

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

CIVIL REVISION APPLICATION NO. 124 of 2018

M/s. Chandrashekhar Real Estate Pvt. Ltd.
Through its Director Mr Vivek Vitthalrao Patil,
age major occupation business R/o 229,
Nana Peth, Pune - 411002

...Applicant

VERSUS

1. Jamil Mohd. Gaus Khan,
age 30 years occupation business
R/o 1278 Kasba Peth, Pune - 411011
2. Daud Chand Shaikh,
age 53 years occupation business
R/o 1244 Kasba Peth, Pune 411011
3. Hazrat Khawaja Shaikh Salluddin Dargah,
MSBW/11/2006/Pune, registered office at
1278 Kasba Peth, Pune 411011
4. Meer Muzaffar Ali Saiyad Meer Mukbil Ali,
age 81 years occupation retired
R/o Flat No. 101, building No. A-2, Mayur Park,
Kondhwa Khurd, Pune – 411048
5. Meer Sarfarazali Meer Manzar Ali,
age 72 years occupation retired
6. Meer Nazim Ali Meer Manar Ali,
age 66 years occupation business.

Nos. 5 & 6 R/o Row House No. 14,
May Fair Eleganza II, NIBM road,
Kondhwa Khurd, Pune 411048
7. Meer Asif Ali Meer Manzar Ali,
age 56 years occupation business
8. Meer Liyaqat Ali Meer Manzar Ali,
age 58 years occupation business
R/o 1278, Kasba Peth, Pune 411048

9. Meer Imtiyaz Meer Manzar Ali,
age 53 years occupation business
10. Soheb Ali Akhtar Ali Sayed,
age 32 years occupation business
11. Zoheb Ali Akhtar Ali Sayed,
age 31 years occupation business
12. Seema Azam Ali Sayed,
age 29 years occupation housewife
13. Sayed Taufiq Ali Meer Muslim Ali,
age 65 years occupation business
R/o Flat No. 7, Kausar Baugh,
Kondhwa Khurd, Pune – 411048
14. Sayed Zafar Ali Meer Muslim Ali,
age 61 years occupation business
15. Sayed Ashfaq Ali Meer Muslim Ali,
age 59 years occupation business
16. Sayed Aslam Ali Meer Muslim Ali,
age 55 years occupation business
17. Sayed Sajid Ali Meer Muslim Ali,
age 51 years occupation business
18. Raziya Sultana Abdul Kadir Kazi,
age 63 years occupation housewife
19. Aasiya Parvin Meer Muslim Ali,
age 50 years occupation housewife

All R/o 1265, Kasba Peth, Pune 411011.
20. The C.E.O.,
Slum Rehabilitation Authority,
Pune & Pimpri Chinchwad Region
having office at SRA office,
Senapati Bapat road, Pune 411016.

...Respondents*Mr Atul B. Gatne, Advocate for applicants**Mr Mujtaba Gulam Mustafa, Advocate for respondents No.1 & 2*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 3rd September, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned Advocate for applicant and learned counsel for respondents No.1 and 2 (original plaintiffs) finally with consent.

2. Learned counsel Mr Gatne for applicant vehemently contends that respondents No.1 and 2 have no concern absolutely with the property bearing city survey No. 1278 situated at *Kasba Peth*, Pune and further submits that erstwhile trust as shown in Schedule - 1 as well as certificate of registration of *wakf* would amply bear the same. Despite this, while the property had been declared for slum development pursuant to the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 and proceedings accordingly have been initiated and applicant had entered into transactions with persons concerned and the authority as well in 2016, the dispute is sought to be raised by respondents by filing suit before Maharashtra State Wakf Tribunal, Aurangabad.

3. He submits that as on the date, not a single authenticated document can be said to have been placed on record by respondents even to remotely indicate that the property

is a *wakf* property. He submits that applicant is under obligation to construct and allot the property to slum dwellers on the property, with whom it has entered into settlement and failure to abide by the same would result into huge financial loss. He submits that while on the face of it, there is not even indication of property being *wakf* property while it is taken for development and original structures thereon have been removed, action by filing the suit before the Tribunal has been taken by plaintiffs with a view to coerce and force applicant to fulfil their unlawful demands. This is an abuse of process of law.

4. He submits that while an application had been moved for framing preliminary issue and the same has been framed, yet, an order of maintaining *status quo* has been cursorily passed. The orders impugned do not reflect upon the relevant consideration being taken into account while granting *status quo*. He submits that aspects of prima-facie case, balance of convenience or irreparable loss have not been considered. He submits that having regard to the economic interest, the matter has assumed urgency and, therefore, *status quo* order be removed.

5. On the other hand, learned counsel Mr Mujtaba for plaintiffs submits that there is sufficient record available which would establish that the property indeed is *wakf* property, albeit

may not have been expressly recorded in Schedule 1 of the Wakf Register and in the form for registration of *wakf* under section 36 of the Wakf Act. He submits that plaintiffs are in possession of property, 'K *patrak*' and 'D *patrak*' show that the property is *wakf* property and, thus, purports to counter submissions advanced on behalf of applicant with respect to property not being *wakf* property. He submits that as a matter of fact, maintaining *status quo* as on the date is beneficial for applicant as well since the construction which could have otherwise been put up by him, and particularly if it ultimately emerges that it is a *wakf* property, unfruitful financial expenses have been stalled. He submits that so far as jurisdictional issue is concerned, plaintiffs are ready to deal with the same, however, he purports to point out that in view of taking off of section 9-A from the Civil Procedure Code (Bombay Amendment), the question of framing of the jurisdictional issue pales into insignificance. He submits that while the order may not in terms express considerations of relevant factors for grant of injunction, yet undercurrent is, having regard to the surrounding circumstances which show it would be appropriate to stall economic losses to other side, the Court has granted *status quo*. As such, on merits, order may not require any interference with. He, therefore, urges not to accede to the request made by applicant.

6. Having regard to the submissions advanced by learned counsel as aforesaid, without getting into rival claims made, the purpose and object of the parties in the circumstances, would be served if entire *lis*, which is pending before the Tribunal, is decided expeditiously and it appears to be expedient in the circumstances.

7. The Tribunal should decide the suit as expeditiously as possible and preferably before expiry of three months from the date of receipt of writ of this order.

8. Parties are expected to extend their co-operation in early disposal of the suit. Attempt for prolongation may be dealt with firm hand by the Tribunal.

9. All points are kept open for the parties including jurisdictional issue.

10. Rule in aforesaid terms.

11. Civil revision application stands disposed of.

**(SUNIL P. DESHMUKH)
JUDGE.**