

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

CIVIL REVISION APPLICATION NO. 36 OF 2016

- 1] Shaikh Sheru s/o Shaikh Bashir,
age 37 years, occ. Labour,
R/o Qadeer Nana Nagar,
Dhangar Galli, Phulambri,
Taluka Phulambri, Dist.Aurangabad,
- 2] Ishaq @ Ismail Khan s/o Sikandar
Khan, age 32 years,
Occ. Private Service,
R/o H.NO.28, Vanjar Galli,
Near Jama Masjid, Phulambri,
Taluka Phulambri,
Dist. Aurangabad
- ... Applicants
[Orig. Deft. Nos. 2 and 3]

VERSUS

- 1] Ayesha Begam w/o Abdul
Qadeer Patel, age 40 years,
Occ. Business,
R/o H. No. 5-8-87,
In front of RTO Office,
Magribi Compound,
Jahagirdar Colony, Station Road,
Aurangabad,
- 2] Abdul Qadeer s/o Musheer Patel,
age 45 years, occ. Business,
R/o H. No. 5-8-87,
In front of RTO Office,
Magribi Compound,
Jahagirdar Colony, Station Road,
Aurangabad,
- 3] Shaikh Fayyaz s/o Abdul Rahim Patel,
age 45 years, occ. Business,
R/o Vanjar Galli, Near Jama Masjid,

Phulambri, Tq. Phulambri,
Dist. Aurangabad,

- 4] Mohammad Ayaz s/o Abdul Rahim Patel,
age 20 years, occ. Business,
R/o Vanjar Galli, Near Jama Masjid,
Phulambri, Tq. Phulambri,
Dist. Aurangabad,
- 5] Shaikh Mahemood s/o Abdul Rahim
Patel, age 50 years, occ. Business,
R/o Vanjar Galli, Near Jama Masjid,
Phulambri, Tq. Phulambri,
Dist. Aurangabad,
- 6] Raheman s/o Amir Patel,
age 65 years, occ. Business,
R/o Rahemat Nagar, Paan Badi,
Tq. Phulambri, Dist. Aurangabad,
- 7] Syed Hamidoddin s/o Syed Afzaluddin
Chisti, age 55 years, occ. Business,
R/o Chisti Wada, Phulambri,
Tq. Phulambri, Dist. Aurangabad,
- 8] Syed Munirodin s/o Syed Muqimoddin
Chisti, age 30 years, occ. Business,
R/o Chisti Wada, Phulambri,
Tq. Phulambri, Dist. Aurangabad,
- 9] Syed Zafar s/o Syed Afzaluddin
Chisti, age 38 years, occ. Business,
R/o Chisti Wada, Phulambri,
Tq. Phulambri, Dist. Aurangabad,
- 10] Shivaji s/o Rangnath Jadhav,
age 40 years, occ. Business,
R/o behind new Tahsil Office,
Phulambri, Tq. Phulambri,
Dist. Aurangabad,
- 11] Sagar s/o Sakharam Raut,
age 33 years, occ. Business,
R/o Shirkar Vasti, Khultabad Road,

Phulambri, Tq. Phulambri,
Dist. Aurangabad,

- 12] Kaduba s/o Gangadhar Raghu,
age 50 years, occ. Business,
R/o In front of new Bus Stand,
Phulambri, Tq. Phulambri,
Dist. Aurangabad,
- 13] Santosh s/o Bhikaji Dhoke,
age 37 years, occ. Business,
R/o Sillod Road, Behind Hotel Lalitraj,
Phulambri, Tq. Phulambri,
Dist. Aurangabad,
- 14] Ajaykumar s/o Biharilal Jaiswal,
age 40 years, occ. Business,
R/o Tirupati Auto, Aurangabad Road,
Phulambri, Tq. Phulambri,
Dist. Aurangabad,
- 15] Sudhakar s/o Gangadhar Thombre,
age 52 years, occ. Business,
r/o Sillod Road, In front of SBI Bank,
Phulambri, Tq. Phulambri,
Dist. Aurangabad,
- 16] Ramesh s/o Balkrushna Dutonde,
age 40 years, occ. Business,
r/o Sillod Road, Beside Hotel Lalitraj,
Phulambri, Tq. Phulambri, Dist. Aurangabad,
- 17] Rajesh s/o Pandit Nagre,
age 52 years, occ. Business,
r/o Panwadi Road, Behind Z.P. High School,
Phulambri, Tq. Phulambri, Dist. Aurangabad,
- 18] Balasaheb s/o Ranoba Waghmare,
age 40 years, occ. Business,
R/o Shiv Cycle, New Bus Stand,
Phulambri, Tq. Phulambri, Dist. Aurangabad,
- 19] Shivaji s/o Dagdu Mule,
age 45 years, occ. Business,

Phulambri, Tq.Phulambri, Dist.Aurangabad,

- 20] Prabhakar s/o Bhikaji Sotam,
age 55 years, occ. Business,
R/o Kanori, Tq.Phulambri,
Dist. Aurangabad,
- 21] Dhananjay Baburao Seemant,
age 53 years, occ. Business,
R/o Savarkar Chowk,
Phulambri, Tq.Phulambri, Dist.Aurangabad,
- 22] Santosh s/o Dattatray Jadhav,
age 38 years, occ. Business,
R/o In front of Sant Sawatamali College,
Phulambri, Tq.Phulambri, Dist.Aurangabad,
- 23] Nikhil s/o Kamlakar Kamlakar,
age 35 years, occ. Business,
R/o Hotel Sham, Khultabad Road,
Phulambri, Tq.Phulambri, Dist.Aurangabad,
- 24] Yogesh s/o Madhukar Misal,
age 35 years, occ. Business,
R/o Sillod Road, Dari Phata,
Phulambri, Tq.Phulambri, Dist.Aurangabad,
- 25] Dinesh s/o Namdeo Bolkar,
age 40 years, occ. Business,
R/o Bolkar Mala, Math Pati,
Phulambri, Tq.Phulambri, Dist.Aurangabad,
- 26] Shaikh Akbar s/o Shaikh Dilawar Patel,
age 44 years, occ. Business,
R/o Kabir Nagar, Beside Water Tank,
Phulambri, Tq.Phulambri, Dist.Aurangabad,
- 27] Shaikh Akram s/o Abdullah Patel,
age 37 years, occ. Business,
R/o Patel Mohalla,
Phulambri, Tq.Phulambri, Dist.Aurangabad,
- 28] Shaikh Bablu s/o Shaikh Muzammil
Patel, age 34 years, occ. Business,
R/o Patel Mohalla

Phulambri, Tq.Phulambri, Dist.Aurangabad,

29] Shaikh Qadeer s/o Shaikh Bashir,
age 39 years, occ. Business,
R/o Qadeer Nana Nagar, Dhangar Galli,
Phulambri, Tq.Phulambri, Dist.Aurangabad,

30] The Maharashtra State Wakf Board,
through its Chief Executive Officer,
Office at Panchakki,
Aurangabad

... Respondents

[Nos. 1 to 25 Orig.Plaintiffs, Nos.
26 to 29 Orig. Deft.Nos. 1, 4 to 6]

.....

Mr. H.I.Pathan, advocate for the applicants
Mr. Mobin M. Shaikh, advocate for respondents 1 to
25

.....

CORAM : K.L.WADANE, J.

Reserved on : 25.09.2017

Pronouncement on : 04.10.2017

J U D G M E N T :

Rule. Rule returnable forthwith. With
the consent of learned counsel for the parties,
the Revision is heard finally.

2. The Revision Application is filed by
original defendant nos. 2 and 3 against the order,
dated 19.1.2016, passed by the learned District
Judge and Presiding Officer, Maharashtra State
Wakf Tribunal, Aurangabad below Exh.5 in Wakf Suit

No. 104 of 2014 thereby granting temporary injunction restraining original defendant nos. 1 to 6 from causing obstruction over the possession of suit plots of plaintiffs described in para no.1 of the application till final disposal of the suit.

3. It is the case of applicants that the suit property Gut No. 353 (old Survey No. 237) admeasuring 24 acres 36 Are including other lands situated at Phulambri was inam land given as Madad Mash in favour of Inamdar of Dargah Babashah Musafir, Panchakki. Succession of said land was sanctioned in the name of Saleha Begum d/o Shah Gulam Jilani on 22.7.1942 as per extract of register of Inam land of Phulambri. Thereafter on abolition of inam on 7.1.1954, one Saeedunnisa Begum and others being legal heirs of Saleha Begum became owner of the said land. The said Madad Mash land was declared as Khalsa by the Commissioner under the provisions of Hyderabad Inam Abolition and Cash

Grants Act on 11.10.1962. It is the case of the applicants that the suit land being declared as Khalsa is not service inam land. It is the case of applicants that Saeedunnisa Begum had executed lease agreement in favour of one Bhausahab Baburao Misal, r/o Phulambri on 9.7.1975 of Gut No. 353 admeasuring 12 Hectar 82 Are for 99 years and on the basis of same, said Misal is in possession and cultivation of the suit land, which is clear from 7/12 extract of Gut No. 353 for the year 1973-74 showing name of Saeedunnisa Begum and thereafter name of said Misal is mutated in the 7/12 extract. As such, the Wakf Board has no authority to claim ownership of the same.

4. It is further the case of applicants that the applicants and others have under the registered notarized lease agreement dated 28.8.2014 obtained 20 gunthas of land out of Gut No. 353 from said Misal and installed temporary shade over it for running the business. Respondent no.30, the Wakf Board, without any authority

through its District Wakf Officer has illegally executed an agreement of tenancy in respect of the suit land in favour of plaintiffs, to the extent of 450 square feet land each on 19.7.2014, by putting certain conditions. The act on the part of the Wakf Board is without any authority of law. Memorandum of understanding, dated 1.9.2014 in favour of Bhausahab Baburao Misal and Shaikh Lal Farid Patel and others is produced by the applicants on record at Exh. 'E'.

5. The applicants contend that Wakf Suit No. 104 of 2014 is filed by the plaintiffs against the applicants and others for perpetual injunction in respect of land Gut No. 353, to the extent of 20 Acre land, situated at Phulambri before the learned Tribunal. In that suit, the plaintiffs filed application Exh.5 for grant of temporary injunction against the defendants.

6. Applicants - original defendant nos. 2 and 3 resisted the said application by filing their

say on 25.8.2015, on the ground that the plaintiffs have not filed any documents in support of possession of the suit land, as the plots were leased out for 11 months and as the said period expired, the said document has become infructuous and balance of convenience does not lie in favour of the plaintiffs. The applicants also contended that the application Exh. 5 filed by them be considered and the application for temporary injunction filed by the plaintiffs, along with suit, be dismissed with costs.

7. The learned Presiding Officer of the Tribunal after hearing the respective parties held that the suit property is Wakf property of Dargah Hazrat Babasaheb Musafir as per Government Gazette dated 17.3.1973 and granted temporary injunction restraining the applicants and defendant nos. 1, 4 and 6 from causing obstruction over the possession of suit land of the plaintiffs, during the pendency of the suit.

8. Being aggrieved by the aforesaid order passed by the Tribunal, the applicants have preferred the present Revision Application contending that the learned Tribunal has failed to appreciate that the suit land was Madad Mash inam and was declared Khalsa under the provisions of Hyderabad Inam Abolition and Cash Grants Act on 11.10.1962 and entry to that effect, in Government Gazette in the year 1973, showing the property as "wakf property" is incorrect and contrary to record on abolition of inam in the year 1962. The tenancy agreement by the Wakf Board in favour of plaintiffs is an abuse of process of law. The Tribunal erred in granting temporary injunction against the defendants by ignoring record. The applicants therefore prayed to quash and set aside the impugned order of temporary injunction passed by the learned Presiding Officer of the Tribunal.

9. Respondent No.3 on behalf of Respondent Nos. 1, 2 and 4 to 25 i.e. original plaintiffs has filed affidavit in reply dated 22.3.2016 and

resisted the admission of the Revision Application filed by the applicants, by denying the averments made therein. It is contended that the applicants have suppressed the material facts and that the plaintiffs are in possession of 20 Are land for last so many years and, therefore, the plaintiffs had applied on 3.3.2014 before the Maharashtra Wakf Board for lease of the suit land. The suit land is owned by Dargah Babashah Musafir Panchakki and there is entry to that effect in 7/12 extract. The suit land is published in Government Gazette of Wakf dated 17.5.1973, at Sr. No.2. The suit land is one of the properties of said Dargah. The applicants have no concern with the land in question. The plaintiffs are in continuous uninterrupted possession of the concerned land. The plaintiffs have deposited the rent regularly with the Wakf Board and receipts to that effect have also been issued by the Board. The Wakf Board executed agreement of lease in favour of plaintiffs on 24.7.2014 and since then the plaintiffs are in possession of the land in

question. The applicants, without any right or interest, have caused obstruction in the peaceful enjoyment and possession of the plaintiffs over the suit property and, therefore, the plaintiffs were constrained to file the suit for injunction. It is contended that Mutawalli of the said Wakf has not disputed possession of the plaintiffs over the suit land, and therefore, possession of the plaintiffs is legal and needs protection. The plaintiffs have also applied for extension/renewal of lease period on 18.6.2015 requesting to accept rent amount. The plaintiffs contended that the Revision Application is devoid of any substance and is liable to be dismissed by confirming the impugned order of temporary injunction granted in favour of the plaintiffs. The plaintiffs in support of their say have along with affidavit in reply filed the documents, such as agreement of lease dated 19.7.2014, no objection certificate by Mutawalli in favour of Respondent no.3 and the application for renewal of lease for further period.

10. Learned counsel for the applicants contended that the suit property Gut No. 353 (old Survey No. 237), admeasuring 24 acres 36 Are, situated at Phulambri was inam land given as Madad Mash in favour of Inamdar of Dargah Babashah Musafir, Panchakki and said land was sanctioned in the name of Saleha Begum d/o Shah Gulam Jilani on 22.7.1942 as per extract of register of Inam land of Phulambri. There was succession inquiry in the matter and the Revenue Assistant, Aurangabad, by order dated 7.1.1954 has clarified that said land shall continue to be in the name of last heirs of Saleh Begum. Thereafter, on abolition of inam on 7.1.1954, one Saeedunnisa Begum and others as legal heirs became owners of the said land. Saeedunnisa Begum had executed lease agreement in favour of one Bhausahab Baburao Misal, r/o Phulambri on 9.7.1975 of Gut No. 353 and on the basis of same, said Misal is in possession and cultivation of the suit land.

11. Learned counsel further contends that by

lease agreement dated 28.8.2014 the applicants and others have obtained 20 gunthas of land out of Gut No. 353 from said Misal and installed temporary shade over it for running the business. The act on the part of the Wakf Board is without any authority of law. There is Memorandum of understanding, dated 1.9.2014 in between Bhausahab Baburao Misal and Shaikh Lal Farid Patel and others, on record. It is, therefore, contended that the Revision Application may be allowed and impugned order, granting temporary injunction, be quashed and set aside.

12. Learned counsel for respondent nos. 1 to 25 i.e. original plaintiffs argued that the suit was filed on 12.8.2014. Learned counsel contended that the applicants have not pleaded the case in proper perspective and suppressed the material facts on record. It is contended that the plaintiffs are in possession of 20 Are of land for last so many years on the basis of lease. There is publication as regards suit land in

Government Gazette of Wakf dated 17.3.1973. The plaintiffs are in continuous possession of the suit land. The possession of the plaintiffs is legal. The plaintiffs have also applied for extension/renewal of lease period on 18.6.2015 requesting to accept rent amount. Along with the affidavit in reply, copies of agreement of lease dated 19.7.2014, no objection certificate by Mutawalli in favour of Respondent no.3 and the application for renewal of lease for further period have been annexed. Learned counsel contended that the Revision Application being devoid of any substance is liable to be dismissed by confirming the impugned order of temporary injunction granted in their favour.

13. On going through the contents of the Revision Application and on perusing the documents on record, the affidavit in reply filed by the plaintiffs as well as order dated 19.1.2016, passed by the learned Presiding Officer of the Tribunal, it is clear that the plaintiffs are in

possession of separate plot of 20 Are out of land Gut No. 353 (Old Survey No. 237) out of the wakf property of Dargah Babashah Musafir Panchakki, situated at Phulambri since last many years. The copy of Khasra Patrak Exh. 9B/11 of Old Survey No. 237, admeasuring 24 acres 36 gunthas, shows that it is inam land of Panchakki. The fact that the suit land is the Wakf property is supported by a copy of Maharashtra Government Gazette dated 17.3.1973 Exh. 3/4 which shows land Survey No. 237, admeasuring 24 acres 36 gunthas, situated at Phulambri, is one of the properties of Dargah Nazrath Baba Shah Musafir, Baba Shah Syeed Pilang Posh, Baba Shah Mahmood Musafir along with Masjid Khanqah, Garden, Baradari, Library and Graveyard. The Chief Executive Officer of the Maharashtra State Board of Wakfs, Aurangabad, by order dated 19.7.2014, has given plots to the plaintiffs on lease. The lease deed has been executed by the District Wakf Officer, Aurangabad in favour of plaintiffs on 24.7.2014 for a period of 11 months. The plaintiffs have also paid rent for the same.

The Mutawalli has also given no objection for possessing of the suit land by plaintiffs by letter dated 2.8.2014 vide Exh.3/5. The plaintiffs are in lawful possession of the suit land. The lease agreement was executed on 19.7.2014 and the plaintiffs have applied for extension/renewal of lease agreement on 18.6.2015. It, therefore, shows that though lease period had expired, the plaintiffs have in continuation applied for renewal of lease agreement. On obstructions of the defendants, the plaintiffs filed the suit and application for temporary injunction.

14. By taking in to consideration the various documents and affidavits on record, the learned Presiding Officer of the Tribunal has held that the plaintiffs are in possession of their respective plots on the suit land by virtue of lease deed executed by the Wakf Officer on behalf of the Wakf Board. As such, the plaintiffs were held entitled for grant of temporary injunction against defendant nos. 1 to 6. The order passed

by the learned Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad, dated 19.1.2016, restraining the defendants from causing obstructions in the possession of the plaintiffs 1 to 25, is a well reasoned order and needs no interference while exercising revisional jurisdiction.

15. In the result, the Civil Revision Application is dismissed. The order dated 19.1.2016 passed by the District Judge/Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad, is hereby confirmed. Rule discharged.

(K.L.WADANE, J.)

dbm