



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 30th OF JUNE, 2025

CIVIL REVISION No. 629 of 2017

HARIMOHAN JHA AND ANOTHER

Versus

MADHYA PRADESH WAKF BOARD AND OTHERS

Appearance:

Shri Prashant Sharma, Advocate for applicants.

Shri F.A.Shah, Advocate for respondent No.1.

Shri Dilip Awasthy, Government Advocate for respondent Nos. 2 to 4/State.

Shri H.K.Shukla and Shri Rajeev Shrivastava, Advocates for LR of respondent No. 5 and respondent No. 6.

ORDER

This Civil Revision, under section 83 of the M.P. Waqf Act has been filed against the order dated 22/8/2017 passed by M.P.State Waqf Tribunal, Bhopal in Case No.58/2014, by which application filed by applicants for declaration of title, declaration of Survey No.190 as waqf property which was entered at S.No.53 of the Register pertaining to Waqf properties as null and void and also for permanent injunction.

2. It is submitted by counsel for the parties, that this Court by a separate order passed today in the case of **Smt. Abharani Vaidh and another Vs. Madhya Pradesh Wakf Board and Others (C.R. No.627 of 2017)** has



decided the identical question of law and this appeal is also covered by the order passed in the case of **Abharani Vaidh (Supra)**.

3. Considered the submissions made by Counsel for the parties.
4. This Court in the case of **Abharani Vaidh (Supra)** has passed the following order :

“This Civil Revision, under section 83 of the M.P. Waqf Act has been filed against the order dated 22/8/2017 passed by M.P.State Waqf Tribunal, Bhopal in Case No.61/2014, by which application filed by applicants for declaration of title, declaration of Survey No.190 as waqf property which was entered at S.No.53 of the Register pertaining to Waqf properties as null and void and also for permanent injunction.

2. It is the case of applicants that applicants are the owners and in possession of 1500 square feet of plot forming part of Survey No.190 situated in Tahsil and district Gwalior. The aforesaid land was purchased by applicants by registered sale deed dated 29/8/2002 from Narayan Singh, Braj Singh, Smt. Nirmala Jain and Dilip Kumar Mehta. After purchasing the plot in question, names of applicants were mutated in the revenue records and they were recorded as Bhumiswami in Col. No.3. The land was also got diverted and NOC was obtained from the Nazul Officer. Respondent Nos. 5 and 6 raised an objection and, accordingly, applicants obtained information from the Office of Waqf Board under the RTI Act and by letter dated 26/7/2011, applicants were informed that Survey No.190 is not a Waqf property. Thereafter, Waqf Board sent a letter dated 4/11/2011 to Manoj Tripathi thereby informing that previous letter dated 26/7/2011 is hereby cancelled. Thus, it was claimed by applicants that Waqf Board has illegally declared Survey No.190 as Waqf property. In the year 2013, applicants filed an application before Collector, Gwalior which was decided by order dated 10/10/2013 and it was held that Survey No.190 is a private land and the order by which Survey No.190 was declared as Waqf property was held to be illegal. It was also mentioned that now applicants have come to know that defendant Nos. 5 and 6 have approached the Waqf Tribunal for declaration of title on the ground that property in question is Waqf property which was being used as a graveyard and defendant Nos 5 and 6 have also claimed that the sale deed executed in favour of applicants be declared as null and void and, accordingly, application was filed for declaration of title and for declaration of registration of property in dispute as waqf property



(Registration No.53) as null and void, as well as, for permanent injunction.

3. Defendant No.1 filed written statement and claimed that the case is barred by limitation. Survey No.190 admeasuring 1 Bigha and 16 Biswa of land is recorded as Waqf land. Applicants are not the owners of property in dispute. The vendors who had sold the property to applicants have not been impleaded as a party. Initially the information dated 26/7/2011, which was furnished under the RTI, was wrongly given by the CEO at his own level and it was subsequently cancelled and, accordingly, it was prayed by respondent No.1 that frivolous litigation has been instituted by applicants to grab the property.

4. Defendant Nos. 5 and 6 also filed their written statement and denied the pleadings raised by the applicants. It was claimed that disputed property is a Waqf property which was duly declared as Waqf property after an elaborate enquiry. The applicants are not the owners of property in dispute and, accordingly, it was claimed that application filed by applicants be dismissed.

5. The M.P. State Waqf Tribunal, after framing issues and recording evidence of parties, held that the property in dispute is a Waqf property as it was declared by Waqf Board by its order dated 10/4/2012. It was held that applicants had purchased the land in dispute from Narayan Singh and others, who had purchased the property from Gulab Ahmad S/o Gulab Mohammad in the year 1991. Gulab Mohammad was a Maurusi Krishak for 1 year and, therefore, father of vendor had no right or title. Thus, no right had accrued in favour of Gulab Ahmad to alienate the property to Narayan Singh and others. Since Narayan Singh and others could not get any title, therefore, applicants also did not get any title by virtue of sale deed executed by Narayan Singh and others in their favour.

6. Challenging the order passed by M.P. State Waqf Tribunal, Bhopal, it is submitted by counsel for applicants that Waqf Tribunal would acquire jurisdiction to decide the case only if the property is properly declared as a Waqf property. By referring to order dated 10/4/2012 passed by Chief Executive Officer, M.P. Waqf Board, Bhopal, it is submitted that the orders on which CEO, M.P. Waqf Board, had relied upon to declare Khasra No.190 as a Waqf property, were either not in existence or no finding with regard to nature of property was given. Thus, the CEO, M.P. Waqf Board, committed material illegality by declaring Khasra No.190 as a Waqf property and,



thus, it was submitted that the order dated 10/4/2012 was bad in law.

7. Per contra it is submitted by counsel for respondents that the Tribunal after conducting full-fledged trial has come to a conclusion that Khasra No.190 is a waqf property which was duly declared by CEO, Waqf Board by order dated 10/4/2012. It is further submitted that Gulam Mohammad was a Maurusi Krishak only for one year and, therefore, his son namely Gulab Ahmad could not have executed a sale deed in favour of Narayan Singh and others. It is submitted that since Narayan Singh and others did not acquire any title in the property in dispute, therefore, they could not have transferred a title better than what they were having and, therefore, it is submitted that applicants are not the owners of the plot which is alleged to have been purchased by them.

8. Heard, learned counsel for the parties.

9. The moot question for consideration is as to whether Khasra No.190 area 1 Bigha and 16 Biswa was rightly declared as Waqf property or not ?

10. Order dated 10/4/2012 (Annexure K), reads as under:-

“एफ 76/रजि0 ग्वालियर भोपाल दिनांक 10-4-2012
//आदेश//

वक्फ दरगाह ख्वाजा खानून व मस्जिद व कब्रस्तान रमटापुरा ग्वालियर के अन्तर्गत खसरा क.190 रकबा 1 बीघा 16 बिस्वा को तृतीय व्यवहार न्यायाधीश वर्ग-1 ग्वालियर के आदेश दिनांक 7.8.92 अपर जिला कलेक्टर के अर्द्ध शासकीय पत्र क. नुजूल / ए.डी.एम./12633 निंक 9.11.2010 तथा माननीय उच्च न्यायालय ग्वालियर खण्डपीठ प्रकरण क. 6207/2010 डब्ल्यू.पी. के आदेश एवं खसरा वर्ष 1997 से उक्त भूमि कब्रस्तान रमटापुरा दरगाह ख्वाजा खानून के अंशभाग होने की पुष्टि होती है ।

माननीय अध्यक्ष महोदय के आदेशानुसार खसरा क.190 रकबा 1 बीघा 16 बिस्वा. को धारा 41 वक्फ अधिनियम 1995 के अन्तर्गत पंजीयन रजिस्टर ग्वालियर के अनुक्रमांक 53 कब्रस्तान रमटापुरा दरगाह ख्वाजा खानून ग्वालियर में दर्ज किया जाता है ।

सही/-

(एस.यू.सैयद)

रा.प्रा.से.

मुख्य कार्यपालन अधिकारी

म.प्र. वक्फ बोर्ड भोपाल”



11. From a plain reading of the aforesaid order, it is clear that Khasra No.190, area 1 Bigha, 16 Biswa of land was declared as Waqf property on the basis of following three orders -

(i) order dated 7/8/1992 passed by III Civil Judge, Class I, Gwalior;

(ii) semi-official letter No. Nazool/ADM/12633 dated 9/11/2010 and

(iii) order passed by High Court in W.P. No.6207/2010.

12. Applicants have filed copy of order dated 7/8/1992 passed by III Civil Judge Class I, Gwalior passed in RCSA No.90/1992 by which the application filed by Siraj Khan (plaintiff) under Order 39 Rules 1 and 2, CPC was allowed and defendant Nos. 4-6 were temporarily enjoined from carrying out any construction and digging work and parties were directed to maintain status quo. It was fairly conceded by counsel for respondents that the aforesaid civil suit was dismissed for want of prosecution by order dated 26/11/1998. Thus, it is clear that once the civil suit had resulted in dismissal then the temporary injunction order would also merge in the dismissal order and thus it is clear that after 26/11/1998, the order dated 7/8/1992 passed by III Civil Judge Class I Gwalior thereby issuing temporary injunction order against defendants there in had lost its effect. The CEO, MP Waqf Board, did not try to find out as to whether the order dated 7/8/1992 was in existence or not and, thus, it is clear that he relied upon a non existing order dated 7/8/1992 for declaring Khasra No. 190 as a Waqf property.

13. The CEO, Waqf Board had also relied upon letter dated 9/11/2010 issued by Additional Collector, Gwalior. Said letter has been filed as Annexure "A". In this letter, it was mentioned by Additional Collector that trial Court by order dated 7/8/1992 had held that Survey No.190 is a graveyard and defendants were restrained from carrying out any construction or digging work. It was further mentioned that order dated 7/8/1992 was challenged by filing a miscellaneous appeal which was dismissed by order dated 10/10/1996 passed in Miscellaneous Civil Appeal No.29/20004. However, the CEO did not consider the fact that the Civil Suit itself was already dismissed and, therefore, order dated 7/8/1992 passed by the trial Court, as well as, the order dated 10/10/1996 passed by appellate Court had merged in final order of dismissal of suit. This letter is addressed to Additional Superintendent of Police (City), Gwalior for maintaining law and order. Any internal communication made by one



administrative officer to another law enforcing agency, cannot be said to be a conclusive proof in support of the fact as to whether land in question is Waqf property or not. The Additional Collector had also relied upon order dated 29/10/2005 passed by IX Additional District Judge, Gwalior In RCSA No.20/2005, as well as, order dated 29/10/2005 passed by this Court in F.A. No.589/2005. Although, none of the parties have placed the aforesaid order on record but since F.A. No.589/2005 is pending before this Court, therefore, record of F.A. No.589/2005 was perused. From the aforesaid appeal, it appears that Jameel Khan, Usman Ali, Shahid Abbasi and Rasool Gulam filed a civil suit for declaration that Survey Nos.191 and 192 be declared as graveyard which is being used by Muslims and judgment and decree dated 12/5/1997 passed in RCSA No.50/96 is bad in law and is not binding upon the plaintiffs. The trial Court, by judgment and decree dated 29/10/2005, decreed the suit and it was held that Survey Nos. 191 and 192 area 8 Biswa and 1 Bigha respectively are graveyard and is being used by Muslim community and the judgment and decree dated 12/5/1997 passed in RCSA No.50/96 is not binding on the plaintiffs. Against the said judgment and decree, F.A. No.589/2005 is pending before this court and by interim order dated 13/1/2006, parties were directed to maintain status quo. Thus, it is clear that the judgment and decree dated 29/10/2005 passed by XI Additional District Judge, Fast Track Court, Gwalior in RCSA No.20/2005 is still sub judice and has not attained finality. Furthermore, it is clear from the judgment passed by trial Court in RCSA No.20/2005 that the said civil suit was in respect of Survey No.191 and 192, whereas in the present case Khasra No.190 area 1 Bigha and 16 Biswa has been declared to be Waqf property. Thus, it is clear that judgment dated 29/10/2005 passed by the trial Court in RCSA No.20/2005 is in respect of another land which is not the subject matter of present revision and secondly, the judgment and decree dated 29/10/2005 is still sub judice as the appeal arising out of the said judgment and decree is still pending. Furthermore, it is clear from the heading of letter dated 9/11/2010 written by Additional District Magistrate, Gwalior that the said letter was in respect of Survey Nos. 191 and 192. The subject of said letter reads thus :- “विषय :- माननीय उच्च न्यायालय की यथास्थिति आदेश के बावजूद सर्वे क्रमांक 191,192 स्थित रमटापुरा के कबरे तोड़े जाने बावत्”.

14. Thus, it is clear that Chief Executive Officer, M.P. Waqf Board, in his order dated 10/4/2012 has wrongly relied upon letter dated



9/11/2010 issued by Additional Collector. Furthermore, by this letter, rights of parties were never adjudicated and it was merely a communication to Additional Superintendent of Police that interim order of High Court dated 13/1/2006 passed in F.A. No.589/2005 by which parties were directed to maintain status quo has to be respected. Thus, the letter dated 9/11/2010 should not have been relied upon by the CEO, MP Waqf Board for declaring Survey No.190 area 1 Bigha 16 Biswa as waqf property.

The CEO, MP Waqf Board also relied upon order dated 26/2/2013 passed by Division Bench of this Court in W.P. No.6207/2010. The said order reads as under:-

“26/02/2013

Shri H.K. Shukla, Advocate, for the petitioners.

Shri Raghvendra Dixit, Government Advocate, for the respondent/State.

Shri N.S. Kirar, Advocate, for respondents No.8 to 13.

By preferring this petition under Article 226 of the Constitution of India, the petitioners with issuance of writ of certiorari or any other suitable writ seek directions against the respondents to safeguard their interest and remove the encroachment made over Survey No.190 at Ramtapura, Near Khwaja Kanoon Dargah, Lashkar, Gwalior.

It is the say of the petitioners that the encroachments are made over Survey No.190 and to protect the rights of the petitioners representation was submitted but no action has been taken and the efforts are being made to damage the property belonging to WAKF-Board.

Considering the grievance and on going through the reliefs made in the petition it would be apt to direct the Collector Gwalior/respondent No.2 to conduct an enquiry and after examining the revenue records, Khasra Entries pertaining to Survey No.190 and hearing the parties affected pass an appropriate order in accordance with law. Till the decision is taken by the Collector, Gwalior the order dated 14.10.2010 shall remain in force.

Accordingly, petition stands disposed of.”

Thus, it is clear that Division Bench of this Court never adjudicated the rights of the parties and had directed the Collector, Gwalior to conduct an enquiry and after examining the record, Khasra



entries pertaining to Survey No.190, as well as, after hearing the parties, pass appropriate order in accordance with law. Therefore, reliance on this order by CEO, MP Waqf Board, Bhopal for declaring Survey No.190 as Waqf property is misconceived.

15. From the aforesaid considerations, it is clear that Khasra No.190 was wrongly declared as Waqf property by CEO, MP State Waqf Board, Bhopal. Unfortunately, it is clear that MP State Waqf Tribunal, Bhopal has conveniently ignored all these aspects and has not considered the correctness of order dated 10/4/2012 although it was challenged by the applicants.

16. Thus, it is held that order dated 10/4/2012 passed by CEO, MP State Waqf Board, Bhopal by which Khasra No.,190 was declared as a Waqf property and was registered at S.No.53 in the registration register is bad in law and is, hereby, **quashed**. Furthermore, Collector, Gwalior after conducting a detailed enquiry has also held that Survey No.190 is a private land.

17. Now, the only question for consideration is as to whether M.P. State Waqf Tribunal, Bhopal had any jurisdiction to try the controversy involved in the present case or not ?

18. So far as the application filed by applicants before the Tribunal for declaring the order dated 10/4/2012 by which Khasra No.190 was declared as Waqf property is concerned, it is suffice to mention here that once the property was declared as Waqf property, then the Civil Court had no jurisdiction to entertain the civil suit for declaring the order dated 10/4/2012 as null and void and the jurisdiction was with the M.P. State Waqf Tribunal, Bhopal. Since validity of order dated 10/4/2012 was also under challenge, therefore, M.P. State Waqf Tribunal, Bhopal should have adjudicated as to whether Khasra No.190 is a Waqf property or not. However, unfortunately that was not done and the Waqf Tribunal had blindly relied upon the order dated 10/4/2012 passed by CEO, MP Waqf Board.

19. Be that whatever it may be.

20. Once this Court has quashed the order dated 10/4/2012 passed by CEO, MP Waqf Board, Bhopal and has held that Khasra No.190 is a private land, then MP Waqf Tribunal, Bhopal would lose all the jurisdiction to decide the rights of parties, which would lie with the Civil Court only. Thus, whether Gulam Mohammad was Maurusi Krishak for one year and whether sale of property by Gulab Ahmad S/o Gulam Mohammad to Narayan and others and further sale by Narayan and others to applicants are valid sale transactions or not, cannot be



adjudicated by the Tribunal because the property in dispute is not a Waqf property. It is well established principle of law that findings recorded by a Court/Tribunal having no jurisdiction are a nullity. Therefore, the findings recorded by MP Waqf Tribunal, with regard to nature of sale transactions done by Gulab Ahmad S/o Gulam Mohammad in favour of Narayan and others and further sale transaction done by Narayan and others in favour of applicants, are held to be nullity and, accordingly, they are hereby **set aside**.

21. For the reasons mentioned above, the order dated 22/8/2017 passed by MP State Waqf Tribunal, Bhopal in Case No.61/2014 is hereby set aside and it is held that Survey No.190 is a private land and the applicants are owners of the plot which they have purchased.

22. With aforesaid observations, the civil revision is allowed.”

5. Therefore, the order 22/8/2017 passed by M.P.State Waqf Tribunal, Bhopal in Case No.58/2014 is hereby set aside and it is held that Survey No.190 is a private land and the applicants are owners of the plot which they have purchased. The civil revision is hereby **allowed**, in the terms and conditions of order passed in the case of **Smt.Abharani Vaidh (Supra)**.

(G.S. Ahluwalia)
Judge

(and)