

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

**CIVIL REVN. APPLN. NO.: 256 OF 2015**

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Jaliwali Masjid and Arbi Madarsa,  
Opp.J.P.Road Dadabhai Cross Road,  
Near Rajkumar Corner, Andheri (West),  
Mumbai - 58.  
Through Trustees/ Mutawallis;

1. Haji Abdul Razzaque S/o Haji Ahmed Chhapra,  
Age: 67 yers, Occu.: Business,  
R/o. Abdullah Manzil, Flat No.11 & 12,  
J.P.Road, Andheri (West), Mumbai-58.
2. Hasham Noor Mohammad Chowhan,  
Age: 48 years, Occ: Business,  
R/o. Hawa Mahal, A/5, Gowthan Land No.1.  
Andheri (West), Mumbai-58. ... **PETITIONERS**

**VERSUS**

1. Maharashtra State Board of Wakfs,  
Panchakkai, Aurangabad.  
Through its Chief Executive Officer,
2. Chief Executive Officer,  
Maharashtra State Board of Wakfs,  
Panchakki, Aurangabad.
3. Mohammad Ali S/o Tayyab  
Age: 61 years, Occ: Business,  
R/o: q54, Victoria Road, Sant Savta Marg,  
Byculla, Mumbai-400 027.

4. Mohammad Taher S/o Tayyab,  
Age: 57 years, Occ: Business,  
R/o: 154, Victoria Road, Sant Savta Marg,  
Byculla, Mumbai - 400 027.
5. Mohammed Tariq S/o Taher,  
Age: 23 years, Occ: Business,  
R/o: 160, Victoria Road, Sant Savta Marg,  
Byculla, Mumbai - 400 027.
6. Mobin Mohammed Ali Latif,  
Age: 27 years, Occ: Business,  
R/o: 160, Victoria Road, Sant Savta Marg,  
Byculla, Mumbai - 400 027.
7. Moin Mohammed Ali Tayyab,  
Age: 22 years, Occu: Business,  
R/o: 160, Victoria Road, Sant Savta Marg,  
Byculla, Mumbai - 400 027.
8. Syed Shaker Ali,  
Age: Major, Occ: Incharge,  
Registration Section and Income Tax  
Auditor, Wakf Board Aurangabad,  
R/o: Panchakki, Aurangabad.
9. Majed Khan S/o Hamid Khan,  
Age: Major, Occ: Inquiry Officer,  
Maharashtra State Board of Wakfs Aurangabad,  
R/o: Panchakki, Aurangabad.
10. Abubakar Tayyab Abdul Latif,  
Age: 50 years, Occ: Business,  
R/o: 154, Victoria Road, Sant Savta Marg,  
Byculla, Mumbai - 400 027. ... **RESPONDENTS**  
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Advocate for the Petitioners: Mr. Kazi S. S.  
Advocate for Respondent Nos.1,2 and 8: Mr. V. J. Dixit, Senior  
Counsel h/f Mr. Sameer Patel, Advocate.  
Advocate for Respondent No.3: Mr. Anil S. Bajaj.

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**CORAM:- T. V. NALAWADE, J.**  
**DATED:- 30th NOVEMBER, 2015.**

**JUDGMENT:**

1. Rule, made returnable forthwith. By consent, heard both the sides for final disposal.
2. The revision is filed to challenge the judgment and order of *Wakf* Appeal No.1 of 2013 which was pending before *Wakf* Tribunal, Aurangabad. This Appeal was filed against the order made by the Chief Officer of *Wakf* Board in MSWB-Enq/Case No.40/292/12 dated 4th January, 2013.
3. Present Respondent No.1 Haji Abdul Razzaque had filed application under section 36 of *Wakf Act, 1995* (hereinafter referred to as "the Act") for registration of property admeasuring 278.79 Sq.Mtrs. which is part and parcel of CTS No.177 situated at Andheri (West), Mumbai. In the application, it was contended that there is a *Mosque* by name "*Jaliwali Masjid*" and there is also *Madarsa* on this property and it is *Wakf* property and it needs to be registered in the register of *Wakf*. It was contended that the *Mosque* was constructed in the year 1958 and CTS No.177 was owned by Abu Bakar at that time. It was

contended by Haji Abdul Razzaue that Abu Bakar had handed over the structure of *Mosque* to him and so he took the management of the *Wakf* and since 1991 he has been managing the entire affairs of the *Mosque*. It is his contention that construction to only some extent was made and remaining construction, which is present on the aforesaid area, is made by him and he has appointed Applicant Nos.2 and 3 like Hasham Noor Mohammad and Mohammad Farooque Bismilla Khan to assist him in the management. Thus, it was contended that the *Mosque* has been in existence for more than 50 years and the aforesaid area belongs to *Mosque*. This application was filed on 25th October, 2012.

4. This proceeding was challenged by Tahir S/o Tayyab. He contended that the property mentioned in the application is a private property and he is successor of Abu Bakar. He contended that the applicants have no concern with the property and they have no right to apply for registration. It appears that application under section 36 of the Act was filed by Mohammad Ali Tayyab Latif and other successors of Abu Bakar on 28th December, 2012

and prayer was made for registration of *Mosque* having area of 300 Sq.Yards, the space occupied by the structure and the structure only from CTS No.177 as *Wakf* property. They gave the name of this institution as "*Abu Bakar Jaliwali Masjid*". They produced *Wakf* deed in respect of this area executed by them in favour of *Masjid* to show that they had created the *Wakf*.

5. Haji Abdul Razzaque then filed application under section 40 of the Act in which similar contentions were made and he requested for registration of the area of 728.8 Sq.Mtrs. along with structures thereon as *Wakf* property. This proceeding was also numbered. The Chief Officer considered the two applications filed by Haji Abdul Razzaque and he made order under section 40 of the Act. The Chief Officer rejected the application of this person by holding that he had no concern at all, he had no *locus standi* but he made order to register the *Masjid* as a *Wakf* immediately. This order was made on 4th January, 2013. In that order, the area of CTS No.177 owned by *Masjid* is not mentioned when it is the contention that the area of 728.79 Sq.Mtrs. i.e. around 7840.30 Sq.ft. out of the total

area of 1201.3 Sq.Mtrs. of CTS No.177 belongs to the *Wakf* institution. Being aggrieved by this order *Wakf* Appeal No.1 of 2013 was filed. The Tribunal has also held that Haji Abdul Razzaque and his two associates have no concern, they have no *locus standi* and the appeal is dismissed.

6. The main contention of learned counsel for the Petitioners is that the Chief Officer has committed error in not describing the area of the property owned by the *Wakf* institution. His other contention is that the *Wakf* Tribunal has committed error in holding that present petitioners have no *locus standi* when, admittedly, at-least for some time, they were rendering services to the *Mosque*. It was submitted that voluminous record is produced to show that the petitioners, who are part of the Committee managing the affairs of the *Mosque* and *Madarsa*, are spending the amount since many years. This Court has gone through the record which is voluminous and which include even the audit report in respect of the amount collected and spent by the *Wakf* institution.

7. To show the *locus standi*, the learned counsel for the Petitioners took this Court through the definition of "*Wakf*"

given in the Act which is in section 3 (r). He submitted that *Wakf* can be created not only by permanent dedication but also by user. This proposition cannot be disputed in view of the definition of "*Wakf*". He then took this Court through the definition of "Person interested in a *Wakf*" which is given in section 3 (k) of the Act and submitted that in the present case the petitioners were involved in the management and they have the record to show the same and at-least their contention that they have the right to offer prayer, go for the purpose of religious rites in the *Mosque* ought to have been considered. In view of the above definition and as there is force in at-least the second submission that they were offering *Namaz* and going to this *Masjid* they have the *locus standi*.

8. The learned counsel for the Petitioners submitted that in view of the powers of the Board given in section 40 of the Act there was no need to go into the *locus standi*. He submitted that when the successors of Abu Bakar themselves had applied under section 36 of the Act for registration, and when it is mandatory to register such institution under this provision, in view of the provision of

section 40 of the Act, the Chief Officer ought to have made “*inquiry*”. He submitted that, the order made by the Chief Officer does not show that any kind of inquiry was made to ascertain the property which belongs to *Wakf* and it can be said that only on the basis of submissions made by the successors of Abu Bakar the order of registration of *Wakf* came to be made without mentioning the area owned by the institution. He then took this Court through Rule 50 of the Maharashtra Wakf Rules, 2003 (hereinafter referred to as “the Rules”), framed by the Maharashtra State Government and he submitted that in view of the wording of this provision “*any party aggrieved*” by the decision of the Board given under section 40 of the Act can file appeal to the Tribunal under section 83 of the Act. There is force in this submission also. Thus, it was not proper on the part of the Tribunal to question the *locus standi* of the present petitioners. When the successors of Abu Bakar themselves were admitting that there was *Mosque* in existence, it was necessary for the Chief Officer to conduct detailed inquiry to ascertain the properties owned by *Wakf*. This was not done.

9. The submissions made in the present proceeding show that the successors of Abu Bakar have some plan which was allegedly submitted to the local body for development. A structure bounded by the boundary wall is shown in the map which is admittedly the *Mosque*. Though it was submitted by the learned counsel for the successors of Abu Bakar that one institution was created to render services to the community and for that the plan was prepared, in view of the admitted fact that the *Mosque* has been in existence for many years this submission cannot be accepted. Further there is admission, in the form of the application made under section 36 of the Act by the successors of Abu Bakar themselves. Some photographs of the *Masjid* showing the structure and the open space are on the record. Admittedly, there is one *Madarsa* which is being run inside of the campus. The campus of *Masjid* has compound wall and at one end at the entrance there is *Minar* of the *Masjid*. There are structures like toilet box, latrine, facility for *Wudu, ablution*. The Petitioners have produced report of Architect showing the description of these structures, which include the structure of the office. So, it was necessary for the Chief Officer to make detailed

inquiry into all these structures to ascertain the user of these structures. There are affidavits of religious persons like *Imam, Naib Imam, Mozin* to show that the open space is being used for *Masjid* and by the persons who come to offer *Namaz*. Such inquiry was not done.

10. During arguments, learned counsel for the successors of Abu Bakar submitted that they have no interest in getting the open space and they do not want to develop the open space. They have fear that some action will be taken by local body against their construction which is on one side of *Mosque* and they fear that the local body may say that the set back on that side is not left. He submitted that the open space until wall of *Masjid* was left as set back. All these things can be considered by the Chief Officer during inquiry. Another submission was made that in the year 1996 the front portion, which includes the entrance gate was acquired, for local body. It appears that a certificate is obtained from local body by the successors of Abu Bakar to use TDR in respect of the space acquired. TDR will be used on other property. It can be said that if the property was a *Wakf property*, such certificate could

not have been given to the successors of Abu Bakar. The property of *Wakf* institution was acquired and so the compensation needs to go to the *Wakf* institution itself. This aspect also needs to be considered by the Chief Officer. The learned counsel for the successors of Abu Bakar submitted that they have not used the said TDR.

11. The aforesaid discussion shows that detail inquiry into all the aspects is required to be made by the Chief Officer. For that, the matter needs to be remanded back by setting aside the order of the Tribunal. However, the order of registration of *Mosque* as *Wakf* institution will stand as it is. The inquiry needs to be made to ascertain the area owned by the institution and the other properties of the institution.

12. In the result, the Revision is allowed. Judgment and order of the *Wakf* Tribunal of dismissal of the appeal of the petitioners is set aside. The appeal is allowed to aforesaid extent.

The matter is remanded back to the Chief Officer for ascertaining the properties and the exact area of *Wakf* institution, the *Mosque*. While ascertaining the exact area

not only the structure of *Mosque* is to be considered but the other structures created for providing amenities to the *Mosque* are also to be considered and the *Wakf* by user law is to be considered.

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

Dated:30/11/2015.  
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