

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

WRIT PETITION NO. 330 OF 2017

MD YUSUF KHAN MOHIUDDIN KHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Shri Mandlik Pratap P
AGP for Respondents/ State : Shri S.K.Tambe.
Advocate for Respondent 3 : Shri A.S.Gaikwad (Absent).

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th August, 2017

Per Court:

- 1 None appears for Respondent No.3/ Wakf Board.
- 2 The learned Advocate for the Petitioners mentions that the present petition is identical to Writ Petition No.8859/2016 and a group of ten petitions wherein, this Court has passed an order on 13.07.2017 quashing and setting aside the impugned order of addition of the Wakf Board as a Defendant in the pending suit.
- 3 The learned AGP appearing on behalf of Respondent Nos.1 and 2 submits that in identical matters, this Court has passed the order dated 13.07.2017.
- 4 For the sake of clarity, the order passed by this Court on 13.07.2017 in Writ Petition No.8859/2016 with ten petitions in the matter

of Mohammad Yusuf Haji Noor and others vs. The State of Maharashtra and others, is reproduced below:-

"1 On 11.7.2017, I had passed the following order to enable respondent No.4 to participate in these proceedings:-

" 1. Issue seems to be that respondent No.4 - Wakf Board, which is permitted to be added as a defendant in the sit filed by the plaintiff, have not asserted their right to the property said to be held by the petitioners for the last more than five decades. Only when the petitioners filed these suits for challenging the notices issued by the District Collector, that respondent No.4 sought addition as a defendant on the ground that the land belongs to the erstwhile Nizam.

2. Learned counsel for the petitioners submit that if at all the Wakf Board has any claim over the property at issue, they can file an independent suit before the Wakf Tribunal and which has been specifically observed by this Court in paragraph No.2 of the order dated 17.3.2017.

3. None is present for respondent No.4.

4. This Court (Coram: S.B. Shukre, J) has drawn a specific conclusion in paragraph No.2 of the order dated 17.3.2017. I find that these petitions can be disposed off in the light of the said orders.

5. S.O. To 13.7.2017 for passing orders.

6. In the event, respondent No.4 appears on the said date, his submissions could be considered. "

2 None appears for respondent No.4 even today.

3 This Court (Coram: Shri S.B. Shukre, J) has observed in order dated 17.3.2017 in paragraph No.2, as under-

"1. Heard learned Counsel for the petitioner. Issue notices for final disposal to the respondents, returnable on 13.4.2017. Learned AGP waives notice for respondent/State.

2. Meanwhile, having regard to the submission that no relief has been claimed against respondent No.4 and if at all respondent No.4 has come cause of

action in the matter, respondent No.4 can always initiate separate proceedings, but can never be allowed to intervene in the present proceeding, in order to promote its own cause, there shall be ad-interim stay in terms of prayer clause (D) till next date.

3. This petition be tagged along with the writ petitions mentioned on page No.41 of the paper book of this petition."

- 4 *It is, therefore, obvious that this Court had formed a view in this matter, after hearing the parties that as no relief has been claimed against respondent No.4 in the first matter and as against respondent No.3 in the remaining matters and since the petitioner did not intend to put forth any claim against the said respondent which is the Wakf board, the said Wakf board would never be allowed to intervene in the present proceedings in order to promote its own cause.*
- 5 *Considering the above and upon considering the submissions of the learned Advocates, all these petitions are disposed of in terms of the conclusion drawn by this Court in paragraph No.2 of the order of this Court dated 17.3.2017. Consequentially, the impugned orders dated 1.4.2016 passed by the learned Trial Court in RCS Nos.328/15, 332/15, 334/15, 335/15, 336/15, 337/15, 338/15, 339/15, 341/15, 343/15, 369/15 are quashed and set aside. Needless to state, if the Wakf board has any grievance or dispute or claim against these petitioners, they would be at liberty to resort to such a remedy, as is permissible in law."*

5 Considering the above, the impugned order dated 01.04.2016 below Exhibit-24 in RCS No.368/2015 is quashed and set aside and this Writ Petition is allowed. Exhibit-24 stands rejected.

6 Needless to state, if the Wakf Board has any grievance,

dispute or claim against these Petitioners, it would be at liberty to resort to such remedy as would be permissible in law.

kps

(RAVINDRA V. GHUGE, J.)