.

5. Before filing a suit No.6/2014, the plaintiff had filed Waqf Application No.04.2014 under Section 83(2) on similar facts and claimed the similar reliefs. However, the Waqf Tribunal has passed two separate orders in these two petitions. The issue revolved around the same facts and was decided on the day. Hence, it is taken up for hearing together and disposal by common judgment.

6. The learned Tribunal allowed the Suit and application of the plaintiff as prayed.

7. The plaintiff had claimed that the suit land was the Inam of Madad Maash. It belonged to one Inamdar Mr. Sayyed

Amiroddin. The forefathers of the plaintiff were the tenants of the Suit land. Their names were recorded as tenants. After the demise of their forefather, the plaintiff got the title and possession of the Suit land. The Government took possession of the Suit land as per Sections 5 and 6 of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 ("The Inam Act" for short). In 1958, Inamdar Syed Amiroddin preferred an application before the Collector for a declaration that he was entitled to the entire "Lawani" amount of the Suit land. By order dated 27.03.1959, the Collector declared that the suit land was a Madad-e-Maash and Amiroddin was entitled to receive the Lawani amount. The tenants had challenged the said order, and lastly, the competent authority/Collector held that the plaintiff and his predecessor were the tenants of the Suit lands, and it was a Madad Maash land. By order dated 26.02.1979 in case No.75/Watan/5, the Collector passed an order of occupancy rights of the Suit land and granted it to Narsingh Gotiram Kakarwal, the plaintiff's father, under Section 6 of the Inam Act. Thereafter, by order dated 21.04.1981, the Tahsildar determined the occupancy price for Rs.288/-. The plaintiff's father deposited the said amount and received the occupancy certificate in his name. Then, mutation entry No.3067 was sanctioned in the name of plaintiff's father.

In this way, the plaintiff's father became the absolute owner of the suit land, and after his demise, the plaintiff inherited the same.

8. Suddenly, the plaintiff received a notice dated 23.10.2013 from Tahsildar for the removal of encroachment from the Suit land. On inquiry with the Board and legal heirs of Amiroddin i.e. defendant No.1, he learnt that the C.E.O. of the Board, without inquiry, without giving notice, opportunity of hearing and verifying the record, passed the order on 30.04.2012 in the Wakf register and declared that the suit land is a Wakf property. He registered the Wakf proceeding bearing No.MSBW/ABD/319/2012, dated 03.05.2012. He also included the Suit land as Wakf property in Jodpatra. The plaintiff also learnt that the suit land was notified in the Government Gazette in 1973 in the name of Wakf. That notification is also illegal and not binding upon the plaintiff.

9. Defendant No.1 contested the Suit and application and filed his written statement below Exh.90 in a suit. Defendant No.2 adopted his written statement. They have supported the orders of defendant No.3. They had come with a case that the suit land was the service Inam land. It was notified in the

Government Gazette as provided under the Wakf Act, 1995. In that notification, the suit land was shown to be a service Inam land. The plaintiff did not challenge the Government notification in time. Once the property is declared as Wakf land in the Government Gazette, its nature cannot be converted into private property or into the Madad-e-Maash for the reasons that once Wakf is always Wakf. There was no reference in the Muntakhab that the Suit land was Madad Maash. The revenue record disclosed that the Suit land was the service Inam land of the Masjid (Mosque) and the graveyard of village Harsool, District Aurangabad. Therefore, the Government had no right to acquire and occupy the Suit land under Sections 5 and 6 of the Inam Act. The Collector/Competent Authority had no jurisdiction to pass the orders as claimed by the plaintiff. The Inam Act exempts the grand properties under Sections 5 and 6, which are service Inam lands belonging to Waqf institutions. The Government Gazette of 1973 was not impugned within a year. Therefore, the Suit of the plaintiff in that respect is time-barred. Since the Suit land was the service Inam land, the possession of the plaintiff cannot be said legal. They denied the plaintiff's Suit and prayed for the dismissal.

10. In Waqf Application No.4.2014, the original defendant No.1 had filed a reply below Ex.16, and defendant No. 2 adopted it by a pursis. They had a defence that Syed Amiroddin was the Mutawali of the Waqf institution, and his name was recorded as Inamdar. The disputed land was a service Inam Land for the services of the Waqf Institution, and such entry was taken long back in 1973 in the Government Gazette. The applicant never challenged/impugned the said entry. Therefore, it has attained the finality and conclusive proof that it was a Waqf property. As per Muntakhab No.1288 dated 14 Sharvar Fasli, the suit land and another piece of land were shown as Service Inam land. Munatkhhab is the basic document of the title. The Collector's order declaring Madad Maash on payment of occupancy price is irrelevant, without Authority and jurisdiction.

11. Defendant No.3/CEO appeared but did not file a written statement. Hence, the Suit proceeded without say.

12. The learned Tribunal held that the plaintiff was the owner and possessor of the suit land, defendants Nos.1 and 2 failed to prove that the Suit land was Wakf property of Masjid and graveyard, which has been registered as a Wakf institution

under the Wakf Act, 1995. It has also been held that defendants Nos.1 and 2 failed to prove that the plaintiff was in possession of the Suit lands as an encroacher. It has also been held that the plaintiff proved that the defendants were causing disturbance to his possession of the Suit land. The plaintiff also proved that the order of C.E.O. dated 28.01.2013 in case No.54/154/2012, is illegal, null and void. The Tribunal also held that the Suit was within limitation and the plaintiff is entitled to the reliefs sought.

13. The learned Tribunal in Waqf Application No.4/2012 held that the order registering the Waqf Institution Masjid and Graveyard with its property mentioned in the Jodpatra under Section 36 of the Waqf Act 1995, dated 03.05.2012 in File No. MSBW/ABD/319/2012 and order dated 30.04.2012 in File No. A.B.D./259/2012 is not proper, correct, or legal. Hence, those are quashed and set aside.

14. Learned counsel for the petitioner Mr. Kazi has vehemently argued that the Government Gazette of 1973 was not impugned. The Suit is barred under Section 50(3) of Wakf Rules 2003. Once a person admits that Mutawali inducted him, the remedy is available under Section 83(2) of the Waqf Act,

1995. The order under Section 54 was issued after the 2013 amendment. Therefore, the Suit was not maintainable. The Suit against such orders ought to have been filed within sixty days. Hence, the Suit was limitation barred. The issue of the locus of the plaintiff to file Suit was not framed, though prayed specifically by an application Ex.91. While deciding the said application, it was observed that the defendants could argue the said point thoroughly. The witness was cross-examined on that issue. However, the learned Tribunal did not discuss that material issue. It is a good ground to remit the matter back to the learned Tribunal. The Muntakhab is admitted to the respondents. However, it was a composite Muntakhab. If the Muntakhab is composite, the law is settled that the lands included in such composite Muntakhab should be presumed to be service Inam lands. The Suit land was a service Inam land. The learned Tribunal did not mention a single case law relied on by them.

15. In Revision No.3, he argued that the Government gazette was never impugned. Re-registration is not required.

16. To bolster his arguments, he relied on the case of *Abdul Qayyum Vs. The Additional Collector, Nanded ; 2013 (1)*

Mh.L.J. 449. The findings of the learned Tribunal are perverse and illegal. Hence, the civil revision application may be allowed.

17. Per contra, learned counsel for the respondents reiterated that the suit land was the Inam land. His forefathers were tenants since 1925. They have been protected tenants since 1979, and occupancy certificates were granted to him. Before publishing the Government Gazette, the Survey Commissioner did not give notice, did not go through the revenue record and mechanically included the Suit land in the Gazette as a Wakf property. The registration was allowed on the basis of Muntakhab. Nobody was looking after and maintaining the Suit land. The person who applied for registration was neither Mutawali nor the successor. The order regarding the Inam abolition and the tenancy rights was never impugned. Therefore, the Tribunal has correctly not considered or disturbed it. The Tribunal has no power to set aside the orders of the competent authority/Collector granting the tenancy rights and abolishing the lands as Inam lands. The notices of registration and proceeding under Section 54 were never served upon the plaintiff. He is a non-muslim. Hence, the limitation of one year is not applicable. The Tribunal has

correctly discussed the law on the limitation. The defendants have no right to claim that the suit land is and was the Wakf land. She prayed to dismiss the revision application.

18. After hearing the respective learned counsels at length, the following points fall for consideration :

(a) Would the Wakf Board has overriding jurisdiction to the provisions of the Hyderabad Tenancy and Agriculture Lands Act?

(b) Was it the composite Muntakhab?

(c) Was the suit within limitation?

(d) Is the order of C.E.O. adding the Suit land in a Wakf register binding upon the respondent/plaintiff?

(e) Was the Suit not maintainable in view of Section 54 (4) of the Wakf Act 1995?

19. The respondent has a specific case that the Suit lands were the tenanted lands since their forefathers, and after them, the present respondents have inherited it. One Amiroddin was the Inamdar of the Suit lands. He had filed an application before the Collector in 1958 and claimed that the suit field is the Madad Maash land and is entitled to the entire payment of Lawani amount. The Collector on 27.03.1959 held that the suit land was the Madad Maash land of Inamdar Shri. Amiroddin,

and is entitled to the payment of the Lawani amount and Mustadi, appointed on the payment by the competent Authority, is not entitled to any portion out of the proceed of the Madad Maash. Inamdar Amiroddin, again behind the back of the forefathers of respondents in collusion with the Authorities of Marathwada Wakf Board, had produced a certificate of the said Board Authorities in 1970 that he has been performing services of concerned Harsul Mosque Institution and obtained ex-parte order of Collector on 06.07.1972 to release other lands including the Suit land Madad Maash. The forefathers of the plaintiff were tried to dispossess. Therefore, the grandfather and father of the plaintiff had filed an appeal against the said order before the Commissioner, Aurangabad, on 29.08.1973. The Commissioner, Aurangabad, held that the forefathers of the plaintiff were in possession of the land as a tenant. He remanded the matter back. The Deputy Collector made an inquiry and, by his order dated 26.02.1979, passed the order of occupancy rights of the suit field. He sent the matter to the Tahsildar for determining the price. By his order dated 21.04.1981, the Tahsildar fixed the purchase price. The plaintiff deposited the price of the land. The Tahsildar issued the occupancy certificate in 1983. Since then, they have been enjoying the suit property as their

absolute property. Suddenly, the plaintiff received a notice dated 23.10.2013 under Section 247 of M.L.R. Code. Defendant Sayed Moinuddin Sayed Saifuddin, the legal heir of Amiroddin, had asked for the settlement of the matter. Then, from reliable sources, the plaintiff learned that Syed Moinuddin, the petitioner, filed a proceeding before the Chief Executive Officer, Maharashtra Wakf Board, on 27.04.2012. The notice of said proceeding was never served to the respondents. Hence, the Suit filed was within limitation.

20. **As to point Nos.A and B** :- The arguments of the learned counsel for the petitioner revolved around the nature of the property and the jurisdiction of the Wakf Board. He has vehemently argued that since it was a composite Muntakhab, it is the Wakf property. He also argued that Muntakhab is not denied to the respondent.

21. Per contra, the learned counsel for the respondents would submit that the composite Muntakhab did not state that the suit property was also the Wakf property. The nature of the property was decided long ago by the competent Authority under the Tenancy Act. Therefore, the jurisdiction of the Wakf Board under the Wakf Act would not prevail over the

provisions of the Hyderabad Tenancy and Agricultural Lands Act.

22. To bolster the arguments, learned counsel for the petitioner, Mr. Kazi relied on the case of *Abdul Qayyum (supra)*. In this case, the issue was about the jurisdiction of the C.E.O. Maharashtra State Wakf Board under Sections 51 and 52 of the Wakf Act, 1995, as there was no resolution regarding the delegation of power by Wakf Board to the Chief Executive Officer in the present matter. Secondly, the issue was whether the Wakf Tribunal has jurisdiction to try and decide the matter regarding tenancy rights, and the third one was about composite Muntakhab. The said Muntakhab was read in the matter in the context of its nature, and the Wakf Tribunal had held that the Muntakhab specifically mentioned that Inams are for conjoint services of Kazat, Imamat and Moazzani of Jame Masjid. The Muntakhab, thus, is a composite Muntakhab, and it is not only for the service of Kazat, as contended by the appellants. However, at no point in time did the petitioner, who was fighting against the respondents, say that it was a composite Muntakhab and the suit land was the service Inam land. The said Muntakhab appears to have been considered by the Revenue Authorities when the disputes were opened before

the Tenancy Court. The revenue entries were accordingly recorded on the basis of the Muntakhab. After hearing both parties, it was decided finally that the suit land was the Madad Maash land. Hence, the ratio of the *Abdul Qayyum (supra)*, which was on different issue could not assist the defendant.

23. The respondent's counsel raises a small question, "could the Wakf Board reconsider the issue of the nature of the suit land under the Wakf Act, 1995"?

24. Learned counsel for the respondent relied on the case of *Sunil Vasudeo Nirgude and others Vs. Hasan Khan S/o Maheboob Khan and another Civil Revision Application No.158 of 2012 of this Court, decided on 11.09.2023*. In this case, also the issue was raised whether Section 56 of the Wakf Act has an overriding effect on the provisions of Sections 6, 7, 9 and 46 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and the next question was, Does Chief Executive Officer under the Wakf Act, 1995 or the Wakf Tribunal under the Act 1995 has jurisdiction to decide the legality of the purchase certificate granted under the Tenancy Act"? The Court had gone through the said judgment. It elaborately discusses the powers of the State and the Central to enact the laws.

Schedules 7 and 9 of the Constitution of India have also been discussed. Considering the relevant provisions, this Court held that Section 56 of the Wakf Act does not override the provisions of the Vidarbha Region Tenancy Act, 1958. The provisions of the Tenancy Act, 1958 and the Hyderabad Tenancy Act 1950 (1950 Act for short) are *pari materia*. It has also been held that the tenancy protected under the Tenancy Act can only be inquired and adjudicated upon by the Authorities constituted under the Tenancy Act. It has also been held that unless the ownership certificate granted under the Tenancy Act is quashed by the Appellate Authority, no proceeding *qua* the same lands can be initiated under the Wakf Act for eviction of the protected tenants/deemed owners declared under the Tenancy Act.

25. Admittedly, the defendants knew well about the proceedings opened before the Tenancy Court. Every attempt of the defendants before the tenancy Court failed. Whatever the orders they had obtained, *ex-parte* against the plaintiff and his forefathers were contested on merits. Since there is no bar enumerated in the Wakf Act 1955 not to create tenancy rights under the statute of the 1950 Act, the Wakf Board had no powers to deal with such issues. The defendants appear to

have not disclosed this fact when they applied to add the Suit land to a Wakf register. Considering the restricted jurisdiction of the Wakf Board on the subject of the Wakf property and the fact of a detailed inquiry made by the competent Authority constituted under the Tenancy Act, every Act of the Wakf Board is apparently out of its jurisdiction. The Wakf Tribunal or the Wakf Board cannot deal with the issue of the tenancy rights granted to the tenant by the process of law. The Act done by any authority without jurisdiction is void ab initio. In view of the matter, this Court held that the Waqf Board has no overriding jurisdiction to deal with the tenancy issue decided under the 1950 Act, and the Muntakhab shows that it was a service Inam land.

26. The record further reveals that the respondent has claimed the Revenue Authority under the capacity of Inamdar. The Collector also considered this issue in the proceeding initiated at the instance of the present petitioner. After making a due inquiry, finally, under its power, the Revenue Authority determined that the suit property was a Madad Mash. It is not the case that the defendants did not know about those proceedings. He was well aware of it, but it appears that since

he lost before the Tenancy Tribunal, he thought it proper to let the suit property go to the Wakf.

27. **As to points Nos. C, D, and E** :- The next limb of the argument of the learned counsel for the petitioner is that in view of Section 85 of the Wakf Act, the suit is not maintainable, and the respondents had remedy only under Section 83(2) of the Wakf Act. Section 85 speaks of the bar of the jurisdiction of the Civil Court, Revenue Court and other Authority. This is the provision of the Wakf Act 1995. This Act came into force on 20.11.1995. Section 82 provides that any dispute relating to any Wakf or Wakf property or other matter should be dealt with only by the Tribunal. For invoking the remedy under said section, the dispute should be about the Wakf or Wakf property. Learned counsel for the petitioner would submit that the suit land was included in the official Gazette in 1973. Therefore, the Gazette ought to have been impugned before the Competent Court. However, he fairly conceded that the limitation for impugning the Gazette for a period of year would not apply to the party if either of the parties is not governed under the Muslim Law. The respondents are admittedly Hindus. Therefore, the limitation to impugned such Gazette is not applicable to them. That apart, the root

question was whether the Suit lands were Wakf property. The Government Gazette was published in 1973. At that time, the Waqf Act 1954 was in force. Section 4 of the 1954 Act provides for the preliminary survey of Waqf properties by the Survey Commissioner appointed by the Government. The Survey Commissioner was to make an inquiry and submit his report to the Board with respect to the (Waqf) existing on the date of the commencement of the Act. Thereafter, the Board was to examine the report and send it back to the State Government for publication. The Waqf Act of 1995 repealed the Act of 1954. Section 112 of the Act of 1995 says that notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act. Similar to the provisions under the Waqf Act 1952, the Survey Commissioner has to make a detailed inquiry under the Act of 1995. He has to make the local inspection and local investigation. He has the powers vested to call for the discovery and production of any document, summon and examine any witness, and requisition any public record from any court or office. These powers appear to be vested particularly to have a detailed survey of the property allegedly to be the Wakf property during the survey. The Survey Commissioner also has the power to decide

the dispute, if any arose during the inquiry on the basis of any deed. Section 5 of the Wakf Act 1995, further provides that on receipt of the report of the Survey Commissioner under Sub Section (3) of Section 4, the State Government shall forward a copy of the same to the Board. The Board shall examine the report forwarded to it within six (6) months for publication in the Official Gazette. Whether the Wakf is in existence at the commencement of this Act or coming into existence, thereafter, to which the report relates and containing such other particulars as may be prescribed. It has also been provided that the Revenue Authorities shall include the list of auqaf referred to Sub Section (2) of Section 5 while updating the land records. The provisions indicate that the revenue record inspection was signed to ascertain the rights of the parties concerned. Herein the case, the defendants have no material as such. They barely relied on the Government Gazette of 1973, which included the Suit land as a Wakf property, to prove that it was a Waqf property. They also have no material to satisfy the Court at any point in time, the Survey Commissioner had heard the plaintiff or the Survey Commissioner had inspected the revenue record. There is also no material on whether the Survey Commissioner submitted the survey report of the Suit land to the Wakf Board and it had examined the revenue

records showing the possession of the respondents over the Suit land.

28. Learned counsel Mr. Kazi has argued that once Wakf is always Wakf and that property never changes its character. However, to claim the doctrine of perpetuity, there must be evidence that the lands were dedicated for the purpose recognized by Muslim Law as religious, pious or charitable and such properties were transferred to God. The sole basis for claiming the property as a Wakf property is the Government Gazette of 1973. Learned counsel Mr. Kazi has tried to advance the argument that if the property is added as a Wakf property in the Government gazette, it is the conclusive proof that the suit land was the Wakf property.

29. The Hon'ble Supreme Court recently, in the case of *Salem Muslim Burial Ground Protection Committee Vs. State of Tamilnadu and others*; 2023 LiveLaw (SC) 454 held that conducting a survey under Section 4 of the Wakf Act 1954 before declaring a property as a Wakf property is the sine qua non and an indispensable requirement. In the absence of a survey conducted under Section 4 of the Wakf Act, the mere issuance of notification under the Act would not constitute a

valid Wakf. It has also been held that in the absence of such material, the mere issuance of the notification under Section 5 of the Act would not constitute a valid Wakf with respect to the Suit land. It has also been observed by the Hon'ble Supreme Court that once a Wakf is always a Wakf, would not alter its nature so as to confer any right upon the claimants. A Wakf could be created in several ways, but the permanent dedication of any movable and immovable property by a person professing Islam for any purpose recognized by Muslim law as a pious, religious or charitable purpose. In the absence of such dedication, it could also be presumed to have come into existence by long use.

30. As discussed above, there was no iota of evidence that any time the survey was done and the Survey Commissioner had examined the revenue record. If the survey was done, the Survey Commissioner would have got detailed information about the previous litigation and the decision of the competent Authority under the Tenancy Act, deciding the nature of the Suit land as Madad Maash. In view of that matter, this Court does not find substance in the argument of learned counsel for the applicants that it is a Wakf land.

31. The learned counsel, Mr. Kazi submitted that the Board passed the order under Section 54 of the Act 1995 on 23.01.2013. The said order is before the amendment of 2013, which came into force on 20th September 2013; therefore, the suit ought to have been filed within sixty days, as provided under Rule 50(3) of the Maharashtra Waqf Rules 2003, from the date of order. The suit is prima facie time-barred. Hence, it was liable to be dismissed.

32. The plaintiff had filed a petition U/S 54(4) of the Act on 13.01.2014, which was registered as Waqf Suit No. 6 /2014. On 02.01.2014, he filed an application U/S 83(2) of the Act, and it was registered as Waqf Application No. 04/2014.

33. The plaintiff has pleaded that Moinuddin met him on 20.11.2013. He told him about the impugned orders. On the very same day, he applied for certified copies. His application is at Exh.97. It bears acknowledgment of the Office of C.E.O. He pleaded that the Office of C.E.O. avoided giving him copies. The superintendent of the record section of the Waqf Board issued him a letter dated 06.12.2013 and 31.12.2013 that the record was missing and show cause notice was served upon the concerned. Lastly, he received the certified copies of the order

dated 30.04.2012 of proceeding No.ADB/259/2012 and MSBW/ABD/ 319/2012 dated 03.05.2012 about registration of the Waqf under Section 36 of the Act on 05.12.2013. He applied for certified copies of the order passed on 23.01.2013, corrected on 28.01.2013 from time to time. Lastly, he received the copies on 05.12.2013. From the date of knowledge he filed the petitions in time. However, he did not receive the orders dated 28.01.2013 of File No.54/154/2012 on its Xerox copies and letters from the Board's Office.

34. It is the vehement argument of the learned counsel for the plaintiff that at no point in time notice was served upon him by the Wakf Board of the proceeding initiated at the instance of the defendants. When he learnt about such an illegal order, he immediately filed a suit. She has correctly pointed out that the Wakf Board was the party to the suit. It did not file a reply and also did not produce a copy of the notice served upon the petitioner. Even before this Court, no such record is produced to satisfy the Court that the impugned proceeding was initiated and the notice of hearing was served upon the plaintiff. The silence of the Wakf Board speaks a lot. Therefore, the petitions were within limitation.

35. In 2013, there were many amendments to the Act. Section 54 (4) was substituted, Sub-section (1) of Section 83 was also substituted. The said amendments were brought into effect from 20.09.2013. Prior to the substitution of sub-section 4, it was as under;

"(4) Noting contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property."

36. After the substitution of the above sub-section, the provision to institute the suit was deleted, and it has been substituted that upon the enquiry of encroachment of the Waqf property, the Chief Executive Officer has to submit an application to the Tribunal. Upon receiving such an application, the Tribunal, on enquiry, has to make an order of removal of such encroachment and direct the encroacher to vacate the Waqf property.

37. Under amended Section 83 (1) the Tribunal has conferred with the powers to determine the questions regarding the Waqf, Waqf property, eviction of tenant etc. Under Sub-section (2), such a dispute should be filed before

the Tribunal within the time specified in this Act and where no such time has been specified within such time as may be prescribed. The term “Prescribed” has been defined under clause (l) of Section 3 as, except in Chapter III, means prescribed by the rules made by the State government.

38. The State of Maharashtra has framed the Maharashtra Waqf Rules 2003 (Rules for short). Rule 50 provides for the time limit under sub-section 83(2) of the Act. It has provided different limitations for the disputes against the orders of the Board under Section 40(1)(3), sub-section 51(2) and subsection 54 (3) of the Act. We are concerned with sub-rule (3), which provides a time limit of Sixty days from the date of the order passed under Section 54(3) of the Act to raise a dispute under Section 83 of the Act. Before amending sub-section 3 of Section 54, the Chief Executive Officer had powers to remove the encroacher. The amendments of 2013 only withdrew a right to sue in Civil Court and conferred all the powers to the Tribunal.

39. A notice to the person allegedly encroached upon the Waqf land/property was the sine qua non. If any suit is filed before the Tribunal against the order under Section 54 of the

Act, the burden is on the Board to prove that such notice was served upon the encroacher. The Board conveniently did not file a reply to the petitions. It is evident that before the impugned orders were passed, no notices were served to the plaintiff.

40. The pleadings and arguments of the plaintiff reveal that he received the certified copies of the order dated 30.04.2013 on 05.12.2013. He did not receive the copies of the orders dated 28.01.2013. He filed an application under Section 83(2) on 02.01.2014 and the suit under Section 54(4) on 13.01.2014. He learned about the impugned orders from defendant Moinuddin on 20.11.2013. It was the date of his knowledge. From that date, the plaintiff impugned the above-mentioned orders within Sixty days. Hence, it could not be said that the petitions of the plaintiff are time-barred.

41. Another limb of the argument of the learned counsel for the defendant was that the learned Tribunal, though heard on the tenability of the Suit under Section 54(4) of the Act 1995, did not discuss the crucial issue. His notes of written arguments filed before the learned Tribunal reveal that it has been objected, that since, the plaintiff admitted he received the

Suit land from Mutawali. Therefore, the suit is not maintainable, and he had no cause for action.

42. Section 54(4) of the Act 1995 before its amendment has been discussed above. It gives rise to the person aggrieved to lodge a suit if aggrieved by the orders of the C.E.O. Its proviso clause prohibits the person in possession from filing such suit under the said section that where the Mutawali let him possess the land as lessee, licensee or by a mortgage. The pleading of the plaint nowhere reflects that the plaintiff claimed that he possesses the suit land from a Mutawali. He has a case that his forefathers were the tenants of the Inamdar, who was the exclusive owner. The Inamdar has claimed that he was entitled to receive the entire "Lawani". That proceeding also attained the finality. Once again, the previous litigations before the Tenancy Tribunal have had an effect on the present suit. This Court observed above that after losing the battle in Tenancy Court, the defendants might have decided to let go of the suit land to Wakf. Reading the pleading and the reply, the Court is of the opinion that the suit was not hit by Section 52(4) of the Act 1995 before its amendment. The plaintiff had impugned the orders in two petitions under different Sections. Since, the orders were passed before the amendment of 2013,

the plaintiff might have thought to avoid the risk, it is better to filed petitions under Section 54 (4) and Section 83(2) of the Act. After the amendment of 2013 to Section 85, the jurisdiction of the Civil and Revenue Court and other Authority has been ousted about any dispute about the Waqf or Waqf property. Both petitions were filed before the Tribunal. There was no evidence before the Court that the plaintiff had filed any suit before the Civil or Revenue Court or other Authority. In these circumstances it could not be said that the proceedings before the Tribunal was not maintainable under Section 54(4) of the Act.

43. The orders of the Tenancy Tribunal holding the plaintiff tenant in the suit land were never impugned. Under its jurisdiction under Section 54 of the 1995 Act, the Board could not disturb the rights conferred upon the plaintiff under the said orders. The point Nos.C to E have been answered accordingly.

44. It has been vehemently argued that the learned Tribunal did not consider the factual aspects. This Court has gone through the impugned order. The learned Tribunal had framed the issues on controversial facts and answered each and every

point framed for consideration. It appears that the learned Tribunal has considered the submissions of each party, discussed the material and recorded the correct findings. The impugned orders are free from illegality and infirmity. Hence, it does not warrant interference.

45. Both revision applications stand dismissed.

46. No order as to costs.

47. The learned counsel for the applicants prays to stay this order for six weeks. Considering the dispute, the order is stayed for six (6) weeks from today.

(S. G. MEHARE, J.)

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vmk/-