

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

CIVIL REVISION APPLICATION NO. 173 OF 2017
WITH
CIVIL APPLICATION NO. 13703 OF 2017

Shaikh Khaleel Ahmed Abdul Aziz
Mutawali Dargah Masjid and
Kabrastan Dade Hayat Subhedar,
Survey no.276,Mantha Road, Jalna, ..Petitioner /
Age 58 years, occup. Mutawalli, Orig. Plaintiff
R/o As above

versus

1. Commandant, State Reserve Police
Force Group III, Near Mantha Nagar,
Jalna, Tq. and Dist. Jalna
2. Executive Engineer,
Building and Construction Department,
Public Works Division, Jalna
3. Maharashtra State Board of Wakfs,
through its Chief Executive Officer, .. Respondents/
Office at Panchakki, Aurangabad Orig. Defendants

Mr. B.A. Darak, Advocate for petitioner
Mr. R.S.Shinde (Borolkar) Advocate for respondent no. 1
Mr. B.V. Virdhe, Asstt.Govt.Pleader for respondent no.2

CORAM : SUNIL P. DESHMUKH, J.
DATE : 27th March, 2018

ORAL JUDGMENT :

1. Heard learned counsel Mr. B. A. Darak appearing on
behalf of applicant, learned counsel Mr. R.S. Shinde on

behalf of respondent no. 1 and Assistant Government Pleader Mr. B. V. Virdhe for respondent no. 2. None appears for respondent no. 3.

2. Applicant - original plaintiff takes exception to the order passed on 25-07-2017 by the Presiding Officer, Maharashtra State Wakfs Tribunal, Aurangbad, whereunder application filed by present applicant under Exhibit - 5 in Wakf Suit bearing no. 24 of 2017, seeking temporary injunction against defendants has been rejected.

3. Mr. Darak purports to draw attention to various facets of the matter including area of the property involved and submits that the order impugned is not proper and requires corrective measure in the form of its reversal and granting application Exhibit - 5.

4. Learned counsel Mr. Darak vehemently submits that over *Dargah* property of 600 ft. x 600 ft. which is more than 8 acre piece of land in land survey number 276 of Jalna city, defendant no. 1 under the garb of grant of land

5.

from the government has caused encroachment and is carrying out construction over encroached area. He submits that *Dargah* is an old institution and from times immemorial *Dargah* is existing along with landed property having 600 ft. x 600 ft. area. This position is amply borne out from various documents on record and, as such, the tribunal has been in error in declining request of the applicant under Exhibit - 5 in wakf suit bearing no. 24 of 2017 to injunct defendants from carrying out construction in suit property and from changing existing nature and condition, particularly of 250 ft. x 250 ft. area and 2.02 hectare from survey number 276.

5. Countering aforesaid submissions, at the outset, Mr. Ram S. Shinde on behalf of respondent no. 1 submits that the construction is being carried out by defendant no. 1 over a portion of land granted by government to defendant no.1-respondent no.1 and the same is at a very advanced stage and is nearing completion. He further submits that previous history of litigation would evince that there is no substance in the claims made by present applicant -

plaintiff about defendant no. 1 having encroached over alleged portion.

6. He submits that the situation is otherwise. While it has been claimed to be an area of 250 ft. x 250 ft. to have been encroached upon by respondent no. 1 - defendant no. 1, said area had been left untouched and no construction over the same is being carried out. He submits, the record with regard to which claims are being made for contended area may not have efficacy as far as defendant no. 1 - respondent no. 1 is concerned, for, said documents, particularly notice and gazette, are subsequent to grants of land by government to respondent no.1 - defendant no. 1 of 1976 and 1983.

7. He purports to refer to order passed by this court in civil revision applications bearing no. 132 of 2005 and 2 of 2007 on 16-01-2017 whereunder the orders passed by Presiding Officer, Wakf Tribunal on 12-12-2006 in suit bearing no. 7 of 2001 between Commandant, State Reserve Police Force and Shaikh Khalil have been set aside

and the matter is remanded to the Tribunal for reconsideration in the light of documents filed.

8. He submits that the lands have been measured and map has also been prepared by the taluka inspector of land records which vividly shows that *Dargah* area is limited to 64 are and not more.

9. The tribunal under impugned order has referred to that there appears to be a government gazette after issuing notice in 1992, showing graveyard area of Darga Dade Hayat Subhedar having area of 600 ft. x 600 ft. Subsequently, *Kabrastan Dade Hayat Subhedar* and *Dargah Syed Saheb and Aziz Sunni Masjid* had been registered in 2010 for an area admeasuring 33445.09 square meters.

10. The tribunal had further adverted to that in 1999, there had been an order by Secretary, Marathwada Wakf Board, Aurangabad passed under section 63 of the Act, appointing the plaintiff as Mutawalli of *Dargah* and *Kabrastan*.

11. Thereafter, the tribunal has also considered that the Home Department of the Maharashtra government had

passed resolution in 1983 granting 9.1261 hectare land to police department for housing and welfare and administrative building and the Collector, Jalna then had been authorized to transfer land on behalf of State government Revenue record, accordingly, particularly 7 x 12 extract, started bearing said change showing in other rights column, names of *Kabrastan Dade Hayat, Hanuman Mandir* etc.

12. The tribunal has observed that the plaintiff had not been able to produce any revenue record lending credence to his claim that respondent no. 1 - defendant no. 1 has caused encroachment over area of *Dargah*. May be that *Dargah* is having 8 acre, 3 guntha land yet, it has been considered that it cannot be ignored that the land survey number 276 has also been granted to the respondent no.1 - defendant no. 1 for construction of residential quarters and administrative building and same is being done by agency appointed by the State government.

13. It appears that defendant no. 1 claims that landed property bearing survey number 276 had been allotted to

the State Reserve Police Force by the then Hyderabad Government. The same now with the organizational changes has been converted into State Reserve Police Force (SRPF) of Maharashtra State from 1956. The State government by resolution dated 24-03-1983 had transferred the land of about 9 hectare from survey number 276/1 for construction of police residential quarters. Subsequently, sanction had been accorded to the same by Maharashtra State Police and Welfare Corporation Limited in 1983 and 1987. It is being claimed that appearance of 8 acre, 3 guntha area as wakf property in government gazette of 1992 has no basis. There is no material or document showing that such allocation had ever been there. Further, reliance is also being placed on observations in the decision of the high court in two civil revision applications bearing no. 132 of 2005 and 2 of 2007 in respect of *Pahani patrak* which were being relied on claiming the property to be wakf property.

14. It further appears that regular civil suit bearing no. 198 of 1991 had been instituted and the same had been dismissed, so was the case of regular civil appeal bearing

number 138 of 1992. Thereafter, one Aktar Ahmed had filed regular civil suit bearing no. 422 of 2002 which also had been dismissed in 2004.

15. It also appears that after decision by the high court, cadestral surveyor had measured land survey no. 276 and had prepared a map. It is being claimed by respondents herein that the map drawn by cadestral surveyor shows masjid and dargah on northern side admeasuring 250 ft. x 250 ft. and excluding that portion, construction is being carried on.

16. Respondents herein claim that an area of about 58.66 hectare is in their name out of land survey number 276/1/1 admeasuring 60.11 hectare. Revenue record also bears the same which shows *kabrastan* only in other rights column. Further, it appears that certain proceedings with reference to section 54 of wakfs Act are pending. It is claimed by respondents herein that the activities of plaintiffs are unauthorized and illegal and their activities are confined to an area of 250 ft. x 250 ft. Looking at the exigent need of

the residential quarters, the work of construction of the same had already been undertaken and is now stated to be at advance stage of completion.

17. Looking at aforesaid and while suit is pending, it does not appear that the civil revision application would carry forward fruitful purpose putting restraint having regard to the background of earlier litigation and orders therein, and it will have to be noted that position about construction being in advanced stage is not doubted and all the activities are being carried out during pendency of litigation.

18. As such, civil revision application is not being entertained and is dismissed with aforesaid observations. In the circumstances, it would be expedient that the wakf suit pending before the tribunal may be proceeded with expeditiously and is disposed of as early as possible preferably within a period of nine months.

19. The observations hitherto made in present order are only of prima facie nature and shall not be deemed to have any reflection on merits of the case on either side. All points are kept open for the parties.

20. Civil revision application is disposed of.

21. Civil application does not survive and stands accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd/-