

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

906 CRA NO. 101 OF 2016

**DARGAH HAZRAT D. MALIK,
DARGAH HAZRAT G. BABA,
DARGAHHAZRAT G. SHAH
AND KABRASTA**

VERSUS

**THE CHIEF OFFICER, MUNICIPAL
COUNCIL, RAHATA, DIST.
AHMEDNAGAR AND ORS.**

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Mr. Y.B.Pathan, Advocate for Applicant.
Mr. V.D.Hon, Sr. Counsel i/b Mr. A.V.Hon,
Advocate for R – 1.

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CORAM : T.V.NALAWADE, J.

DATE : 21st JULY, 2016

ORDER :-

. The Revision is filed against the Order made on the application filed for temporary injunction by the petitioners in Wakf Suit No. 65/2016 which is pending before the Wakf Tribunal, Aurangabad. The application is rejected by the Tribunal. Heard both sides.

2. The Suit is filed by the applicants for relief of declaration and permanent injunction in respect of 5 R. portion of land out of S.No. 338/2. It is contended that to this portion, in the record of city survey, numbers are given as 1832 [21 Sq. Meters], 1833 [21.01 Sq. Meters], 1834 [50.5 Sq. Meters] and 1835 [12.2 Sq. Meters] situated at village Rahata, Tahsil Rahata, District Ahmednagar. It is the case of the plaintiffs that there are 3 Durgahs and Kabrastan adjacent to these Durgahs and the plaintiffs are 'Mujawar' of Durgahs and they are residing on the space.

3. It is the case of the plaintiffs that in the past, the property was with District Local Board, Ahmednagar which was local authority for the public properties and the suit property was devoted for religious purpose by the President of the Local Board. It is contended that such dedication, grant was made in the year 1952-53 and so in the revenue record entry was made as Inam property. It is contended that in view of the circumstances, the suit property became property of Durgah. It is contended that recently notices were issued by the local body, Municipal Council and direction is given to remove the encroachments and it is informed that the property belongs to the local body and

by making some construction of Durgah, encroachment is made on the property. It is contended that on the same survey number, there are other properties viz. CTS No. 1700 to CTS No. 1730 and they are used by the local body for residential quarters and for the office of Fire Brigade and they are adjacent to the suit property on which there is possession of the plaintiffs.

4. It is contended that Durgahs are there on the suit property for more than 100 years and so the structures can not be demolished. It is contended that the authorities are not removing the constructions made on CTS No. 1700 to CTS No. 1730, but action is being taken only against the plaintiffs. It is contended that reply was given to the show cause notice which was issued first time in the year 2010 and subsequent notices were also replied.

5. It is contended that initially R.C.S. No. 434/2011 was filed by the plaintiffs against the local body in the Civil Court to prevent the demolition and the said Suit is still pending and it is at the stage of framing issues. The first notice dated 08/06/2010 and subsequent notices issued till the year 2016 are mentioned as cause of action for the

Suit. In this Suit, injunction is prayed to prevent the defendants from pulling down the constructions.

6. Written Statement is filed by the local body and aforesaid contentions regarding grant of the property by the President of the local body are denied. It is contended that the plaintiffs are encroachers on aforesaid 4 city survey numbers and in the development plan, as sanctioned by the Govt. on 16/08/2004, which came in force on 15/09/2004, the properties are reserved for shopping centre of the local body. It is contended that the constructions on so called CTS Nos. 1832 and 1833 are exactly on national high-way 160 and the construction present on CTS Nos. 1834 and 1835 are situated within the prohibited area of 37 Meters from the central line of national high-way. It is contended that there was no permission or authority to make such construction and as the plaintiffs are encroachers, notice is given and the plaintiffs have no right to say that they can continue the possession.

7. It is the case of the defendant – local body that the aforesaid Suit bearing No. 434/2011 which was filed in the Civil Court by the plaintiff was dismissed for default as no

interest was shown to prosecute the matter. It is contended that only to protract the action of local body, such step was taken and filing of present Suit is another attempt to protract the action which can be taken by the local body.

8. It is the case of the defendants that the so called Durgah is not registered and it is not wakf property. It is contended that in the first notice of 2010, sufficient opportunity was given to the plaintiff to pull down the construction. It is contended that constructions of temporary nature are made by the plaintiffs and there they are running illegal lottery centre and mobile shoppee. It is contended that he sought time and then filed Suit and this way the plaintiffs are trying to avoid to remove the encroachment.

9. The Tribunal has rejected the application filed for temporary injunction by holding that there is no record to show that the property is dedicated for construction of Durgahs and for Kabrastan. It is observed that there is no record to show that the property was declared as wakf at any time and the so called religious institution is registered under any Act.

10. The record produced by both sides is consistent with the case of the defendants. It is not disputed that the aforesaid city survey numbers are part of S.No. 338/B. Learned counsel for the applicants has relied much on some entry made in the revenue record in the year 1952-53 to show that it was Inam land of Class VII, but that entry also can not help to plaintiffs. In this 7/12 extract, there is no mention of Durgah or Kabrastan. On the other hand, the owner is shown as the President, District Local Board, Ahmednagar and dormentry [Dharamshala] belonging to local board is mentioned and it is shown under the control of the local body. There is no other record of Inam with the plaintiffs. If at all the property was dedicated to the plaintiffs, there would have been some record and entries would have been there in Inam register. For some time the property was with Village Panchayat and it was used as market place and that can be seen from the 7/12 extract for years 1968 – 1973. There is mutation of the year 1950 showing that for dormentry [Dharamshala] the property was given to the President of local board by the Collector. All the entries were in favour of the local board after 1950. At one time, one floor mill was found there and action was taken for removal of the floor mill. There is even record to show that

the property came to the Municipal Council, Rahata as in place of local board, Municipal Council came in existence.

11. Learned counsel for the applicants has relied on the assessment record of 2014-2015 showing that temporary construction of tin shed was there and there was structure of small Durgah constructed in clay and lime. The other assessment record of the same period shows that temporary structures of huts having tin shed were there and one Eqbal Abdulla Shaikh was shown to be occupying the structure which was being used as residential place and toilet block. Copy of enquiry register of the local body is produced which is as per the assessment record, but that is recent record, created after 2010.

12. The city survey of the property was done after 1970 and in the record of city survey office of the aforesaid city survey numbers Village Panchayat and then Municipal Council, Rahata were shown as occupants - owners.

13. Learned counsel for the applicants made submission that the construction of durgah is there since more than 100 years and so it needs to be protected. There is

virtually no record in that regard with the plaintiffs. On one hand it is contended that prior to 1955, the property was dedicated by the local body and on the other hand it is contended that the structure is there for more than 100 years. Copies of the photographs were produced and they show that small structures of size of hardly 6 feet length and 2 feet height are shown as Durgahs.

14. There is no dispute about the issuing of notices by the local body. Notices were issued not only under Maharashtra Land Revenue Code but also under the provisions of the Maharashtra Municipal Councils Act. The record is sufficient to show that Abdulla Shaikh, who is allegedly Mujawar has made encroachment. There is allegation that he is using the property for running illegal lottery centre, etc. It appears that on one small structure, subsequently attempt was made to make construction to show that cover was there. This is a serious act of the plaintiffs. The instances of mis-using the religious feelings of the persons of various communities of the society are increasing. The persons like present plaintiffs are mis-using the religious feelings for making personal gain and they are creating rifts in the society. It is noticed that small structures

are created on public property and then by using religious feelings, the authorities are prevented from taking action and then properties are developed for commercial purpose by such persons. Such persons needs to be severely dealt with and even criminal cases needs to be filed against them. Otherwise such incidents will go on increasing. This Court holds that the Tribunal has not committed any error in rejecting the application filed for temporary injunction.

15. In the result, Civil Revision Application stands dismissed.

[T.V.NALAWADE, J.]