

2022 LiveLaw (SC) 425

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.**

APRIL 29, 2022

CIVIL APPEAL NO. 2788 & 2789 OF 2022 (ARISING OUT OF SLP (CIVIL) NO. 16196 & 17334 OF 2021)
WAQF BOARD, RAJASTHAN Versus JINDAL SAW LIMITED & ORS.

Waqf Act, 1995; Section 3(r) - Definition of waqf - there ought to be proof of dedication or user or grant to qualify as waqf - in the absence of any proof of dedication or user, a dilapidated wall or a platform cannot be conferred a status of a religious place for the purpose of offering prayers / Namaaz. [Para 17, 18]

Counsel for the parties: Dr. Manish Singhvi, Sr. Adv. Mr. Arpit Parkash, Adv. Mr. Sandeep Kumar Jha, AOR Ms. Nilofar Khan, AOR Mr. Manoj K. Singh, Adv. Mr. Abhishek Singh, Adv. Mr. Yogendra Singh, Adv. Mr. Abdul Qadir Abbasi, AOR

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeals is to an order dated 29.9.2021 passed by the High Court of Judicature for Rajasthan at Jodhpur, whereby the writ petition filed by respondent No. 1¹ was allowed directing the appellant and respondent Nos. 2 to 8 not to interfere with the action of the writ petitioner in removal of the structure forming part of Khasra No. 6731 at Village Pur, Bhilwara, Rajasthan.

2. The writ petitioner was granted lease of an area admeasuring 1556.7817 hectares vide lease deed dated 8.12.2010 for the mining of Gold, Silver, Lead, Zinc, Copper, Iron, Cobalt, Nickle and associated minerals near Village Dhedwas, Tehsil and District Bhilwara, Rajasthan.

3. It was pointed out that the Tehsildar, Bhilwara had submitted a report on 3.12.2010 after conducting an inquiry along with Revenue Record Super Impose Site Plan in respect of Land Numbers, admeasuring 142-15 bigha of village Samodi; Land Numbers admeasuring 33-09 bigha of village Dariba; Land Numbers admeasuring 40-03 bigha of village Pansal; Land Numbers admeasuring 127-02 bigha of village Malola; Land Numbers admeasuring 24114 bigha of village Dhulkheda; Land Numbers admeasuring 74802 bighas of village Pur after obtaining report from the concerned Patwaris. Such report shows that Land Number 897 of village Samodi is a Devsthan i.e. place of worship. It was communicated that if the mining work is carried out without causing harm to Devsthan and not using the harmful explosives, then there is no objection in carrying out mining work in that survey number. In the detailed report, certain survey numbers in different villages such as Samodi, Dariba, Pansal, Malola are mentioned wherein there was a proposal not to grant permission and also certain other survey numbers wherein permission was proposed to be given. In Survey Nos. 543 (6 Bigha 11 Biswa), 498 Min. (8 Bigha 6 Biswa) and 42 (3 Biswa) of Malola Village, there was a proposal not to grant permission in view of barren land near religious place. Similarly, in Dhulkheda Village,

¹ For short, the 'writ petitioner'

the proposal to undertake mining was not granted in Survey Nos. 219 and 220 on account of religious place and in Survey No. 365 for the reason of graveyard. However, in respect of the area in question in Village Pur, the mining was proposed to be carried out in Land Survey No. 235. The permission was proposed to be granted in respect of Survey No. 6731 measuring 158 Bigha 12 Biswa. It was thus proposed that permission is not to be granted in total of 213 Bigha 11 Biswa, for the mining work whereas in 325 Bigha 19 Biswa, permission was to be granted. It is thereafter that the lease was executed on 8.12.2010 by the State in favor of the writ petitioner.

4. The Survey Commissioner, Waqf of the State of Rajasthan, conducted survey of the waqf properties in the year 1963. In the said survey, a structure was found named as 'Tiranga Ki Qalandari Masjid' in the survey report. On the basis of said Survey report, a notification was published on 23.9.1965 in which 'Qalandari Masjid of Tiranga' located at village Pur was notified as wakf. Later, on the basis of the said Gazette Notification, the 'Tiranga Ki Qalandari Masjid' was entered in the waqf register as admeasuring 12x9=108. Another survey was conducted in village Pur, Bhilwara in accordance with the Waqf Act, 1995². The 'Qalandari Masjid Tiranga' was found in existence in Survey Number 931 as per the report dated 15.1.2002. Part III (b) of the said survey report gives dimension of the mosque as 25x25x25x25, bounded on all sides by Hills.

5. It may be stated that Survey No. 931 is not included in the list of survey numbers of which lease was granted. There is no reference to Survey No. 931 as to whether lease is to be granted or not to be granted for the same.

6. It appears that the Anjuman Committee addressed a letter to the Chairman of the appellant-Board on 17.4.2012 to the effect that on Tiranga Hill in Village Pur, there is a wall and Chabutrah (platform) on so-called Qalandari Masjid where in olden times laborers used to offer prayers. The elders had informed that they have not seen anybody praying Namaaz nor there is access to water and stairs to reach the platform. The office of the appellant responded on 18.4.2012 that the area consisting of the platform over the Tiranga Hill should be saved from mining. The said letters, when translated, read thus:-

“17.4.2012

“It is submitted that there is a wall and delapidated platforms/chabutrah at the so-called Qalandari Masjid situated at Tiranga Hills where earlier some laborers used to offer prayers. By enquiring from the elderly people, it came to our knowledge that no one was seen offering prayer/namaz at such place. Further, neither there is any water there, nor there are stairs.

The miners informed that due to mining, the wall and chabutrah, which are already in a dilapidated condition, could fall.

When we talked about this to the miners present there, then they respectfully agreed to reach to a settlement. Hence, kindly oblige us by issuing directions/guidance to settle the issue.”

18.4.2012

“Subject- Relating to taking steps for the chabutara/platform as per the Shariyat.

In reference to your letter dated 17 April 2012.

² For short, the 'Act'

In relation to the abovesaid letter, it is stated that there is a chabutara/dilapidated platform at the Tiranga Hill situated at Village Pur which is sought to be protected from mining activities and there have been talks of arriving at a settlement.

Hence, considering the present circumstances in this context as well as keeping in mind the benefit of Wakf, take the requisite decisions at your end and also inform the Wakf Board about the same. Original is attached herewith.”

7. On 23.4.2012, the Chairman of the appellant-Board communicated to the Collector and to the Superintendent of Police that the communication dated 18.4.2012 is being misinterpreted as the purpose was to safeguard the interest of the waqf but the members of the Anjuman Committee have acted for personal gain and, therefore, action should be taken. In response to the said letter, the District Magistrate communicated that an FIR has been registered and a sum of Rs.65 lakhs has been recovered. It was in this background, respondent No. 1 herein filed a writ petition before the High Court.

8. The High Court constituted an Expert Committee to examine the following two questions:

“(i) As to whether the structure existing within the mining lease area of the Petitioner was a mosque or structure which can be removed for the purpose of carrying out lease hold activities within the said area.

(ii) The Committee shall also ascertain as to whether any illegal mining activity within the mining lease area of the petitioner and if so whether the same was carried out by the petitioner-company or any other entity.”

9. It has come on record that such Committee was chaired by Shri R.K. Sinha, Controller General (Retd.) of India Bureau of Mines along with Shri O.P. Kabra, nominee of the Secretary Mines, Department of Mines and Geology, Rajasthan and Smt. Nandini Bhattacharya Sahu, Regional Director (West), Archaeological Survey of India. Shri O.P. Kabra, nominee of the Secretary Mines was later substituted by Shri A.K. Nandwana, Superintending Mining Engineer, Bhilwara. The Committee submitted its report on 10.1.2021, reporting that the dilapidated structure existing at Khasra No. 6731 is neither a mosque nor any structure with archaeological or historical relevance. Shri A.K. Nandwana, one of the members had partially dissented with the report by a handwritten note stating that steps should be taken to stop the illegal mining.

10. Learned counsel for the appellant argued that such Expert Committee constituted had no representative of the appellant and the appellant was not associated with the report so submitted, therefore, the report cannot be made basis of rejecting the structure on the Hill as not a religious structure. It was contended that whether the structure is a waqf or not has to be decided by the Waqf Tribunal in terms of Section 83 of the Act and not in a writ petition under Article 226 of the Constitution of India.

11. Dr. Manish Singhvi, learned senior advocate for the State supplemented the arguments raised to contend that in terms of the lease dated 8.12.2010, the decision as to whether the place is a public ground over which the mining activity can be carried out has to be determined by the State Government. The State Government has determined that mining lease is not permissible over Survey No. 6731. The relevant conditions read as under:

“No building etc. upon certain places:-

1. No building or thing shall be erected, set up or placed and no surface operations shall be carried on in or upon any public pleasure ground, burning or burial ground or place held sacred by any class of persons or any house or villages site, public road or other place which the State Government may determine as public ground nor in such a manner as to injure or prejudicially effect any buildings works property or rights of other persons and no land will be used for surface operations which is already occupied by persons other than the State Government for works or purposes not included in this lease. The lessee/lessees shall not also interfere with any right of way well or talk.”

12. On the other hand, Mr. Ranjit Kumar and Mr. C.S. Vaidyanathan, learned senior counsels appearing for the writ petitioner contended that as per the detailed report submitted by the Tehsildar, on the basis of which permission to lease was granted, Survey No. 931 over which the said structure is found in the survey report was not part of the lease. Survey No. 6731 measuring 158 Bigha 12 Biswa was the one over which the writ petitioner was granted permission to do the mining work but there is no document or report to show that any part of Survey No. 6731 was ever declared to be a religious structure within the meaning of waqf as defined under the Act. The learned counsel for the parties furnished the photocopies of the original documents on the basis of which reliance was placed by the appellant that the Tiranga Qalandari Masjid in Village Pur is a mosque and, therefore, no mining activity can be undertaken.

13. The first document so produced is undated but the subject shows that it is in respect of Auqaf to be registered in Ajmer and Sunel Regions of the State till 5.1.1959 and in the rest of Rajasthan by 1.4.1955 . A reading of the said report shows that it does not have any survey number, though the value of waqf was assessed at Rs.900/- and the purpose of use was for Namaaz. Thereafter, a notification was published on 23.9.1965 declaring Qalandari Masjid of Tiranga as the waqf property as the nature and object are pious, religious and for offering prayers. The appellant has produced an extract from its register pointing out that 12 x 9 measuring 108 is Tiranga Ki Qalandari Masjid. Another document produced by the appellant is the survey report dated 15.1.2002 to the effect that the Qalandari Masjid on Tiranga Hill is situated in Survey No. 931.

14. With this factual background, Mr. Ranjit Kumar and Mr. C.S. Vaidyanathan have argued that the claim of the appellant is wholly untenable as at no point of time, any revenue record shows any religious structure on the land comprising in Survey No. 6731. In fact, the religious structure is said to be in existence over Survey No. 931. Still further, the record of the appellant shows that the area of the religious structure is 108 feet whereas in the second survey report, the area is shown to be 525 feet. Hence, there is a discrepancy about the area over which the religious structure is in existence.

15. It has also been contended that a perusal of the photographs shows that the structure is totally dilapidated without any roof and in fact a wall and some broken derelict platform exist at the spot. The area is surrounded by vegetation and there is also nothing to suggest that the structure was ever used for offering prayers (Namaaz) as neither the area is accessible, nor there is any facility of Wazoo³, which is stated to be an essential step before offering prayer. The experts from the Archaeological Department have

³ The practice of ritual purification i.e., to wash face, hands, arms and feet before daily prayer.

reported that the structure has no historical or archaeological importance. It is further contended that the Tehsildar, before the possession was delivered, had given an extensive report of each of the structure existing on the land proposed to be given. The lands for graveyard and other religious structures have been excluded from the lease. Therefore, the act of identification carried out years before raising of the dispute done by the revenue officials in the course of their official duties carry presumption of correctness. It shows that the structure had no religious value.

16. We have heard learned counsel for the parties at length and find no merit in the appeals. The Qalandari Masjid on Tiranga Hill as per the document produced by the appellant is located on Survey No. 931. There is no assertion that the Survey No. 931 is changed as Survey No. 6731. In fact, the old number of Survey No. 6731 is 9646 or may be some other number but positively not the survey number 931. Therefore, the claim of the appellant is on a different portion of land and not the land leased to the writ petitioner. There is discrepancy in the total area of the Masjid in the two documents, i.e., the extract produced by the appellant from the register and the second survey report. The letter dated 17.4.2012 by the Anjuman Committee is based upon hearsay and is not of any binding value.

17. Still further, there is no evidence at any given point of time that the structure was being used as a mosque. There is no allegation or proof of either of dedication or user or grant which can be termed as a waqf within the meaning of the Act. Section 3 (r) of the Act reads thus:-

“(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

- (i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
- (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
- (iii) xxx xxx”

18. The report of the experts is relevant only to the extent that the structure has no archaeological or historical importance. In the absence of any proof of dedication or user, a dilapidated wall or a platform cannot be conferred a status of a religious place for the purpose of offering prayers/Namaaz.

19. The stand of the State Government that they have identified it to be a religious structure comprising in Khasra No. 6731 has not been produced on record. There is nothing on record that such decision if any, was arrived at after associating the writ petitioner. It is always open to the State as lessor to exercise the powers conferred in it by the lease deed after complying the principles of natural justice and on good and sufficient grounds.

20. In view of the above, we do not find any merit in the present appeals. Consequently, the appeals are dismissed.