

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

2 CIVIL APPLICATION NO. 133 OF 2017
IN RAST/37020/2016

JALINDAR MACCHINDRA MOTE, THROUGH GPA RANGNATH
NANDRAM PATEKAR AND ANOTHER
VERSUS
THE CHIEF EXECUTIVE OFFICER, MAHARASHTRA STATE BOARD
OF WAKF, PANCHAKKI, AURANGABAD AND ORS.

...
Advocate for Applicants : Mr. B.S. Shinde h/f. Mr. V.P. Latange
Advocate for Respondents 1 & 3 : Mr. Z.M. Pathan
...

CORAM : T.V. NALAWADE, J.
DATED : September 25, 2017.

ORDER :

. The application is filed for condonation of delay of 197 days caused in filing the application for review of the order made by this Court in Civil Revision Application No. 208/2014 on 26.4.2016. Both the sides are heard.

2) The learned counsel for applicants submitted that Petition for Special Leave to Appeal No. 29709/2016 in Apex Court and it was withdrawn as liberty was given by the Apex Court to approach this Court. This Court has carefully gone through the order of Apex Court. It shows that it was submitted in Apex Court that there was some confusion over the number of

survey of Waqf property and by making such submission, the proceeding was withdrawn. In view of this submission, it can be said that in the present proceeding, the learned counsel for applicants is expected to satisfy this Court that there is some confusion with regard to the number of the property which is gazetted as Waqf property, property of one Masjid.

3) It is not disputed that the property is part and parcel of Gat No. 564. This property is gazetted as Waqf property, though according to the applicants, the gazette was published in the year 2006. The applicants, original plaintiffs of the suit wanted to show that it is not the property of Waqf and he had filed suit on the basis of one agreement of 1990 made with Kadarbhai Dagadu Shaikh and Hasan Dagdu Shaikh. The learned counsel submitted that Survey No. 137 which was converted to Gat No. 564 was not in existence in the village, but he admits that Survey No. 144 was in existence.

4) In view of the provision of section 54 of the Transfer of Property Act, it can be said that the agreement of sale does not create any right or interest in favour of person, in whose favour the agreement is executed. However, admittedly these

two persons have admitted that the property belongs to Masjid. There is no record with them to show that the previous survey number was owned by them. It can be said that the present applicants were deceived by them. But, on the basis of the so called agreement made in their favour, they cannot get any right or interest in the property, which is now shown as Waqf property after following the procedure laid down in the Waqf Act. Thus, there is nothing for review in the present matter.

5) For condonation of delay, the applicant needs to satisfy this Court on following points :-

- (i) There was sufficient cause, and
- (ii) The applicant has some arguable case in the main matter, review application.

In the present proceeding in view of the discussion made, this Court holds that on both points the applicants have failed to make out case. The application stands rejected.

[T.V. NALAWADE, J.]

ssc/