

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

WRIT PETITION NO. 6914 OF 2016

Begum Hajra Khan Riyazoddin Khan
Age: 46 years, Occu.: Mutawalli of
Dargah Hazrat Mansoor Shah Wali
Through her Power of Attorney;
Sadat Ali Khan Safdar Ali Khan
Age: 60 years, Occu.: Pensioner,
R/o Dautpura, Beed, Tq. & Dist. Beed.

..PETITIONER

VERSUS

- 1) Syyd Khairunissa Begum Syyed Kadar Ali
Age: 75 years, Occu.: Household,
R/o Hiralal Chowk, Beed, Tq. & Dist. Beed.
- 2) Majhar Ali S. Kadar Ali
(Died) Through L.Rs.
- 2/a) Tahsim begum Syyed Majhar Ali
Age: 48 years, Occu.: Houshold,
R/o as above.
- 2/b) Akhtar Begum Syyed Majhar Ali
Age: 50 years, Occu.: Household,
R/o as above.
- 2/c) Syyed Rehan Ali Syyed Majhar Ali
Age: 22 years, Occu.: Education,
R/o as above.
- 2/d) Jaya Manal Syyed Majhar Ali
Age: 19 years, Occu.: Education,
R/o as above.
- 2/e) Syyed Sofiyan Ali Syyed Majhar Ali
Age: 15 years, Occu.: Education,

R/o as above
(Minor: Under Guardian of R 2/a)

- 3) S. Julfikar Ali S. Kadar Ali
Age: 40 years, Occu.: Trade,
R/o as above.
- 4) Saytanarayanji Bhagirathji Lohati
Age: Major, Occu.: Trade,
R/o M.I.D.C. Road,
Opp. Samshan Bhumi,
Tq. & Dist. Beed.

..RESPONDENTS

WITH
WRIT PETITION NO. 6659 OF 2016

Saytanarayanji Bhagirathji Lahoti
Age: 68, Occu.: Business,
R/o M.I.D.C. Road, Opp. Samshan Bhumi,
Tq. & Dist. Beed.

..PETITIONER

VERSUS

- 1) Sayyed Khairunissa Begum Sayyed Kadar Ali
Age: 75 years, Occu.: Household,
R/o Hiralal Chowk, Beed, Tq. & Dist. Beed.
- 2) S. Majhar Ali S. Kadar Ali
(Died) Through L.Rs.
- 2/a) Tahsim Begum Syed Majhar Ali
Age: 48 years, Occu.: Household,
R/o as above.
- 2/b) Akhtar Begum Syed Majhar Ali
Age: 50 years, Occu.: Household,
R/o as above.
- 2/c) Syed Rehan Ali Syed Majhar Ali
Age: 22 years, Occu.: Education,
R/o as above.

2/d) Joya Manal Syed Mazhar Ali
Age: Major, Occu.: Education,
R/o as above.

2/e) Syed Sofiyan Ali Syed Majhar Ali
Age: Major, Occu.: Education,
R/o as above

3) S. Julfikar Ali S. Kadar Ali
Age: 40 years, Occu.: Trade,
R/o as above.

..RESPONDENTS

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Mr. S.S. Kazi, Advocate for petitioner.
Mrs. M.A. Kulkarni, Advocate for Respondent Nos. 1 to 3.
Mr. Md. Waseemullah, Advocate for Respondent No.4.

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CORAM : T.V. NALAWADE, J.
DATED : 21st DECEMBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The first proceeding is filed to challenge the order made by Civil Judge, Junior Division, Beed on Exhibit 53 in Regular Civil Suit No. 273 of 2005. This application was filed by the third party / petitioner for making him party defendant in the suit. It is his contention that he is Mutawalli. The second proceeding is filed by original defendant to

challenge the order made on Exhibit 52 from the same suit. In this application, the defendant / petitioner contended that the suit property is Waqf property and so Civil Court has no jurisdiction and point of jurisdiction needs to be decided as preliminary issue. Both applications are rejected by the Trial Court.

3. The attention of this Court was drawn to the pleading in the plaint. In plaint at paragraph no. 2, the plaintiff has mentioned Survey No. 3 as property of Mansoor Shah Wali Dargah. This contention is sufficient to draw some inference and then decide the point of jurisdiction. In view of provisions of Waqf Act, 1995 and the amendments made to it in the year 2013, the Civil Court needs to ascertain as to whether it has jurisdiction to decide the dispute or whether only Waqf Tribunal created under the special enactment has the jurisdiction. In such a case and when there is pleading of aforesaid nature, it is not necessary to record the evidence and only on the basis of pleading and some record the point of jurisdiction can be decided.

4. Unfortunately the Civil Court has lost sight of provision of Section 90 of the aforesaid Act which has imposed the duty on the Court to see that in every case in which Waqf property is involved, Waqf Board

is made party. When Waqf Board is not there, Mutawalli who is approved by the Waqf Board can intervene to protect the interest of Waqf and then also it is the duty of the Court to see that Waqf Board is made party. The entitlement of the petitioner to work as Mutawalli cannot be decided by this Court or Civil Court and this claim can be considered by the Waqf Tribunal if the matter is filed before the Waqf Tribunal. For that the Civil Court will not have jurisdiction. However, in view of provision of aforesaid special enactment any party interested in the Waqf can intervene in the matter and only from that angle this Court holds that present petitioner can be allowed to intervene in the matter.

5. Learned Counsel for petitioner from Writ Petition No. 6919/16 produced copy of citation reported as 2014 (1) Mh.L.J. 902 (Syed Kausar Shah Vs. Syed Gous Ahmed Shah (D) Through L.Rs. And Another). Same property was involved in the matter and so observations made by this Court in the said matter are also taken into consideration.

6. In the result, both petitions are allowed. Application filed by petitioner from Writ Petition No. 6914 of 2016 before the Trial Court to allow him to join as defendant is allowed. However it is to be kept in mind that he is not to be treated as Mutawalli and he can be treated as

party interested in Waqf. Similarly, the Court will be required to decide the preliminary issue about the jurisdiction of the Civil Court and that issue needs to be decided immediately in view of the provisions of special enactment. Rule made absolute in those terms. Civil Court to decide the preliminary issue within 45 days from the date of receipt of this order.

(T.V. NALAWADE, J.)

SSD