

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

CIVIL REVISION APPLICATION NO. 144 OF 2016

Management Committee Idgah
Risala Bazar, Hingoli
Through its Secretary
Moiz Khan s/o Mansur Khan,
Age: 45 years, Occu: Mechanic
R/o Near Zakir Hussian Chowk,
Risala Bazar Chowk, Hingoli
Tq. & Dist. Hingoli.

... Applicant

versus

1. The Maharashtra State Waqf Board
Through its Chief Executive Officer,
Panchakki, Aurangabad.
2. The Municipal Council, Hingoli
Through its Chief Officer,
Tq. & Dist. Hingoli.

... Respondents

Mr. Hamzakhani I. Pathan, Advocate for applicant
Mr. Sameer S. Patel, Advocate for respondent no.1
Mr. S. S. Deshmukh, Advocate for respondent no.2

WITH
CIVIL APPLICATION NO. 13630 of 2016
IN
CIVIL REVISION APPLICATION NO. 144 OF 2016

The Municipal Council, Hingoli
Through its Chief Officer,
Tq. & Dist. Hingoli.

.. Applicant

versus

1. Management Committee Idgah
Risala Bazar, Hingoli.
Through its Secretary
Moiz Khan s/o Mansur Khan,
Age: 56 years, Occu: Mechanic
R/o Risala Bazar, Hingoli
Dist. Hingoli.

2. Maharashtra State Board of Wakf,
Through Chief Executive Officer,
Panchakki, Aurangabad. .. Respondents

Mr. S. S. Deshmukh, Advocate for applicant
Mr. Hamzakhan I. Pathan, Advocate for respondent no. 1
Mr. Sameer S. Patel, Advocate for respondent no. 2

CORAM : SUNIL P. DESHMUKH, J.
DATE : 24th October, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. The applicant purporting to be aggrieved by order on Exhibit - 5 rejecting request for injunction against the respondents in Wakf suit no. 115 2016 passed on 27-09-2016 by District Judge/Presiding Officer, Maharashtra State Waqf Tribunal, Aurangabad, is before this court.

3. The dispute appears to be with regard to area of applicant - *Idgah*. While the applicant - *Idgah* claims it to be 1334. 3 square metre, the other side claims that it is not more than 86 ft. x 66 ft. In respect of the same, proceedings are going on before the Wakf Board.

4. It appears that a layout had come up in respect of survey number 21, to be precise of Nehru Nagar Colony and had been

shown road on northern side of *Idgah*, which is claimed by applicants is passing through area of applicant - *Idgah*.

5. Some litigation earlier on had also been there ensued by and against applicant - *Idgah*. In wakf suit no. 96 of 2007 by present applicant-plaintiff before the tribunal for perpetual injunction against defendants in the suit, an application for temporary injunction had been filed which had been rejected against defendant no. 3. There was yet another litigation under regular civil suit no. 230 of 2008 against State government and others, including present plaintiff. Suit was decreed and perpetual injunction had been granted restraining defendants from closing road on northern side of *Idgah*.

6. Wakf Tribunal in the present matter has taken stock of the situation, finding that on the northern side of *Idgah*, there is road and it is not in possession of the *Idgah* and that even the Wakf board has yet not taken cognizance of the area being as claimed by *Idgah*. The Wakf tribunal, from the material, the past record and the photographs which had been placed on record and looking at the progress in construction of road, has considered that general public and the municipal body would be kept at bay under the ad-interim injunction order passed by the tribunal causing inconvenience and further that *Idgah* may not be

at this stage would be said to have any benefit from the same. In the process the tribunal has rejected the application under order dated 27-09-2016. It is this order which has been impugned in present civil revision application.

7. After hearing learned counsel for the parties and particularly looking at the stage at which the construction is resting under the ad-interim orders passed by this court, it would not be expedient on either side to let the things lie as they are since the position as obtaining today is not likely to benefit anyone.

8. It appears that as on the date, it cannot be firmly said that the claim of *Idgah* for an area of 1334.3 square metre is final and conclusive. It would be pertinent to consider that continuation of ad-interim relief given by this court would not serve any useful purpose on either side. In case *Idgah* would be in a position to vindicate its claim about area admeasuring 1334.3 square meters, the activity of construction of road would be at the risk and peril of the defendants. If claim of *Idgah* is found to be proper and legal, the tribunal in the proceedings may pass appropriate orders in respect of the same. Presently it appears that construction road has got halted in its final stages, which is not conducive to the interest of either side.

9. With aforesaid observations, civil revision application is disposed of. Rule stands discharged. Ad-interim relief granted by this court from today would cease to operate.

10. It is made clear that observation in this decision are for decision on interim relief application and shall have no efficacy further and shall not affect decision making in main proceeding which shall be decided on its own merits.

11. The tribunal may proceed with and decide the suit as expeditiously as possible and preferably within a period of six months from the date of receipt of writ of this order.

12. In view of aforesaid, civil application stands accordingly disposed of. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd