

Waqf Application No. 19/2014.
Minhaj Shah s/o Ashiq Ali Shah & Ors.
Vs. Anwar s/o Gafoor Shah & Ors.
Judgment Exh. No.: 27

Received On : 01.04.2014
Registered On : 02.04.2014
Decided On : 24.11.2023
Duration : Y. M. D.
09. 07 .22
Exhibit No. : 27

BEFORE THE
MAHARASHTRA STATE WAQF TRIBUNAL, AT
AURANGABAD
Presided over by

- 1) Mr. M. T. Asim: District Judge/ Chairman
- 2) Mr. Mohd. Mohiuddin Moied: Having knowledge of
Muslim Laws &
Jurisprudence/Member

WAQF APPLICATION NO.19/2014

- 1) Minhaj Shah s/o Ashiq Ali Shah,
Age – 23 Yrs. Occ. Labourer.
R/o. Dhangaon, Tq. Paithan,
Dist. Aurangabad.
- 2) Shaukat Shah s/o Ashiq Ali Shah,
Age – 25 Yrs. Occ. Labourer.
R/o. Dhangaon, Tq. Paithan,
Dist. Aurangabad.
- 3) Syeda Raziya Bee wd/o Syed Salim Shah,
Age – 45 Yrs. Occ. Household.
R/o. Dhangaon, Tq. Paithan,
Dist. Aurangabad.
- 4) Syed Rukhaiyya wd/o Sadiq Shah,
Age – 42 Yrs. Occ. Household.
R/o. Dhangaon, Tq. Paithan,
Dist. Aurangabad.

...APPLICANTS

Versus

- 1) Anwar s/o Gafoor Shah,
Age – 48 Yrs. Occ. : Business.
R/o. Shahgad, Tq. Ambad.
Dist. Jalna.
- 2) Dawwod s/o Sajan Miyan Shah,
Age – 60 Yrs. Occ. Business.
R/o. Pundlik Nagar, Hussain Colony,
Aurangabad.
- 3) Rasheed s/o Zainuddin Shah,
Age – 60 Yrs. Occ. Business.
R/o. Dhangaon, Tq. Paithan,
Dist. Aurangabad.
- 4) Syeda Rabiya Bee w/o Syed Salim, **[Deleted]**
Age – 40 Yrs. Occ. Household.
R/o. Dhangaon, Tq. Paithan,
Dist. Aurangabad.
- 5) Chief Executive Officer,
Maharashtra State Board of Waqfs,
Panchakki, Aurangabad.

...RESPONDENTS

Advocates: Mr. Mazhar Khan the applicants.
Mr. N. A. Khan for respondent Nos.1 to 3.

[J U D G M E N T]
[DELIVERED ON 24.11.2023]
[DICTATED BY MR. M. T. ASIM]

1) Present application is filed under Section 83 (2) of the Waqf Act, 1995 (hereinafter in short referred as “the Act”) challenging the impugned order dtd. 27.05.2013 passed by respondent No.5 Chief Executive Officer (hereinafter in short

referred as “the C.E.O.”) of the Maharashtra State Board of Waqfs, Aurangabad (hereinafter in short referred as “the Board”) in File No./Case No. MSBW/Inquiry/ 54/367/2011 in relation to the property of Waqf Institution namely Dargah Shah Dawal situated at Dhangaon, Tq. Paithan, Dist. Aurangabad (hereinafter in short referred as “the Waqf Institution”).

2) Brief facts of the case are as under :

There is Waqf Institution namely Dargah Shah Dawal situated at Dhangaon, Tq. Paithan, Dist. Aurangabad. Applicants used to perform day to day services of the Waqf Institution as being legal heirs of original mutawalli namely deceased Bhikan Shah s/o Hussain Shah. The succession was sanctioned by Atiyat Court in favour of Bhikan Shah s/o Hussain Shah. The Waqf Institution own properties bearing land Gut No. 156/1 admeasuring 2 Hectare 8 R and land Gut No. 156/2 admeasuring 6 Hectare 75 R situated at Dhangaon. It is contended that, Bhikan Shah whose name is recorded as mutawalli in Government Gazzette in relation to the Waqf Institution was grandfather of present applicants. The

respondent Nos. 1 to 4 deliberately posing themselves as heirs of said Bhikan Shah filed an application against these respondents in the office of the Board for obtaining possession of aforesaid properties. The respondent Nos. 1 to 4 have no right and interest in the suit properties and they intended to grab the same. Applicants are in management of the Waqf Institution. That, upon application filed by the respondent Nos. 1 to 4 before respondent No.5, notices were issued to the applicants and they filed their written statement. However, learned C.E.O. of the Board completely discarded the say and written statement filed by them and passed the impugned order allowing the application. They are in possession of the properties in lieu of services being rendered by them to the Waqf Institution i.e. Dargah, so they are not encroachers. That, respondent No.5 without following due process of law and without proper inquiry passed the impugned order to hand over the possession of land of Dargah.

3) It is further contended that, some strangers in collusion with Talathi got mutated their names in 7/12 extract of land Gut Nos. 156/2. In fact, those persons are not real successors

of original mutawalli. Some of them are trying to grab the land of Dargah which is in possession of these applicants. After death of original mutawalli Bhikan Shah, his son Bashir Shah and two sons of Bashir Shah namely Ashiq Ali Shah and Sadiq Ali Shah were rendering services to the Waqf Institution. Both the sons of Bashir Shah also died. After them, these applicants are rendering day to day services to the Waqf Institution. They have not obtained succession from Atiyat Court due to lack of knowledge and proper guidance. However, they have hereditary rights of rendering services to the Waqf Institution. But this fact was ignored by the respondent No.5 and passed the impugned order. It is further contended that, the impugned order is wrong, erroneous and illegal and against the provisions of law. Accordingly, it is prayed that, the impugned order may kindly be quashed and set aside.

4) Respondent Nos. 1 to 3 filed their reply vide Exh.7 and resisted the application. They denied that, applicants are legal heirs of original mutawalli namely Bhikan Shah. They also denied that, applicants are rendering services to the Waqf

Institution. It is not disputed that, land of Gut Nos. 156/1 and 156/2 situated at Dhangaon, Tq. Paithan, Dist. Aurangabad belong to the Waqf Institution. It is also not disputed that, Bhikan Shah s/o Hussain Shah was the original mutawalli of the Waqf Institution. But they denied that, Bashir Shah was the son of Bhikan Shah. They contended that, Bhikan Shah has only one son namely Gafoor Shah and two daughters namely Bismillah Bi w/o Zainoddin and Hafiza Bi w/o Sajan Miya and respondent No.1 Anwar Shah is the son of Gafoor Shah and respondent No.2 Dawood Shah is the son of Hafiza Bi w/o Sajan Miya. Respondent No.3 Rasheed is the son of Bismillah Bi w/o Zainuddin. They contended that, Bashir Shah was not the son of Bhikan Shah. He was the son of Maula Shah. Wife of Maula Shah namely Rashadbai was sister of Bannubai who was the wife of original mutawalli Bhikan Shah. Thus, he was not the descendant of original mutawalli Bhikan Shah.

5) They further contended that, they are hereditary mutawalli of the Waqf Institution i.e. Dargah and they are regularly rendering and performing services to the Waqf

Institution. Applicants had made encroachment over service inam land of the Waqf Institution, therefore in order to remove illegal encroachment of the applicants over service inam land of the Dargah, they had filed application under Section 54 of the Act in the office of the Board. The C.E.O. of the Board vide order dtd. 27.05.2013 passed order for removal of illegal encroachment over the service inam land of the Dargah. Said order has already been executed. The illegal and unlawful encroachment of the applicants over the service inam land of the Dargah has already been removed and possession of service inam land bearing Gut Nos. 156/1 and 156/2 situated at Dhangaon, Tq. Paithan has been handed over to the respondents by Mandal Adhikari, Paithan on 21.10.2013. They are in actual possession of aforesaid lands. The applicants are not in possession of the same. So, now the application has become infructuous.

6) They further contended that, the impugned order was passed after giving every opportunity of hearing to the applicants and it is legal, perfect and proper. Father of applicants namely Syed Ashak Ali, Syed Usman, Syeda

Raziabee, Syeda Rukhaiyya Bee were creating third party interest by illegally transferring the property. Therefore, the present respondents Nos. 1 to 3 filed suit bearing Waqf Suit No. 103/2011 before this Tribunal for perpetual injunction restraining them from alienating and transferring the suit property. Temporary injunction was granted restraining them from alienating, partitioning, dividing, encumbering the suit property vide order dtd. 09.12.2011 passed below Exh.5. However, despite said order, those persons created third party interest and also raised construction over the Waqf property of the Waqf Institution. So, complaint was made to the Police Authority but no cognizance was taken. Order of police aid was passed in the said suit bearing Waqf Suit No. 103/2011 which was challenged by father of applicant Nos. 1, 2 and other persons before the Hon'ble High Court in C.R.A. No. 160/2012. In said C.R.A., undertaking was given by concerned applicant and in pursuance of the same, aforesaid C.R.A. was disposed of. In the said suit, applicants have admitted that, original mutawalli and Inamdar namely Bhikan Shah was the grandfather of these respondents which falsify

the claim of applicants that they are the legal heirs of original mutawalli and Inamdar namely Bhikan Shah. It is further contended that, the impugned order passed is already executed, so now present application is not maintainable. Accordingly, it is prayed that, application be rejected.

7) Respondent No.5 the C.E.O. of the Board filed their say vide Exh.12 and contested the claim of the applicants. It is not disputed that, properties in question belong to the Waqf Institution namely Dargah Shah Dawal. It is also not disputed that, it is notified in the Government Gazette. After considering the report of District Waqf Officer, this respondent has held that, all applicants are encroachers and the impugned order was passed after considering the interest of Waqf and after perusing the report. It is passed within four corners of provisions of the Act which need not required to be interfered. Accordingly, it is prayed that, application be rejected.

8) Perused record and proceeding in present matter, record and proceeding regarding the impugned order i.e. File No.

MSBW/Inquiry/54/367/2011 called from the Board and written notes of argument filed by the applicants.

9) Heard respective counsel for applicants and respondent Nos. 1 to 3. None appeared on behalf of respondent No.5 at the time of hearing.

10) Following points arise for our determination and we have recorded our findings to the same with reasons to follow as under ;

Sr. No.	POINTS	FINDINGS
1.	Whether impugned order is legal, correct and proper?	In the Affirmative.
2.	Whether the impugned order calls for interference?	In the Negative.
3.	What order?	As per final order

REASONS

AS TO POINT NOS.1 TO 3 :

11) Learned advocate for applicants vehemently argued that, applicants are hereditary mutawalli and managing the affairs of the Waqf Institution namely Dargah Shah Dawal, situated

at Dhangaon, Tq. Paithan, Dist. Aurangabad and being in the capacity of mutawalli they are in possession of properties belonging to the Waqf Institution. So, they cannot be termed as encroachers. He submitted that, respondent No.5 has ignored say and written statement of these applicants. He submitted that, applicants have placed on record relating to the impugned order waqf fund receipts to show that, they are managing the affairs of the Waqf Institution. Learned advocate for applicants submitted that, respondent Nos. 1 to 3 have got no concern with the original mutawalli of the Waqf Institution namely Bhikan Shah. Applicants are the descendants of original mutawalli Bhikan Shah, so they are hereditary mutawallis and they cannot be deprived from the possession over the Waqf property. Accordingly, he requested to set aside the impugned order.

12) On the other hand, learned advocate Mr. N. A. Khan for respondent Nos. 1 to 3 vehemently argued that, applicants are not the descendants of original mutawalli Bhikan Shah and respondent Nos. 1 to 3 are the descendants of original

mutawalli namely Bhikan Shah and submitted that, the impugned order passed is legal, correct and proper.

13) At the outset, we would like to mention that, these applicants have filed their say before the Board in proceeding relating to the impugned order wherein they admitted that, Gafoor Shah is also son and Bismillah Bi and Hafiza Bi are daughters of original mutawalli Bhikan Shah. Therefore, their contention in present application that, respondent Nos. 1 to 3 have no concern with said Waqf Institution has no force. Mere so, Usman Shah s/o Syed Bashir who was one of the respondents in said proceeding in his say admitted that, applicant No.1 along with him managing affairs of the Waqf Institution. This fact also demonstrates that, contention of applicants as pointed above has no merits. In this background, now we consider present application.

14) It is to be noted that, present proceeding was conducted under Section 54 of the Act prior to Amendment Act of 2013. At the relevant time, the C.E.O. of the Board was empowered to conduct inquiry under Section 54 of the Act. At the relevant time, Maharashtra Waqf Rules, 2003 were in force.

Inquiry under Section 54 of the Act at the relevant time was to be initiated by issuing notice under Rule 23 and thereafter, inquiry was required to be conducted as per sub-rules 2 and 3 of Rule 9 of said Rules. From the record and proceeding in File No. MSBW/Inquiry/54/367/2011 received from the Board, it is apparent that, notices were issued to the applicants as per Rule 23 and they have filed their say in said proceeding. It is for them to lead oral evidence in the said proceeding. It does not transpire from the said proceeding that, they adduced oral evidence in the said proceeding. They have only filed photocopies of certain documents including two waqf fund receipts which demonstrate that, waqf fund was paid in relation to the Waqf Institution through one Syed Usman Bashir Shah. It is clear that, applicants have not paid the waqf fund. They have only filed photocopies of certain 7/12 extracts relating to the properties of the Waqf Institution. They have not placed on record certified copies of 7/12 extracts. They have not placed admissible evidence on record in said file in support of their claim. Main defence of the applicants is that, they being hereditary mutawalli and

descendants of original mutawalli Bhikan Shah, they cannot be treated as encroachers. They also claimed that, they are managing the affairs of the Waqf Institution and being hereditary mutawalli, they are in possession of land Gut No. 156/1 and 156/2 situated at Dhangaon, Tq. Paithan belonging to the Waqf Institution.

15) It is not disputed that, properties in question belongs to the Waqf Institution namely Dargah Shah Dawal situated at Dhangaon, Tq. Paithan, Dist. Aurangabad. It is also not in dispute that, original mutawalli of the Waqf Institution is Bhikan Shah s/o Hussain Shah and that his name is also notified as mutawalli of the Waqf Institution in the Government Gazette but the applicants have not placed on record any document to show that, succession was granted either in favour of father of applicant No.1 or applicant No.2 as per provisions of Hyderabad Atiyat Inquiries Act, 1952. They have also not placed on record any document to show that, succession is granted in their favour under the provisions of the Act. They admitted that, they have not applied for getting succession in their names. The reason assigned for not

applying to get succession in their favour is not plausible. They have not placed on record any document to show that, either their father or they themselves were appointed as mutawalli by the Board at any time. We would like to mention that, when applicants have come with the defence that, they being hereditary mutawalli, they cannot be termed as encroachers over the said properties, then it is necessary to refer different provisions of the Waqf Act, 1995 which cast certain obligations upon the mutawalli. Section 50 of the Waqf Act, 1995 provides about the duties of mutawalli. Relevant clauses of said provision are as under :

50. Duties of mutawalli -

It shall be the duty of every mutawalli—

(a)

(b) *to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;*

(c)

(d) to discharge all public dues; and

*(e) to do any other act which he is lawfully required to do
by or under this Act.*

Section 46 of the Act provides for submission of accounts of waqf. Sub-section 1 of Section 46 speaks that, “*Every mutawalli shall keep regular accounts.*” Sub-section 2 of Section 46 speaks about “*True statement of account hold by every mutawalli every year.*” Rule 12 of Maharashtra Waqf Rules, 2003 (which was then applicable) speaks about statement of accounts by waqf. Its sub-rule (1) provides that,

“Every mutawalli or managing committee of a Waqf shall maintain the following Books and Registers for maintenance of its accounts which include Cash Book, Receipt Book, Register of Demand, Collection and Balance and Waqf Contribution, etc.”

Sub-rule (2) of Rule 12 provides that,

“The full statement of accounts shall be furnished by every mutawalli or managing committee of Waqf in Form-N.”

It shows payment of Waqf fund to the Board by concerned waqf institution. Those provisions certainly demonstrate

incidences relating to the management of the Waqf Institution. In present matter, applicants who claimed to be managing the affairs of the Waqf Institution have not placed on record account statement of the Waqf Institution of different years. Only two waqf fund receipts which claimed to be deposited by Syed Usman Bashir Shah are filed before the Board. Those receipts are not in the name of applicants. They have not placed on record any document to show that, they have paid any public dues if any in relation to the Waqf Institution. Thus, they have not brought evidence even on touch stone of preponderance of probability in support of their defence before the Board in proceeding under Section 54 of the Act.

16) No doubt, as per Section 83 (2) of the Act, mutawalli of the Waqf Institution being aggrieved by any order passed under the Act can challenge it before this Tribunal and applicants claiming themselves as hereditary mutawalli challenged the impugned order under Section 83 (2) of the Act by filing present application but as pointed earlier, they failed to adduce cogent and sufficient evidence before respondent No.5 the Board in proceeding under Section 54 of the Act to

substantiate their defence. That being so, they could have instituted suit before this Tribunal in view of sub-section 4 of Section 54 of the Act to establish their interest in the properties in question and their alleged right as mutawalli of the Waqf Institution. But they choose to file application wherein also they have not brought sufficient material to establish incidences of their management over the Waqf Institution. In such circumstances, we are of the view that, finding recorded by respondent No.5 the C.E.O. of the Board against the applicants in relation to properties in question, cannot be said to be improper and incorrect. In light of above discussion, we hold that, the impugned order is legal, correct and proper. Hence, we answer point No.1 in affirmative.

17) In view of our finding to point No.1 in affirmative, the impugned order does not call for interference. Hence, we answer point No.2 in negative.

18) In light of discussion made above, the application deserves to be rejected. Hence, we pass the following order.

ORDER

- 1) Waqf Application No. 19/2014 stands rejected.
- 2) Record and proceedings in File No./Case No. MSBW/
Inquiry/54/367/2011 be sent back to respondent No.5.
- 3) Accordingly, application stands disposed of.

Date: 24.11.2023

Place: Aurangabad.

(M. T. Asim)

District Judge/Chairman
Maharashtra State Waqf Tribunal
Aurangabad.

(Member)

Vacant

(Mohd. Mohiuddin Moied)

Having knowledge of Muslim law
& Jurisprudence/Member,
M.S.W.T. Aurangabad.