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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.429 OF 2016**

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| Linker Shelter Pvt. Ltd.<br>(A Company incorporated under the Indian<br>Companies Act 1956<br>having its office at : PSC,CTS No.111+111/2,<br>Dr. Ketkar Road, Erandwane Pune 004<br>through its Authorized Signatory,<br>Narendra Keshav Wadnare<br>Age: 33 years, Occn.Service<br>Address as above | ] Applicant Original Respondent No.7 |

V/s.

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| 1] Dudadhari @ Kathada @ Kagzipura Masjid<br>Trust, Nashik<br>having PTR No.D. 252, Nashik MSBW-137/2008<br>Through its Trustee<br>Sayed Abdul Shakoor Sayed<br>Age:62 years,Occn.Business<br>r/o House NO.3772, Kathada, Nasik | ] Respondent Nos. 1 to 4 Original applicants. |
| 2] Shaikh Malang Amir Trustee/Mutawalli<br>age:64 years,Occn. Business,<br>r/o House No.3744, Kathada, Nashik | |
| 3] Shaikh Mushtaque Abdul Karim<br>Age: 48 yrs, Occn. Business<br>r/o House No.3651, Kathada, Nashik. | |
| 4] Kutubuddin Dilawar Mulla<br>age: 71 years, Occn. Nil.<br>r/o Hari Nagari Society, Kathada<br>Nashik | |
| 5] Nasir Khan Razzak Khan,<br>age : 48 years, Occn. Business. | ] Respondent |

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| r/o House No.3746, Kathada<br>Nashik | ] No.5. |
| 6] The Maharashtra State Board of Waqfs<br>Panchaki, Aurangabad. | ] Respondent<br>] No.6 |
| 7] The Chief Executive Officer,<br>The Maharashtra State Board of Waqfs<br>Panchaki, Aurangabad. | ] Respondent<br>] No.7 |
| 8] Uttamrao s/o Nabhaji Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | |
| 9] Rajendra s/o Uttamrao Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | ] Respondent<br>] <u>Nos. 8 to 13</u><br>] Original<br>] Respondent<br>] Nos.1 to 6 |
| 10] Ravindra s/o Uttamrao Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | |
| 11] Rahul s/o Uttamrao Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | |
| 12] Sahebrao s/o Uttamrao Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | |
| 13] Sandeep s/o Uttamrao Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | |

***ALONG WITH***

**CIVIL REVISION APPLICATION NO.548 OF 2016**

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|---|---|
| 1] Dudhadhari @ Kathada @ Kagzipura<br>Masjid Trust, Nashik<br>Having PTR No.D/254,<br>MSBW-137/2008, Nasik<br>Through it's Trustee-<br>Sayed Abdul Shakoor Sayed<br>age: 62 years, Occn.Business<br>r/o House No.3772, Kathada,<br>Nashik | ] |
| 2] Shaikh Malang Amir Trustee/Mutawalli<br>age:64 years,Occn. Business,<br>r/o House No.3744, Kathada, Nashik | ] Petitioners.<br>] Original<br>] Applicants. |
| 3] Kutubuddin Dilawar Mulla<br>age: 71 years, Occn. Nil.<br>r/o Hari Nagari Society, Kathada<br>Nashik | ] |
| 4] Nasir Khan Razzak Khan,<br>age : 48 years, Occn. Business.<br>r/o House No.3746, Kathada | ] |

-vs-

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|---|---|
| 1] Uttamrao s/o Nabhaji Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | ] |
| 2] Rajendra s/o Uttamrao Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi,<br>CIDCO, Nashik. | ] Respondent<br>] Nos. 1 to 6<br>] Original<br>] Respondent<br>] Nos. 1 to 6 |
| 3] Ravindra s/o Uttamrao Mahale<br>age: major, Occn.Agriculture,<br>r/o Mahale FarmHouse, Morwadi, | ] |

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| CIDCO, Nashik. ] | |
| ] | |
| 4] Rahul s/o Uttamrao Mahale ] | |
| age: major, Occn.Agriculture, ] | |
| r/o Mahale FarmHouse, Morwadi, ] | |
| CIDCO, Nashik. ] | |
| ] | |
| 5] Sahebrao s/o Uttamrao Mahale ] | |
| age: major, Occn.Agriculture, ] | |
| r/o Mahale FarmHouse, Morwadi, ] | |
| CIDCO, Nashik. ] | |
| ] | |
| 6] Sandeep s/o Uttamrao Mahale ] | |
| age: major, Occn.Agriculture, ] | |
| r/o Mahale FarmHouse, Morwadi, ] | |
| CIDCO, Nashik. ] | |
| ] | |
| 7] Linker Shelter Pvt. Ltd. ] | |
| (A Company incorporated under the ] | |
| Companies Act 1956 ] | |
| having its office at : PSC,CTS No.111+111/2 ] | Respondent |
| Dr. Ketkar Road, Erandwane Pune 004 ] | No.7 |
| through its Director, ] | Original |
| Mr. S. P. Paranjape ] | Respondent |
| Age: 52 years, Occn.Business ] | No.7. |
| ] | |
| 8] Maharashtra State Board of Waqfs ] | |
| Through its Chief Executive Officer, ] | |
| Panchakki, Aurangabad. ] | |
| ] | |
| 9] The Chief Executive Officer, ] | |
| Maharashtra State Board of Waqfs ] | |
| Panchakki, Aurangabad. ] | |

Mr. Sagheer A Khan with Mr. Musaddique Momin i/by Judicare Law Associate, for the Applicant in Application No.429 of 2016 and for respondent No.7 in Application No.548 of 2016.

Mr. S. B. Talekar i/by Talekar & Associates, for the Respondent Nos. 1, 2, 4 and 5 in Application No.429 of 2016 and for applicant in Application NO.548 of 2016.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**CLOSED FOR ORDER : 26th MARCH, 2018.**

**JUDGMENT PRONOUNCED ON : 11th APRIL 2018.**

**COMMON JUDGMENT :**

1] Heard learned Counsel for the petitioners and learned counsel for the respondents .

2] Rule.

3] Rule is made returnable forthwith with the consent of learned Counsel for both the parties and these Applications are taken up for final hearing, at the stage of admission itself.

4] These are two counter Revision Applications, filed by the parties, challenging the order dated 18.6.2016, passed below Exh.5, by the Maharashtra State Waqf Tribunal, Aurangabad, in Waqf Appeal No.1 of 2016. Hence they are being decided by this common judgment.

5] For the sake of convenience, the parties to these two petitions are referred to by their original nomenclatures as "appellant/petitioner trust" and "respondents".

6] One Mr. Salim Khan Ahmed Khan, has filed an Application against original respondent Nos. 1 to 6 namely Uttam Mahale and others, under Section 40 of the Waqf Act, 1995, before the Maharashtra State Board of Waqf, for declaring that the lands bearing survey Nos.980 and 981 situated at Morewadi, Taluka and District: Nashik, are the Waqf properties of the original appellant No.1, the Dudhadhari Masjid Trust. This application came to be registered as Case No.MSBW/Enq/40/54/2012 and after conducting enquiry into the said application, the Chief Executive Officer of the said Waqf Board, came to the conclusion that these lands are not the Waqf properties and same were purchased by the father of Respondent Nos. 1 to 6 viz. Uttam Mahale and others, as per the provisions of Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as, "B.T. & A. L.Act" for short), and hence they are the owners of the said lands. Therefore, by her order dated 4.2.2016, the Chief Executive Officer of the Waqf Board, rejected the application of the trust, for declaring them as properties of the Waqf.

7] Being aggrieved by the said order, the petitioner Trust approached Waqf Tribunal by filing Appeal No.01 of 2016. Alongwith the said Appeal, the application at Exh.5 was also filed, for restraining respondent Nos. 1 to 7, therein, from creating third party interests in the trust property or transferring the possession of the flats constructed thereon. The Tribunal allowed the said application partly, by passing the following order:-

> "1. Application is allowed partly.
>
> 2. The construction of the suit property and it's completion and transfer of possession of the flats to the intending purchasers who have booked the flats shall be subject to the final decision of this appeal.
>
> 3. The respondent Nos. 1 to 7 shall intimate to the intending purchaser about pendency of this appeal and further notify them that the agreements by above said respondents with the intending purchasers are subject to the final decision of this appeal.
>
> 4. If any further agreement/agreements is/are entered by the above said respondents with the intending purchasers, they will also be informed expressly about pending of this appeal and that the transaction of sale of the flats is subject to final decision of this appeal".

8] Against this order of the Tribunal, both parties have approached this Court, invoking revisional jurisdiction of this Court.

9] Civil Revision Application 429 of 2016 is preferred by the the respondent No.7, who has purchased the development rights over the said property from the original owners Uttam Mahale and others, and had undertaken the construction thereon; whereas Civil Revision Application No.548 of 2016 is preferred by the Trust, being aggrieved, particularly only with the part of the order, namely clause No.2, allowing the respondent Nos. 1 to 7 to complete and transfer possession of the suit flats to the intending purchasers. It is submitted on behalf of the petitioner trust that once the possession of Waqf property is handed over to the flat purchasers, it would be difficult to recover the same and hence to that extent, the impugned order passed by the trial Court is required to be quashed and set aside.

10] Per contra, on behalf of respondent Nos 1 to 7, it is submitted that the suit property is owned by respondent Nos. 1 to 6 Uttam Mahale and ors, having purchased the same under Section 32G of the B.T. & A. L. Act. Hence, the condition imposed by the Tribunal on the respondents, for creating third party interests in the said property is not just, legal and correct.

11] In the light of these rival submissions and the backdrop of the facts, this Court has to consider the legality, validity and propriety of the impugned order.

12] At the outset, it may be stated that this is the second round of litigation between the parties. Earlier round of litigation has reached upto Hon'ble Supreme Court and thereafter the matter was remanded by this Court to the Tribunal and now against the impugned order of the Tribunal, the parties have again approached this Court.

13] In the nutshell, the facts of this case are to the effect that, the grand father of Respondent Nos. 1 to 6, namely Nabhaji Mahadu Mahale has, on the basis of tenancy proceeding, initiated under Section 32G of of the B.T. & A. L.Act, obtained the certificate of purchase under Section 32M of the said Act, in respect of 15 acres land out of survey No.980, totally admeasuring 38 acres and 4 gunthas and 9 acres and 10 gunthas, out of survey No.981. This 32M certificate was obtained by him, way back in the year 1967 on 16th July, 1969 from the Additional Mamlatdar and the Agricultural Land Tribunal, Nashik. As on today also, the said certificate is not

challenged in any of the proceedings and hence according to respondent Nos. 1 to 7, it has become final. They are, thus, the owners of these lands and hence, they cannot be restrained from carrying out construction or parting with the possession of the flats constructed thereon.

14] Per contra, the case of the petitioner trust is that this 32M certificate was obtained by Nabhaji Mahale, on the basis of false revenue record, showing Smt. Rehimunissa Begum Lal Saheb and Fakiruddin Amibuddin as the *Inamdars* and/Landlords of the suit properties. In effect, it is submitted that these Smt. Rehimunissa Begum Lal Saheb and Fakiruddin Amibuddin were never the owners of the said properties and these properties were all along standing in the name of the petitioner - Dudadhari Trust.

15] In support of this contention, the petitioner trust has relied upon the copy of the Bombay Government Gazette dated 30.06.1927; wherein the lands bearing survey No.980 admeasuring 34 acres 4 gunthas and land bearing survey No.981 admeasuring 15 acres 10 gunthas have been declared as Waqf property of Dudadhari Trust. The petitioner trust has also produced on record the Gao Namuna No.3 of land of *Inam Register* for the year 1917-18; wherein

also, these lands are entered to be the *class III Devasthan Inam lands*. Further, the petitioner trust has also produced on record the copy of '*Pratibook';* wherein also, these lands are entered as *Inam land* of Dudadhari Masjid. Reliance is further placed on the copy of Alienation Register Exh.39/9 for entry No.607, wherein also these lands are mentioned as *class III inam lands* of Masjid.

16] Thus, according to petitioner trust, since beginning, from the year 1917-18, these lands are all along belonging to the Dudadhari trust and the revenue record is also witness to that effect, showing that these lands since year 1927 were declared as Waqf Inam lands of Dudadhari trust, by virtue of Bombay Government Gazettee dated 30.06.1927. In the light of this documentary evidence on record, it is the contention of the petitioner trust that the Chief Executive Officer of the Waqf Board, was not at all correct in rejecting trust's application filed under Section 40 of the Waqf Act, for declaring these properties as Waqf properties of the trust.

17] As against it, the submission of learned counsel for respondent No.7 is that as respondent Nos. 1 to 6, the original owners Uttam Mahale and others, have been declared as owners on the basis of 32M Certificate, being in possession of the lands as tenants. Hence,

the petitioner trust has no right to stop them from enjoying their property.

18] According to learned counsel for the petitioner trust, the provisions of Waqf Act will have the precedence and once the properties are declared as *Deosthan Inam lands,* they will always be Waqf properties. Moreover, as the properties are declared as *Inam Deostan lands,* then they stand exempted from the provisions of Section 32G of the B.T. and A.L. Act, in view of Section 88B of the said Act. Whereas according to learned counsel for respondents, the provisions of Section 32G to 32M, of the B. T. and A.L. Act, have the precedence and the certificate issued under Section 32M of the said Act, is the conclusive proof of ownership.

19] To substantiate their respective contentions, learned counsel for both parties have placed reliance on the various judgments. Learned counsel for the petitioner-developer has relied upon the judgment of this Court in the case of *Chhatrapati Charitable Devasthan Trust -vs- Parisa Appa Bhoske and others, [1979 Mh. L.J.163],* wherein it was held that, if trust has applied for registration under Bombay Public Trust Act on 18.1.1956 but the order of registration was passed on 31.5.1959, and thereafter in July, 1960

the trust applied for exemption certificate under Section 88-B(2) of the Act, then the right of tenant who became owner on 1.4.1957, is not affected. It was held that as on 1.4.1957, the tenant had become owner of the land, he could not be divested of that right; that the order of registration of the trust could not have the effect of extinguishing the tenant's vested right nor of reviving the extinguished or lost claim of the trust; that the trust was not entitled for exemption under Section 88-B in respect of the lands which were no longer owned by it and that the suit was not maintainable. It was further held that the date of the registration of the trust cannot be deemed to be the date of application for registration and registration takes effect only on passing of the order.

20] Here in the case, it is submitted that no such order of registration of petitioner trust is passed as per the provisions of Bombay Public Trust Act and in absence thereof, the trust cannot be said to have been duly registered before the 32M Certificate was granted in favour of the tenant. In view thereof, the provisions of section 88-B(2) of the Act, have no application.

21] Per contra, according to learned counsel for the petitioner trust, as the Bombay Government Gazettee dated 30.6.1927 has

declared these lands as Class III *Devasthan Inam* lands, they were already exempted from the provisions of section 32G of the said Act. Hence whatever 32 M certificate is obtained, it has no legal value.

22] Learned counsel for the petitioner -developer has then placed reliance on the judgment of the Hon'ble Apex in the case of *Saraswatibai Trimbak Gaikwad -vs- Damodhar D. Motiwale and ors, [2002 (3) Mh. L.J.69],* wherein it is held that the certificate of ownership, issued to deemed tenant, after fixation of price stands as conclusive proof of purchase of land. Hence, so long as certificate stands and it is not set aside in appropriate proceedings under the Tenancy Act, a decree for recovery of possession of such land by a Civil Court cannot be executed against the deemed tenant.

23] As against it, learned counsel for the petitioner trust has relied upon the judgment of Apex Court in case of *Sayyed Ali and others -vs- A. P. Wakf Board, Hyderabad and others [ (1998) 2 SCC 642],* wherein it was held that once Waqf has been created, it continues to be so for all time to come and further continues to be governed by the provisions of the Wakf Act and the grant of patta in favour of Mokhasadar does not change the character of the Wakf property.

24] Here in the case according to learned counsel for the petitioner trust as the suit lands were declared as Waqf property in the year 1927 itself, the subsequent issuance of of 32M certificate, in the name of tenants cannot change the nature of the said lands and they are required to be treated as Waqf lands.

25] Learned counsel for the petitioner trust has then relied upon the judgment of this Court, in the case of *Dattatray Sakharam Yeole and ors -vs- Hafeez Munoroddin Haji and ors [2005 (2) Mh. L. J.813],* to submit that the trust formed for public religious worship would qualify the requirement of Section 88-B of the Bombay Tenancy and Agricultural Lands Act, and hence such land stands exempted from the provisions of Section 32G of the said Act.

26] Learned counsel for the petitioner trust also has relied upon the judgment of this Court in the case of *Dhanappa Balappa Sawale (decd) through Lrs -vs- Murgendra Dhanappa Sawale and ors,* in W. P. No.485 of 1988 decided on 17.1.2017 to advance his submission that the trust property cannot be purchased by a tenant by virtue of section 88B of the B.T. and A. L. Act. To substantiate the said submission, he has further placed reliance on the judgment of

this Court in the case of *Arun Bhimaji Lakare -vs- Hindustani Momin Banarasi Jaatiche Panch Mandali and anr [2014 (3) Mh. L.J. 67];* wherein it was held that Section 88B of the B.T. and A.L. Act, is applicable to Waqf if the institution is for public religious worship and therefore any tenancy over the said property cannot be inherited.

27] Learned counsel for the petitioner-developer, has however, by placing reliance on the judgment of Hon'ble Supreme Court, in the case of *T. Kallamurthi and anr -vs- Five Gori Thaikkal Waqf and ors, [(2008) 9 SCC 306],* tried to submit that the claim of the petitioner trust over the suit property has already become time barred under the provisions of the Limitation Act, as they have not claimed the possession of the property since last more than 80 to 90 years.

28] In my considered opinion, even a cursory glance to the submissions advanced at Bar by learned counsel for both the parties is sufficient to show that there are several triable and intricate legal issues involved in these proceedings, which are required to be decided at the time of final hearing, in the light of the rival claims made by both the parties over the suit lands. It will also have to be decided whether the 32M Certificate which is yet not set aside will

prevail or whether the said certificate will have no legal value as the suit lands were already declared as *Devasthan Inam lands* by virtue of the notification in the Gazettee.

29] A this stage, it may also be stated that the Petitioner trust has also filed an application for declaring the lands in question as Waqf Properties. The Chief Executive Officer of Waqf Board has vide his order dated 17.5.2009, directed the registration of the said lands as properties of Waqf under Section 36 of the Waqf Act, 1995. In appeal, the Maharashtra Waqf Tribunal, Aurangabad, by its order dated 11.12.2009, reversed the order of the Chief Executive Officer of Waqf Board and declared that these lands are not the Waqf lands and accordingly set aside the order for registration of the said lands as properties of Waqf. It was done so relying upon 32M Certificate issued under B.T. & A.L. Act in the name of Nabhaji Mahale, the predecessor in title of respondents 1 to 6. This order of the Tribunal was challenged before this Court by the petitioner trust in Writ Petition No.2511 of 2011. In the said writ petition, the petitioner trust has prayed for the following reliefs contained in clause (c) and (d) of the petition:-

> "(c) Pending hearing and final disposal of this petition, the Respondent No.1 to 6 themselves and through their

agents, servants and Constituted Attorney or by any other person or persons be prevented by an Order of injunction of this Hon'ble Court from creating third party right, title and interest in Waqf land bearing Survey No.980 and 981 admeasuring approximately 52 acres situate at Morwadi, Taluka and District: Nashik.

(d) Pending hearing and final disposal of this petition, impugned judgment and order passed by Presiding Officer, Maharashtra Waqf Tribunal, at Aurangabad in Application No.35 of 2009 dated 11.12.2009 be stayed".

30] The learned Single Judge of this Court has not granted these reliefs. He has granted following reliefs:-

"All acts of the respondent Nos. 1 to 6 pursuant to the order passed on 11.12.2009, and impugned in this Writ Petition shall abide by the final orders of this Court. Considering that the Writ Petition is filed in the year 2011 and to be precise in March 2011 challenging the order dated 11.12.2009, I do not deem it fit to grant any interim stay in terms of the prayers of the Petitioners. Hence, interim relief is rejected".

31] The said order was challenged in the Letters Parent Appeal No.13 of 2013 and on 29th January, 2013 the said appeal was admitted and exparte injunction was granted in terms of prayer clause (b) and (c).

32] In this Letters Patent Appeal, the developer Linker Shelter Pvt. Ltd., filed Civil Application No.154 of 2013, praying to vacate the said order of exparte interim relief. While deciding this application, looking to the facts and circumstance of the case and the request of learned counsel for parties, the Division Bench of this Court has taken up the appeal itself for final disposal. Having regard to the nature of the dispute between the parties and having regard to the fact that the Writ Petition was still pending for final hearing before the learned Single Judge, the Division Bench did not express any opinion on the merits of the controversy, which was the subject matter of the Writ Petition. However, having regard to the certificate issued under Section 32 M of the B.T. & A.L.Act, and having regard to the fact that the intervener i.e. developer has already commenced construction and entered into agreements with a large number of prospective purchasers and the first phase of construction on land admeasuring 6.81 acres has already commenced, the Division Bench gave following directions, which were to operate as interim directions during pendency of Writ Petition No.2511 of 2011 before the learned Single Judge.

> "(i) the injunction against putting up construction in respect of the construction on land admeasuring 6.81 acres

approximately (rounded off to seven acres) on which the Linker Shelter Pvt. Ltd has already commenced construction, stands vacated.

(ii) the injunction will also not apply to additional land admeasuring about three acres on which the Intervener has agreed to construct houses for the benefit of respondent Nos. 1 to 6 and/or their nominees.

(iii) both the aforesaid lands i.e. about 7 acres as well as 3 acres are part of Sector 4 and are earmarked on the plan which is placed on record by the Intervener and with the consent of respondent nos 1 to 6 is marked "X" for identification.

(iv) the respondents and the intervener shall not put up any construction on any land except the aforesaid lands admeasuring 7 acres approximately and 3 acres as indicated above.

(v) subject to direction no.(vi), the injunction against construction on the remaining lands which is the subject matter of the Writ Petition shall continue till disposal of the writ petition.

(vi) Writ Petition shall be listed before the learned Single Judge for final hearing on 19 August 2013. In case, the Writ Petition is not heard and decided finally by 31 December 2013, it will be open to the respondents to move an application before the learned Single Judge for seeking permission to put up construction on the remaining lands covered by certificate dated 16 August 1967 under Section 32M of the Tenancy Act".

33] When the Writ Petition No.2511 of 2011 came up for final hearing before the learned Single Judge of this Court on 2.3.2015, he was pleased to hold that, "as the petitioner trust has already approached the Waqf Board to exercise its power under Section 40 of the Act, to determine the ownership of this property as Waqf property and after enquiry to decide the question and such application is numbered as Case No.40/54/2012, it would be appropriate to direct the parties to pursue the said application".

34] Accordingly the learned Single Judge has disposed off the Writ Petition with direction to the Waqf Board to dispose of the application filed under Section 40 of theWaqf Act, in accordance with law.

35] Meanwhile, being aggrieved by the order passed by the Division Bench, in the Letters Patent Appeal, the petitioner Trust has approached the Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) bearing No.(s) 34727of 2013; wherein after ascertaining the exact stage of construction at the site and noticing that substantial progress of the construction has been made and the respondents have made arrangements with 375 persons by way of booking flats, executed registered agreement to sale with 142

persons, the Special Leave to Appeal was disposed of by passing following interim order;-

i. The construction on the subject land and its completion shall be subject to the final decision in Writ Petition No.2511 of 2011.
ii. During the pendency of the above writ petition, respondent Nos. 1 to 6 and 11 shall not transfer the possession of the flats to the intending purchasers or those who have booked the flats in any manner whatsoever.
iii. The above respondents shall intimate to the intending purchasers about the pending litigation in the writ petition and further notify them that the agreements by the above respondents with the intending purchasers are subject to the final decision in the writ petition.
iv. If any further agreement/agreements is/are entered by the above respondents with the intending purchasers, they will also be informed expressly about the pending litigation and that the transaction of sale of flats is subject to the final decision in the writ petition.

36] While disposing of the Application preferred by the petitioner trust against the order of Chief Executive Officer, alongwith the application for interim relief restraining respondent from alienating the suit property till disposal of the appeal, the Waqf

Tribunal has, by the impugned order passed below exh.5, passed the order allowing the construction on the suit property and its completion, till final decision of the appeal. The Tribunal has also continued the order of Hon'ble Apex Court directing the petitioner developer and owners of intimating to the intending purchasers about pendency of the appeal and further to notify that the agreements by these respondents with intending purchasers are subject to the final decsiion of the appeal. The Tribunal has also continued the order of the Apex Court as to clause No.4, namely, "if any, further agreement/agreements is/are entered by the above said respondents with the intending purchasers, they will also be informed expressly about pending of this appeal and that the transaction of sale of the flats is subject to final decision in the Writ Petition".

37] However, while doing so, the Tribunal has allowed the developer even to transfer possession of the flats to the intending purchasers, subject to the final decision of the appeal.

38] It may be stated that the Apex Court has in clause No.(ii) of its order, which was continued till the Tribunal has passed the impugned order, specifically directed that during the pendency of the above writ petition, respondent Nos. 1 to 6 and 11 shall not transfer

the possession of the flats to the intending purchasers or those who have booked the flats in any manner whatsoever. The Tribunal, has however, permitted the transfer of possession of flats to the intending purchasers, who have booked the flats, subject to the final decision of the appeal. There is, however, no discussion or the reasons given by the Tribunal in its impugned order, for permitting the transfer of possession.

39] This part of the order of the Tribunal, permitting the developer to transfer possession of the flats to intending purchasers, is in my opinion, a matter of serious concern not only because, such order is passed for the first time and without assigning any reasons, but also because it may lead to irreversible position and that too at an interim stage, when rights of parties are yet to be finalized.

40] According to learned counsel for the the developer, the construction is about to be completed and if he is not allowed to hand over the possession to the intending purchasers, he will have to face both the civil and criminal penalties. Per contra, according to learned counsel for the petitioner trust, if possession is handed over, then nothing will remain in the appeal as such and therefore, to that extent interference is warranted in the impugned order.

41] In my considered opinion, if during the pendency of the earlier Writ Petition also, the Hon'ble Apex Court has, vide its order restrained the developer and the original owners from transferring the possession of the flats to the intending purchasers or to those who have booked the flats, in any manner whatsoever and whatever agreements of sale of the flats were made subject to the intending purchasers being made of the pending litigation, it would not be appropriate at this interim stage to allow the developer to hand over or transfer the possession of the suit flats during the pendency of the appeal. The interest of justice require that the property be retained as it is and the hearing of the appeal be expedited so that none of the party would suffer in any way.

42] Thus, without expressing any opinion about rival claims made by both the parties, the matter is remitted back to the Tribunal for expeditious disposal of the appeal pending before it. Meanwhile whatever arrangement was made by the Hon'ble Supreme Court, by its order dated 13.12.2013, is continued and respondents are restrained from transferring the possession of the flats till disposal of the appeal.

43] In view thereof, Civil Revision Application No.429 of 2016 preferred by the respondent developer stands dismissed.

44] The Civil Revision Application No.548 of 2016 preferred by the Dudadhari Trust stands allowed.

45] The impugned order passed by the Tribunal, to the extent of permitting the transfer of possession of the suit flats to the intending purchasers is quashed and set aside.

46] The hearing of the appeal is expedited.

47] Both parties are directed to appear before the Tribunal on 20.04.2018.

48] The Tribunal to decide the appeal as expeditiously as possible and preferably within three months from the receipt of copy of this order.

49] At this stage, learned counsel for the Petitioner-Developer requests the Court to stay the operation of this order for a period of 10 weeks, in order to enable the Petitioner-Developer, to approach the Hon'ble Supreme Court against this order.

50] None present on behalf of the Petitioner-Trust.

51] In view thereof, the operation of this order is stayed for a period of 10 weeks, in order to enable the Petitioner-Developer to approach the Hon'ble Supreme Court.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**