

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

908 CRA NO. 102 OF 2014

**ABDUL KASIM ABDUL MOIN
AND ORS**

VERSUS

**ABDUL MAOZZAM ABDUL NAEEM
AND ANR**

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Mrs.C.S.Deshmukh h/f Mr. V.S.Badakh,
Advocate for Applicants.

Mr. Mustafa Gulam Mustafa, Advocate for R – 1.

Mr. Sameer S.Patel, Advocate for R – 2.

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CORAM : T.V.NALAWADE, J.

DATE : 8th JUNE, 2016

ORAL ORDER :-

. The Revision is filed by the defendants of Wakf Suit No. 132/2009 which is pending before the Wakf Tribunal, Aurangabad. The present applicants/defendants had made applications in the Suit for dismissal of the Suit and also for staying the Suit. It was contended that one Civil Suit in respect of the suit property was already pending in the Civil Court against the plaintiffs and due to these circumstances Wakf Tribunal has no jurisdiction. On the date

of this application, the Suit which was pending in the Civil Court and which was filed by the present applicants was pending and so the prayer of stay of Suit in view of provision of Section 10 of the Code of Civil Procedure was considered by the Tribunal and this prayer is rejected. Heard both sides.

2. Learned counsel for the applicants took this Court through the provisions of Sections 6 and 7 of the Wakf Act, 1995 and she placed reliance on the case reported in **AIR 2007 Supreme Court 1447 (1) [Sardar Khan & Ors. Vs. Syed Najmul Hasan (Seth) & Ors.]**. She submitted that the Apex Court has laid down that the provisions of Section 7 (5) and Section 85 of the Wakf Act do not extend to Suits pending in Civil Court before enforcement of the Act. This Court has carefully gone through the facts of the reported case and provisions of Sections 6, 7 and 85 of the Wakf Act, 1995.

3. The interpretation made by the Apex Court of the aforesaid provisions show that if Suit is already filed in Civil Court, which can lie u/s 6 (1) of the Wakf Act and it was filed prior to commencement of the Act, the Tribunal will have no jurisdiction to decide such matter and it will be continued and concluded as if Act has not come into force. This interpretation is made in view of provision of Section 7 (5) of the Wakf Act. It is not disputed that the Suit filed by the present applicants was filed prior to coming into force of the Wakf Act and it was still pending on the date of the Suit filed before the Wakf Tribunal.

4. The provision of Section 6 (1) of the Wakf Act shows that in such a Suit, dispute about the nature of the property is involved viz. whether a particular property is wakf property or not and whether the property belongs to Sunni wakf or Shiya wakf.

5. The Suit filed by present applicants in the Civil Court is only in respect of the right of the plaintiff to get share in the property and the Suit was filed for relief of partition and injunction. At para No. 4 of the plaint, present applicants have contended that the agricultural land, the suit property, was service inam land of Masjid but subsequently it was converted to make it 'madatmash' land. Thus, the applicants have admitted that in the beginning the suit property was service inam land, the wakf. No declaration was claimed that it was 'madatmash' land and the institution like masjid or Wakf board are not parties to the Suit. Thus, the partition suit filed by the applicants in the Civil Court is not u/s 6 (1) of the Wakf Act, 1995.

6. Present Wakf Suit is for relief of injunction and it is claimed that it is service inam land of Durgah Hajrat Khwaja. Wakf Board is made party defendant in the Suit and relief of injunction is claimed against the applicants/defendants in the Suit. Thus, the two suits are apparently different and so the provision of Section 10 of the Code of Civil Procedure can not come into play.

7. This Court has gone through the issues framed by the Wakf Tribunal. The Tribunal will be considering the

case of applicants that they are in possession and the effect of Suit No. 126/1992 filed by the present applicants. Thus, the Wakf Tribunal will be considering the effect of the Civil Suit also and the rights of present applicants, which can be done under the provisions of the Wakf Act, 1995. This Court has no hesitation to hold that no error is committed by the Wakf Tribunal. The Revision is devoid of merits.

8. Civil Revision Application stands dismissed.

[T.V.NALAWADE, J.]