

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.156 OF 2017

The Gram Panchayat,
through its Gram Sevak,
Dadh (Bk), Tq. Rahata,
District Ahmednagar.

Applicants

Versus

01 Maharashtra State Board of Wakf,
through its Chief Executive Officer,
At Panchakki, Aurangabad.

Adan Madan Baba (R.A.)
Dargah and Muslim Kabrastan,
through its Trustees.

02 Inamdar Mohammed Babulal,
age: 46 years, Occ: Agril.;

03 Inamdar Aziz Ali Mohammed,
age: 48 years, Occ: Agril.,

04 Inamdar Raj Masoom,
age: 43 years, Occ: Agri.,

05 Inamdar Babulal Umer,
age: 43 years, Occ: Agril.,

06 Inamdar Sadik Ali Charakuddin,
age: 48 years, Occ: Agril;

07 Inamdar Salauddin Karmat Ali,
age: 41 years, Occ: Agril.,

08 Inamdar Abu Mastan,
age: 38 years, Occ: Agril.,

09 Inamdar Sultan Umar,
age: 49 years, Occ: Agril.,

10 Inamdar Alam Gulab,

age: 48 years, Occ: Agril.,

11 Shaikh Haroon Usman,
age: 49 years, Occ: Agril.,

12 Pathan Shabbir Hussain,
age: 55 years, Occ: Agril.,

Respondents No.2 to 12 all
R/o Dadh (Bk), Tq.Rahata,
District Ahmednagar.

13 Taluka Inspector,
Land Records, Rahata,
Tq.Rahata, District Ahmednagar.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.D.Shinde, advocate for the applicant.

Mr.Y.B.Pathan, advocate for Respondents No.2 to 12.

CORAM : M.S.SONAK, J.

DATE : 11th January, 2018.

ORAL JUDGMENT :

1 Heard Mr.V.D.Hon, learned Senior Counsel i/by Mr.A.D.Shinde, advocate for the applicant and Mr.Y.B.Pathan, advocate for Respondents No.2 to 12. Considering the order, which is proposed to be made, appearance of respondents no.1 and 13 is not necessary. Therefore, service upon said two respondents is dispensed with.

2 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 The challenge, in this Revision Application taken out under Section 83(9) of the Wakf Act, 1995, is to the order dated 14.02.2017, by which, the Wakf Tribunal has allowed the application made by respondents for appointment of Court Commissioner.

4 Mr.V.D.Hon, learned Senior Counsel for the applicant, submits that the impugned order was made without affording an opportunity of hearing to the applicant. He points out that the pursis filed by the learned Counsel for respondents on 28.11.2016 merely stated that the advocate appearing for the applicant had been intimated about the application for appointment of Court Commissioner personally when he met the said advocate at the Typing Centre. Mr.Hon submits that such kind of service hardly amounts to effective service, particularly, since, the applicant is a *Gram Panchayat*. Mr.Hon submits that there is nothing on record to indicate that even copy of the application seeking appointment of Court Commissioner was properly served upon the *Panchayat*. He further submits that since the impugned order is made in violation of principles of natural justice, the same may be set aside. He also offered to make submissions on merits. However, since, the issue of natural justice is involved, Mr.Y.B.Pathan, advocate was requested to make submissions on the said issue itself.

5 Mr.Pathan, learned Counsel for respondents no.2 to 12, referred to me to the *Roznama* on record to point out that applicant and its advocate were, throughout, irregular in attending the proceedings before the Tribunal. He points out that already orders are made to proceed in the matter without Say of the

applicant-*Gram Panchayat*. He submits that necessary intimation was given to the advocate for the *Panchayat*. He submits that if all these aspects are cumulatively considered, it cannot be said that there is any breach in compliance of the principles of natural justice.

6 Upon perusal of the record, in particular, reply filed by the respondents as well as *Roznama* appended to the pursis filed by the advocate for respondents, though, there is some substance in the contentions raised by Mr.Pathan, this is a fit case where an opportunity is required to be afforded to the applicant to contest the application for appointment of Court Commissioner. This is not either to disbelieve or discredit the pursis filed by learned Counsel for respondents on 28.11.2016, however, such oral intimation, by itself, cannot be regarded as sufficient, as urged by Mr.Hon, learned Senior Counsel for the applicant, particularly, because, the applicant is a *Panchayat* and the *Panchayat* has to deal through its officers or elected representatives. Therefore, without going into much details as to where the fault lies, interest of justice will be met if the impugned order dated 14.02.2017, is set aside and the Tribunal is directed to re-consider and re-decide respondents' application dated 07.09.2016 (Exhibit-28), seeking appointment of Court Commissioner.

7 Mr.Hon, learned Senior Counsel for the applicant states that the applicant would file reply to the said application within a period of three weeks from today by serving an advance copy to the learned Counsel for respondents. In case respondents wish to file rejoinder, they can do so within a period of one week

from today. The Tribunal is directed to dispose of the application on its own merits and in accordance with law within a period of maximum eight weeks from today.

8 The impugned order dated 14.02.2017 is, therefore, set aside and the matter is remanded for fresh decision, as per aforesaid directions. Consequently, the order dated 25.07.2017 is also set aside.

9 The applicant is directed to pay costs of Rs.2500/- (Rs.Two Thousand Five Hundred) to the respondents within a period of three weeks from today, along with reply to the application at Exhibit-28. If no costs are accompanied along with such reply, the reply shall not be taken on record, since, this Revision shall be deemed to have been dismissed and the impugned order shall be deemed to have been confirmed. In case there is some difficulty in payment of costs directly to the respondents or their advocate, the applicant is at liberty to deposit the costs before the Wakf Tribunal.

10 Rule is made absolute to the aforesaid extent.

M.S.SONAK
JUDGE