

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5457 OF 2014

1] Ghamaji S/o Sakharam Khomane
Age 80 years, Occu. Agriculture,
R/o : Belhe, Tq. Junnar,
Dist. Pune

2] Vithoba S/o Sakharam Khomane
Age 75 years, Occu. Agriculture,
R/o : Belhe, Tq. Junnar,
Dist. Pune

3] Haribhau S/o Sakharam Khomane
Age 68 years, Occu. Agriculture,
R/o. Belhe, Tq. Junnar,
Dist. Pune

Through G.P.A. Holder namely;

Popat S/o Vithoba Khomane
Age 45 years, Occu. Agriculture,
R/o : Belhe, Tq. Junnar,
Dist. Pune

.. Petitioners

Versus

1] The State of Maharashtra
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai

2] The Collector,
Pune, Dist. Pune

3] The Additional Collector,
Pune, Dist. Pune

4] The Tahsildar, Junnar,
Tq. Junnar, Dist. Pune

- 5] The Talathi, Belhe,
Tq. Junnar, Dist. Pune
- 6] The Chief Executive Officer,
Maharashtra State Wakf Board,
Pan Chakki, Aurangabad
- 7] Belhe Kabrastan Trust, Belhe,
Tq. Junnar, Dist. Pune
Through its Trustee namely;
Jafar Ahmed Pathan,
Age : 35 years, Occu. Contractor,
R/o : Near Masjid, Belhe,
Tq. Junnar, Dist. Pune .. Respondents

...
Mr. V.J. Dixit, Senior Advocate h/f. Mr. A.N. Nagargoje, Advocate
for petitioners
Mr. A.V. Deshmukh, AGP for respondent-State
Mr. V.S. Undre, Advocate for respondent no. 7
...

CORAM : SUNIL P. DESHMUKH &
R.G. AVACHAT, JJ.
DATE : 14-03-2019

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

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

2. It appears that proceedings resting in present writ petition had been set in motion under a communication to the chief executive officer, Maharashtra State Wakf Board. Under application dated 05-10-2013 for entry of Belhe Kabrastan Trust,

Chief Executive Officer, Maharashtra State Wakf Board, Aurangabad, thereupon, had sent a communication dated 07-04-2014 to respondent no. 2 – Collector, Pune, stating that land survey no. 45, 42 and 49 are *wakf* properties and are registered with him and 7/12 extract bears names of some other persons and, therefore, requesting Collector for necessary action for taking *wakf* 's name on record by deleting the earlier names. It appears, in turn, Collector had corresponded with Tahsildar. The Chief Executive Officer, had, however, purportedly directed Tahsildar under his letter dated 26-07-2014, to take action for deleting names of the persons and correct 7/12 extract and submit a report. Thus, the petitioners are before this court claiming to be aggrieved by aforesaid communications and action taking place ignoring them while their names are on revenue record from a long time.

3. Learned Senior Advocate Mr. V. J. Dixit holding for Mr. A.N. Nagargoje, appearing for petitioners refers to various documents annexed to the petition and submits that while petitioners have from long before been the tenants and there are various declarations in this respect by revenue authorities. An attempt earlier on, on behalf of trustees of Belhe Kabrasthan

Trust, seeking exemption from operation of tenancy law had failed and decision in this respect had been rendered by high court on 23-07-1975 in special civil application no. 2619 of 1971, refusing the request of Belhe Kabrastan Trust.

4. Learned Senior Counsel further submits that all this vital and relevant aspects have been ignored and Chief Executive Officer is insisting upon to cause changes in revenue record without hearing petitioners.

5. Learned counsel Mr. V.S. Undre appearing for respondent no.7 submits that the origin of property is in creation of wakf and the same would not be a fact which can be denied. In the circumstances, while the property belong to *wakf*, communications accordingly had been made to the *wakf* board and Chief Executive Officer, looking into the matter, had requested Collector to cause necessary changes in the revenue record.

6. While aforesaid are the submissions on behalf of the parties and letter dated 26-07-2014 is suggestive of insistence on the revenue authorities to cause changes, reflecting that otherwise it may result in adverse consequences, the claimed

interest of petitioners being at stake being getting side tracked in process, the situation will have to be dealt with, hearing all the parties concerned.

7. In the circumstances, it appears to be expedient that the matter may be looked into by the Collector objectively and take appropriate decision after hearing the parties concerned including the petitioners.

8. Although, learned senior counsel for petitioners requests to set aside communication dated 07-04-2014 issued by the chief executive officer, Maharashtra State Wakf Board, Aurnagabad / respondent no. 6 herein to the Collector, District – Pune - respondent no. 2, looking at the tenor of the communication, it does not appear that intention underlying the same is a command to the Collector. In view of the same, it may not be necessary to heed the request of learned Senior Counsel.

9. In view of the same, communication dated 26-07-2014 issued by respondent no. 6 is set aside. It is hoped that the proceedings would be expeditiously prosecuted. All points are kept open for the parties.

10. Writ petition is disposed of. Rule made absolute accordingly.

[R.G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/