



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

CIVIL REVISION APPLICATION NO.53 OF 2019

1. Asad s/o Jilani Qureshi,
Age : 36 years, Occu.: Business,
R/o.: Near Chowk Masjid,
Qureshi Mohalla, Dharur,
District : Beed.
2. Feroz s/o Kasam Sayyed,
Age : 35 years, Occu.: Agril.,
R/o.: Deshpande Galli, Dharur,
Dist. Beed.
3. Muneer s/o Chotumiya Sayyed,
Age : 37 years, Occu.: Labour,
R/o.: Rangar Galli, Dharur,
District : Beed.
4. Aleem s/o Nawab Shaikh,
Age : 37 years, Occu.: Agril.,
R/o.: Ranger Galli, Dharur,
District: Beed.
5. Siraj s/o Ahemad Shaikh,
Age : 30 years, Occu.: Agril.,
R/o.: As above.
6. Shaikh Rahil s/o Shaikh Jabbar,
Age : 30 years, Occu.: Business,
R/o.: Jhare Galli, Dharur,
District : Beed.

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APPLICANTS
(Original Plaintiffs)

VERSUS

1. Maharashtra State Board of Waqfs,
Through its Chief Executive Officer,
Panchakki, Aurangabad.

2. The District Waqf Officer, Beed,
District Waqf Office, Beed.
3. Premnath s/o Ramchandra Komatwar,
(Died through Lrs.)
- 3-A. Pramila wd/o Premnath Komatwar,
Age : 63 years, Occu.: Housewife,
R/o.: Jhare Galli, Dharur,
District : Beed.
- 3-B. Sunita d/o Premnath Komatwar,
Age : 45 years, Occu.: Housewife,
R/o.: As above.
4. Suresh Ramchandra Komatwar,
Age : 55 years, Occu.: Service,
R/o.: C/o.: Post Office, Ambajogai,
District : Beed.
5. Abarao Ramchandra Komatwar,
Age : 53 years, Occu.: Service,
R/o.: Dharur, Dist. Beed.
6. Sanjay Ramchandra Komatwar,
Age : 45 years, Occu.: Service,
R/o.: C/o.: Police Colony,
Ambajogai, Dist. Beed.
7. Sanjit Jagannath Komatwar,
Age : 45 years, Occu.: Business,
R/o.: Dharur, Dist. Beed.
8. Sandip Jagannath Komatwar,
Age : 43 years, Occu.: Business,
R/o.: As above.
9. Geeta w/o Ramkisan Komatwar,
Age : 50 years, Occu.: Housewife,
R/o.: Behind Bus stand,
Kalam, Dist. Osmanabad.
10. Ramesh Raghunath Komatwar
(Died. Through Legal Heirs)

- 10-A. Sangeeta wd/o Ramesh Komatwar,
Age : 58 years, Occu.: Household,
R/o.: Opposite Tehsil Office, Kalam,
District : Osmanabad.
- 10-B. Rohit s/o Ramesh Komatwar,
Age : 40 years, Occu.: Wineshop,
R/o.: As above.
- 10-C. Roshan s/o Ramesh Komatwar,
Age : 36 years, Occu.: Wineshop,
R/o.: As above.
- 10-D. Rashmi w/o Santosh Sugre,
Age : 41 yeas, Occu.: Household,
R/o.: As above.
- 10-E. Roma w/o Shyam Telang,
Age : 38 years, Occu.: Household,
R/o.: As above.
- 10-F. Rati w/o Girish Guttedar,
Age : 33 years, Occu.: Household,
R/o.: As above.
- 10-G. Komal w/o Shankar Eligade,
Age : 31 years, Occu.: Household,
R/o.: As above.
11. Dinesh Raghunath Komatwar
(Died. Through Legal Heirs)
- 11-A. Gitarani wd/o Dinesh Komatwar,
Age : 59 years, Occu.: Household,
R/o.: Adas Road, Dharur,
District : Beed.
- 11-B. Atish s/o Dinesh Komatwar,
Age : 39 years, Occu.: Business,
R/o.: As above.
12. Dileep Harinath Komatwar,
Age : 48 years, Occu.: Business,
R/o.: Dindrud, Tq. Majalgaon,
District : Beed.

13. Prabhavati Subhash Komatwar,
Age : 48 years, Occu.: Housewife,
R/o.: Behind bus stand, Kalam,
District : Osmanabad.
14. Suman Anil Komatwar,
Age : 40 years, Occu.: Housewife,
R/o.: As above.
15. Vidya Sandesh Komatwar,
Age 35 years, Occu.: Housewife,
R/o.: Dharur, Dist.: Beed.
16. Sudheer Premnath Komatwar
(Died. Through Legal Heirs)
- 16-A. Vibhadevi wd/o Sudheer Komatwar,
Age : 57 years, Occu.: Household,
R/o.: Jhare Galli, Dharur,
District : Beed.
- 16-B. Krushna s/o Sudheer Komatwar,
Age : 29 years, Occu.: Business,
R/o.: As above.
- 16-C. Kavya d/o Sudheer Komatwar,
Age : 28 years, Occu.: Household,
R/o.: As above.
- 16-D. Karuna d/o Sudheer Komatwar,
Age ; 26 years, Occu.: Household,
R/o.: As above.
17. Santosh Premnath Komatwar,
Age : 43 years, Occu.: Business,
R/o.: As above.
18. Rajni Sudarshan Komatwar,
Age : 45 years, Occu.: Housewife,
R/o.: As above.
19. Prakash Jagannath Komatwar,
Age : 55 years, Occu.: Agril.,
R/o.: Kaij Road, Dharur,

District : Beed.

20. Prakash Balasaheb Pawar,
Age : 30 years, Occu.: Agril.,
R/o.: Adas Road, Dharur,
District : Beed.

21. Krushna Balasaheb Pawar,
Age : 28 years, Occu.: Agril.,
R/o.: As above.

.... **RESPONDENTS**
(Original Defendants)

.....
Mr. Rajendra S. Deshmukh, Senior Advocate a/w Ms. Ashwini Sahasrabudhe i/b Saeed Shaikh, Advocate for the petitioners.
Mr. S. R. Kedar, Advocate for respondent Nos.3A, 3B, 5 to 10, 10A to 10G, 11, 11A, 11B, 12 to 16, 16A to 16 &, 17 to 21.
Mr. N. E. Deshmukh, Advocate for Respondent Nos.1 & 2.
Mr. V. M. Kagne, Advocate for Respondent No.4.

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 13/03/2024.

PRONOUNCED ON : 06/05/2024.

JUDGMENT :

1. The applicants, who are the original plaintiffs in Waqf Suit No.3 of 2017, have challenged the order dated 21/02/2019 passed below Exhibit-5 in the said suit by the learned District Judge / Chairman and Members of Maharashtra Waqf Tribunal, Aurangabad (hereinafter referred to as 'the learned tribunal') of rejecting their application Exhibit-5 for temporary injunction.

2. Heard rival submissions. Also perused entire documents on record alongwith the impugned order.

3. The learned senior counsel for the applicants submits that the learned tribunal has not appreciated the documents on record in proper perspective. According to him, the learned tribunal by way of an *adinterim* relief and order dated 01/04/2017, had granted *status-quo* and it continued for last seven years. However, the learned tribunal erroneously rejected application Exhibit-5 for temporary injunction filed by the present applicants, instead of expediting the suit. He pointed out various documents on record to show that how the finding of the learned tribunal is perverse.

4. On the contrary, the learned counsel for contesting respondent No.4 strongly opposed the submissions made on behalf of the applicants and submitted that there are no documents on record to show that land Survey No.622 to the extent of 4.20 acres was being used as a *Namazgah* and burial ground and the remaining land was *Inam* land. According to the learned counsel for respondent No.4, the applicants / plaintiffs also could not produce any document to show that land Survey Nos.623/A and

623/AA were being used for *Urs* of Dargah of Maheboob Subhani (Chilla). As such, he supported the impugned order and prayed for dismissal of this application.

5. The learned counsel for respondent Nos.1 & 2 supported the case of the applicants.

6. It is significant to note that the applicants / plaintiffs have come with a case that land Survey No.622 to the extent of 4 Acres 20 Gunthas situated at Dharur is belonging to Muslim community since beginning and used for *Namazgah* and burial ground. They claimed that remaining portion of Survey No.622 is an Inam land, which was initially in possession of Nawab Basharat Ali Khan s/o Inayat Ali Khan. According to them, area 286 X 30 fts., of the said land is also notified in Government Notification of 1974 being used as a place of *Namazgah* and Kabrastan. They also contended that in the land Survey Nos.623/A and 623/AA there is a Dargah of Maheboob Subhani (Chilla) since beginning and *Urs* of the said Dargah is being celebrated regularly in the said land. According to them, the erstwhile owner of the aforesaid land was one Nawab Basharat Ali Khan and he had never executed any sale deed in

respect of Survey No.622 to defendant No.3 and his brother. But, on the basis of frivolous documents, defendant No.3 and his brother entered their names in the record of rights in the Survey No.622 in the year 1955-1956 to 1958-1959 and on that basis filed false civil litigation to show their ownership over the same. Now they are trying to dispose of the land by dividing the said land into plots. Some of the defendants have also started construction on the said land.

7. It appears that rival parties have submitted voluminous documents on record showing the history of the aforesaid lands. Though the applicants / plaintiffs have claimed that land Survey No.622, totally admeasuring 9.16 Acres, is reserved to the extent of 4.20 Acres for the use of Kabrastan and *Namazgah* and remaining land is *Inam* land, but not a single document is on record to support the contention of the applicants/ plaintiffs. Admittedly, the Government Notification dated 18/04/1974 indicates that there is an entry at Serial No.106 in respect of graveyard of Killa Dharur [tomb of Mohammed Baig Aurang Jang Kiladar Khan, one big tomb, two pucca platform with grave and *Namazgah* (dilapidated)] for the area of 286 X 30 sq.fts., but there is no reference of any *Muntakhab*. Therefore, excluding the aforesaid area not a single

document is on record showing that Survey No.622 was the *Inam* land. As such, *prima facie* the applicants / plaintiffs have failed to establish their case that the entire land of Survey No.622 was *Inam* land and out of the same, land admeasuring 4.20 Acres allotted for the use of Kabrastan and *Namazgah*. Similarly, Government Notification at Exhibit-13 indicates that certain land from Survey No.622 only to the extent of 24 X 24 sq.fts., area is shown towards Dargah of Maheboob Subhani (Chilla). Thus, the entire contention of the applicants / plaintiffs in respect of Survey No.622 appears to be false apparently.

8. On the contrary, there are certain documents on record, which indicate that some portion of Survey No.622 was purchased by deceased defendant No.3 in the year 1951 and subsequently the rest of portion also purchased by him and his brother in the year 1954. It is evident that though the copy of sale deed in respect of purchase in the year 1954 is on record, but the sale deed pertains to year 1951 is not produced. However, the contesting defendants have not denied the said facts and came with a case that the said sale deed of the year 1951 is not traceable. Even though the sale deed of 1951 is not on record but the permission dated 25/01/1951 produced on record issued by the then Collector

indicates that the Collector Divisional, Mominabad had permitted the erstwhile owner Mohd. Basharat Ali Khan to sell the lands mentioned in the said permission inclusive of Survey Nos. 622 and 623 to deceased defendant No.3 and his brother. Even in the sale deed of 1954 executed by Mohd. Basharat Ali Khan it has been mentioned that he sold the remaining land of Survey No.622 to deceased defendant No.3 and his brother. Moreover, *Pahani-Patruk* of 1951 in respect of land Survey Nos.622 & 623 indicates that both the lands were Government lands and not *Inam* lands and those were being cultivated by present defendant No.3 and his brother. As such, it appears that in the land Survey No.622 only the area of 286 X 30 Sq. ft. is notified as a graveyard in government notification. Moreover, there is also entry of Dargah of Maheboob Subhani (Chilla) to the extent of area admeasuring 24 X 24 sq. fts. in Survey No. 622. Except the aforesaid portions, not a single document is on record to show that the land Survey No.622 was *Inam* land and certain part is being used as graveyard.

9. Similarly, though the applicants / plaintiffs claimed that Survey No.623 was *Inam* land and the Dargah of Maheboob Subhani (Chilla) is situated on the same land but the entry of said Dargah of Maheboob Subhani (Chilla) is in fact in the record of

rights of Survey No.622 and nothing is there to show that said Dargah exists on land Survey No.623. Further, there is no evidence at all to show that land Survey No.623 is being used for *Urs* of Dargah of Maheboob Subhani (Chilla). No supporting affidavits are also on record of persons from Muslim community to support the said fact. It is significant to note that the defendants have not demolished the structures in the respective areas namely area of 286 X 30 sq. fts., and 24 X 24 sq. fts., from survey No.622. It appears that defendants are developing the lands excluding the aforesaid portion in the Survey No.622. Therefore, *prima facie* it appears that they are doing such alienation and plotting in lawful manner. On the contrary, the applicants / plaintiffs have miserably failed to establish any *prima facie* case in their favour as alleged and therefore, it cannot be said that balance of convenience is in their favour and they would suffer an irreparable loss if the injunction is granted. Considering all these aspects, there is no reason to interfere with the impugned order and accordingly the present civil revision application stands dismissed and disposed of. In view of dismissal of the civil revision application, the interim relief granted earlier also stands vacated.

(SANDIPKUMAR C. MORE, J.)

10. The learned Senior Counsel Mr. Deshmukh, after pronouncement of judgment, submits that the interim relief granted by the learned Tribunal was in force almost 7 years. Further, there was also status-quo order during the pendency of this Civil Revision Application. Since the applicants are intending to challenge the order passed by this Court before the Superior Court, the status-quo order passed by this Court shall remain in force for further period of six weeks.

(SANDIPKUMAR C. MORE, J.)