

IN THE HIGH COURT OF SINDH, KARACHI

M.A. No. 44 of 1995

Present: Mr. Justice Nazar Akbar

Appellants : Syed Inayat Husain
through Mr. Shoa-un-Nabi, Advocate.

Respondent : Chief Administrator of Waqf Sindh,
Through Mr. Zahid Farooq Mazari, Advocate.
Mr. Pervez Akhtar, State Counsel.

Date of hearing : **08.11.2018**

Date of Judgment : **21.12.2018**

J U D G M E N T

NAZAR AKBAR, J:- This appeal under **Section 12** of the Sindh Waqf Properties Ordinance, 1979 is directed against the judgment **24.8.1995** passed by First A.D.J (South) Karachi whereby Waqf Petition No.1/1984 filed by Mian Rahim Gul father and predecessor-in-interest of the appellant challenging the notification dated **15.12.1983**, issued by the respondent and published in Extra Ordinary Gazette of Sindh, dated **15.12.1983** was dismissed. Precisely following prayer was declined:-

- a) To **declare** that the Mazar and its properties of Hazrat Lal Shah Tahir Clifton is not covered by notification No.AUQ(CAA) Misc/83-585 dated 5.12.1983 issued by respondent and the threats of respondents and his persons to take possession of said Mazar are illegal and without jurisdiction and authority and it may be further **declared** that Mazar and property of Hazrat Baba Lal Shah Tahir is not part of any Waqaf property and Mosque and Shrine of Hazrat Abdullah Shah Ghazi or it does not fall within the boundaries prescribed by the said notification.
- b) Any other relief which is deemed fit and proper be awarded.
- c) Costs.

2. The brief facts leading to this miscellaneous appeal are that the appellant claiming to be legal heir of late Mian Rahim Gul Kaka Khail, who was said to be Sajjadh Nasheen of Mazar of Hazrat Baba Lal Shah Tahir at Clifton in his life time had filed Waqf petition No.1/1984 with prayer reproduced above. After his death, the present appellant has been impleaded in his place. The appellant has challenged the taking over of Mazar of Hazrat Baba Lal Shah Tahir by respondent on the ground that the Mazar of Baba Lal Shah Tahir is situated on a separate piece of land which was constructed by Baba Lal Shah Tahir from his own funds and that since the said Mazar and its properties are situated on an area of about 2500 sq.yards do not form part of the Waqf Properties of Mazar or Hazrat Abdullah Shah Ghazi (R.A). Therefore, the impugned notification does not cover/include this Mazar. It is also averred in the petition that there is no mention of the Mazar of Baba Lal Shah Tahir and its properties in the said notification and therefore, the said Mazar of Baba Lal Shah Tahir is not included in the said notification.

3. Learned counsel for the respondent while opposing the petition filed objections and contended that the petition is not maintainable as according to him the impugned notification includes the Mazar of Baba Lal Shah Tahir and its properties which is part and parcel of the Waqf property of the Mazar of Hazrat Abdullah Shah Ghazi (R.A).

4. The learned Trial Court out of the pleadings of the parties framed the following issues.

- i. *Whether the Mazar of Baba Lal Shah Tahir and its property is situated on a separate plot of land and is not part of the property of Mazar of Hazrat Abdullah Shah Ghazi?*
- ii. *Whether the Mazar of Hazrat Lal Shah Tahir is independent Mazar constructed by Baba Lal Shah*

Tahir from his own funds and is exclusive property of Baba Lal Shah Tahir?

- iii. *Whether the Mazar of Baba Lal Shah Tahir is Waqf property as claimed by respondent?*
- iv. *Whether the petitioner after having filed Suit No.110/84, before the XVth Senior Civil Judge, Karachi, can institute and prosecute present petition?*
- v. *Whether the petitioner has any locus standi to file this petition against the respondent?*
- vi. *Whether the notification No.AUA/(CAA)Misc. 83/585 dated **5.12.1983** issued by the respondent is bad in law?*

Appellant's father Mian Rahim Gul in support of his case examined himself as Ex.5. He produced the following documents;

- i. *Certified copy of Shajrah Nasab* Ex.6.
- ii. *List of Mureeds* Ex.7
- iii. *17 photographs of ceremony of his appointment as Gaddi Nasheen* Ex.8/1 to 8/17
- iv. *Certified copies of receipts of purchase of material used in the construction of the building* Ex.9/1 to 9/171
- v. *Certified copies of 11 lists of Mureeds of baba Lal Shah Tahir* Ex.10/1 to 10/11
- vi. *Certified copy of FIR* Ex.11
- vii. *Certified copy of power of attorney* Ex.12
- viii. *Photostate copy of impugned Notification* Ex.13

The appellant also examined three witnesses, namely P.W Soofi Allahdin PW-2 as **Ex.14** and Muhammad Safdar, P.W-3 as **Ex.15**, and Abdul Haque P.W-4 as **Ex.16**. Subsequently on the orders of Hon'ble High Court, P.W Inayat Hussain was also examined as **Ex.22**. He has produced report of Official Assignee dated **15.11.1987** as **Ex.23**, report of Architecture as **Ex.24**, sketch of Dargah Abdullah Shah Ghazi as **Ex.25** and letter of High Court dated **14.10.1992** as **Ex.26**. The Respondent examined Mirza Amjad Baig D.W-1 as **Ex.17**

and Manager Auqaf Mirza Maqsood Baig, D.W-2 as **Ex.18**, he also produced the impugned notification as Ex.19.

5. The trial Court after hearing counsel of either side dismissed the Waqf petition by judgment dated **24.8.1995**. The appellant has impugned the said judgment through the instant Miscellaneous Appeal. Respondents have filed objections to this Misc. Appeal.

6. I have heard learned counsel for the appellant and the respondent as well as minutely examined the record. I believe for appreciating the contentions advanced by the learned counsel for the parties, it is better to keep an eye on the impugned notification and therefore, the same is reproduced below:-

THE SIND GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY
KARACHI THURSDAY DECEMBER 15, 1983
PART I-A
THE CHIEF ADMINISTRATOR OF AUQAF
SINDH, HYDERABAD.

No.AUQ(CAA)Misc/83-585.—In partial modification of Notification bearing Nos.3(48-Auqaf /62, dated 18th June, 1962 and 3(48) Auqaf/63, dated 15th April, 1963, I, Mir Makhdoom Ali, Chief Administrator of Auqaf Sind, Hyderabad in exercise of the powers vested in me under sub-section (1) of Section 7 of the Sindh Waqf Properties Ordinance 1979, do hereby assume and take over administration control, management and maintenance of the waqf properties along with easement and right attached or appertinent with Mosque and Shrine of Hazrat Abdullah Shah Ghazi, Clifton Karachi. This will mean and deemed to include all the properties with constructions including houses, shops, cabins, wells Musafirkhana open plot, Langarkhana, Hotel Dispensary, Mosque, Qawwali Hall, School Sprinc, Graveyard, moveable fittings/fixtures and Cash Boxes etc., situated on the plot measuring 25411.60 sq.yds around the Dargah and Mosque, surrounded by roads on all sides.

Sd/-
(MIR MAKHDoom ALI)
Chief Administrator of Auqaf,
Sindh, Hyderabad.

7. The learned counsel for the appellant contended that the appellant to prove that the Mazar of Baba Lal Shah Tahir is not covered by the notification and its construction was raised by the late Baba Lal Shah Tahir from his own fund (issues No.1 & 2) has relied

on 268 receipts of construction expenses Exhibits 9/1 to 9/268 and reports of Official Assignee and architect Exhibits P/23 & P/24 from the record of suit No.110/1984. He has contended that the perusal of reports Ex.23 & Ex.24 confirms that the Mazar of Baba Lal Shah Tahir is outside the Waqf Properties.

8. In rebuttal the respondent has contended that a Civil Suit on the same issue was also filed by the appellant and it was contested up to the level of Hon'ble Supreme Court of Pakistan which was decided in favor of the Auqaf Department. It is further averred that the impugned judgment was passed after properly framing issues and recording of evidence proper findings have been given by the trial Court in the light of evidence on each and every issue precisely and after application of judicial mind in the light of the law applicable to the facts of the case. It is further averred that the main ground for attacking the impugned notification dated 15.12.1983 of the Chief Administrator of Auqaf by the appellant was that the total area mentioned in that notification is 25,411.60 sq.yds while in the report of official assignee / commissioner the area has been shown as 28320 sq.yds.

9. The perusal of record shows that both these documents (Exh.23 & 24) were discussed by learned trial Court in the following terms:-

*The most important question to be looked into as to whether whole of the land surrounded by roads on all sides attached to the Mosque and Shrine of Hazrat Abdullah Shah Ghazi is included in the Notification and whether there is any specific separation of Mazar of Baba Lal Shah Tahir. A perusal of sketch will show that whole of the land around the Dargah of Hazrat Abdullah Shah Ghazi is surrounded by roads on all sides as is described in the impugned Notification and the Mazar of Baba Lal Shah Tahir is around the Dargah of Abdullah Shah Ghazi. **Mere difference of***

measurement shown in the impugned notification and the sketch does not mean that the excess area of 2908.40 sq.yards is outside the limits of Dargah Hazrat Abdullah Shah Ghazi or that the Mazar of Baba Lal Shah Tahir is on separate plot. It is clear from the sketch so also the evidence available on the record that the disputed Mazar of Baba Lal Shah Tahir is situated at a distance of 60 feet away from the Dargah of Abdullah Shah Ghazi which is surrounded by roads on all sides. It is thus clear that the Mazar of Baba Lal Shah Tahir is not constructed on any separate portion of land.

The record shows that appellant has not even identified the Mazar of Baba Lal Shah Tahir in his memo of petition by meets and bounds. Learned counsel for appellant admits that Mazar of Baba Lal Shah Tahir is hardly at 60 feet distance from Mazar of Hazrat Abdullah Shah Ghazi and also that there is no road between the two Mazars. On the issue No.2, regarding construction of Mazar by the Baba himself, the learned trial Court has very comprehensively examined the evidence produced by the appellant to claim that construction was also raised by Baba Lal Shah Tahir in his life time and I reproduce relevant discussion of the trial Court on this piece of evidence as follows:-

Out of 268 receipts, in 202 receipts the name of receiptant is not mentioned, while 10 receipts (Ex.9/10, 9/25, 9/106, 9/107, 9/115, 9/118, 9/122, 9/153, 9/161 and 9/164) are in the name of some unconcerned persons. Out of remaining 56 receipts, 22 receipts are of purchase of wheat, rice, Bajra, Gas etc; the remaining receipts are in respect of purchase of Cement, Iron Bars etc; but it is not clear that the said material was used for the construction of Mazar/Dargah of Baba Lal Shah Tahir or for any other building. Neither the persons who signed those receipts nor the supplier of the said material has been examined to prove the receipts.

.....

it is not the case of petitioner that Baba Lal Shah Tahir was owner of the said piece of land, but the case of petitioner is that it was in possession of

Baba Lal Shah Tahir who raised construction thereon at his own expenses.

10. The record shows that evidence discussed by trial Court was in fact from the record of proceeding of **Civil Revision No.140/1995** filed by the appellant in this Court arising from the dismissal of an application of stay the action of the respondent against the appellant pursuant to the impugned notification in **Suit No.110/1984**. Even their appeal against dismissal of stay application in the said suit was dismissed by the First Appellate Court and this Court while deciding Civil Revision No.140/1995 has observed as under:-

“Admittedly the applicant / plaintiff has not produced so far any document showing any title over the suit land except that, there has been Mazar of Hazrat Baba Lal Shah there which by itself would not prima facie confer any title over the land in question in favour of applicant / plaintiff or his predecessor in interest. The notification dated 15.12.1983 did mention the assumption and taking over administration, control, management and maintenance of Mazar of Hazrat Abdullah Shah Ghazi, around the Dargah and Mosque surrounded by roads on all sides. The applicant / plaintiff has not shown from any MAP that there was any sanctioned road bisecting the Mazar of Hazrat Abdullah Shah Ghazi from the Mazar of Baba Lal Shah Tahir which could make the Mazar Baba Lal Shah Tahir a separate and independent from the Mazar of Hazrat Abdullah Shah Ghazi”.

11. Learned counsel for the appellant has not referred to any better evidence than the evidence discussed by the trial Court. It is admitted by counsel for the petitioner that the dead body of Baba Lal Shah Tahir was brought from Mensehara in 1983 for his burial in expensive Clifton area by his brother, the original Petitioner. It may be mentioned here that if the land in question was, for the sake of argument, in occupation of Baba Lal Shah Tahir and he has raised the construction from his own funds, then irrespective of his title, on

the death of Baba Lal Shah Tahir, it should be claimed by his legal heirs by way of inheritance. It has come on the record that the petitioner have never filed any application for Letter of Administration of the property left by the deceased Babal Lal Shah Tahir and eight persons of the family of petitioner from Mensehara have come and are living in the premises of Mazar. The petitioner himself has admitted in the cross-examination that he is totally illiterate person has no religious knowledge except to read Holly Quran. His sons are taxi drivers and his livelihood is not identified.

12. Learned counsel for the appellant was unable to refer any law to justify occupation of any piece of land by the petitioner which is covered by the notification.

13. As may be seen from the contents of the prayer reproduced in para-1 the entire burden of seeking two declaration from this Court regarding Mazar of Baba Lal Shah Tahir is not covered by the notification and its a separate piece of land was on the petitioner. The petitioners have miserably failed to discharge the burden and, therefore, they had no locus standi to file the petition against the respondents. The other issues raised by the trial Court viz; whether Mazar of Baba Lal Shah Tahir is waqf property and notification dated 15.12.1983 is bad in law also stands replied accordingly of the finding on the two main issues.

14. In view of the above, the claim of the petitioner has been rightly rejected by the trial Court, therefore, this appeal is dismissed with no order as to cost and all pending applications also stand disposed of having become infructuous.

Karachi

Dated: .12.2018

JUDGE