

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

**WRIT PETITION NO. 2771 OF 1996**

SK.KASAM SK. MAKTUM MUJAWAR AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mrs. C. S. Deshmukh  
Deshmukh Charuta Sunil Adv For Appellant Deshmukh  
Charuta Sunil Adv

AGP for Respondents No. 1 to 3 : Mr. A. R. Kale  
Advocate for Respondents 4(A-1) to 4(A-3) and 5-i  
to 5-vi : Mr. Patil Milind M. (Beedkar)

Respondent No. 6 - served

Advocate for Respondents 7 : Mr. Pathan Yunus  
Basheer

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WITH

CA/8405/2013 IN WP/2771/1996  
WITH CA/8406/2013 IN WP/2771/1996

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**CORAM: S. V. GANGAPURWALA &**  
**MANGESH S. PATIL, J.**

**DATE: 26<sup>th</sup> JULY, 2019**

**PER COURT:**

1. The petitioners are assailing the order dated 05.01.1996 passed by respondent no. 2 giving sanction to the exchange. By virtue of the said exchange, the present respondents i.e. Sk. Rasool Sk. Abdul Mujawar / original respondent no. 4 had

exchanged the land from survey no. 4 of village Chausala with private Survey No. 33 measuring 5 Acres and 8 Gunthas.

2. Mrs. Deshmukh, learned counsel for the petitioners submits that the propositus is Sk. Mohmmad Sk. Hussain. He had three sons Hanif, Ranho and Maindu. The petitioners are from the branch of Sk. Rasool Sk. Abdul Mujawar / original respondent no. 4. The original respondent no. 4 is from the branch of Hanif. They are all co-sharers. The property is a service inam land. The succession was sanctioned in favour of late Maindu under order dated 12.03.1979 by the Deputy Collector, Beed. The learned counsel submits that Farid had 5 Aana share in land Survey No. 4 total admeasuring 4 Acres and 19 Gunthas. 2 Acres land is acquired by the Government and 2 Acres and 19 Gunthas remained. The petitioners are the co-sharers. The same can be vouched from the 7/12 extract wherein names of all co-sharers are recorded.

3. The learned counsel further submits that even the procedure as contemplated for exchange has not been followed. The respondents have indulged in activities contrary to the provisions of Section 6 of the Hyderabad Atiyat Enquiries Act, 1952. The alienation and transfer of inam land is prohibited. Despite this position, the descendants of Hanif i.e. respondents have sold out or leased several part of the inam land to various persons. The respondents have no right to interfere with the share of the petitioners. The learned counsel further submits that respondent no. 2 does not possess any authority to pass the impugned order. The Wakf board also could not have consented for the transfer. The Wakf land could not have been allowed to be wasted in such a manner.

4. Mr. Patil, learned counsel for the contesting respondents submits that the petitioners do not have any right. The *Virasat* is sanctioned in the name of Sk. Rasool with equal Shikmis to Sk. Mohamad and Shaikh Amir under the order of the

Deputy Collector, Beed on 31.10.1955. The learned counsel submits that the application for *Virasat* in the name of Sk. Shabbir is rejected on the ground of delay. The transfer was in the interest of the Wakf. The 2 Acres 19 Gunthas is in the residential area and in place of 2 Acres and 19 Gunthas the respondent has exchanged his private Survey No. 33 admeasuring 5 Acres and 8 Gunthas. Large property was surrendered by the respondent as against 2 Acres and 19 Gunthas. The Wakf member has considered interest of the Wakf and the 5 Acres 33 Gunthas would remain inam land for Dargah Chandan Shahwali, Chausala.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The land in question is undisputedly a service inam land. In case of a service inam land the *Virasat* is to be sanctioned by the Deputy Collector (Land Reforms), as provided under the provisions of Hyderabad Atiyat Enquiries Act, 1952. We do not find succession in favour of the

petitioners so as to hold that the petitioners have a right in the inam land as shikmidars or in whatsoever capacity. The succession, it appears, was sanctioned in favour of Farid on 12.03.1979. Subsequently, the legal heirs of Farid applied for succession and that was denied. No succession has been granted in favour of heirs of Farid. It also does not appear that the order rejecting application for succession though on the ground of delay was assailed by the heirs of Farid. The petitioners admittedly are claiming through Maktum the brother of Farid. At no material point of time it appears that succession was sanctioned in the name of Maktum also. Mere entry in the 7/12 extract which also seems to have been deleted would not give any right, title or interest to the petitioners.

7. Even otherwise, in the writ jurisdiction it would not be possible to consider the dispute amongst the parties with regard to the title. We would have considered the grievance of the

petitioners had the petitioners being armed with the *Virasat*.

8. The order of the Wakf granting sanction to the exchange appears to be on the premise that 2 Acres land out of Survey No. 4 at village Chausala has been acquired by the Government for extension of Gaothan. The remaining 2 Acres and 19 Gunthas are adjacent to the Abadi and the Bus-stand, there are more possibilities of encroachment in future. As against said land Survey No. 4; land admeasuring 5 Acres and 19 Gunthas has been allowed to be exchanged and thus 5 Acres and 8 Gunthas from Survey No. 33 would remain the property of the Dargah Chandan Shahwali of village Chausala. The valuation of Survey No. 4 is determined at Rs. 25,000/- per Acre by the Tahsildar whereas the valuation of Survey No. 33 is determined by the Tahsildar at Rs. 33,000/- per Acre. The said exchange, as such, cannot be said to be detrimental to the interest of the Wakf.

9. If the petitioners have any rights in the

property, then they can still insist upon their rights in accordance with law in the land which now vests with Dargah Chandan Shahwali of village Chausala i.e. 5 Acres and 8 Gunthas from Survey No. 33, of course, the same would be in accordance with the provisions of the law.

10. In the light of above, the Rule is accordingly disposed of.

11. Writ Petition is accordingly disposed of. No costs.

12. In view of disposal of the writ petition, the civil applications also stands disposed of.

**[MANGESH S. PATIL, J.]      [S. V. GANGAPURWALA, J.]**

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