

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 56 OF 2018

Syed Azizullah alias Ikramullah Hussaini
S/o Syed Asadullah Hussaini age 66 years,
occupation Mutawalli & Sajjada,
R/o Farshi Galli, Dargah road, Osmanabad,
Taluka and District Osmanabad

.. Applicant

Versus

- 1] Maharashtra State Waqf Board,
Aurangabad Through Chief Executive
Officer, Panchakki, Aurangabad
- 2] The District Wakf Officer, Osmanabad
- 3] Syed Shah Sarfaraz Hussaini S/o
Syed Abdullah Hussaini age 49 years,
occupation agriculture,
R/o Dargah road, Osmanabad
- 4] Syed Shah Rafiq Hussaini
S/o Syed Abdullah Hussaini
age 47 years, occupation agriculture,
R/o Dargah road, Osmanabad
- 5] Syed Shah Shafiq S/o Rafiq Hussaini
age 20 years, Occupation Agriculture,
R/o Dargah Road, Osmanabad

.. Respondents

...

Mr. Rajendra Deshmukh, Advocate h/f Mr. S.A.P. Quadri, Advocate
for applicant

Mr. A.N. Walujkar, Advocate for respondent no.3

Mr. Z.A. Khan, Advocate for respondent no. 4

Mr. S.P. Pandav, Advocate for respondent no. 5

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 26-03-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the appearing parties.
3. Applicant is plaintiff in Wakf Suit no. 53 of 2018 seeking declaration that tender notice dated 28-02-2018 issued by defendant no.3 being null and void and injunction against defendants no. 3 to 5 from calling tenders to install stalls, shops for celebrating the *urus*, collecting rents etc. of institution Dargah Hazrat Khwaja Shamsuddin Gazi Sheranshah Wali (Rah) Osmanabad. Parties hereto are referred to by their status in the suit as plaintiff and defendants.
4. According to the plaintiff, issuance of tender notice for conducting *urus* during the period 30-03-2018 to 08-04-2018 by defendant no. 3 is illegal and improper. Defendants no. 3 to 5 have no *locus standi* to call tenders for celebrating *urus* and has no right to conduct the same.

5. Learned counsel Mr. R.S. Deshmukh appearing along with Mr. Quadri, vehemently submits that the District Wakf Officer had made a report on 22-02-2018 clearly pointing out that defendant no.3 had not been discharging duties properly. As a matter of fact, it has been observed in the report that defendant no.3 had not deposited wakf fund for last three years and he has no authority to conduct the *urus*. He further contends that defendant no.3 has not been performing duties properly and had been committing defaults. In view of the same, especially after expiry of period of order appointing temporary *Mutawalli* in the year 2013, having not been continued, does not give a perpetual right to defendant no.3 to conduct *urus*.

6. According to him comparatively rights of the plaintiff are far better than those that can be claimed by defendants 3 to 5. He submits that documents viz. Wakf register and *Virasat* proceedings sufficiently bear the same. He further purports to refer to document dated 27-04-2016 titled "opinion certificate", which according to him supports the case of the plaintiff wherein officer concerned has referred to that plaintiff had been performing and rendering duties as per customs and that in the year under consideration, he had seen plaintiff successfully conducting the

sandal ritual. Learned counsel further submits that the claim on behalf of defendant no.3 that succession has been granted in his favour, has no basis and is fallacious.

7. On the other hand, learned counsel Mr. Pandav, Mr. Z.A. Khan and Mr. Walujkar, submit it can not be said that observations in impugned order are not based on material on record. It is submitted that defendant no.3 had been appointed as *Mutawalli* under order of authority in 2013 for a period of two years and he had been accordingly conducting *urus* every year. Defendant no. 3 is performing duties of *Mutawalli*. It is submitted that continuously from 2013, defendant no.3 has been discharging duties and performing services to the institution. Even after expiry of period, during *pendency* of application for extension of appointment as *Mutawalli*, *urus* is being conducted. It is further submitted that during 2016, *urus* has been conducted by defendant no. 3 so is the case in the year 2017. Record supports their case whereas they are in possession and the plaintiff has not, at any point of time, been in possession at least from 2013 to date. Every year *urus* has been conducted by defendant no.3 and in such a regular course, the tenders have been invited. It is further being submitted that it is rather queer as to why only this year, objection is taken for publication of tender after 2013 or even for that

matter, after 2015, if according to submissions on behalf of applicant-plaintiff, when period of appointment of defendant no.3 as *Mutawalli* had been over. No objection had been taken to the tenders issued each year barring the year wherein a tender issued by Wakf Board, had been initially objected to by defendant no.3. The objection had been withdrawn as agreement had been reached.

8. They continue to submit that, factual position would not get altered by submissions on behalf of applicant-plaintiff nor do the report disputes that defendant no.3 has been conducting *urus* every year after 2013. Mr. Pandav submits that in-fact, as rightly observed by the tribunal for successive three years i.e. 2014-15, 2015-16 and 2016-17, *urus* has been conducted by defendant no.3 and the report in fact underscores said factual position. It is further being submitted that the report is not relevant as far as present matter is concerned. No notice had been received by defendant no.3 nor any explanation has been called yet. It is being submitted that *urus* is just about to commence. It is not the case at all by the other side that they have made preparations for conducting *urus*. Under the circumstances, request being made under the revision may not be acceded to. In such a situation, injunction would not issue against

defendants no.3 to 5, let alone a temporary one.

9. Wakf tribunal has rejected application for temporary injunction under its order dated 17-03-2018. Initially, only operative order had been issued, however, subsequently, full text of the order has been made available and certified copy of the same has been filed on record.

10. It appears that, it is being claimed on behalf of plaintiff that Syed Asadullah Hussaini father of plaintiff was the holder of inam lands and had been *Sajjadanashin* and *Mutawalli* and after his death, it is the plaintiff, who is discharging duties of the *Dargah* in the same capacity. The institution has been registered with the Wakf Board showing his father's name. The succession proceedings after death of his father are pending.

11. Defendants 3 to 4 had appeared before the Wakf Tribunal and submitted their say to the application for temporary injunction. They purported to deny that plaintiff is *Sajjadanashin* and defendants 3 and 4 without any right, had called tenders for *urus* and claimed that the same is not illegal, null and void. It is contended by them, in-fact, defendants 3 and 4 are hereditary *Mutawalli* and are looking after the affairs of *Dargah*.

12. Defendants no. 3 to 4 claim to be descendants of one Syed Abdullah Hussaini, who had been holder of *Muntakhab* and his name has been so recorded and after his death, according to defendants, in the succession proceedings, Deputy Collector, *Atiyat*, Osmanabad has sanctioned the same. The plaintiff and other *inamdars* had preferred appeal. The same had been allowed and defendants no. 3 and 4 have preferred revision before the Maharashtra Revenue Tribunal and the same is pending.

13. Perusal of the order passed by the tribunal shows that it has been considered, plaintiff as well as defendant no.3 have been claiming to be *Sajjadanashin* and *Mutawalli* of the institution. Tribunal has observed that father of plaintiff - Syed Azizullah Hussaini, namely, Syed Asadullah Hussaini and father of defendant no.3 - Syed Shah Sarfaraz, namely, Syed Abdullah Hussaini were shown as *Mutawalli* of the Dargah. In columns no. 7 and 8 *Muntakhab* no. 110, dated 15th Jamaduilwal 1289 Hijri, names of Asadullah Hussaini and Abdullah Hussaini and others were being shown as *Mutawalli*.

14. The tribunal had thereafter considered that so far as temporary injunction is concerned, it would be *germane* to see as to

who has been performing *urus* of the *Dargah* and rendering services before the date of filing of the suit. Tribunal has observed that under order dated 11-03-2013 passed by the Chief Executive Officer of the Wakf Board, defendant no.3 had been appointed as temporary *Mutawalli* for a period of two years. Further under letter dated 02-02-2018 by defendant no. 3, it had been informed to the Chief Executive Officer that continuously from 2013, *urus* has been held by defendant no.3 and had sought permission to conduct *urus* for the present year. In said letter, he has prayed for granting permission to perform the *urus* commencing on 30-03-2018 which is to last till 08-04-2018. No decision on the same as yet has been taken. Tribunal has adverted to report by District Wakf Officer dated 22-02-2018 wherein also reference has been made to that for the years 2014-15, 2015-16 and 2016-17, it is defendant no.3 who has conducted *urus*.

15. Tribunal further considered that no material could be placed by plaintiff that before 2013, he had been performing *urus* by obtaining permission from the Board. Tribunal has also adverted to the submissions on behalf of the plaintiff that a *Mutawalli* has right to perform *urus* relying on decision of this court in the case of *Minhajuddin S/o Shaikh Habib Qureshi (deceased through LRs.) Vs. State of Maharashtra & Anr.* reported in 2006(1) ALL MR 225 holding in

the facts of that case that appointment of *Mutawalli* is as per the custom of family and preference is to be given to the members of the family while appointing the *Mutawalli*.

16. Tribunal has then also adverted to the submissions on behalf of defendant no. 3 - respondent no.3 that he is in possession and management of the institution as temporary *Mutawalli* and has been conducting *urus* and it would be a relevant consideration so far as temporary injunction is concerned. Decision of this court in the case of *Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare & Anr. reported in 2011 (6) ALL MR. 15* had been referred to and relied upon. Tribunal, therefore, has rejected the application and thus, the plaintiff is before this court.

17. Foregoing contents show that defendants no. 3 to 5 and plaintiff claim right to perform services and discharge duty as *Mutawalli* pursuant to *Muntakhab* sanctioned in the name of their predecessors. Both contesting parties claim to be *Mutawalli* by inheritance and certain *Virasat* proceedings appear to be pending on either side. In the interregnum, it appears that defendant no.3 had been temporarily appointed as *Mutawalli* and with reference to the same, defendant no.3 had been conducting *urus* since then. For the years 2014-15, 2015-16 and 2016-17, defendant no.3 appears to have conducted *urus*. The same gets endorsed by report dated

22-02-2018 of the District Wakf Officer. It further emerges that as on the date, no material has been placed by plaintiff on record to show that he is equipped or has made any preparation for conducting *urus*.

18. In the circumstances, while the *urus* is on the verge of commencement, the allegations made against defendant no.3 having been taken care of in the operative part of impugned order by directing to keep accounts of income and expenditure of *urus*, in exercise of discretionary powers, it does not appear any interference is called for by this court in present revision. Revision is, thus, not entertained and is dismissed.

19. Rule stands discharged.

20. However, it is made clear that observations in this order as well as in the order passed by the tribunal are in *interlocutory* proceedings and shall have no reflection at all on merits of the matter nor shall affect the merits of the case.

21. It would be expedient that the suit proceedings should be expeditiously proceeded with.

[SUNIL P. DESHMUKH]
JUDGE

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