

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

CIVIL REVISION APPLICATION NO. 42 OF 2016

Mohammed Maslehoddin s/o

Wasefoddin Khatib

[since deceased Thr. L.Rs.]

1. Mujahid s/o Maslehoddin Khatib
 Age : 55 Yrs., Occ. Business,
 R/o : Ranjani, Tq. Ghansawangi,
 District : Jalna.
2. Zubair s/o Maslehoddin Khatib
 Age : 50 Yrs., Occ. Imam of Masjid,
 R/o : Kacheri Road, old Jalna.
3. Majed s/o Maslehoddin Khatib
 Age : 45 Yrs., Occ. Labour,
 R/o : Ranjani, Tq. Ghansawangi,
 District : Jalna.
4. Wajed s/o Maslehoddin Khatib
 Age : 40 Yrs., Occ. Labour,
 R/o : Ranjani, Tq. Ghansawangi,
 District : Jalna.
5. Zaker s/o Maslehoddin Khatib
 Age : 33 Yrs., Occ. Labour,
 R/o : Ranjani, Tq. Ghansawangi,

District : Jalna.

6. Rashid s/o Maslehoddin Khatib
Age : 30 Yrs., Occ. Labour,
R/o : Ranjani, Tq. Ghansawangi,
District : Jalna. **APPLICATNS**

V E R S U S

1. Amjad Makhdoom s/o
Mohiyoddin, Age : 2 Yrs.,
Occ. RTO agent,
R/o Afgan Mohalla, Jalna,
Tq. & Dist. Jalna.
2. Maharashtra State Board of
Wakf, Aurangabad through
its Executive Officer,
Panchakki, Aurangabad. **RESPONDENTS**

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Mr. Mujahedul Haque, Advocate for Applicants.

Mr. U.D.Dalve, Advocate for R.No. 1.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 05/05/2016

JUDGMENT :

1. **'Admit'**. Notice after admission of Civil Revision Application. Heard learned counsels for the applicant and respondent No. 1/original respondent in the application which was pending before the Waqf Tribunal.

2. Waqf Application No. 105/2012 was filed by present applicant under the provisions of Section 83 (2) of the Waqf Act, 1995. He had challenged the order of appointment of respondent No. 1 as temporary Mutawalli made by the Waqf Board. It is the contention of the present applicant that he is successor of Wasefuddin and Wasefuddin was Mutawalli and Sanad was granted in his favour by Jama Masjid and Idgah at Ranjani. It is the case of the applicant that he has been maintaining and managing religious institution and there is record in that regard with him. It is his case that he is entitled to work as Mutawalli as successor of original Mutawalli, but behind his back, respondent No. 1 was appointed as temporary Mutawalli by Waqf Board and so the appointment is illegal.

3. Respondent No. 1 had contested the matter by filing reply. He has contended that he is successor of original Mutawalli Gaus Mohiuddin. Learned counsel for respondent No. 1 submitted that present applicant may be a successor of Shikmidar, but he is not successor of Mutawalli and only Amjad s/o Maqdoom Mohiuddin is successor of Mutawalli and in view of this circumstance, no error is committed by the Waqf board in appointing him as temporary Mutawalli.

4. The submissions made show that both sides had applied for obtaining succession in respect of Mutawalliship and it appears that the proceeding filed by Amjad is still pending. In view of the circumstance, appointment of temporary Mutawalli is made by the Waqf Board.

5. Some record was shown by both sides against each other. One Suit was filed by present applicant against respondent Majad and others for relief of injunction and it was contended that defendant was trying to dispose of the waqf property G.No. 251-2-3 and in that Suit, Amjad had filed Written Statement. On the

other hand, some record was shown by the learned counsel for Amjad that some portion of S.No. 116 is sold by the applicant to Mohd. Wasefuddin – father of present applicant in the year 1988.

6. There is record viz. Sanad which may support the contention of the present applicant and Govt. Gazette, according to Amjad is supporting his claim. Further succession is not yet granted and both of them are claiming that they are Mutawalli. There is some record with present applicant to show that in the year 1988 when the applicant had filed application for permission to the village Panchayat for construction it was granted for this religious institution. One certificate is also issued that present applicant was managing waqf property. He has made some payment to the waqf funds.

7. The provision of Section 63 of the Waqf Act shows that when there is temporary vacancy, arrangement can be made by Waqf Board and somebody can be appointed as Mutawalli for fix period. It is the case of the present applicant that when he was taking care of religious institution, at least notice ought to have

been issued against him. On that ground, he has challenged the order made in favour of Amjad.

8. It appears that Waqf Tribunal presumed that the proceeding became infructuous as the period of initial appointment of 2 years was over. However, the Tribunal did not consider the circumstance that extension was already given before the date of expiry of the previous period for further period of 3 years and there was the contention of aforesaid nature. It can be said that the applicant had not shown interest to prosecute the matter and due to that the Tribunal made order on the basis of the submissions made by the respondent of that proceeding. In view of the record of the present matter, this Court holds that opportunity needs to be given to both, to establish their claims before the Tribunal. On that basis, Tribunal can make appropriate order in the proceeding. It can not be said that by such order, Tribunal has decided the claim of anybody.

9. Thus, the Civil Revision Application needs to be allowed and it is allowed. The order made by the Waqf Tribunal of dismissal of Waqf Application No.

105/2012 is set aside and the matter is restored to its original number. Both parties to appear before the Waqf Tribunal on 20/06/2016. The Tribunal is to expeditiously dispose of the matter and preferably within 6 months from the date of receipt of this order.

[T.V.NALAWADE, J.]

KNP/S.A. 245.1993 - [J]