

2022 LiveLaw (Del) 148

IN THE HIGH COURT OF DELHI AT NEW DELHI

CORAM: JUSTICE PRATHIBA M. SINGH

22nd February, 2022

C.R.P. 224/2019 & CM APPLs. 7945-48/2022; REVIEW PET. 35/2022

AFROZNISHA versus DELHI WAKF BOARD & ORS.

Petitioner through: Mr. J.S. Bakshi, Sr. Advocate with Mr. Rakesh Kumar Agarwal, Advocates.

Respondents through: Mr. Wajeeh Shafiq, Standing Counsel for R-1 with Ms. Ramsha Shan & Ms. Sabika Ahmad, Advocates.

1. This hearing has been done through hybrid mode.

2. The present review application has been filed by Mohd. Rizwan (*hereinafter "Review Applicant"*), son of Late Mohd. Razi, describing his residence at property no.1068, Ward No.1, measuring approximately 425 sq. yds. in Khasra No. 1665 (New Khasra No. 1151/3), situated in the revenue estate of Village Mehrauli, Tehsil Hauz Khas (Mehrauli), New Delhi-110030 (*hereinafter "subject property"*), seeking review of the order dated 15th December, 2021, passed by this Court in **CRP 223/2019, 224/2019** and **225/2019**.

3. In **CRP 223/2019, 224/2019** and **225/2019**, the Petitioners/Plaintiffs/Mehvish Adil, Mohd. Adil and Afroznisha (*hereinafter collectively "Petitioners"*) had challenged the orders dated 4th October, 2019 passed by the Waqf Tribunal/NDD/PHC (*hereinafter "Waqf Tribunal"*) in **ML No.27/2018** titled **Mehvish Adil v. Delhi Wakf Board & Ors.**, in **ML No.29/2018** titled **Mohd Adil v. Delhi Wakf Board & Ors.** and in **ML No.28/2018** titled **Afroznisha v. Delhi Wakf Board & Ors.** Vide the said orders, the applications of Petitioners under Order XXXIX Rules 1&2 CPC were dismissed. Effectively, the prayer seeking injunction against the Delhi Wakf Board/Respondent No.1 (*hereinafter "Wakf Board"*) from dispossessing the Petitioners, from property being 1068, Ward No.1, Khasra no. 1151/3, Mehrauli, Delhi ad measuring 425 sq. yards (*hereinafter "suit property"*), was rejected. In the revision petitions, vide this Court's order dated 15th December, 2021, the revision petitions of the Petitioners therein, i.e., Ms. Afroznisha, Ms. Mehvish Adil and Md. Adil, were dismissed. The suit property was also shown to have been entered into the list of *Auqaf* published by the Delhi Administration in the Gazette dated 30th December, 1976 (*hereinafter "Waqf Notification"*). The operative portion of the said order dated 15th December, 2021, read as under:

"35. Thus, it is the settled legal position that (due process need not mean only an active process initiated by the owner of the property. It can even mean rejection of relief in a proceeding initiated by the occupants/encroachers or persons in possession.

36. Moreover, in the present petitions, the Petitioners have admitted the ownership of the Waqf Board over the suit property by entering into rent agreements.

37. The recitals in the rent agreements dated 16th October, 2008 and 5th November, 2008 leave no scope for any ambiguity. These rent deeds and material facts have been deliberately and intentionally concealed from the Waqf Tribunal when the complaints were filed. The rent deeds are very

clear that the tenancy was only for a period of 11 months. The Petitioners are encroachers/trespassers and in any case, unauthorized occupants of public land belonging to the Waqf and the said issue has been considered in detail by the Waqf Tribunal. The submission made on behalf of the Petitioners to the effect that 'due process' has not been followed is thus, liable to be rejected.

38. In any event, the Petitioners having entered into rent agreements are estopped from challenging the title of the Waqf Board as stipulated under Section 116 of the Evidence Act. Under such circumstances, this Court has no hesitation in holding that the dismissal of the applications for injunction vide orders of the Waqf Tribunal dated 4th October, 2019, is in accordance with law.

39. Accordingly, the applications for injunction having been rejected, the Waqf Board is free to take proceedings in accordance with law to take possession of the suit property.

40. Further, in view of the conduct of the Petitioners of concealing relevant facts before the Tribunal and initially before this Court, each of the Petitioners shall deposit a sum of Rs.50,000/- as costs with the Waqf Board within a period of six weeks from today.”

4. In the present review application, the case of the Review Applicant is that the order dated 15th December, 2021, deserves to be reviewed as the same has been passed without hearing the Review Applicant and that he would be directly affected by the order passed by this Court on 15th December, 2021. The further case in the review application is that he is a permanent resident of the subject property mentioned above and he relies upon his Aadhaar Card number showing the said address. In order to establish ownership, he relies on the sale deed dated 25th February, 2005, executed by Mrs. Afroz Nisha in favour of the Review Applicant and registered with Sub-Registrar V, Mehrouli, New Delhi. He submits that Mrs. Afroz Nisha obtained her own ownership over the subject property, through documents being Agreement to Sell, Will, General Power of Attorney and Affidavit, executed by one Mr. Babu Khan Son of Noor Ali Khan, Resident of Village New Mehrauli, New Delhi. According to the Review Applicant, even prior to the purchase of the subject property by Mrs. Afroz Nisha, the subject property had been declared as a *lal dora* property, vide certificate issued in 15th September, 1980, and thus the Review Applicant is not liable to be evicted from the subject property. The further case of the Review Applicant is also that the land of the Wakf Board is only Khasra No.667 and not Khasra No.1151/3. Mr. Bakshi, Id. Senior Counsel, relies upon Waqf Notification to argue that the Wakf Board cannot claim any right in respect of this subject property, as the notification only shows Khasra No.667 to be Waqf property. He submits that even the notice to vacate issued by the SDM, Mehrauli, dated 24th August, 2018, mentions Khasra No.667, Opposite Gandhak ki Baoli, Mehrauli, New Delhi, when it addresses the occupant, Md. Adil. He thus submits that the order which was passed by this Court on 15th December, 2021, deserves to be reviewed. He relies upon the following four judgments in support of the review application:

- **Sambhunath Mitra & Ors. v. Khaitan Consultant Ltd. & Ors, AIR 2005 Cal 281;**
- **Tamil Nadu Wakf Board v. Hathija Ammal (Dead) by Lrs. Etc. Etc., (2002) AIR (SC) 402;**
- **Chand Bhatia v. Raj Kumar Baweja & Anr. [RFA 138/2007, decided on 10th May, 2018]; and**
- **A.V. Papayya Sastry & Ors. v. Government of A.P. & Ors., (2007) 4 SCC 211.**

5. Lastly, Mr. Bakshi, Id. Senior Counsel, has also relied upon judgment dated 17th December, 2016, in **CS No. 83047/16** titled **Fakre Alam v. Smt. Ganga Devi & Ors.** passed by the Id. Civil Judge, Saket Courts Complex, New Delhi. He submits that the said judgment relates to this very Khasra No.1151/3 as of the subject property, where an injunction has been granted, in favour of the occupant of a contiguous piece of land.

6. On the other hand, Mr. Wajeeh Shafiq, Id. Standing Counsel appearing for the Wakf Board at the outset, submits that the Review Applicant has concealed and suppressed material facts from this Court. He submits that the Review Applicant was a party to the proceedings before the Waqf Tribunal and has wrongly stated in the review application that he was not a party. Mr. Shafiq, Id. counsel, submits that the memo of parties in **ML 28/18**, placed at page 2 of documents filed by the Wakf Board in response to the present review application, shows that the Review Applicant was Plaintiff No.2 in the said proceedings and he is clearly bound by the order dated 4th October, 2019 of the Waqf Tribunal, by which the injunction application of the Petitioners was dismissed. Having not challenged the said order dated 4th October, 2019, it is submitted that the Review Applicant cannot now seek review of the order passed by this Court. It is further submitted by Mr. Shafiq, that the sale deed placed in the present review application, has in fact, been executed by the Review Applicant's own mother, Smt. Afroz Nisha, who has herself been non-suited by this Court by the order dated 15th December, 2021. It is further submitted that subsequent to the said sale deed dated 25th February, 2005, there was a Memorandum of Family Settlement dated 11th October, 2005 (*hereinafter "MFS"*) which was allegedly entered into between the family members of Late Md. Razi, including the Review Applicant and Mrs. Afroz Nisha, wherein it is clearly agreed by Mr. Rizwan - the Review Applicant, that he would not claim any rights in the suit property. Clause 7 of the MFS dated October, 2005 is relied upon for this submission.

7. Therefore, Mr. Shafiq, Id. counsel, submits that suppression and concealment of material facts has been resorted to by the Review Applicant and thus no indulgence deserves to be shown in favour of the Review Applicant.

8. On a query from the Court as to whether pursuant to the order dated 15th December 2021, possession of the suit property has been taken over by the Wakf Board, Mr. Shafiq, Id. counsel, submits that the Wakf Board has written to the concerned Sub-Divisional Magistrate (*hereinafter "SDM"*) and has given a reminder, however, the action is yet to be taken by the concerned SDM.

9. In response to the Review Applicant's contention regarding the injunction granted in **CS No. 83047/16**, it is submitted by Mr. Shafiq, Id. counsel, that most of the properties in Mehrauli bear the Khasra No.1151/3 and various properties in the said Khasra No.1151/3, located in Mehrauli, Delhi, belong to the Wakf Board and are notified as such. He further submits that the dispute in **CS No. 83047/16** was between two private parties and the Wakf Board was only Defendant No.3. He submits that he does not have ready instructions as to whether any challenge has been raised against

the said judgment or not.

10. On a direction of the Court, Mr. Naushad Ahmad Khan, Id. ASC appearing for the GNCTD, has entered appearance. He submits that he wishes to seek instructions in this matter as he is not aware of the status of the proceedings before the SDM.

11. Heard the Id. Counsel and Id. Senior Counsel for the parties. At the outset, this Court turns to the primary submission of the Review Applicant, that he was not a party to any proceedings in respect of the subject property and has not been heard in any proceedings. A perusal of the review application shows that the Review Applicant has cleverly averred in the said application that he was not a party to the proceedings before the Waqf Tribunal. However, on a query to the Id. counsel appearing for the Review Applicant, it is conceded that the Review Applicant was a party before the Waqf Tribunal. A perusal of the plaint which is on record clearly shows that in **ML No.28/2018**, the Plaintiffs were Mrs. Afroz Nisha - the mother and the son - Mohd. Rizwan, who is the Review Applicant. Clearly, the Review Applicant has made a false statement before this Court. Mr. Bakshi, Id. Senior Counsel under instruction from Mr. Agarwal, Id. Counsel, submits that the Review Applicant had instructed the counsel to state that he was not a party to the proceedings and it was only thereafter, that they have now discovered that he was in fact a party before the Waqf Tribunal.

12. The impugned order which was passed on 4th October, 2019, was a detailed order of the Wakf Tribunal dismissing the injunction application filed by the Petitioners, which included Mohd. Rizwan, the Review Applicant. The said order dated 4th October, 2019, was binding on the Review Applicant and he having not challenged the same, cannot now seek review of the order dated 15th December, 2021.

13. Moreover, in so far as the civil revision petitions pursuant to the Waqf Tribunal's order dated 4th October, 2019 are concerned, this Court had, vide its detailed order dated 15th December, 2021, rejected the contentions of the Petitioners in the said suits, after hearing all the parties. Notably, the Petitioners therein, are also the family members of the Review Applicant, namely, Mrs. Afroz Nisha (mother), Mrs. Mehvish Adil (sister-in-law/*bhabhi*), and Mohd. Adil (brother). It is not disputed that the Review Applicant, as well as the Petitioners, all live together. Therefore, on both counts i.e., *first*, on the count of not having challenged the impugned order passed by the Waqf Tribunal dated 4th October, 2019; and *second*, the fact that the Review Applicant has chosen not to challenge the said order and was thus bound by the order dated 15th December, 2021, passed in **CRPs 223, 224 and 225 of 2019**, which has non-suited the occupants residing in the suit property, the review application is not maintainable.

14. Insofar as the contention of the Review Applicant that the subject property and suit property are located at different khasra nos. and the khasra no. of the subject property does not belong to the Wakf Board, this Court finds that the identity of the said property is clear from the MFS itself. In fact, in the said MFS, the property is described variously as property bearing no.1068/1, Khasra No.667, Opp. Gandak ki Bawli, Mehrauli, New Delhi and as property bearing no.1068/1, Khasra No.1151/3, Opp. Gandak ki Bawli, Mehrauli, New Delhi. The said paragraphs are extracted below:

“Whereas Late Mohd. Razi was having the property bearing no. 1068/1, Khasra No. 1151/3 ad measuring about 500 sq. yds. opposite Gandak ki Bawli, Mehrauli, New Delhi and another property ad measuring about 1000 sq. yds. situated at Subzi Mandi, Mehrauli, New Delhi vide Municipal No. 937/7, Sarai Hafiz, Mehrauli, New Delhi.

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4. That the party No.1 to 5 are entitled 1/2 share of the property bearing No.1068/1, Khasra No. 667, Opp. Gandak ki Bawli, Mehrauli, New Delhi i.e. 125 sq. Yards and party No. 6 to 11 are entitled 1/2 of the share of the property bearing No. 1068/1, Khasra No. 667, Opp. Gandak ki Bawli, Mehrauli New Delhi i.e. 125 sq. Yards and the said property is divided equally from the front side between both the parties. It is made clear that 250 Sq. Yards of the said property which is built up and is already divided between the parties equally and 1/2 of the property i.e. 125 Sq. Yds. is in the possession of the parties No. 6 to 11 from the front side and half of the property xxx is in the possession of parties No. 1 to 5 from the back side. It is pointed out that the total area of the property is 500 Sq. Yards.”

The Review applicant is a party to this MFS. This is the same property in respect of which the injunction was sought before the Waqf Tribunal by the Petitioners. The identity of the property being not in question before, no issue can be raised at this stage in respect of the khasra number of the said property.

15. In addition to these submissions of these parties, there is, another issue of serious concern before this Court today, i.e., the misrepresentations and the false statements which have been made by the Review Applicant. The same are as under:

i) In the review application, it is claimed that he was not a party in the proceedings before the Waqf Tribunal whereas it is clear that he was Plaintiff No.2 in **ML 28/18**. In fact, Mr. Shafiq, Id. counsel, also points out that the Review Applicant’s presence before the Waqf Tribunal has been recorded in order of the Waqf Tribunal dated 31st October, 2018, also extracted in this Court’s order dated 15th December, 2021. The relevant extract reads as under:

“As far as Mark B is concerned plaintiff in the present suit as well as plaintiff no. 2 in ML No. 28/18 have submitted that they are not sure whether Mark B bears the signatures and photographs of their mother or not.”

ii) The MFS which was stated to have been on record before the Waqf Tribunal as well and has been placed before this Court by the Waqf Board, has been cleverly concealed and there is no whisper of the same in the review application. In the MFS, Clause 7 clearly states that any earlier executed sale deed or instrument would be null and void. Clause 7 of the MFS dated October, 2005, reads as under:

“7. That it is agreed that none of the parties to this Deed have forged / made / executed any type of ownership document regarding all the properties mentioned above and if any document will be found in future or comes to the knowledge to any of the parties to this Deed, the same shall be treated as null and void and any registered or unregistered document in this very regard shall be deemed as null and void and canceled from the day of execution of this family settlement deed.”

iii) That the Review Applicant is attempting to concoct a case of different Khasra

Numbers, when he is well aware of the identity of the suit property.

16. Therefore, in the opinion of this Court, the Review Applicant is completely guilty of making false statements before this Court and making misrepresentations. On this count also, he does not deserve any indulgence.

17. As for the judgments relied upon by the Id. Senior Counsel for the Review Applicant, this Court finds that they would have no application inasmuch as:

i) In ***Chanda Bhatia v. Rak Kumar Baweja***, the Review Applicant has relied upon the holding that there is a presumption as to validity of registered documents. Though there is no doubt that there is such a presumption, the same judgment also states that the said presumption is a rebuttable presumption. In the present case, the land being Waqf land, there can be no question of any sale deed being registered in respect thereof. Moreover, the brother of the Review Applicant, Md. Adil, had himself made a statement before the Waqf Tribunal that he was a tenant in the same very suit property and thus the entire basis of the review application is devoid of any merit.

ii) Insofar as the judgment in ***Tamil Nadu Wakf Board (supra)*** is concerned, it has been held that when a dispute arises in respect of a property claimed to be waqf property, a determination has to be first made by the Court as to whether the property in question is a waqf property or not. In the present case, the determination of the suit property being Waqf property has been done by the Waqf Tribunal, after which the revision petitions, being ***CRP 223, 224 and 225 of 2019***, have already been dismissed. The same is not to be reopened in the review application.

iii) In ***A.V. Pappayya (supra)***, though, there can be no doubt that when there is fraud of a high degree, the Court has the power to recall its order, in the present case, no fraud has been shown to have been committed in the proceedings before this Court in the revision petitions. In fact, fraud and misrepresentation has been committed by the Review Applicant.

iv) In ***Sambhunath (supra)***, it has been submitted by Id. Senior Counsel, that the tenant can contend that plaintiff who claims to be landlord had not really derived title from the original inductor and therein estoppel against the tenant, would not operate. This decision is also not applicable in the present case, in as much as the issue regarding ownership of the suit property was settled by order of the Waqf Tribunal dated 4th October, 2019 and has not been challenged by the Review Applicant.

v) This Court notices that in the judgment of ***Fakre Alam(supra)***, the litigation was between two private parties and Defendant No.3 was the Wakf Board, as also the fact that the property in question was different from the subject property and there is no information on whether the said judgment has been challenged.

18. Accordingly, in view of the above facts and circumstances, this review application is completely devoid of any merit and is dismissed, with costs of Rs.50,000/- to be deposited by the Review Applicant with the Wakf Board, within four weeks. Despite the misrepresentation by the Review Applicant, this Court has refrained from taking action against the Review Applicant as costs have been imposed on him. If the costs

are not deposited within four weeks, the Wakf Board is free to approach this Court for action to be taken against the Review Applicant, in accordance with law.

19. During the course of proceedings in this matter as also a large number of other similar matters, this Court has seen that repeatedly in respect of public land, the Sub-Registrars are blindly registering the sale deeds without any consideration as to whether the registration can be effected in respect of such properties at all or not. This results in prolonged litigation and properties while being occupied by unauthorised occupants continue to be entangled, leading to delay in the Wakf Board and public bodies, being unable to obtain the possession of the properties concerned. Even in the present case, despite the order dated 15th December, 2021, the SDM, Mehrauli does not appear to have taken any steps to evict the unauthorized occupants of the suit property.

20. Mr. Naushad Ahmed Khan, Id. ASC, shall obtain instructions from the SDM, Mehrauli, as to the steps taken by the concerned SDM, for evicting the unauthorized occupants and shall file a compliance report within a period of four weeks. The SDM, Mehrauli shall also join the proceedings on the next date of hearing.

21. Additionally, from the submissions made before this Court today, it appears that the Wakf Board is facing various constraints in its functioning, which are as under:

- i) There is no fully functioning CEO for the Wakf Board. Though, an officer was appointed as the CEO, he has now been transferred to another area, and the new CEO is yet to be notified;
- ii) The grant-in-aid for the Wakf Board has not been released by the GNCTD, and there is acute shortage of funds.

22. Let a status report be filed in respect of the above two aspects by the next date of hearing by the Id. Counsel for the GNCTD. Mr. Naushad Ahmed Khan, Id. ASC, also submits that the functioning of the Wakf Board is not fully satisfactory. If so, let the same be stated in the status report and placed before the Court for consideration.

23. In these terms, the review applications and all pending applications are dismissed.

24. List for reporting compliance on 27th April, 2022. This matter shall be treated as a part-heard matter for reporting compliance.

25. Copy of this order be also communicated to the Sub-Registrar, Mehrauli, New Delhi for taking action in accordance with law, for cancellation of the sale deed dated 25th February 2005, executed by Mrs. Afroz Nisha in favour of the Review Applicant.

26. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted upon by any authority/entity or litigant.