

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

**CIVIL REVISION APPLICATION NO. 35 OF 2013**

Kamruddin Hasanshah Fakir  
and others

.. Petitioners

**Versus**

Shaikh Iqbal Taj Mohammad and others .. Respondents

Shri Javed Abdul H. Deshmukh, Advocate for Petitioners.  
Shri M. G. Mustafa, Advocate for Respondent Nos. 1 and 3.  
Shri M. B. W. Khan, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA, J.  
DATE : 02ND SEPTEMBER, 2015.**

**PER COURT :**

. Heard Mr. Deshmukh, the learned counsel for the petitioner and learned counsel for Respondent Nos. 1 and 3.

2. Mr. Deshmukh, the learned counsel submits that, in view of the bar engrafted under Section 87 of the Wakf Act, the suit of the respondent/plaintiff was not maintainable at all. According to the learned counsel, the property is not registered as a Wakf property, nor it is published in the Gazette. The suit in respect of unregistered wakf is not maintainable. The subsequent amendment i. e. deletion of Section 87 will not have any effect, as the suit was filed when the provision i. e. Section 87 was part of

the statute book. The learned counsel further submits that, even order appointing the receiver was passed without notice to the present petitioners and without hearing petitioners. The said order is per-se illegal.

3. The learned counsel for Respondent Nos. 1 and 3 submits that, suit is perfectly maintainable. The issue whether the property is a wakf property or not is within the domain of the Wakf Tribunal. Now subsequently Section 87 of the Wakf Act has been deleted.

4. I have considered the submissions canvassed by the learned counsel for respective parties. The order appointing receiver has been passed long back. There is no stay to the said order. Naturally, the said order would be subject to final decision of the Wakf Tribunal.

5. As far as objection with regard to the jurisdiction is concerned, now Section 87 has been deleted from the statute book. The effect of the same would be considered by the Tribunal.

6. In light of that, civil revision application stands disposed of. No costs.

7. It is submitted that, the matter is fixed for final arguments and the petitioners have not led their evidence. Mr. Deshmukh, the learned counsel submits that, the evidence was not led because of pendency of this revision and as this revision was pending challenging the maintainability of the suit itself, the evidence was not led.

8. The said contention is disputed by respondents. I am not entering into the said dispute. It is a fact that, petitioners have not led their evidence. I am inclined to grant one opportunity to petitioners so that, the matter would be decided on merits. The Tribunal shall permit petitioners to adduce the evidence. However, petitioners shall not seek any adjournment and shall lead evidence immediately.

**[ S. V. GANGAPURWALA, J. ]**