

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3823 OF 2022

Noorjahan Hakkani Pasha Quadri .. Petitioner
Versus
Mujahid Syed Akbar Jahagirdar
and others .. Respondents

**WITH
WRIT PETITION NO. 3826 OF 2022**

Noorjahan Hakkani Pasha Quadri .. Petitioner
Versus
Nuruddin @ Shaker Syed Akbar Jahagirdar
and others .. Respondents

**WITH
WRIT PETITION NO. 3827 OF 2022**

Noorjahan Hakkani Pasha Quadri .. Petitioner
Versus
Asadulla @ Saber Syed Akbar Jahagirdar
and others .. Respondents

**WITH
WRIT PETITION NO. 3825 OF 2022**

Noorjahan Hakkani Pasha Quadri .. Petitioner
Versus
Umar Syed Akbar Jahagirdar
and others .. Respondents

Shri P. V. Barde, Advocate h/f Shri S. A. P. Quadri, Advocate for the Petitioner in all matters.
Shri Vinesh C. Solshe, Advocate for the Respondent Nos. 1, 3 to 5 in all matters.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 09TH JANUARY, 2023.**

FINAL ORDER :

. By these petitions filed under Article 226 read with Article 227 of the Constitution of India, the petitioner seeks to challenge the compromise award dated 23rd November, 2013 passed in Lok Adalat between the Respondents. As common issues are raised, the Petitions are heard together and are disposed of by this common judgment. The challenge to the compromise decree of Lok Adalat is on the ground that the properties forming part of the compromise decree are Wakf properties and jurisdiction of Civil Court is barred under the provisions of Wakf Act, 1995 and as such fraud has been played upon the Court. Petitioner is the daughter of the Respondent No 2, now deceased and sister of Respondent No 1, 3 to 5. For reasons stated hereinafter, I am not inclined to set aside the compromise decree as the Petitioner has failed to substantiate that the subject properties are Wakf properties.

2. Facts of the case are as under :

R.C.S. No. 323 of 2013, R.C.S. No. 332 of 2013 , R.C.S. No. 334 of 2013 and R.C.S. No. 333 of 2013 came to be filed by the respondent No. 1 against the respondent Nos. 2 to 5 seeking declaration that the respondent No. 1 is the owner of the suit land bearing land Sy. No. 9/1, 9/2, 9/3 and 9/4 admeasuring 0H 28R (05R land out of each Sy. No. 9/1, 9/2, 9/3 and 13R land out of land Sy. No. 9/4 total 28R situated at village Nideban, Tq. Udgir, Dist. Latur and land Sy. No. 228/1/1 admeasuring 0H 35R L.R.S. of Rs. 00.75 paise situated at proper Udgir, Tq Udgir, Dist. Latur as per the boundaries mentioned in para No. 2 of the plaint and also for injunction restraining the defendants therein

from obstructing the peaceful possession of the Respondent No 1 over the suit land. The Respondent No 1 claimed that the suit property was gifted by Respondent No 2 and pursuant thereto the Respondent No 1 is in actual physical possession of the suit land.

3. On 23rd November, 2013 compromise terms were entered into before the Lok Adalat, wherein the Respondent No. 1 was held entitled to 0H 28R in respect of land Sy. No. 9/1, 9/2, 9/3 and 9/4 and 0H 35R in land Sy. No. 228/1/1, that there was oral gift, that other property of Respondent No 2 has been orally gifted to Respondent Nos. 3 to 5 and that Respondent No. 2 has five married daughters and out of land Sy. No. 9/4 and out of land Sy. No. 228/1/1, each daughter has been given a plot admeasuring 02R. It was also recorded that the respondent No. 1 and the respondent Nos. 2 to 5 will not interfere in the possession of each others properties.

4. Petitioner herein challenged the compromise decree in R.C.S. No. 393 of 2020, R.C.S. No. 392 of 2020, R.C.S. No. 394 of 2020 and R.C.S. No. 395 of 2020 seeking declaration that the compromise decree dated 23rd November, 2013 may be declared as null, void, fraudulent, ineffective, nonest and not binding on the petitioner and for setting it aside and also for an order of injunction restraining the respondent No. 1 from creating third party interest in respect of the property mentioned in para No. 2 i. e. land bearing Sy. No. 9/1, 9/2, 9/3 and 9/4 admeasuring 0H 28R and land Sy. No. 228/1/1 adm. 0H 35R. An application for temporary injunction filed by the Petitioner came to be rejected by the Trial Court, against which the petitioner preferred

miscellaneous civil appeal, which came to be partly allowed by the Appellate Court, whereby the Appellate Court restrained the respondents from alienating or creating third party rights only in respect of one of the suit properties namely land Sy. Nos. 9/1 to 9/4, but not in respect of other suit property bearing land Sy. No. 228/1/1. As against the order of the Appellate Court, the petitioner filed Writ Petition No. 7855 of 2021 to the extent of refusal of injunction in respect of land Sy. No. 228/1/1 and similarly the respondents also filed writ petition to the extent of injunction granted in respect of land Sy. Nos. 9/1 to 9/4. Writ Petition filed by petitioner came to be dismissed and Writ Petition of the Respondents came to be allowed. Thereafter the present Petitions came to be filed alleging that the properties bearing Survey No 228 and Survey No 9 are Wakf properties. Detailed Affidavit in reply was filed by the Respondents to which Affidavit in rejoinder was filed.

5. The present Petitions were listed on 5th January, 2023 and at the request of counsel for Petitioner were adjourned to 9th January, 2023. On 9th January, 2023, the parties were heard at length and the operative part of the order dismissing the Petitions was pronounced. The request for stay of the order was rejected. By way of Civil Applications, the Petitioner sought recall of order dated 9th January, 2023 and for re-hearing of the matter. On 13th January, 2023, the Civil Applications came to be rejected with liberty to file written submissions within period of two weeks. Accordingly on 27th January, 2023, written submissions were filed by the Petitioner.

6. Heard Mr. P. V. Barde learned counsel appearing for

Petitioner and Mr. V. C. Solshe, learned counsel appearing for the Respondents.

7. Mr. Barde submits that the land Sy. No. 228 and land Sy. No. 9 are inam lands of two different Dargahs and as such cannot form part of the compromise decree. He has invited the attention of this Court to the annexures to the Petition i.e. Copy of Inam Patrak Namuna No 9 of Village Udgir annexed at Page 17, Item No 15 of Government Gazette dated 1st May, 1980 annexed at page No. 19 of the Writ Petition No. 3823 of 2022, document at page No. 20-C which is in Urdu language purporting to show that subject properties are inam land, Khasra Patrak of land Sy. No. 9 and 228 at Page 26 and Page 30. On the strength of the documents annexed to the Petition, he would submit that the properties forming part of the compromise decree are Wakf properties. Upon query put by this Court as regards R.C.S. No 393 of 2020 and other suits filed by the Petitioner seeking to challenge the compromise decree, the learned Counsel makes a statement that the suit will be withdrawn.

8. Per contra, Mr. Solshe learned counsel for the Respondents have taken this Court through the Affidavit in reply, wherein detailed averments are made stating the manner in the which the subject properties have devolved upon the Respondent No 2. It is stated that one Dawood Khan was original owner to the extent of 08 annas share in land Sy. No. 228/A adm. 27 Acres 19 Gunthas and in the year 1976 R.C.S. No. 43 of 1976 was filed by the legal heirs of Dawood Khan for partition and separate possession of various properties including land Sy. No. 228/A adm. 27 Acres 19 Gunthas. Subsequently, R.C.S. No. 43 of 1976

was compromised between the parties and in the said compromise decree one Mahmoodabee, grandmother of the respondents and petitioner received 07 Acres of land out of land Sy. No. 228/A. There was another compromise decree in the year 1994 between the deceased father of the petitioner and the respondents and their uncle namely Abdul Haq on one hand and their mother Mahmoodabee on the other, in which the father of the petitioner and the respondents became owners of the suit property as per the boundaries stated in the compromise decree. As far as land Sy. No. 9 adm. 07 Acres 10 Gunthas is concerned, in R.C.S. No. 97 of 1963, the grandfather of the petitioner and respondents received certain share. Subsequently, the petitioner's and the respondent's uncle filed R.C.S. No. 43 of 1993 for partition and separate possession of Sy. No. 9, which came to be compromised and in the said compromise father of the petitioner and respondents received 2/3rd share i. e. 1H 21R land in Sy. No. 9/1, 9/2, 9/3 and 9/4. As such he would submit that the property bearing land Sy. No. 228/B adm. 07 Acres 06 Gunthas is Inam land and compromise has been entered into in respect of Sy. No. 228/1. He would further submit that the present proceedings have been initiated by the petitioner only to harass the respondents after the Petitioner failed to obtain restraining orders in her R.C.S. No. 393 of 2020.

9. In rejoinder, Mr. Barde submits that the compromise decrees entered into between the parties in the previous litigation is a nullity as the properties are Wakf properties. He would contend that Survey No. 228/1 is belonging to Dargah Hazrat Syed Khwaji Sadruddin Basha and the then Government of Nizam issued Muntaqab bearing no 1553 and the area of land

is recorded as 120 bighas and allotted land for services of Dargah. He relies upon record of Mukdam Patvari annexed at Page 290 of the Petition which reflects the area of Survey No. 228 as 30 acres and 2 gunthas.

10. Considered the rival submissions advanced by the parties and perused the documents and written submissions on record.

11. In these Petitions, the challenge is to the compromise decrees on the footing that the properties forming subject matter of the compromise decrees are Wakf properties and fraud has been practiced on the Court. Initially the petitioner filed suits to challenge the compromise decrees, in which the stand of the Petitioner was that their predecessor Akbar was the owner of the property bearing Sy. No. 9/1, 9/2, 9/3 and 9/4 admeasuring 1H 21R and as also Sy. No. 228/1/1 adm. 1H 51R and the respondents pressurized their father Sayed Akbar and taking advantage of his old age and ill-health entered into the compromise decree in the Lok Adalat on 23rd November, 2013. In the pleadings before the Trial Court there is no whisper that the properties i. e. land Sy. No. 9/1 to 9/4 and 228/1/1 are wakf properties and on the contrary specific assertions have been made that their father Sayed Akbar was the owner of the subject properties. Petitioner continued with the proceedings and it is only upon the injunction application being refused, which came to confirmed by this Court in Writ Petition Nos. 7855 of 2021, Writ Petition No. 7851 of 2021, Writ Petition No. 8015 of 2021 and Writ Petition No. 8016 of 2021 that the petitioner has filed present petitions taking a completely different stand that the suit properties are wakf properties.

12. It will be worthwhile to note that in paragraph 2 of the Petitions, the Petitioner has pleaded that Survey No. 228 admeasuring 7 Acre 6 gunthas situated at Village Udgir is allotted for the services of Dargah Khwaja Sadruddin Basha and in paragraph 3 of the Petitions, the Petitioner has pleaded that in the government gazette Survey No 228 admeasuring 7 acre 6 gunthas is shown as Wakf property belonging to Dargah.

13. Coming now to the documents annexed to the Petition on which reliance has been placed, I find that none of the documents conclusively prove that the subject properties are Wakf properties. Page 19 of the Petition to which the attention of this Court was invited is copy of Government Gazette dated 1st May, 1980. A perusal of item No. 15 at page No. 19 would show that as far as land Sy. No. 228 is concerned only an area of 07 Acres 06 Guntha is recorded as wakf property of Durgah Hajarath Khaja Sardaruddin grave yard, which is also reflected in the Inam Patrak Namuna No 9 at Page 17 of the Petition. As far as the document a page No. 20-C is concerned, the document being in Urdu, a query was put by this Court as which survey number is noted therein to which learned counsel for the petitioner was unable to respond. The Khasra Patrak of land Sy. No. 9 and 228 annexed at page Nos. 26 and page 30 reflects the description of the Survey No 9 as 'Patta' in Item No 7 and local name is given as "inam" in the column of the name of the agricultural land, and the Khasra patrak in respect of Sy. No. 228 at Exhibit F at page No. 30 shows the land as inam land only in respect of 07 Acres 06 Guntha. This is further supplemented by the field book map annexed at Page 188 of the Petition, which

shows that out of 34 acre 25 gunthas of Survey No. 228, Inam land is 7 acres 6 gunthas and Khalsa land is 27 acres and 19 gunthas. From the documents annexed to the Petition, I find that 7 acre 6 gunthas land out of Survey No 228 was Inam land and the compromise award does not include this land. As far as the revenue records of Survey No 9 is concerned, the khad patrak annexed at Page 25/A and 26/A shows two different areas of Survey No 9 i.e. area admeasuring 2 acres 28 gunthas reflecting entry as "Inam" and area admeasuring 4 acres 22 gunthas which has no entry as "Inam". The description in Khasra Patraks of Survey No 9 is "Patta" and local name is given as "Inam".

14. Learned Counsel for Petitioners has attempted to supplement his arguments by way of written submissions which I have considered in detail. In the written submissions, reliance is placed on Muntakhab No 1553 annexed at Page 283 of the Petition and it is contended that Muntakhab is issued in result of Inam which is authentic record of allotment of grants. It is submitted that Muntakhab is also mentioned in Column No 5 of the Inam patrak Namuna No 9 annexed at Page 17. As observed above, the Inam patrak Namuna No 9 records the area of 7 acre and 60 gunthas out of Survey No 228. The copy of Muntakhab annexed at Page 283 records an area of 120 bighas i.e. approximately 90 acres of Village Udgir. Learned Counsel for Petitioner has placed reliance on the definition of Muntakhab contained in The Hyderabad Atiyat Inquiries Act, 1952 to contend that the property is Inam land and the same constitutes waqf property by reason of Section 3 (r) (iii) of Wakf Act, 1995.

15. Under Section 2 (c) of The Hyderabad Atiyat Inquiries Act,

1952, Mutakhabs and Vasiqas are defined as documents issued by competent authorities as result of inam and issued by way of continuance or confirmation of Atiyat grants. From the perusal of the documents produced on record, although the Muntakhab No 1553 is granted in respect of 90 acres land of Taluka Udgir, the revenue entries record an area of 7 acres and 6 gunthas and the same area is reflected Government Gazette dated 1st May, 1980 published under the provisions of Section 5 of the Wakf Act, 1995. On the basis of the entries in the revenue records and the government gazette, it is evident that an area of 7 acres 6 gunthas forming Survey No 228/B is Inam land.

16. The Respondents have produced documents on record to prove their source of title and long standing possession. It is evident that the Respondents and their pre-decessors were in occupation and possession of the subject property uninterruptedly for over a continuous period on the basis of the compromise decrees passed in previous litigations instituted in respect of the subject property, which compromise decrees have attained finality. In none of the previous litigation the issue of the subject property being wakf property is raised by any of the parties.

17. As far as the Khasra Patraks of Survey No 228/A is concerned, in Column No 7 the tenure is reflected as “Patta” and in Column 8 the name of Dawood Kha Mohammed Burahan is reflected as “Pattedar Inamdar”. In my view, the khasra patraks do not assist the case of the Petitioners as the land bearing Survey No 228/A is shown as “Patta” and in Column No 8 name is shown as ‘Pattedar Inamdar’.

18. An attempt has been made by the Petitioners in the written submissions to put forth the contention that Survey No. 228 is not bifurcated in Survey No 228/A and 228/B. However the Khasra Patraks placed on record by the Petitioner reflects the bifurcation in Survey No 228/A and Survey No 228/B. As regards the Khad patrak of Survey No 9 annexed at Page 24 is concerned, the khad patrak shows survey no 9 as “inam” admeasuring 2 acre 28 gunthas and khad patrak annexed at Page 25 shows Survey No 9 without the entry of “Inam” admeasuring 4 acres 22 gunthas. The 7/12 extracts annexed at Page 36 to the Petition reflects the local name of the land bearing Survey No 9/2, 9/3 and 9/4 as Inam. It is matter of record that the land bearing Survey No 9 has been subject matter of previous compromise decrees. Learned Counsel for the Petitioner has not been able to demonstrate that the land bearing Survey No 9/1, 2, 3, 4 forms part of the Survey No 9 admeasuring 2 Acres 28 Gunthas shown as “Inam” in the khad patrak.

19. It is the contention of the Petitioner in the written submissions that the succession certificate of Dawood khan produced by the Respondents contains description of Survey No 228/B of Village Udgir and succession was granted with condition of maintenance of Dargah and there is also description of Munthakhab No 1553. This submission assists the case of the Respondents that the Inam land was land forming survey No 228/B admeasuring 7 acres 6 gunthas which is reflected in the Khasra patrak of Survey No 228/B. The Petitioner assails the area reflected in the Inam Patrak and would contend the entire area of Survey No 228/B is shown to be admeasuring 34 acres 25

gunthas in Khasra patrak and as such the entire area is Wakf property. The case of the Petitioner rests on the discrepancy in the various revenue records to contend that entire area of Survey no 228 is Wakf property. I am unable to accept the contention raised that there are errors in the areas recorded in the revenue records and on the basis of Munthakhab, the entire Survey No 228 is to be considered as Wakf property. On the basis of Munthakhab entries are made in the revenue records which show that an area of 7 acres 6 gunthas of Survey No 228 is Wakf property and the same finds mention in the list of Wakf properties in the government gazette and I find no reason to hold otherwise.

20. As regards the submission that during the filing of the compromise decree, there is suppression of the pendency of Second Appeal proceedings by the donor and as regards the challenge to the previous compromise decree, the submissions cannot be considered as there are no pleadings to that effect in the Petition and in the written submissions the issues are sought to be raised, which cannot be permitted. The decisions in case of **Jitendra Singh vs State of M.P. 2021 S.C.C. Online Sc 802, S.P. Chengadvaraya Naidu vs L.R's and others reported in 1994(1) SCC Page 1 and Kusumbai vs Bhausahab 2019 SCC Online Bombay 585** does not assist the case of the Petitioner. As far as the decision in case of **Jitendra Singh** (supra) relied upon by the Petitioner, the decision is on the point that mutation entries in revenue records neither creates or extinguishes title to property. There is no dispute as regards the settled position in law. In the present case, the Petitioner seeks to challenge the compromise decree on the ground that the subject properties are Wakf

properties and has herself relied upon the revenue records. As regards the decision in case of **S.P. Chengadvaraya Naidu** (supra) is concerned, it is held by the Apex Court that judgment or decree obtained by fraud is nullity. In the present case, the Petitioner has failed to demonstrate fraud and the decision does not assist the case of the Petitioner. The third decision relied upon is the decision in the case of **Kusumbai** (supra), which holds that third party can challenge the award of Lok Adalat. The said decision is inapplicable as there is no challenge to the locus of the Petitioner to maintain the Petition.

21. From the discussion above, in my opinion, the Petitioner has failed to produce any document on record to conclusively prove that the subject properties are Wakf properties. The Petitioner has attempted to raise disputed questions of fact and in exercise of jurisdiction under Article 226/227 of Constitution of India, this Court cannot conduct a detailed investigation in disputed questions. Such an inquiry is not contemplated in exercise of power of judicial review invoked as against the compromise decree executed between the Respondents. For being entitled to the relief of setting aside the compromise decree, the Petitioner is required to conclusively demonstrate from the records of the proceedings that the properties are Wakf properties, which the Petitioner has failed to do. It is worthwhile to take into consideration the conduct of the Petitioner in as much after unsuccessful attempts to obtain restraining orders in the proceedings instituted in the civil courts, the present dispute is raised by claiming that the properties are Wakf properties. For this reason also, I am not inclined to interfere in the compromise decrees.

22. I find considerable force in the submissions of the learned counsel for the respondents that the petitioner is merely trying to stall the implementation of the compromise decree and after having filed R.C.S. No. 393 of 2020, R.C.S. No. 392 of 2020, R.C.S. No. 394 of 2020 and R.C.S. No. 395 of 2020, wherein there is no mention that the subject properties are wakf properties and failing to have obtained restraining orders, present petitions are filed. Upon a query raised by this Court regarding variance in the stand, the learned counsel appearing for the petitioner submits that after dismissal of the writ petitions, the petitioner searched the revenue record and has learnt that properties are wakf properties. Pertinently the petitioner has not joined the wakf board as party to the proceedings. Neither the Petitioner has initiated any proceedings before the Wakf Tribunal constituted under the provisions of Wakf Act, 1995 considering that the claim of the Petitioner is that only the Wakf Tribunal has the jurisdiction to determine the issue. From the documents on record no case of fraud is made out to set aside the compromise award.

23. In light of the above facts, the Petitions are devoid of merits and stand dismissed.

[SHARMILA U. DESHMUKH, J.]