

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

WRIT PETITION NO. 747 OF 2015

Rupa Kabu Bharwad and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Ankush N. Nagargoje, Advocate for Petitioners.

Shri B. V. Virdhe, A.G.P. for Respondent Nos. 1 and 2.

Shri S. S. Kazi, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.**

DATE : 04TH JULY, 2016.

PER COURT :

. Mr. Nagargoje, the learned counsel for the petitioner submits that, the order dated 16.07.2014 directing the Sub Divisional Officer, Vasai to take possession of the land pursuant to Sec. 52 of the Wakf Act, 1995 is without notice to petitioners and without hearing petitioners. The petitioners are legitimate owners of the property and such an order could not have been passed. The Wakf Board is not concerned with the said property.

2. Per contra, Mr. Kazi, the learned counsel for the respondent No. 4 submits that, the writ property is notified as a wakf property in the Gazette as well as alienation register and

which has presumptive value. The sale transaction could not have been conducted. The order has been rightly passed by the Chief Executive Officer.

3. We have considered the arguments canvassed by learned counsel for respective parties. Even while invoking provisions of Sec. 52 of the Wakf Act, notice is required to be issued to the parties. It appears that, said procedure has not been adhered to. The petitioners were not given any notice and directly directions are given to the Sub Divisional Officer to take possession of the writ property. The same is not in consonance with the provisions of law.

4. In the light of that, we set aside the impugned order. In case Chief Executive Officer ventures to take action U/Sec. 52 of the Wakf Act, he may do so as laid down in the Wakf Act and after hearing the petitioners. All contentions of respective parties are kept open. The writ petition is disposed of. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]