

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 114 OF 2017

Kazi Rizwan S/o Kazi Imadadullah

Age : 38 years, Occupation : Mutawalli,

R/o Bhoi Galli Taluka Tuljapur

District – Osmanabad

.. Petitioners

Versus

1] The Maharashtra State Board of Auqaf
Through the Chief Executive Officer,
Panchakki, Aurangabad

2] The District Waqf Officer,
Osmanabad

3] Chotu Miyan Ghudubhai Shaikh
Age 38 years, Occupation Nil,
R/o Indira Nagar Naldurg Taluka Tuljapur,
District – Osmanabad

4] Mohammad Mohiuddin Shaikh
Age 60 years, Occupation nil
R/o Hatti Galli Naldurg Taluka Tuljapur,
District Osmanabad

5] Rasool Mohiuddin Shaikh
Age 50 years, Occupation – Nil,
R/o Hatti Galli Naldurg Taluka Tuljapur,
District – Osmanabad

6] Chand Abbas Ali Shaikh
Age 40 years, Occupation Govt. Service
R/o Indira Nagar, Naldurg Taluka Tuljapur,
District – Osmanabad

.. Respondents

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Mr. S.A.P. Quadri, Advocate for petitioner

Mr. Y.B. Pathan, Advocate for respondent no.1

Mr. Mobin H. Shaikh, Advocate for respondents no.3 to 7

...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 15-10-2018

ORAL JUDGMENT :

1. Heard learned counsel for appearing parties.
2. The dispute is in respect of Dargah situated at survey no. 383, *gat* no. 299, municipal house no. 965/2 New house no. 1103/1 at village Naldurga in Taluka - Tuljapur, District - Osmanabad. Petitioner claims that his father Imadadullah had continued spiritual heritage and religious activities of the Dargah as per customs and traditions of Hazrata Syeda Khairunnisa alias Sarkar Nanima (Rah) and after demise of Imdadullah, petitioner has continued the customs and religious activities and has been managing Dargah till this date. Police authorities had issued licence to him of *Urus*. The Dargah is not a registered wakf and respondents no. 3 to 7 have no concern whatsoever nor have any *locus standi*.
3. Mr. Quadri, learned counsel for petitioner submits that it appears without making applicants a party, some proceedings were initiated before Wakf Board and some orders were obtained. An order came to be passed in 2016, directing seizure and sealing of donation boxes. Aggrieved by said decision, application

no. 26 of 2016 was required to be preferred before Wakf Tribunal under section 83(2) of the Wakf Act, 1995. While the proceedings were pending, the wakf board has filed an undertaking before the tribunal that non-applicants no.1 and 2 can not seize boxes of donation of Dargah as per the impugned order dated 09-05-2016. It has further been referred to that petitioner can conduct *urus* and customs and usages of Dargah Nanima Sarkar (Rah), however, cannot open the boxes of donation of Dargah and not disturb the boxes. While this is the situation in pending application no. 26 of 2016 before the Tribunal, according to learned counsel for petitioner, respondents no. 3 to 7 have subsequently filed an application under section 83(2) of the Wakf Act, 1995 without making petitioner a party and seeking directions to respondent no. 2, who is the District Wakf Officer, to obey the orders passed on 03-12-2013 and 09-05-2016 and put seal to the donation boxes.

4. Learned counsel submits that although in respect of same boxes, proceedings bearing wakf application no. 26 of 2016 are pending, hurriedly wakf application no. 29 of 2016 has been allowed, which application was without making applicant a party and purportedly filed for implementation of those orders of 2013 and 2016 and he submits that execution of orders is not domain of the tribunal and it is only civil court which can proceed with the same. He further submits that while attempt had been made to

get petitioner impleaded, as party in application no. 29 of 2016, same has been cursorily dealt with without realizing that proceedings at the core are the same donation boxes as are involved in application no. 26 of 2016. He submits that tribunal has committed an error going by the ostensible relief claimed without realizing its implications and without giving appropriate opportunity to the petitioner. He submits that the petitioner has stronger case on merits while respondents no. 3 to 7 have none and the petitioner has to discharge duties which incur expenses. As such, the orders passed in 2013 and 2016 by board be set aside.

5. On the other hand, Mr. Mobin Shaikh, learned counsel appearing for respondents no. 3 to 7 submits that the claims under present civil revision application are fallacious. Dargah Hazrata Syeda Khairunnisa alias Sarkar Nanima (Rah) is part of already registered wakf and same is recorded in the gazette. It also emerges that petitioner is not at all *Mutawalli* of either the wakf institution or for that matter Hazrata Syeda Khairunnisa alias Sarkar Nanima (Rah) *Dargah*. He has been meddling with management of the *Dargah* and has been misappropriating amounts. Under the circumstances, they had no alternative but to move the wakf board and seek relief and accordingly two orders

have been passed; one in 2013 and other in 2016. Despite the orders being passed, those were not being implemented and, as such, wakf application bearing no. 29 of 2016 had to be moved. For the same, it was not necessary that petitioner ought to be a party.

6. Learned counsel further contends that on the same analogy, attention also needs to be had to the position that petitioner as well, has not added present respondents no. 3 to 7 as party to application bearing no. 26 of 2016. Those proceedings are being conducted behind the back of respondents no. 3 to 7. It is therefore contended that petitioner has no *locus standi*.

7. During the course of his submissions, Mr. Quadri has brought to the attention that while applicant had not been a party to the proceedings, direction in application no. 29 of 2016 was obtained from this court, to have disposal of application no. 29 of 2016, keeping it away from the court that applicant is interested party and while high court being unwary of the fact of pendency of application no. 26 of 2016.

8. Mr. Pathan, learned counsel for respondent no.1 submits that his instructions are in case the petitioner is prepared to pay up the wakf fund, he may not have any particular resistance to de-sealing, as sought by the petitioner.

9. Having heard learned counsel for the appearing parties, it is discernible that rival parties are seeking claim to the same property and the same institution. There are rival claims being made purportedly based on facts. It does not appear under the impugned order, background claimed by the parties before this court has been examined and has considered that application no. 29 of 2016 is simplicitor application seeking implementation of orders of 2013 and 2016.

10. While the parties stake their respective claims in the matter, it appears to be expedient that since the dispute is in respect of same property and same institution, that the applications bearing wakf application no. 26 of 2016 as well as wakf application no. 29 of 2016, be heard together, allowing the parties adequate opportunity to prove their claims.

11. In such a case, it appears that the petitioner be allowed to participate in the proceedings bearing wakf application no. 29 of 2016 as well as respondents no. 3 to 7 be allowed participation in proceedings bearing wakf application no. 26 of 2016.

12. It is expected that the tribunal will proceed with the matter accordingly and dispose of the same as early as possible,

preferably within a period of six weeks from the date of receipt of writ of this order.

13. For said purpose, the impugned order dated 02-05-2017 passed by learned Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad below Exhibit No. 1, 11 and 12 in Wakf Application no. 29 of 2016 is set aside.

14. Civil revision application is disposed of accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/