

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

905 CIVIL REVISION APPLICATION NO.51 OF 2019

KALYAN BHANUDAS RAO YEDKE
VERSUS
RANJIT SINGH ZUMBER SINGH RAJPUT AND OTHERS

...
Advocate for Applicant : Shri Girish K. Thigale (Naik)
Advocate for Respondent No.3 : Shri Dewadatt D. Deshmukh
Advocate for Respondent No.4 : Shri S.S. Kazi
...

CORAM : PR.BORA, J.
DATE: 30th July, 2019

PER COURT:-

1. With consent of learned counsel for the parties, heard finally.

2. After having heard the arguments advanced by learned Counsel appearing for the respective parties, it appears to me that the present Civil Revision Application can be disposed of by remitting the matter to the Waqf Tribunal to decide it afresh, in view of the fact that whatsoever may be the reason, the applicant could not file written statement in the said Suit and the Suit has been thus decided on the basis of the pleadings in the plaint itself.

3. It is the contention of the applicant that since in the meanwhile, the Tribunal itself was not functioning, the applicant failed in keeping pace with the progress in the said matter and the matter ultimately came to be decided without his written statement and without any evidence from his side.

4. From the contentions raised in the application and the documents which are placed on record, it seems to be the case of the applicant that the property which is declared to be waqf property, is the property of Kankaleshwar Devsthan. In view of above, adequate opportunity needs to be given to the applicant to put-forth his contention so that dispute raised can be decided on merits. Moreover, it would be in the interest of both the parties that the dispute is resolved on merits. In the result, the following order is passed:-

ORDER

I) The Judgment and order passed by the Waqf Tribunal, Aurangabad, on 05.08.2017 in Waqf Suit No.47 of 2010, is set aside.

II) The matter is remitted to the Waqf Tribunal with a request to decide it afresh in accordance with law and on its own merits, by giving due opportunity to the present

applicant to file his written statement and to adduce necessary evidence to substantiate the pleadings therein.

III) As undertaken by the learned Counsel for the applicant, the written statement will be filed on the date of appearance in the matter before the Waqf Tribunal.

IV) Parties to appear before the Waqf Tribunal on 21.08.2019, so that no fresh notice may be required to be issued by the Tribunal for the appearance of the parties.

V) It is clarified that the observations made by this Court in the instant order are prima-facie in nature and the Tribunal shall decide the matter on its own merits without getting influenced by the same. The contentions raised in the matter by both the parties are kept open to be agitated before the Waqf Tribunal.

(PR.BORA)
JUDGE

Later on:

5. Shri S.S. Kazi, learned Counsel appearing for Respondent No.4 i.e. original plaintiff, on instructions, submitted that, in the meanwhile, subsequent developments have occurred, which the plaintiff is required to bring on record. The learned Counsel submitted that, according to the instructions received, the

present applicant has carried out some construction over the suit property and if it be so, the plaintiff will have to amend the plaint. It would be open for the plaintiff to file such an application before the Waqf Tribunal, which may be decided by the Tribunal on its own merits.

(PR.BORA)
JUDGE

SPT