

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2105 OF 2009

Sayyad Sajid Hussaini S/o Sayyad Sajjad Hussaini Chisti Jagirdar,
[Died through his legal heirs]

- 1/a] Haseena wd/o Sayyed Sajid Hussaini,
Chishti Jagirdar,
Age : 60 years, Occ : Household,
R/o. At post Burhanpur, Tq. Akkalkot,
Dist. Solapur.
- 1/b] Sayyed Mujaheb Hussaini s/o Sayyed,
Sajid Hussaini Chishti Jagirdar,
Age : 40 years, Occ : Sajjadanshin,
Mutawalli of Dargah Hazarat Peer
Khaja Maqdoom Allauddin Chishti (Rh.)
- 1/c] Sayyed Ubaid Hussaini s/o Sayyed
Sajid Hussaini Chishti Jagirdar,
Age : 37 years, Occ : Agriculture,
R/o At Post Burhanpur, Tq. Akkalkot,
Dist. Sholapur.
- 1/d] Sayyed Umar Hussaini s/o Sayyed,
Sajid Hussaini Chishti Jagirdar,
Age : 37 years, Occ : Agriculture,
R/o At post Burhanpur, Tq. Akkalkot,
Dist. Solapur.

...PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through Collector,
Osmanabad.
- 2] The Chief Executive Officer,
Maharashtra State Board of Wakfs,
Panchakki, Aurangabad.
- 3] The District Wakf Officer,
Osmanabad,
Dargah Road, Osmanabad.

4] The Tahsildar, Omerga,
District Osmanabad.

...RESPONDENTS.

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Advocate for Petitioner : Mr. A. P. Gaikwad, Advocate h/f Mr. S. S. Kazi.
AGP for Respondent Nos.1 & 4 : Mr. A. P. Basarkar.
Advocate for Respondent No.2 : Mr. M. C. Syed.
Advocate for Respondent/Wakf Board : Mr. P. B. Pathan.

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**CORAM : S. V. GANGAPURWALA &
A. M. BADAR, JJ.**

DATE : 24th FEBRUARY, 2016.

PER COURT:

1] Learned counsel for the petitioner submits that the petitioners have been granted Succession by the competent Atiyat Court. However, possession is not being given of the said land. According to learned counsel, Wakf Board is still proceeding with Ek-Sala-Lavni of the said writ land, without any authority. According to him, it is the petitioners who are entitled to the possession of the said land. He further submits that it is only where succession certificate is not granted or the succession proceedings are pending, the respondent can proceed with the Ek-Sala-Lavni. When petitioners have been granted succession by the competent Atiyat Court, the act of the respondents in putting the said property on Ek Sala Lavni is illegal.

2] We have heard the learned counsel for the respondents.

3] According to the petitioners, succession has already been granted by the Atiyat Court under the provisions of the Atiyat Enquiries Act. Once succession is granted, petitioners can certainly claim their right. As far as the possession of the property is concerned, the petitioners have to move the competent authority under the statute, for getting possession. The

petitioners have already moved the Wakf Board in that regard by filing an application (Exhibit J, page 64).

4] It is for the Wakf Board to take appropriate action. In case the Wakf Board is not taking any action, the petitioners have other remedies available, either taking recourse to the provisions of the Atiyat Enquiries Act or the Wakf Act, as the case may be.

5] In the light of the above, we dispose of the writ petition. The Wakf Board may take necessary decision on the application by the petitioner (Exhibit J page 64) expeditiously and in case the same is not favourable to the petitioners, the petitioners may take recourse to the provisions of the statute and may approach the competent forum in that regard.

6] Rule made absolute accordingly. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-