

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

CIVIL REVISION APPLICATION NO. 154 OF 2017

Jaliwali Masjid and Arbi Madarsa, ... **Applicant**
Near Rajkumar Hotel, Dadabhai Cross
J.P.Road, Andheri (West)
Mumbai 400 058

Through:

- 1 Haji Abdul Razzaque s/o Haji Ahmed
Chhapra, Age 67 years,
Occu: Business,
R/o Abdullah Manzil, Flat No.11,12
J.P.Road, Andheri (West)
Mumbai 400 058
- 2 Hasham Noor Mohammed Chowhan
Age 50 years, Occu:Business,
R/o Hawa Mahal, A/5, Gaothan Lane
No.1, Andheri (West), Mumbai-58
- 3 Mohammed Farooque Bismilla Khan,
Age 45 years, Occu: Business,
R/o Gaodevi Dongri, Khaleel Ahmed
Chawl, Andheri (West),
Mumbai 400 058

VERSUS

- 1 Municipal Corporation of ... **Respondent**
Greater Mumbai,
Through its Commissioner, K/W Ward,
M.C.G.M. Paliram Path, Opp. BEST
Depot, Andheri (West), Mumbai 400058
- 2 Assistant Commissioner,
Municipal Corporation of Greater
Mumbai, K/W Ward, MCGM, 2nd Floor,
Paliram Path, Opp. BEST Depot,
Andheri (West), Mumbai 400 058,
- 3 Ward Executive Engineer,
Municipal Corporation of Greater
Mumbai, K/W Ward,
Paliram Path, Andheri (West),

Mumbai 400 058,

- 4 Maharashtra State Board of Wakfs,
Through its Chief Executive
Officer, Panchakki,
Aurangabad, M.S.

- 5 Mohammed Ali s/o Tayyab, ... Respondent
Age 63 years, Occu: Business s
154, Victoria Road, S.S. Marg,
Byculla, Mumbai 400 027

Mr.S. S. Kazi, Advocate for the applicant.

Mr.R. N. Dhorde, Senior Advocate i/by Mr.A.K. Tiwari &
Ms.Surekha Sonawane, Advocate for respondent Nos.1 to
3

Mr. Y. B. Pathan, Advocate for respondent No.4

Mr. A. S. Bajaj, Advocate for respondent No.5

CORAM : K. L. WADANE, J.

RESERVED ON : 28.08.2017

PRONOUNCED ON : 04.09.2017

JUDGMENT:

1. Present Revision Application is preferred by the revision applicant against the common order dated 15.06.2017, passed below Exh.5 in Wakf Suit No.172 of 2016 and Wakf Suit No.175 of 2016, by which the application for temporary injunction has been partly allowed. Being aggrieved with the same, the original plaintiffs in Wakf Suit No.172/2016 have preferred this Revision.

2. Brief facts of the case may be stated as follows:

(1) The applicant/plaintiff- Jaliwali Masjid and Arbi Madarsa, is Wakf Institution, situated at J.P. Road, Andheri (West), Mumbai. City Survey No.177, having structure of Masjid therein, admeasuring 1201.30 sq. mtrs, to the extent of 728.79 sq. mtr. is a 'suit property'.

(2) The applicant/plaintiff Jaliwali Masjid and Arbi Madarsa, through its trustees filed Wakf Suit No.172/2016 before the Wakf Tribunal, Aurangabad for permanent injunction restraining respondent Nos.1 to 3 from causing any sort of interference in the peaceful possession of the applicants/original Plaintiffs- Jaliwali Masjid & Arbi Madarsa, over the suit property.

(3) On or about 08.11.2016, the officers and employees of respondent Nos. 1 to 3 tried to dispossess the applicant from the suit property and tried to demolish the suit property. When the applicant resisted the illegal and unlawful attempt of respondent Nos. 1 to 3, the office bearers and employees of respondent Nos. 1 to 3 threatened the applicant/ plaintiffs to demolish the suit property at any time and further directed to handover the

possession of the suit property within eight days, otherwise, they would demolish the structure by force and dispossess the applicants at any point of time.

(4) It is the case of the applicant plaintiffs that the structure of Jaliwali Masjid and Arbi Madarsa is standing there since long, which is already declared as Wakf property. The existence of structure of the Masjid is since the time immemorial, which is clear from the record of City Survey and also Municipal record and the same is not unauthorized construction. Respondent Nos. 1 to 3, under the wrong impression, presumed that the Government Resolution dated 5th May, 2011 issued as per the directions of the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 8519/2006, dated 29.09.2009 is applicable to the suit property and are trying to demolish the structure, owned and occupied by the Masjid since the time immemorial.

(5) The Respondent Nos. 1 to 3 appeared and contested the suit by filing written statement and contended that the structure is falling in development plan road as per Sanctioned Development Plan Road of K/West Ward and therefore, the plaintiff is not

entitled for any relief and as per the sanctioned development plan, they are intending to demolish the structure over the suit property.

(6) During the pendency of the suit, respondent No.5 i.e. plaintiff in Wakf Suit No.175/2016 filed application for impleading him as party to the suit, which was opposed by the present applicants and despite pendency of the said application Exh.5, Respondent No.5 filed Wakf Suit No.175/2016 before the Wakf Tribunal, Aurangabad for declaration that the notice dated 13.12.2016 is illegal, null and void and for injunction, restraining respondent Nos. 1 and 2 from implementing the notice and from demolishing the premises of the mosque- Abubakar Jaliwala Masjid and also prayed perpetual injunction against defendant Nos. 3 to 5 (present appellants/ original plaintiffs in Wakf Suit No.172/2016) from causing obstruction and interference to the management of the Wakf Institution.

(7) Along-with Wakf Suit No. 172/2016, the present applicants/plaintiffs filed application for temporary injunction, restraining respondent Nos.1 to 3 from entering in the suit property and interfering in the peaceful possession of the Wakf Institution and also

for restraining them from demolishing the existing structure of the Masjid and Madarsha. Respondent No.5 also filed similar application in Wakf Suit No. 175/2016. In both the Suits, show cause notices were issued to respondent Nos.1 to 3. During the pendency of the above temporary injunction application Exh.5, respondent No.5, filed pursis stating that he does not want to press the application for temporary injunction against the present applicants who were arrayed as defendants Nos. 3 to 5.

(8) After hearing both the sides, the learned Presiding Officer of the Wakf Tribunal has allowed application Exh. 5 partly and restrained the defendants Nos.1 to 3 in Wakf Suit No.172/2016 and defendants Nos. 1 and 2 in Wakf Suit No. 175/2016 from demolishing the entire religious structure of Abubakar Jaliwala Masjid registered as the Wakf bearing No. MSBW/MUM/285/2013, excluding the area of structure approximately admeasuring 110 sq. mtrs. shown by hash line in the Development Plan Map Exh. 30/1 and 34/1 in Wakf Suit No.175/2016. It is also clarified that defendants are not restrained from demolishing the affected area approximately 110 square meter shown by hash line in the Development Plan Map Exh. 30/1 and

34/1 in Wakf Suit No.175/2016 which includes M.S. Entrance Gate, Compound Wall and Shed structure affected in the road line of Municipal Road, known as Dadabhai Road, Andheri West.

(9) Being aggrieved with the same, the applicants/plaintiffs in Wakf Suti No. 712/2016 have preferred this revision.

3. I have heard the arguments of Mr. S. S. Kazi, learned counsel for the applicants/appellants, Mr. Mr. R. N. Dhorde, learned senior counsel for respondent Nos.1 to 3, Mr. Y. B. Pathan, learned counsel for respondent No.4 and Mr. A. S. Bajaj, learned for respondent No.5. I also perused the documents on record and gone through the impugned order.

4. At the outset, it is material to mention here that Mr. Kazji the learned counsel for the applicant argued that the applicants are the trustees of the Wakf Institute namely Jaliwali Masjid and Arbi Madarsa, which is a suit property. Respondent Nos. 1 to 3 have not acquired the suit property after following due process of law under the provisions of the Land Acquisition Act or the Maharashtra Regional &

Town Planning Act. Without acquisition of the aforesaid suit property, respondent Nos.1 to 3 are not entitled to take possession or to obstruct the peaceful possession of the applicants/plaintiffs over the suit property. Mr. Kazi further argued that the disputed structure is on the property owned by the Wakf Institution and therefore, unless and until such property is acquired by following due process of law, the respondents are not authorized to take possession of the same. Mr.Kazi further argued that the Government Resolution dated 5th May, 2011 based upon the directions given by the Hon'ble Supreme Court is inapplicable to the disputed structure, since it is not an illegal construction on a public road. Mr. Kazi further argued that the property is owned by the Wakf, controlled by respondent No.4. Prior permission of the authority has not been obtained by respondent Nos.1 to 3 to acquire the same. Guidelines issued in the aforesaid Government Resolution are not applicable to the suit property. Mr. Kazi further argued that the plaintiffs have made out a case to show their possession over the suit property and since respondent Nos.1 to 3, through their employees and office bearers are obstructing the peaceful possession of the

applicants over the suit property, the learned Wakf Tribunal ought to have restrained respondent Nos.1 to 3 from demolishing, causing obstruction to the entire suit property.

5. Mr. Kazi, the learned counsel for the applicants relied upon observations of following cases:

- (1) 2012(5) Mh.L.J.120, Balbhim Shamrao Ghumare Vs. State of Maharashtra and others.
- (2) 2011(4) AIR Bom 196, Bhiwandi Nizampur City Municipal Corporation vs. Vikas Kashinath Patil and ors.
- (3) (2005) AIR (SC)104, Maharwal Khewaji Trust Vs. Baldev Das
- (4) 2010 (1) LJSOFT 55 Smt.Indirabai Bhalchandra Bhajekar Vs. Pune Municipal Corporation and anr.
- (5) 1965 Mh. L.J.105, Poona City Municipal Corporation Vs. Dattatraya Nagem Deodhar,
- (6) AIR 1976 Supreme Court 1569 Syed Mohd Salie Labbi (Dead) By L.Rs. Vs. Mohd. Hanifa (Dead) by L.Rs.

6. As against this, Mr. Dhorde, the learned senior counsel appearing for respondent Nos. 1 to 3 relied on the observations of following cases:

- (1) 2008 (3) All MR 269, Kalyan Dombivli Municipal Corporation Vs. Prakash Muttha
- (2) (2009) 3 Supreme Court Cases 432, Prakash Harischandra Muranjan Vs. Mumbai Metropolitan Regional Development Authority and another.
- (3) 2005(3) ALL MR 218 Bales Sardara Paracha Vs. The Municipal Corporation of Greater Bombay and anr.
- (4) 2015 (6) Mh. L.J. 262, Arihant Construction Vs. Subhash K. Barlota and others.
- (5) Judgment of this Court in First Appeal No. 572/2013 in case of M/s Akash Impex Vs. Municipal Corporation of Greater Bombay.
- (6) Judgment of this Court in PIL No. 104/2010, Society for Fast Justice Vs. The State of Maharashtra.

7. Mr. Dhorde, the learned Senior counsel argued that the present applicants/plaintiffs have no concerned with the Wakf Institution -Abubakar Jaliwala

Masjid which is registered as the Wakf bearing No. MSBW/MUM/285/2013 in City Survey No. 177. Mr. Dhorde, the learned Senior counsel further submitted that the present applicants/plaintiffs have no concern with the Wakf institution since respondent No.5 is claiming to be Mutawali of the said trust and has also filed Wakf suit to that effect bearing Wakf Suit No. 175/2016. Mr. Dhorde further submitted that during the pendency of the Application Exh.5 in Suit No. 175/2016, the plaintiff/ respondent No.5 in the present proceeding has not pressed the application for temporary injunction. In fact, during the pendency of the proceeding, he has given no objection to demolish the portion which falls under the Development Plan Road as per Sanctioned Development plan of K/W ward. Mr, Dhorde, the learned senior counsel further argued that before institution of the suit, no notice as required under the provisions of the law was issued to Respondent Nos. 1 to 3. Therefore, the suit is not maintainable. The learned senior counsel further submitted that the respondents authority as well as police personnels have conducted survey to find out which area and construction falls under the development plan road as per the directions

given by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 8519/2006, and pursuant G.R. issued by the State Government. At that time, notices were issued to all the concerned and there objections were also heard and after hearing all the interested persons, it was concluded that the disputed structure falls under 'B' Category. Respondent No.5 made representation to substitute the Category from "B" to "A". However, finally, it was concluded that the disputed structure falls under Category "B".

8. Considering the arguments advanced by both the sides, it is material to note that the present plaintiffs have filed Wakf Suit No. 172/2016 and the respondent No.5 filed Wakf Suit No.175/2016. Both of them are claiming to be trustees of the Wakf Institution, registered as the Wakf bearing registration No.MSBW/MUM/285/2013. However, considering the nature of the present proceedings and the reliefs claimed by the revision applicants, I am of the opinion that it is not necessary to enter into the controversy of the claims/reliefs claimed by the respective plaintiffs in both the Suits. That controversy has to be ultimately resolved by the Wakf

Tribunal. Similarly, whether the suit is maintainable or not is also to be decided by the Wakf Tribunal. Therefore, limited controversy arises between the parties in the present proceeding is whether the disputed structure as shown by hash line in the Development Plan Map Exh. 30/1 and 34/1 in Wakf Suit No.175/2016 is a legal construction, constructed after obtaining proper permission from the respondents.

9. From the record, no where it is revealed that such structure was constructed by the Wakf Institution after obtaining permission from respondent No.1. Mr. Dhorde, the learned Senior Counsel, by referring certain documents, submitted that the plaintiffs/applicants have suppressed the material fact about the public notice and hearing of the objection about the construction which falls under the Development Plan Road. Plaintiffs have raised objection so also notices were issued to respondent No.4 and considering the objections raised by the concerned persons, the respondents have determined the construction in Class "B" category.

10. Considering the submissions made by Mr. Dhorde the learned senior counsel and upon scrutiny of the

documents, it appears that the Hon'ble Supreme court in Special Leave to Appeal (Civil) No.8519/2006, directed all the States and the Union Territories that henceforth, no unauthorized construction shall be carried or permitted in the name of temple, church, mosque or gurudwara etc. on public street/park or other public places etc. Further, it is also directed that for unauthorized construction of religious nature which has already taken place, the State governments/union territories shall review the same on a case by case basis and take appropriate steps as expeditiously as possible.

11. This Court, in its Ordinary Original Civil Jurisdiction, while considering the Public Interest Litigation No.104/2010, has held that the State and planning authority can also demolish the illegal religious structures made on private properties in accordance with law.

12. It reveals from the record that in view of the order dated 29.09.2009 of the Hon'ble Supreme court, the State of Maharashtra issued a Government Resolution dated 5th May, 2011 and thereby constituted various level committee to identify the illegal

religious structures. In pursuance to the directions issued by the Hon'ble Supreme Court and the directions in the Government Resolution, the Officials of the Municipal Corporation along-with Police authority, jointly inspected the illegally constructed religious structures and prepared a report on 01.11.2011. In the said report, premises of present Masjid is at Serial No.24, wherein it is specifically stated that due to the illegal construction of "wajuh place" the footpath is completely closed down. Further, it reveals from the record that the Municipal Corporation has decided to give hearing to all the concerned persons of such religious structure and after hearing the concerned persons, report is prepared and the property involved in the present matter is mentioned at Serial No.33 and classified as "B" Category. From the communication dated 23rd April, 2015, it reveals that again opportunity of being heard was given to the interested persons and after considering their objections, encroachments falling in the development plan road were classified.

13. It is material to note that the present Plaintiff no.1 has submitted its objection on 4th August, 2011. Further it reveals that the present

plaintiffs, along-with their Advocate were present at the time of hearing and it is very much clear from the Roznama dated 04.08.2015. It means that the plaitniffs were adequately heard and represented in the proceedings and after hearing was given to the concerned persons, the disputed structure is classified as "B" category. From the record, it is seen that notice was also issued to Chief Executive Officer of respondent No.4 Wakf Board. The notice was duly served but he remained absent. Therefore now he cannot agitate any ground that opportunity of hearing was not given to him.

14. It is material to note that the order of classification of structure under "B" category is not challenged either by the present applicants/plaintiffs or the plaitniff in Wakf Suit No.175/2016. Therefore, that order attains finality. It is surprising to note that plaintiffs/applicants have suppressed this material fact, due to which, the plaintiffs are not entitled for any equitable relief in regard to the structure which is shown to be falling within the development plan road.

15. Further, it is material to note that the

Mutawali of Abubakar Jaliwala Masjid, i.e. respondent No.5 submitted Application below Exh.45 before the learned Wakf Tribunal on 19.04.2017, wherein, he has specifically admitted that the area demarcated for the road by the Municipal Corporation is not the area that he had given to the Wakf. That area is not a Wakf land as per the map submitted to Wakf Board alongwith the Wakf Deed at the time of registration.

16. On 5th November, 2016, the Government of Maharashtra issued an order, thereby directing all the concerned authorities to remove unauthorized religious structure on or before structure on or before 17.11.2017. This order, passed by the State Government, is based upon the directions given by this Court in PIL No. 104 of 2010.

17. So, looking to the entire documents on record, it appears that the action initiated by respondent Nos. 1 to 3 is proper, legal and based upon the directions given by the Hon'ble Supreme court as well as this Court and pursuant Government Resolution dated 5th May, 2011. On the other hand, the present applicants/plaintiffs have failed to establish that the disputed structure as carved out by the learned

Wakf Tribunal, which falls within the Development Plan road, is a property belonging to the plaintiffs and it is their property or the Wakf property.

18. Mr. Kazi, the learned counsel appearing for the applicants/plaintiffs was repeatedly harping upon the fact that the land is not acquired nor compensation is paid. For this purpose, it is material to note that there is dispute inter se between two parties i.e. plaintiffs in Wakf Suit No. 172/2016 and Plaintiff in Wakf Suit No. 175/2016 and their claims are pending for adjudication. In-spite of that, Mr.Dhorde, the learned Senior counsel has submitted that pursuant to the demolishing of structure to the extent of approx. 110 sq. mtr., the Municipal Corporation granted TDR to that effect to respondent No.5 and the person or party succeed in the litigation will get the benefit of TDR. Therefore, from the record, it is crystal clear that the action of respondent Nos.1 to 3 is legal and proper and is based upon the directions given by the Hon'ble Supreme Court as well as this Court and pursuant Government Resolution issued by the Government.

19. All the above observations are made prima

facie for deciding the present revision application and the learned Tribunal shall not get influenced by the above observations at the time of final disposal of the suits filed by the present applicants as well as respondent No.5.

20. I have gone through the reasons recorded by the learned Wakf Tribunal. I do not find any illegality, impropriety or incorrectness with the impugned order. Consequently there is no merit or substance in the Revision and therefore, it is liable to be rejected and it is accordingly rejected. No order as to costs.

At this stage, the learned counsel for the applicants submits that the earlier statement made by the learned counsel for the respondents may be continued for some time, as the applicants want to challenge the order passed by this Court. Learned counsel for the respondents has strongly opposed the prayer.

Considering the reasoned order passed by this Court today, I find no reason to grant any interim relief. Hence the prayer is rejected. Authenticated copy be given.

(K. L. WADANE, J.)

JPC