

(1)

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

CIVIL REVISION APPLICATION NO.109 OF 2017

1. Raaj Baig s/o Naseer Baig,
Age: 69 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar
(Chairman) (died during pendency
of suit on 23.03.2017 and his
name is deleted on the application
moved by the petitioners on
30.03.2017 by the Tribunal)
2. Anees Dilawar Baig,
Age: 35 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
(Vice Chairman)
3. Bansoor Baig s/o Safdar Baig,
Age: 46 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
(Secretary)
4. Mehmood Baig s/o Salam Baig,
Age: 51 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
(Treasurer)
5. Azim Hamid Sayyad,
Age: 51 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
(Trustee/Member)
6. Aslam Baig s/o Mohd. Baig,
Age: 60 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.

(2)

(Trustee/Member)

..APPLICANTS

VERSUS

1. Shivaji Rakhmaji Bhujbal
Age: 42 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
2. Suresh Yadav Parbat,
Age: 40 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
3. Sanjay Baban Bujbal,
Age: 30 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
4. Vijay Pandurang Pathade,
Age: 35 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
5. Sampat Madhukar Parbat,
Age: 35 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
6. Anil Tukaram Parbat,
Age: 36 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
7. Santosh Namdev Bhujbal,
Age: 33 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
8. Sachin Belekar,
Age: 41 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.

(3)

9. Vinod Pandurang Pathade,
Age: 37 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
10. Santosh Vasant Patade,
Age: 27 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
11. Sampath Rambhau Mandlik,
Age: 36 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
12. Ganpat Kishan Parbat,
Age: 51 years, Occ: Agri.,
R/o. Village Nimbale,
Taluka Sangamner, Dist.Ahmednagar.
13. Maharashtra State Board of Wakfs,
Through Chief Executive Officer,
Office at Panchakki,
Aurangabad.
14. Sub Divisional Officer,
Sangamner, 0Dist.Ahmednagar.
15. Range Forest Officer,
Sangamner, Dist. Ahmednagar ..RESPONDENTS

Mr A. D. Kasliwal, Advocate for applicants;
Mr R. S. Sadaphule, Advocate for respondent Nos.1,
2, 4, 5 and 7;
Mrs. Vaishali Patil-Jadhav, A.G.P. for respondent
Nos. 14 & 15

CORAM : N.W. SAMBRE, J.

DATE : 20th JULY, 2017

(4)

ORAL ORDER :

Present applicants filed simplicitor suit for injunction before Wakf Tribunal, Aurangabad in respect of one Wakf institution by name Hazrat Badebaba Dargah at village Nimbale, Taluka Sangamner, District Ahmednagar, being Wakf Suit No. 109 of 2016. An application for grant of temporary injunction came to be moved. Said application came to be rejected by learned Tribunal vide order dated 25th April, 2017. As such, this revision.

2. Mr Kasliwal, learned Counsel for applicants submits that existence of tomb in question could be ascertained from the revenue entries as are reflected at Sr. No.350 dated 03/09/1953. According to him, the land to the extent of 25 Gunthas out of Gayran land Survey No. 7 was divested for the purpose of tomb and as such, there is *prima facie* evidence that tomb is in existence in 1953. He would then urge that since people of all the religions are visiting said tomb,

(5)

respondents are required to be restrained as prayed. According to him, the Tribunal has failed to take note of the said entry and other material as relied upon.

3. Per contra, learned Counsel for respondents submits that respondents have already approached to Grampanchayat for allotment of disputed land for the public purpose. According to him, there is a temple, which is in existence since more than four decades and as such, the respondents have better claim than the applicants. He would then urge that, in law, the applicants have failed to establish any right and application was rightly rejected by the Tribunal.

4. Mr Bhagwat Dnyanoba Doifode, Sub Divisional Officer, Sangamner is personally present in the Court and is heard through learned A.G.P. He clarifies that the revenue entry that is relied upon by the applicants dated 03/09/1953 divesting land 0.25 Guntha out of Survey No.7 is for road and

(6)

not for Dargah. In addition, he would submit that it is a policy of the State Government that Gayran land cannot be divested for any other purpose without adopting procedure as laid down in the policy of the Government as reflected in Government Resolution dated 12th July, 2011. He would further assure this Court that land to the extent of 0.54 Guntha is remained as Gayran land out of Survey No.7, of which revenue authorities shall take appropriate care and precaution so as to avoid encroachment on the said land.

5. Having considered the rival submissions, it is required to be noted that so far as the claim of applicant for grant of injunction is concerned, the said prayer was rightly rejected by the Presiding Officer, Wakf Tribunal, Aurangabad. While doing so, though Tribunal has considered 7/12 extracts, however, the fact remains that Gayran land was never divested for the purpose for which injunction is sought by the applicants, as it could be inferred from the above revenue entry.

(7)

6. Apart from above, it is required to be noted that the parties hereto are trying to create law and order issue and as such, Sub Divisional Officer, Sangamner, District Ahmednagar has already clamped and invoked provisions of Section 145 of the Code of Criminal Procedure.

7. In the aforesaid background, the claim of the applicants that they are entitled for injunction is rightly rejected. No case for interference is warranted. Civil Revision Application stands rejected.

8. This Court appreciate the assistance extended by sub Divisional Officer, who has filed affidavit before the Court, demonstrating old revenue entries in relation to land Survey No.7 of village Nimbale, Taluka Sangamner, District Ahmednagar. It is required to be noted that since land to the extent 0.54 R only remained as Gayran land from the said Survey, as remaining land

(8)

already stood allotted to the encroachers, when encroachment was regularized. He assures this Court that appropriate steps will be taken to protect 0.54 R land, except land which is already allotted to Forest Department at village Nimbale, Taluka Sangamner, District Ahmednagar. The revenue authorities shall make every endeavour to remove encroachment, if any, on the Gayran land to the extent of 0.54 R out of Survey No. 7 of village Nimbale, Taluka Sangamner, District Ahmednagar.

9. With above observations, Civil Revision Applications stands dismissed.

(N.W. SAMBRE, J.)

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