

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL REVISION APPLICATION NO.63 OF 2008
WITH
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Shaikh Karimoddin s/o. Shaikh
Rahimoddin, Age 62 years,
occ. Business, r/o. Dargah Road,
Parbhani, Dist.Parbhani ..Applicant

Versus

- 1] M/s. Kothari Builders through
Partner Lalchand s/o. Thakurdas
Khairajani, Age 65 years,
occ.Business, r/o. Shastri Nagar,
Parbhani, Dist.Parbhani
- 2] Mangeshrao s/o. Ramrao Subhedar,
Age 45 years, occ. Agri.,
r/o. Kranti Chowk, Parbhani,
Dist. Parbhani
- 3] Abdul Rehman Khan Jeelani
s/o. Gulam Khan, age 55 years,
occu. Business, r/o. Bashir Gunj
Mohalla, Juna Mondha,
Survey No.2, Parbhani
- 4] Maharashtra State Board of Wakfs,
Through its Chief Executive Officer,
Panchakki, Aurangabad

5] State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai

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Mr.S.S.Kazi, advocate for applicants

Mr.P.V.Mandlik, Senior counsel along with Mr.
Pratap Mandlik i/b. Mr.Amol Gandhi, advocate for
respondent no.1

Mr.G.R.Syed, advocate for respondent no.4

Mr.S.R.Palnitkar, AGP for respondent no.5

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WITH
CIVIL APPLICATION NO.3514 OF 2015
IN
CIVIL REVISION APPLICATION NO.63 OF 2008

WITH
CIVIL APPLICATION NO.3513 OF 2015
IN
CIVIL REVISION APPLICATION NO.64 OF 2008

WITH
CIVIL APPLICATION NO.3515 OF 2015
IN
CIVIL REVISION APPLICATION NO.65 OF 2008

WITH
CIVIL APPLICATION NO.3517 OF 2015
IN
CIVIL REVISION APPLICATION NO.66 OF 2008

The State of Maharashtra ..Applicant

versus

Shaikh Karimoddin Shaikh
Rahimoddin and ors. ..Respondents

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Mr.S.R.Palnitkar, AGP for applicant – State

Mr.S.S.Kazi, advocate for respondent no.1

Mr.P.V.Mandlik, Senior counsel along with Mr.
Pratap Mandlik i/b. Mr.Amol Gandhi, advocate for
respondent no.2

Mr.G.R.Syed, advocate for respondent no.5

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CORAM : M.T. JOSHI, J.

DATE : JUNE 16, 2015

ORAL JUDGMENT :

Heard both sides.

2] Perused the impugned order passed by learned
Member, Waqf Tribunal, Aurangabad.

3] In the affidavit filed by respondent – State,
it is made clear that in the Maharashtra Wakf
Rules, 2003, certain mistakes have occurred and

therefore, certain amendments are required, more particularly, in Rule 40, with which we are concerned in the present proceedings.

4] Rule 40 provides as under :-

"40.Court fee :- (1) Every application, plaint or memorandum of appeal or an application for execution or other application shall be accompanied by court fee or rupees

(2) No Notice, summons or other process of the tribunal shall be issued and no such application for certified copies of orders, documents or other records shall be granted unless proper fee as specified by the Government by notification is remitted."

5] Since the Government is competent under Section 109(1) of the Wakf Act, 1995, to frame

rules and make provision vide Rule 40 that some court fees is to be paid, but kept the said column blank and now, the amendment is being carried out, the provisions of Bombay Court Fees Act, cannot be made applicable in the present proceedings. Even if, certain amendment is made by the State as communicated by the State in the affidavit, the said rules naturally would be prospective and it would not be retrospective. In that view of the matter, the order passed by learned Member of Wakf Tribunal dismissing the suit as per the provisions of the Bombay Court Fees Act, cannot sustain.

6] In the result, Civil Revision Applications are allowed and disposed of without any order as to costs.

. The impugned orders passed by learned Member, Wakf Tribunal are hereby set aside in each of the Revision Application. The suits are restored to

file. The Wakf Tribunal is hereby directed to proceed with the suit as per the law.

. In view of disposal of Civil Revision Applications, Civil Applications do not survive and stand disposed of.

[M.T. JOSHI, J.]

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