

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

CIVIL REVISION APPLICATION No. 153 of 2018

Shaikh Mohammad Isa S/o Shaikh Ismail,
age 62 years occupation Mutawalli
R/o Meer Moosa Nagar, Udgir
Taluka Udgir District Latur

...Applicant
(Original plaintiff)

VERSUS

1. The Maharashtra State Board of Wakfs
through : Chief Executive Officer,
Panchakki, Aurangabad
2. The District Wakf Officer,
Office of the District Wakf Office,
Latur District Latur.
3. Shaikh Shamsuddin S/o Rahimuddin,
age 55 years occupation business
R/o Meer Moosa Nagar, Udgir
Taluka Udgir District Latur.

...Respondents
(Original defendants)

Mr. M.A. Khan, *Advocate for applicant*
Mr Y.B. Pathan, *Advocate for respondent No.1*
Mr S.B. Khan, *Advocate for respondent No.3*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 17th October, 2018

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally by consent.

2. Petitioner, who is original plaintiff, is before this Court aggrieved by rejection of application Exhibit – 5 for temporary injunction in regular civil suit No. 89 of 2018. It is contention of petitioner-plaintiff that suit property bearing survey No. 376 is a *Wakf* property of *Dargah Hazrat Meer Moosa Sahab (Rah)* and for that purpose, he purports to refer to government gazette of 1980. He submits that subsequently gazette has underwent some change since mistake had occurred in publication of earlier gazette. He further submits plaintiff is *Mutawalli* of said *Dargah* and is entitled to protect its property. As present respondent No.3-defendant No.3 is trying to encroach over certain portion of survey No. 376, the suit ensued. He submits that during pendency of the suit, *ex-parte ad-interim* relief in the form of *ad-interim* temporary injunction had been granted and the same continued till disposal of Exhibit 5. Exhibit – 5, according to him, has been dismissed by misconstruing record before the tribunal. He submits that even respondent No.3 has admitted that survey No. 376 is a *wakf* property. He submits, it is claimed by respondent No.3 that he has purchased property in 1985 and had been running saw mill over the purchased property. However, no credible material has been placed on record, particularly, neither the sale deed nor saw mill licence has been produced. Yet, the tribunal refers to that licence has been produced. He submits

that even electricity bills, on which reliance is placed, would not bear that those are of respondent No.3. In such a case, according to him, injunction application, while it is an admitted position that suit property is a *wakf* property, ought to have been granted. He submits that material on record sufficiently depicts that all the three ingredients required for grant of temporary injunction are in favour of plaintiff. He, therefore, urges to allow revision application.

3. On the other hand, learned counsel Mr S.B. Khan for respondent No.3 submits that publication of list of wakf properties under government gazette would depict that the suit property land survey No. 376 belongs to *Masjid Shakar Bauli* and land survey No. 377 is of *Masjid Dargah Hazrath Meer Moosa Saheb*. He contends that in any case, plaintiff though purports to claim to be *Mutawalli*, it has no valid sanction and has not been recognized by the wakf board as yet. He further submits that the suit land has been purchased by respondent No.3 way back in 1985 and since then he is running saw mill over the purchased property. He submits that while it had been realized that it is a *wakf* property, *Wakf Board* had been approached and requested for grant of said land to respondent No.3 for running saw mill and the request is pending. He submits that respondent No.3 has been

in physical possession of the property and the same had been endangered under order of *ad-interim* temporary injunction. However, looking at the facts, the tribunal has properly gauged the material on record and has passed order rejecting temporary injunction application filed by petitioner. He submits that claim of plaintiff about there being correction in the government gazette is not reliable and is not proper. He submits that electricity meter is in the name of different person, Mohamadsab Mastansab, as there is no transfer in the name of respondent No.3 as yet. In the circumstances, electricity bills may not be in the name of respondent No.3; but the factual position is that saw mill is being run by respondent No.3.

4. Looking at the nature of the dispute and the state of affairs and the material placed on record as annexed to the civil revision application and to affidavit-in-reply of respondent No.3, produced upto this stage, would not be able to sustainably bear claims made on either side. It appears that entire evidence as may be adduced in the tribunal will have to be properly scanned and appreciated. In the scenario, it would be expedient to proceed with the trial of the suit itself expeditiously and, in the meanwhile, parties shall maintain *status quo* with regard to suit property as on the date.

5. As such, civil revision application is disposed of with direction to the tribunal to proceed with the suit among the parties pending before it, as early as possible. The tribunal may dispose of the suit preferably within a period of four months from the date of receipt of the writ of this order.

6. Till disposal of the suit, the parties to maintain *status quo* with regard to the suit property as on the date.

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

Madkar