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

CIVIL REVISION APPLICATION NO. 82 OF 2017

1. Habib Khan Bismillah Khan,
Age: 60 years, Occ: Business,
R/o.C.T.S. No. 3721, Mardana
Mahal, Qil-e-ark, Aurangabad.
2. Usman Khan s/o Habib Khan,
Age: 36 years, Occ: Business,
R/o. C.T.S. No.3721, Mardana
Mahal, Qil-e-ark, Aurangabad. ..APPLICANTS

VERSUS

1. Government College of Arts
& Science Aurangabad
Through its Principal at present
Dr.Jalandar Sabehrao Laad,
Age: Major, Occ: Principal
R/o. Govt. College of Arts
& Science, Aurangabad.
2. The Maharashtra State Board of
Wakf, Through its Chief
Executive Officer, Panchaki at
Aurangabad. ..RESPONDENTS

Mr Qureshi Shaiklul Abdul Gafar, Advocate for
applicants
Mr C.V. Dharurkar, A.G.P. for respondent No.1;
Mr Y.B. Pathan, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 13th JUNE, 2017

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ORAL ORDER :

The present applicants brought in action Wakf Suit No.56 of 2016 against respondents claiming that the property admeasuring 50 ft. x 60 ft., out of C.T.S. No.3721 situated at Mardana Mahal, Kil-e-ark, Aurangabad is wakf property. The religious institution Dargah Sayyed Sadat is situated over the said property and it was declared as a Wakf, as notified in the Government Gazette dated 3rd May, 1973 at Serial No. 104, and registered as Wakf on 18th January, 2016.

2. It is claimed that the father of plaintiff namely Bimilla Khan was mutawali of wakf and after his death, the plaintiffs, by succession, became mutawali and are in possession of the suit property including two adjacent rooms, where they are residing and rendering services to the wakf.

3. The respondent-defendant is alleged to be stranger, a Government College, who is occupying property in question, issued notice dated 5th

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April, 2016, about illegal possession of the plaintiffs over the suit property and carrying out illegal construction. The plaintiffs, as such, prayed that decree for perpetual injunction be passed against the respondents from interfering with peaceful possession.

4. An application Exhibit-5 under the provisions of Order 39 Rule 1 and 2 of the Code of Civil Procedure was also moved, which came to be rejected, by order dated 6th March, 2017 passed by the tribunal. As such, this civil revision.

5. It will not be out of place to mention here that the claim in the suit and prayer for injunction was resisted by the respondent vide Exhibit-13-reply and written statement at Exhibit-24.

6. According to respondent, the property in question is Government land, wherein an education institution is being run. It is claimed that in the

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Gazette, property only to the extent of 25 ft. x 15 ft., is notified as wakf property.

7. In the aforesaid background, learned Counsel for the applicants, while questioning the order of refusal of injunction, would invite attention of this Court to the Gazette dated 3rd May, 1973, wherein at Serial No. 104 in Column No.19, the property in question is shown to be wakf property. He would then invite attention of this Court to the registration certificate dated 18th July, 2016 so as to claim that the property in question is wakf property. In addition, he would urge that there is long standing possession of second generation of present applicants over the suit property and as such, the respondents are required to be restrained from interfering with their peaceful possession.

8. Per contra, based on the documents, the respondent opposed the claim. Learned A.G.P. submits that wakf tribunal has appreciated all the

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facets of the matter including that of existence of wakf over the property to the extent of 25 ft., x 15 ft., i.e. 375 sq. ft. and as such, the application is liable to be rejected.

9. Having considered rival submissions, it is required to be noted that upon perusal of Exhibit-A and its enclosure viz., registration certificate of wakf in question, an entry specifying area of wakf is mentioned, which speaks of 375 sq. ft. Said area being wakf property, as per Gazette dated 3rd May, 1973 in terms include the alleged area claimed in the suit. Apart from above, on appreciating Annexure-D to the application, viz., a Gazette notification of 1973 speaks of area 25 ft. x 15 ft., i.e. total 375 sq. ft., as Dargah area i.e. wakf property. In view thereof, present applicants-plaintiffs owes an explanation as to claiming relief that they are entitled for injunction to the extent of land admeasuring 50 ft. x 80 ft.

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In absence of any documentary evidence, the applicants' claim for injunction to the extent of 50 ft. x 80 ft. i.e. 4000 sq. ft., of area is without any basis.

10. The plaintiffs-applicants are unable to demonstrate their source of possession over the land to the extent of 50 ft., x 80 ft., i.e. area 4000 sq. fts.

11. In addition to above, there is no sanction from the competent authority for carrying out construction over the said property, particularly two adjoining rooms to the Dargah as claimed by the plaintiffs. The only inference that can be drawn based on the available evidence is but for 25 ft. x 15 ft. = 375 sq. ft. of area, the plaintiffs-applicants are encroachers who have carried out illegal construction.

12. In the aforesaid background, in my opinion, the claim of present applicants that they

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are entitled for injunction is at all not established. Learned wakf tribunal, as such, in my opinion, has rightly rejected the claim for grant of injunction.

13. The case for failure to exercise jurisdiction could be noticed in revisional jurisdiction. As such, Civil Revision Application fails and stands rejected.

(N.W. SAMBRE, J.)

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