

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

**CIVIL REVN. APPLN. NO.: 99 OF 2012  
WITH  
CIVL. REVN. APPLN. NO.: 18 OF 2013**

\*\*\*

**CIVIL REVN. APPLN. NO.: 99 OF 2012**

1. Mohammad Abdul Gaffar,  
Age: 54 years, Occ.: Legal  
Practitioner, R/o Mominpura,  
Jahangir Park, Parbhani,  
President of Committee Idgah  
kabrasthan, Jintoor Road,  
IParbhani.
2. Shaikh Mohammad Shaikh Yusuf,  
Age: 47 years, Occu.: Business,  
R/o Kalabawar Gaurakshan Road,  
PARbhani, Vice-President,  
Committee Idgah, Kabrasthan,  
Jintoor Road, parbhani.
3. Syed Anis Hasmi S/o Syed  
Amir Hasmi,  
Age: 52 years, Occu: Business,  
R/o Masoom, Kamarin,  
Dargah Road, Parbhani,  
Gen. Secretary of Committee  
Idgah, Kabrasthan, Jintoor Road,  
Parbhani.
4. Shaikh Mohammad Yusuf S/o  
Mohammad Azam, Age: 38 years,  
Occu: Business, R/o Near Kareem  
Hospital, Kadrabad Plot, Parbhani,  
Secretary of Committee Idgah,  
kabrasthan, Jintoor,  
Road, Parbhani.
5. Mohammad Nazim S/o Mohd. Kasim  
Siddiquie, Age: 38 years, Occu.:  
Business, R/o Galibnagar, Dargah Road,  
Parbhani.

6. Shaikh Iftekhhar S/o Shaikh Mustafa, Age: 39 years, Occu. Business, R/o Gulshan Bag, Parbhani.
7. Ashraf Naeemuddin Quadri, Age: 48 years, Occu.: Business, R/o Sarparaj Nagar, parbhani.
8. Aslamkhan S/o Tayabkhan, Age: 40 years, Occu.: Business, R/o kadrabad Plot, Parbhani.
9. Shamshuddin Allahbaksh Ansari, Age: 56 years, Occu: Business, R/o kalabazar, Parbhani.
10. Faheemkazi, Age: 40 years, Occu.: Business, R/o Kadrabad Plot, Parbhani.
11. Parvez Mehmood Hasmio, Age: 55 years, Occu.: Business, R/o Dargah Road, Parbhani.
12. Mohammad Nisar Mohd. Zareen, Age: 28 years, Occu.: Business, R/o Kalabazar, Parbhani.
13. Abdul Rasheed S/o Abdul Rasool, Age: 42 years, Occu.: Business, R/o Gaurakshan Road, Parbhani.

... **PETITIONERS**  
**[ORIG.DEFENDANT**  
**NOS.1 TO 13].**

**VERSUS**

1. Khammarali Shah S/o Mehboob Ali Shah, Age: 60 years, Occu.: Business, R/o Kadrabad Plot, parbhani.

2. Naseerali Shah S/o Akbarali Shah,  
Age: 42 years, Occu.: Service,  
R/o Kadrabad Plot, parbhani.
3. The Municipal Council,  
Prabhani Through it's Chief  
Executive Officer.
4. District Wakf Officer,  
District: Parbhani.
5. Maharashtra State Wakf  
Board through it's Chief  
Executive Officer,  
Panchakki, Aurangabad.
6. The Collector, Parbhani.  
Tq. Parbhani, Dist. Parbhani.

... **RESPONDENTS**  
**[ORI.PLAINTIFF NOS.**  
**1 AND 2 AND DEFTS.**  
**NO.14 TO 16].**

\*\*\*

Mr. P. R. Katneshwarkar, Advocate for the Applicants.  
Mr. S. S. Kazi, Advocate for Respondent Nos.1 and 2.  
Mr. S. S. Bora, Advocate for Respondent No.3.  
Mr. D. V. Tele, A.G.P. for Respondent No.6.

@@@

**WITH**  
**CIVL. REVN. APPLN. NO.: 18 OF 2013**

1. Mohammad Abdul Gaffar,  
Age: 54 years, Occu.: Legal  
Practitioner, R/o Mominpura,  
Jahangir Park, Parbhani,  
President of Committee Idgah  
kabrasthan, Jintoor Road,  
IParbhani.
2. Shaikh Mohammad Shaikh Yusuf,  
Age: 47 years, Occu.: Business,  
R/o Kalabawar Gaurakshan Road,  
PARbhani, Vice-President,  
Committee Idgah, Kabrasthan,

Jintoor Road, parbhani.

3. Syed Anis Hasmi S/o Syed Amir Hasmi,  
Age: 52 years, Occu: Business,  
R/o Masoom, Kamarin,  
Dargah Road, Parbhani,  
Gen. Secretary of Committee  
Idgah, Kabrasthan, Jintoor Road,  
Parbhani.
4. Shaikh Mohammad Yusuf S/o  
Mohammad Azam, Age: 38 years,  
Occu: Business, R/o Near Kareem  
Hospital, Kadrabad Plot, Parbhani,  
Secretary of Committee Idgah,  
kabrasthan, Jintoor,  
Road, Parbhani.
5. Mohammad Nazim S/o Mohd. Kasim  
Siddiquie, Age: 38 years, Occu.:  
Business, R/o Galibnagar, Dargah Road,  
Parbhani.
6. Shaikh Iftexhar S/o Shaikh  
Mustafa, Age: 39 years, Occu.  
Business, R/o Gulshan Bag,  
Parbhani.
7. Ashraf Naeemuddin Quadri,  
Age: 48 years, Occu.: Business,  
R/o Sarparaj Nagar, parbhani.
8. Aslamkhan S/o Tayabkhan,  
Age: 40 years, Occu.: Business,  
R/o kadrabad Plot, Parbhani.
9. Shamshuddin Allahbaksh Ansari,  
Age: 56 years, Occu: Business,  
R/o kalabazar, Parbhani.
10. Faheemkazi,  
Age: 40 years, Occu.: Business,  
R/o Kadrabad Plot, Parbhani.
11. Parvez Mehmood Hasmio,  
Age: 55 years, Occu.: Business,

R/o Dargah Road, Parbhani.

12. Mohammad Nisar Mohd. Zareen,  
Age: 28 years, Occu.: Business,  
R/o Kalabazar, Parbhani.
13. Abdul Rasheed S/o Abdul Rasool,  
Age: 42 years, Occu.: Business,  
R/o Gaurakshan Road, Parbhani.

... **PETITIONERS**  
**[ORIG.DEFENDANT**  
**NOS.1 TO 13].**

**VERSUS**

1. Khammarali Shah S/o  
Mehboob Ali Shah,  
Age: 60 years, Occu.: Business,  
R/o Kadrabad Plot, parbhani.
2. Naseerali Shah S/o Akbarali Shah,  
Died through L.Rs.
- 2-A) Rizwanabegum W/o Syed Naseerali,  
Age: 48 years, Occu: Household.
- 2-B) Syed Abed Ali S/o Syed Naseerali,  
Age: 27 years, Occu: Nil.
- 2-C) Syed Sajed Ali S/o Syed Naseer Ali,  
Age: 26 years, Occu: Nil.
- 2-D) Sayed Juned Ali S/o Syed Naserr Ali,  
Age: 22 years, Occu: Nil.
- 2-E) Rubina Begum W/o Sk. Moinoddin,  
Age: 26 years, occu.: Household.
- 2-F) Farina D/o Syed Naseer Ali,  
Age: 48 years, Occu.: Household.
- 2-G) Samina D/o Naseer Ali,  
Age: 20 years, Occu: Household.

All R/o kadrabad Plot, Parbhani,  
Tq. & Dist. Parbhani.

3. Maharashtra State Wakf Board  
Through its Chief Executive Officer,  
Panchakki, Aurangabad.

... **RESPONDENTS**  
**[ORIG.PLAINTIFFS**  
**NO.1 AND 2 AND**  
**DEFENDANT 14).**

@ @ @

Mr. P. R. Katneshwarkar, Advocate for the Petitioners.  
Mr. S. K. Kazi, Advocate for Respondent Nos.2-A to 2-G.  
Mr.

**CORAM:- T. V. NALAWADE, J.**  
**DATED:- 9th DECEMBER, 2015.**

**JUDGMENT:**

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. Revision No.99 of 2012 is filed to challenge the judgment and order of Wakf Suit No.33 of 2010 which was pending before the Wakf Tribunal, Aurangabad. The Tribunal has granted relief of permanent injunction against all the defendants and they are prevented from obstructing or interfering in the possession of plaintiffs and enjoyment of property viz. Survey No.636 of Parbhani including the structure standing on the property unless due process of law is followed.

3. Revision No.18 of 2013 is filed against the judgment and order of Wakf Application No.37 of 2010 which was filed against some of the defendants of aforesaid suit by plaintiffs of the suit for challenging the registration certificate issued in favour of present Petitioners regarding the registration of Idgah and Kabrastan on Survey No.636 in which the present Petitioners were shown as members of Managing Committee.

4. It is the case of Respondents, Khamar Ali Shah and Naseer Ali Shah that the Survey Nos.636 and 637 having total area of 26 Acres situated at Parbhani belong to Wakf institution Dargah Burhan Shah Wali of Parbhani. The structure of this Dargah is situated on Survey No.636. It is the case of these two plaintiffs that they are Mutawalli of this Wakf institution. It is contended that these lands were given to this institution under Muntaqab in the year 1301 Fasli. It is contended that in Survey No.636 there is Idgah and also Kabrastan, but this property belongs to the aforesaid Wakf institution.

5. It is the case of Plaintiffs that they have been rendering services to the aforesaid institution and they are managing all the aforesaid structure present on Survey No.636. It is their case that they have been arranging the functions like Urs with the permission of authorities and they have obtained certificates from Wakf Board to show that they are managing these properties. The certificates are with them for the period starting from 2004. It is contended that on the portion which is being used as Idgah they had arranged Urs in the year 2010 also. It is the case of Plaintiffs that by mistake some area of Survey No.636 was shown in the separate name of Idgah in the list of Wakf properties published in the year 1974 and one managing committee was shown as the committee managing this property. It is contended that no such committee was ever in existence. It is the case of plaintiffs that behind their back, some portion of this property is registered as the property of Idgah and the defendants obtained the registration certificate in the year 2010 in respect of this property. It is contended that the defendants are trying to take over the management of the Wakf institution by playing such tactics. It is contended

that the defendants are trying to demolish the shops which are constructed by plaintiffs to make income for the religious institution. The main grievance is against defendant Nos.1 to 13 but the relief is claimed against local body, Municipal Council and also the District Wakf Officer. It is the case of plaintiffs that defendant No.2 himself is an encroacher over the property of Wakf and proceeding is started against him by the Plaintiffs under Section 54 of the Act. It is contended that the plaintiffs are taking action to recover the property of the religious institution as there are many encroachments made by many persons including defendant No.2 and so the dispute is created by defendant Nos.1 to 13. Relief of permanent injunction was claimed on the basis of aforesaid contentions.

6. The defendant Nos.1 to 13 filed written statement and contested the suit. The defendants contended that plaintiffs are not Mutawalli of the aforesaid Dargah and some false record is created by them. They have however, not disputed that Survey Nos.636 and 637 belong to Dargah. It is contended that in year 1974 list of Wakf

property was published by the State Government and the property of Idgah was separately shown and this entry was never challenged by the Plaintiffs. It is contended that in the said list separate Managing Committee was shown as against Idgah and graveyard and so the defendants who have constituted managing committee have right to manage the property of Idgah and graveyard. It is contended that plaintiffs are trying to dispose of the property of Wakf institution to make money and so defendant Nos.1 to 13 have formed committee and they have filed proceedings against the plaintiffs. It is contended that proper accounts are not kept in respect of the property shown to be given on lease and plaintiffs are making huge money and they are causing loss to the Wakf institution.

7. Defendant No.14, the Municipal Council, filed written statement in the suit and it contended that it is not the necessary party to the suit in view of nature of dispute and nature of relief claimed. The local body contended that the disputed property is being used for public purpose and the open space is known as Idgah ground and at this place

persons of Muslim community perform religious ceremonies and functions. It is contended that one committee, defendant Nos.1 to 13 had filed representation to the Collector in the year 2009 for removal of encroachments over said Idgah ground and on that representation the Collector has given directions to the Municipal Council for taking necessary action. It is the contention of local body that it informed to the Chief Executive Officer of Wakf Board about the representation received and direction given by the Collector and then the District Wakf Officer requested the local body to cooperate for removal of illegal and temporary structures constructed on the aforesaid property. It is contended that due to these directions and request made by District Wakf Officer the local body is giving cooperation and it has no other interest.

8. The Wakf board filed written statement and it denied that plaintiffs are Mutawalli or they are successors of the first Muntaqab holder. The Wakf Board contended that many complaints are received against the plaintiffs by it, that they have made encroachment and they have made

illegal constructions. The Wakf board however contended that in the year 2010 it had not recognized any committee as Managing Committee.

9. During arguments it was submitted that there was constructions of 14 shops illegally made by plaintiffs and subsequent to that they made many more constructions and they are making money by using the property of religious institution. It was submitted for the local body that no permission was granted for making these constructions, but due to the order made by the Tribunal the local body may not be in a position to take any action in respect of the illegal constructions.

10. This court has carefully gone through the evidence given before the Wakf Tribunal. At the out set it needs to be observed that it was a suit for relief of injunction simplicitor. No declaration was claimed by the plaintiffs in respect of any right and the Tribunal has also given the relief of only injunction though some issues were framed and findings are given on the issues.

11. For getting the relief of injunction which the plaintiffs

wanted particularly as against defendant Nos.1 to 13, it was necessary for the plaintiffs to show that they have better title. This Court has gone through the record which consists of Muntaqab statement of the year 1301 Fasli (1891 A.D.). It shows that in that year one Amir Ali Shah S/o Mazhar Ali Shah was shown as Muntaqab holder of the Dargah of Parbhani. Name of the Dargah was, however, not mentioned in the statement. The remaining record of the inquiry conducted at the relevant time, however, shows that inquiry was conducted in respect of Wahed Ali Shah Dargah. It appears that there is some mistake in the name of Dargah mentioned in that statement recorded during the inquiry. The name of the Muntaqab holder was Wahid Ali Shah S/o Hasan Ali Shah and Mir Ali had claimed succession. Then, there is record to show that even in the Atiyat Inquiry in the year 1944 the names of plaintiffs were entered as successors of aforesaid Muntaqab holder. The learned counsel for the Petitioners of Revision No.99 of 2012 submitted that this record is prepared by Tahsil office and so this record can be of no use as the officer of the rank of Deputy Collector can make inquiry under Atiyat Inquiry Act. Learned counsel for the plaintiffs submitted

that at the relevant time Atiyat Act was not in existence and so the revenue authority was making inquiry. Even if this record of succession is ignored, it can be said that there is record to show that plaintiffs are successors of the original Inamdar to whom the land was given for rendering services to Dargah. When there is record of 1974 showing that Dargah Burhan Shah Wali was the owner of Survey No.636 and 637, it appears that the structure of this Dargah was shown on Survey No.435 when there is one more Dargah shown in the same list in survey No.435. Admittedly, there is one structure of Dargah on Survey No.636. Both plaintiffs and defendants Nos.1 to 13 are not disputing that these two structure belong to Dargah Burhan Shah Wali. In view of this circumstance, the discrepancy can be ignored safely. In the list of Wakf properties published in the year 1974 graveyard and Idgah were shown at serial No.122 and one Muslim managing committee was shown to be managing this property. Against this entry, there is no mention of particular survey number and there is note that the land around Dargah was in possession of Municipality. The Tribunal has rightly held that the defendant Nos. 1 to 13 cannot claim to be

successors of the aforesaid managing committee if at all such managing committee was there in respect of Idgah. There is no record whatsoever with defendant Nos.1 to 13 to show that such managing committee was in existence and due to its registration and constitution they are entitled to claim as managing committee of Idgah and graveyard.

12. When there is aforesaid material and there is substantive evidence of one of the plaintiffs, nothing is given in rebuttal by defendant Nos.1 to 13. Thus, there was no alternative before the Tribunal than to hold that the plaintiffs are managing the religious institution and its properties at present and they are controlling the things. During the arguments, the learned counsel for Wakf Board also submitted that they are supporting the claim of plaintiffs. As these defendants, present petitioners are claiming rights which are adverse to the rights of the plaintiffs, relief of injunction can be given against them.

13. In view of submissions made by learned counsel for the local body this Court holds that powers of the local body need to be considered. If the local body wants to pull

down the structures which are illegal, in respect of which no construction permission was obtained, then the local body is entitled to pull down those illegal structures. By using the order of injunction the plaintiffs cannot protect the illegal structures. There is no question of consideration of so called encroachment for the municipal council as in the written statement it was not claiming any right over this property and there is record in respect of the title of the religious institution. Some record is there to show that permission of Chief Officer was obtained by the plaintiffs for making construction of one or two rooms but they were not to be used as shops. It can be said that the construction is made by plaintiffs without taking the permission of Board. The Board is entitled to take appropriate action against the plaintiffs in that regard after following due process of law.

14. Defendant Nos.1 to 13 have no right in the management of the Wakf institution or the property like Idgah place and graveyard place and these properties belong to aforesaid Wakf institution. The Wakf institution was already registered, in the year 1974 and there was no

question of its registration again under the Act of 1995. In the past there was Wakf Act of 1954 and the property was registered under the said Act. In view of the provision of section 43 of the Act of 1995 there was a deemed registration under the new Act. It is clear that the defendant Nos.1 to 13 made an attempt to take over some property of Wakf institution by taking step of separate registration of Idgah and graveyard space. The Tribunal has rightly decided that matter against these defendants. It is not possible to interfere in the said decision. In the result, the following order is made:

15. Revision Application No.99 of 2012 is partly allowed. The judgment and order of the Wakf Tribunal in Wakf Suit No.33 of 2010 given as against Municipal Council, Parbhani, defendant No.14, is hereby set aside and the suit is dismissed as against the municipal council. The remaining part of the decision of the Wakf Tribunal is kept in tact so far as the relief of injunction is concerned. Rule is made partly absolute in Revision Application No.99 of 2012.

-(18):-

99

16. Civil Revision Application No.18 of 2013 stands dismissed. Rule discharged.

**[T. V. NALAWADE, J. ]**

Dated:09/12/2015.  
ans/99