

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

WRIT PETITION NO.6914 OF 2014

- 1) Naresh Hastimal Gugale,
Age 57 years, Occu. Agriculture & Advocates
- 2) Dinesh Hastimal Gugale,
Age 53 years, Occu. Agriculture
- 3) Suresh Hastimal Gugale,
Age 51 years, Occu. Agriculture
- 4) Santosh Hastimal Gugale,
Age 49 years, Occu. Agriculture

All R/o 4253, Chitale Road,
Ahmednagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra
through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 32
- 2) The Collector, Ahmednagar,
District Ahmednagar
- 3) The Sub Divisional Officer,
Nagar Division, Nagar,
District Ahmednagar
- 4) The Maharashtra State Wakf Board,
through the Chief Executive Officer,
Panchakki, Aurangabad
- 5) The Chief Executive Officer,
The Maharashtra State Wakf Board,
Panchakki, Aurangabad

...RESPONDENTS

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Shri A.K. Gawali, Advocate for petitioners
Shri S.S. Dande, A.G.P. for State

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**CORAM: SUNIL P. DESHMUKH AND
R.G. AVACHAT, JJ.**

DATED : 19th March, 2019

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

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. The petitioners question propriety and validity of communication dated 30.4.2014, issued to the Sub-Divisional Officer, Ahmednagar by the Chief Executive Officer, Maharashtra State Board of Wakf, under which it has been requested to the Sub-Divisional Officer that certain lands including lands Survey No.135 and 137 be shown to be Wakf properties in revenue record. Learned counsel for the petitioners purports to point out that lands Survey No.135 and 137 were under the ownership of an erstwhile Trust, registered under the Bombay Public Trusts Act. With due permission under Section 36-A of the Trusts Act, aforesaid lands bearing Survey No.135 and 137 were alienated in favour of predecessor-in-title of the present petitioners, namely, Jawaharlal Panalal Bogawat under a registered sale deed of 1981. Subsequently, he sold the same to the petitioners in 1985 under a registered sale deed and since then, the lands are being owned,

possessed and enjoyed by the petitioners as absolute owners. However, while the list of Wakf was being prepared pursuant to Wakf Act, 1995, these two lands as well were shown as Wakf properties. Till 2007, the petitioners had not been aware of this development. Upon realising the same, the petitioners instituted proceedings before the Wakf Tribunal in the form of a suit. The suit has been decreed and the decree is under challenge before this court in a revision filed on behalf of the Wakf. While this is the position, the communication by the Chief Executive Officer is improper, untenable and illegal. Learned counsel for the Board supports the communication and purports to trace the same to the origin of the land as trust property and submits that, in view of the provisions of the Wakf Act, 1995, alienation being incompetent, the communication would be tenable.

3. Thus, the position emerges that, while it was a Trust property, it is said to have been alienated under the permission pursuant to the provisions of the Bombay Public Trusts Act to the predecessor-in-title of the petitioners in 1981. In 1985, the said vendee has further alienated the same in favour of present petitioners and the petitioners, since then, have been enjoying the same as its owners and in possession. It is being further referred to that the petitioners have been unaware of the development until 2007 that the property has been shown to be wakf property in the register of Wakf. On realisation of the land, a

suit had been instituted by the petitioners and the same has been decreed by the Wakf Tribunal. It is further being referred to that, the decree is challenged in Revision before this Court. While the aforesaid is the position, it does not appear that, the communication dated 30-04-2014 is challenged in the present petition would have any practical efficacy so far as lands Survey No.135 and 137 are concerned. The submissions on behalf petitioners carry a lot of force, taking into account the background of the case, which is not disputed. In view of the aforesaid factual position, which is largely indisputable, the communication dated 30th April 2014 to the Sub-Divisional Officer by the Chief Executive Officer of the Board is set aside to the extent of lands Survey No.135 and 137 as well as further communication dated 21st May 2014, issued by the Additional Collector is also set aside. This order, of course, would not have influential value for decision in stated pending C.R.A.

4. Rule made absolute in above terms. Writ Petition is disposed of.

(R.G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/