

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CRA NO. 224 OF 2014
WITH CA/3882/2015 IN CRA/224/2014

DARGAH HAZRAT GAIBI PEER MARDANI GAIB, THROUGH
ITS MUTAWALLI SHAHAUDDIN
VERSUS
MAHARASHTRA STATE BOARD OF WAKF AND OTHERS

...
Advocate for Petitioner : Mr. Pathan Yunus Basheer .
Advocate for Respondent No.1:Mr.Patel Sameer Shaikh N.
Advocate for Respondent No.2: Mr. S. S. Kazi.
AGP for Respondent No.3: Mrs. M. S. Patni.

CORAM: T. V. NALAWADE, J.
DATED: 31st JULY. 2015.

PER COURT:

1. The proceeding is filed to challenge the judgment and order of Wakf Tribunal, Aurangabad delivered in Wakf Application No.11 of 2013. The proceeding was filed by present Applicant for relief of setting aside the order made by Chief Officer and also for relief of declaration that the Applicant institution is the owner of property bearing CTS No.2702. The Wakf Tribunal has dismissed this application. Both sides are heard.

2. Both the sides took this Court through the record of previous litigation, the record of City Survey Office and the record of Wakf Board. The record of City Survey Office shows that the City Survey of the properties of that region was conducted in the year 1970-73. In the year 1990, the name of the present applicant was entered in the property record as the owner of property CTS No.2702. It is the case of the Applicant that behind his back a proceeding was filed and his name was deleted from the record. There is copy of Inquiry Register prepared by Revenue Authorities, City Survey Office and it shows that the name of the Masjid, respondent was entered in respect of CTS No.2702 but again it was deleted by another entry and there is a mention that the property needs to be entered in the name of Maharashtra Government. Copy of Sanad is produced in respect of property CTS No.2701 and this property belongs to Masjid, as per this Sanad. Neither of the parties has produced copy of Sanad in respect of CTS No.2702.

3. The Wakf Tribunal has considered the record of City Survey office. It appears that the Deputy Director of

Land Records has set aside the entry made in favour of the present applicant and has directed to make entry of Masjid in respect of this property. The Wakf Tribunal has based its decision entirely on the record of these orders.

4. There is a record of some civil suits (3 in number). At least one suit was filed in respect of CTS No.2702 by the applicant. Learned counsel for present Respondents submitted that the Respondent Masjid was not party defendant in the said suit and the decision given in favour of present applicant by Civil Court in the said suit is not binding on Masjid. There is record of one more suit in which one of the so called trustees was party defendant. Learned counsel for the defendant Masjid submitted that the said person is Maheboob Allah Baksh Mujawar and he was on record, trustee of Dargah and not of Masjid and it was collusive suit.

5. The judgment delivered by Tribunal shows that it has not considered the rival contentions in respect of title and it has considered only the record of City Survey office. The record of City Survey office cannot confer title on anybody. Further, there will be a question as to whether Wakf Board or the Chief Officer has power to

decide the dispute of such nature. The learned counsel for Respondent, Masjid drew attention of this Court to Section 40 of the Wakf Act, 1995 and submitted that in view of this provision the dispute can be decided by the Wakf Board. This submission is not acceptable as the provision is made to enable the Board to take decision and decide as to whether particular property is Wakf or not. When dispute between two institutions arises then in view of the provisions of the Act it is necessary that the Wakf Tribunal decides such dispute. One more point was argued by learned counsel for Masjid that only application is filed and suit ought to have been filed. This proposition is also not acceptable. In view of provision of section 83 (2) of the Act the tribunal has the original jurisdiction and can decide the dispute of the present nature in a proceeding filed even as an application before it. This Court holds that the judgment and order of the Tribunal cannot sustain in law as the title in respect of the party is not decided on merits. The record of City Survey will be only a circumstance for consideration but only on the basis of such record the point of title cannot be decided.

6. In the result, the application is allowed. The judgment and order of Tribunal is hereby set aside. The matter is remanded back to the Wakf Tribunal for fresh decision. Parties to appear before the Tribunal on 2nd September, 2015. The Tribunal is not to get influenced by the observations made by this Court.

[T. V. NALAWADE, J.]

Dt.31/07/2015
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