

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

CIVIL REVN. APPLN. NO.: 71 OF 2014

1. Grampanchayat Belapur (Kh),
Tq. Shrirampur, Dist. Ahmednagar.
Through its Sarpach
Sunil Baban Kshirsagar,
Age: 37 years, Occu: Agril.
R/o. Belapur (Kh), Tq., Shrirampur,
Dist. Ahmednagar.
2. Gramsevak, Grampanchayat Belapur (Kh),
Tq. Shrirampur, Dist. Ahmednagar.
3. Annasaheb B. Tagad,
Age: 44 years, Occu.: Business,
R/o. Belapur (Kh).
Tq. Shrirampur, Dist. Ahmednagar.
4. Prashant Pandurang Shahane,
Age: 33 years, Occu: Agril.,
R/o. Belapur (Kh),,
Tq. Shrirampur, Dist. Ahmednagar.
5. Manikrao Madeorao Mahadi,
Age: 61 years, Occu.: Agri.,
R/o. Belapur (Kh),
Tq. Shrirapur, Dist. Ahmednagar. ... **APPLICANTS**
[ORI.DEFT.NOS.1 TO 5]

VERSUS

1. Jama Masjid Belapur (Kh.),
Through its trustee,
Shaikh Mehmoodbhai Kamalbhai,
Age: 55 years, Occu: Business,
R/o. belapur (Kh),
Tq. Shrirampur, Dist. Ahmednagar.
2. Shaikh Chandbhai Kamalbhai Shaikh,
Age: 50 years, Occu: Business,
R/o. Belapur (Kh),
Tq. Shrirampur, Dist. Ahmednagar.

3. Shaikh Bashirbhai Kamalbhai,
Age: 46 year,s Occu: Business,
R/o. Belapur (Kh), Tq. Shrirampur,
Dist. Ahmednagar.
4. Shaikh Alambhai Shaikh Noor,
Age: 44 years, Occu: Business,
R/o Belapur (Kh), Tq. Shrirampur,
Dist. Ahmednagar.
5. Shaikh Rajabhai Jamalbhai,
Age: 48 years, occu: Business,
R/o. Belapur (Kh), Tq. Shrirampur,
Dist. Ahmednagar.
6. The Maharashtra State Board of Wakf,
Through its Chief Executive Officer,
Panchakki, Aurangabad.

... **RESPONDENTS**

Mr. Karpe Rahul R., Advocate for the Applicant.

Mr. Shaikh Matin A. Jahagirdar, Advocate for Respondent Nos.1 to 5.

Mr. Sameer Patel Shaikh, Advocate for Respondent No.6 - Absent.

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CORAM:-
DATED:-

T. V. NALAWADE, J.
9th DECEMBER, 2015.

JUDGMENT:

1. The revision is filed to challenge the order made by Wakf Tribunal, Aurangabad on temporary injunction application filed at Exhibit - 5 in Wakf Suit No.67 of 2012. The Tribunal has restrained present Petitioner, village Panchayat from interfering and obstructing the work of construction of Masjid on CTS No.346 situated at Belapur

(Kd), Tahsil Shrirampur, District Ahmednagar. Both the sides are heard.

2. The suit was filed on behalf of Jama Masjid Belapur (Kd) by its present Managing Committee. It is their case that property bearing CTS No.346 belongs to Masjid and Jama Masjid has been in existence since time immemorial. It is contended that the Masjid has been in the use of Muslim community since many years. It is contended that as the structure of Masjid was dilapidated and there were some leakages, they had applied for renovation of the Masjid to village Panchayat. It is contended that in the permission letter dated 2nd September, 2002 such permission was granted by village Panchayat.

3. It is the case of plaintiffs that some persons of the village have created dispute and they are interested in stopping construction work and repair work of the Masjid. It is contended that complaints are made by some persons against the Managing Committee and some complaints are made by the Managing Committee against the persons who are obstructing the work. It is contended that the defendants tried to demolish the construction of the Masjid

by entering the suit premises on 8th March, 2012 and so the cause of action took place for the suit. It is contended that balance of convenience is in favour of the plaintiffs and irreparable loss will be cause if the construction activity is stopped.

4. The defendants filed written statement and the application filed for temporary injunction was also opposed. In the written statement and say, the defendants contended that the police machinery and revenue machinery have taken action and due to that the construction activity is stopped. It is contended that the Government is a necessary party to the proceeding. It is contended that there was no construction at all and the persons of Muslim community were not visiting this place for offering Namaz. The defendants have contended that though there are entries in the village record and city survey record showing that the property belongs to Masjid, those entries are wrong.

5. It is the case of defendants that in the year 2002 no permission was given by village Panchayat. It is contended that the so-called permission was cancelled by Gram

Sabha of the village.

6. The defendants have contended that in the aforesaid property there was Chawadi, office of village Panchayat. It is contended that in the vicinity of this space at a distance of 40' there is a temple of Lord Ganesh and at the distance of 60' there is a temple of God, Goddess Vitthal and Rukmini and there is also temple of Maruti.

7. It is contended that by using the aforesaid so-called permission, within a short time, some structure was put up by the committee of so-called Masjid. It is contended that the villagers had tried to settle the dispute and they had offered to give alternate space to Masjid but the dispute is not settled. They contended that unless and until there is a permission of Gram Sabha such construction permission cannot be given. They contended that in the vicinity of this place there are temples and due to that there is possibility of creation of tension if Masjid is constructed.

8. In the aforesaid written statement itself the defendants have admitted that they have stopped the construction. Though, it is contended that police machinery and revenue machinery have stopped the

construction, there is no record whatsoever to show that the Collector, District Magistrate had stepped in.

9. It is not disputed by the present Appellants, defendants that property bearing CTS No.346 admeasuring 101.5 sq. mtrs is standing in the name of said Masjid. The city survey record was created long back though the Masjid was registered under Wakf Act in the year 2012. In the village record also this property was shown as the property of Masjid from the year 1960-61. This record is more than sufficient to *prima-facie* show that property belongs to the aforesaid Masjid. The aforesaid contentions made in the written statement also show that when the matter was filed there was structure, though it is contended that the structure was put up within a short time after getting the permission.

10. The learned counsel for the Appellants took this Court through some record of village Panchayat and submitted that in the year 2002 itself Gram Sabha was held and in that Gram Sabha resolution was passed to cancel the permission. It was submitted by the learned counsel for defendants that alternate land was suggested for making

such construction and initially some Muslim persons had agreed to make construction on other place but the Managing Committee did not accept this request.

11. On the basis of aforesaid record and contentions this Court has no hesitation to hold that there is a *prima-facie* case in respect of the title of Masjid. There is material on cause of action. Balance of convenience is also on the side of Respondents, Managing Committee of the Masjid. The construction permission was granted and the permission was signed not only by Sarpanch but also by Gram Vikas Adhikari. In view of these circumstances, it can be said that only due to some pressure of the interested persons who must be mischief mongers some dispute is created. The defendants have no right to say that the plaintiffs should make the construction at other place and not on the space on which there was the structure of Masjid in the past. It is unfortunate that the village Panchayat which is expected to be impartial in such cases is taking the side of some mischief mongers. The Gram Sabha could not have cancelled the permission in view of the provisions of the Village Panchayat Act. This Court holds that the Tribunal

has not committed any error in granting the relief to protect the property of Masjid. Only protection is given to the Masjid committee and that is in respect of Wakf property. As it is not possible to interfere in the order, the appeal stands dismissed.

[T. V. NALAWADE, J.]

Dated:09/12/2015.
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