

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 105 OF 2016

Syed Mumtaz S/o Syed Gafoor,  
Age – 35 years, Occu. - Editor / Mutawalli,  
R/o 1-1-126, New Mondha,  
Lakkad Mandi, Kuwarfalli, Aurangabad,  
Tq. & Dist. Aurangabad

.. Applicant  
(Orig. Plaintiff)

Vs.

1] Maharashtra State Board of Wakf,  
Through its Chief Executive Officer,  
Panchakki, Aurangabad

2] Syed Khader Pasha S/o Syed Bahidullah Hussaini,  
Age-73 years, Occu-Nil,  
R/o Near Quader Auliya Dargah,  
Mondha, Aurangabad, Tq. & Dist. Aurangabad

.. Respondents  
(Orig. Defendants)

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Mr. R.R. Shaikh, Advocate for the applicant  
Mr. H.I. Pathan, Advocate for respondent no.1-Wakf Board  
Ms. Fatema Kazi, Advocate h/f Mr. S.S. Kazi, Advocate for respondent  
no.2

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CORAM : SUNIL P. DESHMUKH, J.  
DATE : 09/01/2017

ORAL JUDGMENT :

1. Heard learned counsel for the parties. Learned counsel Mr. Shaikh contends that considering the lineage from whom the property has devolved, the applicant be allowed to manage the affairs of Dargah Hazrat Syed Mohammad Inayat Ali Shah Quadri and Dargah Hazrat Syed Shah Sultan Abdul Quader Aulia Reh. both situated at the Jafar Gate, Mondha, Aurangabad. He further refers to that some

landed properties have also come alongwith the dargah and it is the branch of applicant which has been managing the affairs of the dargah. However, Hussaini Begum, who may not have the legitimate claim to manage affairs of the Dargah and her son, who has been begotten from Nadiuddin, is from Shia sect, the Dargah cannot be managed by him at all. He further submits that the Dargahs had been registered as Wakf institution under the application of the applicant. He contends that there had been disturbance to the management of the affairs of the Dargah. While the Urus was to take place on 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> of January, 2016, since disturbance had been caused last year at the hands of defendant no.2, who is present respondent no.2, a wakf suit has been instituted seeking injunction against the defendants. The Wakf Tribunal initially had granted the exparte injunction, however, defendant no.2 has moved the Wakf Tribunal and the order impugned in the present matter had been passed. He submits that having regard to the facts and circumstances and merits of the case, his request under application at Exhibit 5 ought to have been allowed. He further submits that the defendants are unnecessarily causing interference in the management of the affairs of the Dargah and in conducting the annual Urus. The police have issued a letter dated 6<sup>th</sup> January, 2017 preventing him from conducting the Urus. He refers to letter by the Wakf Board authorising him to conduct the Urus, which is to take place from 8<sup>th</sup> January, 2017 to 11<sup>th</sup> January, 2017. He therefore submits that the order passed by the Wakf Tribunal deserves to be set aside.

2. Countering the aforesaid submissions, Ms. Kazi, learned counsel appearing for respondent no.2 contends that it cannot be said at this stage that any case is made out for any interim relief in favour of the applicant. She submits that since 1983, uninterruptedly it was Hussaini Begum, who has in each year conducted the Urus under authorisation and permission from the police authorities. There is record indicating the same. After her death, defendant no.2 i.e. her son is managing the affairs each year under authorisation from the police authorities. As a matter of fact, interception in the same is sought under the suit. She submits that Exhibit 5 application has been rightly rejected by the Tribunal. She submits that the contentions advanced on behalf of the applicant as far as interim relief is concerned, would hardly have any relevance at this juncture and if at all the applicant has any case, the same will have to be decided on merits. However, the applicant absolutely is not entitled to any interim relief whatsoever. She submits that the so-called communication for this year for conducting the Urus by the Wakf Board is improper and the defendant no.2 has now moved the Wakf Board to recall the said order.

3. Perusal of the impugned order shows that the Wakf Tribunal has taken stock of the situation, has gauged the necessary ingredients for granting injunction viz. *prima facie* case, balance of convenience and irreparable loss and has considered that having regard to Hussaini

Begum continuously since 1983 had authorisation from police authorities till 2005 and since 2005 onwards, police authorities were permitting defendant no.2 to conduct the Urus, it does not appear that the Tribunal has faltered in taking account of necessary ingredients for decision on Exhibit 5 application. It is not such a case where it can be stated that the order is perverse. In the circumstances, the Civil Revision Application is not being entertained and is rejected.

4. Learned counsel for the applicant Mr. Shaikh at this stage requests that the Tribunal be directed to dispose of the suit expeditiously. Learned counsel Ms. Kazi and Mr. H.I. Pathan have no particular objection to the request being made on behalf of the applicant.

5. As such, the suit pending before the Tribunal amongst the parties be proceeded with expeditiously and be decided as far as possible before 31<sup>st</sup> December, 2017.

[SUNIL P. DESHMUKH]  
JUDGE

arp/