

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

CIVIL REVISION APPLICATION NO.127 OF 2019

1. Shrimant Raje Vikramsinh Laxmansinh Raje Jadhavrao
Age : 65 years, Occu : Agriculture,
R/o. Malegaon (Bk), Tq. Baramati, Dist. Pune
2. Raheman Gulabbhai Shaikh
Age : 45 years, Occu : Labour,
R/o. Malegaon (Bk), Tq. Baramati, Dist. Pune
3. Faiyaz Ilahi Shaikh,
Age : 32 years, Occu : Business,
R/o. Prabodh Nagar, Baramati, Dist. Pune

... Petitioners

Versus

1. Gulab Didali Shah Fakir
Age : Major, Occu : Mujawar,
2. Sunnabi Didali Shah Fakir w/o Dilawar Sayyed
Age : Major, Occu : Household
3. Qutubbi Deedali Shah Fakir
Age : Major, Occu : Household
4. Munnabi Gulab Fakir
Age : 44 years, Occu : Household,
R/o. Near Raje Baksar Dargah,
Malegaon (Bk), Tq. Baramati, Dist. Pune
5. Aysha Gulab Fakir w/o Arif Mujawar
Age : 23 years, Occu : Household,
R/o. Koregaon, Tq. Koregaon, Dist. Satara
6. Kashmira Gulab Fakir w/o Farooque Shaikh
Age : 21 years, Occu : Household,
7. Reshma Gulab Fakir
Age : 17 years, Occu : Education
(Under Guardianship of Deft No.1)

8. Shahruk Gulab Fakir
Age : 15 years, Occu : Education,
(Under Guardianship of Deft No.1)
9. Irfan Gulab Fakir
Age : 13 years, Occu : Education
R/o. Malegaon (Bk), Tq. Baramati, Dist. Pune
10. Hina Dilawar Sayyed w/o Zameer Jagirdar
Age : 26 years, Occu : Household,
R/o Indapur, Tq. Indapur, Dist. Pune
11. Bina Dilawar Sayyed w/o Shahid Mulani
Age : 24 years, Occu : Household,
R/o. Walabnagar, Pimpri, Dist. Pune
12. Rizwana Dilawar Sayyed w/o Mohsin Shaikh
Age : 22 years, Occu : Household,
R/o. Koregaon, Tq. Koregaon, Dist. Satara
13. Ramzan Dilawar Sayyed
Age : 19 years, Occu : Education,
R/o. Malegaon (Bk), Tq. Baramati, Dist. Pune
14. Hussain Dilawar Sayyed
Age : 17 years, Occu : Education,
R/o. Malegaon (Bk), Tq. Baramati, Dist. Pune
15. Jaitunbi Didali Shaikh Fakir
Age : Major, Occu : Nil,
R/o. Not known (absconding)
16. Ashok Nivrutti Taware
Age : Major, Occu : Agri,
17. Shankar Nivrutti Taware
Age : Major, Occu : Agri,
18. Dileep Nivrutti Taware
Age : Major, Occu : Agri

Respondents No.15 to 18

R/o. Malegaon (Bk), Tq. Baramati, Dist. Pune

19. V.N.S. Nirman Infro through partner
Shri Sachin Raghunath Bhosale
Age : 32 years, Occu : Construction,
R/o Vidin, Tq.Phaltan, Dist. Satara
20. Prakash Balasaheb Chavan
Age : 35 years, Occu : Construction,
R/o Gultekdi Market Yard,
Height Park, Office No.37, 38,
Vastushri Complex, Pune
21. Anil Krishnarao Taware
Age : Major, Occu : Agri,
R/o. Sangli, Tq. Baramati, Dist. Pune
22. Keshav Sarojirao Jagtap
Age : 70 years, Occu : Agri,
23. Vishal Keshavrao Jagtap
Age : 34 years, Occu : Agri,
24. Ambadas Marutirao Jagtap
Age : 45 years, Occu : Agri,
Deft Nos.20 to 24 R/o Pandare,
Tq. Baramati, Dist. Pune
25. Kalyan Maruti Pachangane
Age : Major, Occu : Agri,
R/o. Malegaon (Bk) Colony (Sharda Nagar)
Tq. Baramati, Dist. Pune
26. Sujata Mahadeo Dhaygude
Age : Major, Occu : Household,
27. Mahadeo Maruti Dhaygude
Age : Major, Occu : Agri,
28. Anandibai Shivaji Dhaygude
Age : Major, Occu : Household
Deft Nos.26 to 28 R/o Malegaon (Bk)
Tq. Baramati, Dist. Pune

29. Sau. Surekha Sambhaji Shinde
Age : 56 years, Occu : Service
R/o Shivaji Chowk, Malegaon (Bk),
Tq. Baramati, Dist. Pune
30. Sambhaji Bajirao Shinde
Age : 47 years, Occu : Agri,
R/o. Malegaon (Bk), Tq. Baramati,
Dist. Pune
31. Kantilal Shankarrao Kale
Age : 47 years, Occu : Agri,
R/o. Sharda Nagar, Malegaon (Bk),
Tq. Baramati, Dist. Pune
32. Kishor Mahadeo Giri
Age : 38 years, Occu : Agri,
R/o. Vithalwadi, Khandaj,
Tq. Baramati, Dist. Pune
33. Vipul Dhansinh Korpad
Age : 23 years, Occu : Agri,
R/o. Malegaon (Bk), Tq. Baramati,
Dist. Pune
34. Rajendra Gajanan Kardile
Age : 58 years, Occu : Kirana Shop,
R/o. Malegaon (Bk), Tq. Baramati,
Dist. Pune
35. Atul Vishwas Holkar
Age : 38 years, Occu : Agri,
R/o. 11 Foot, Sadubaji Wadi,
Tq. Baramati, Dist. Pune
36. Siddeshwar Gramin Bigarsheti
Sahakari Patsanstha Maryadit
At Pandare, Tq. Baramati,
Dist. Pune
37. Uttam Tatyaba Nale
Age : 38 years, Occu : Agri,

R/o. Vidni, Tq. Faltan, Dist. Satara

38. Avinash Shankarrao Gaikwad
Age : 38 years, Occu : Agri,
R/o. Ambegaon, Tq. Ambegaon
Dist. Pune
 39. Rajudas Ganpatrao Jadhav
Age : 31 years, Occu : Business
R/o. Gulenagar, Mohammadwadi
Hadapsar, Dist. Pune
 40. Sheetal Sawataji Lokhande
Age : 36 years, Occu : Business
R/o. Pandare, Tq. Baramati,
Dist. Pune
 41. Nitin Malhari Jadhav
Age : 36 years, Occu : Business & Agri,
R/o. Malegaon (Bk), Tq. Baramati,
Dist. Pune
 42. Maharashtra State Wakf Board,
Through Chief Executive Officer,
Office at Panchakki, Aurangabad
- .. Respondents
(Original Defendants)
-
- Shri V.J. Dixit, Senior Advocate, h/f. Shri U.D. Dalvi &
Shri S.V. Dixit, Advocate for Petitioners
- Shri R.N. Dhorde, Senior Advocate, h/f. Shri V.R. Dhorde,
Advocate for Respondent Nos.1 to 14
- Smt Neha Kamble, Advocate for Rspdent Nos.16 to 18, 21 to 28
- Shri N.B. Khandare, Advocate for Respondent Nos.16 to 18
(consent obtained) 35 to 41
- Shri S.V. Adwant, Advocate for Respondent Nos.19 & 20
- Shri Y.G. Deshmukh & Shri V.D. Sapkal, Advocate
for Respondent Nos.21 to 25
- Shri C.V. Korhalkar, Advocate for Respondent
Nos.29 to 31 & 33 to 35

Shri Gajendra A Rajput & Shri R.A. Taware,
Advocate for Respondent No.32

Shri Y.G. Deshmukh, Advocate for Respondent No.36

Shri Nikhil P. Runwal, Advocate for Respondent Nos.37 to 41

Shri Y.B. Pathan, Advocate for Respondent No.42

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CORAM : PR. BORA, J.

Dated: JULY 22, 2019

ORAL JUDGMENT :

1. The order dated 29.06.2019 passed by the Maharashtra State Wakf Tribunal (hereinafter referred to as the 'Tribunal') below the application at Exh.5 in Wakf Suit No.90 of 2019 is challenged by the plaintiffs therein in the present petition. The petitioners are hereinafter referred to as the plaintiffs, whereas the respondents are referred to as the defendants in the same sequence as they are arrayed in the wakf suit.

2. The plaintiffs have filed the aforesaid wakf suit for declaration that, the suit properties are wakf properties belonging to Raje Pir Baksar Dargah, Idgah and Kabrastan of muslim community situated at Malegaon (Bk), Tal. Baramati, Dist. Pune and for decree of delivery of possession thereof in

favour of plaintiff no.1 being *wakif* or to the Wakf Board and seeking permanent injunction against the defendants restraining them from encroaching upon the suit properties or to otherwise obstruct the enjoyment of the suit properties by the Wakf Institution. Alongwith the wakf suit, an application was also filed under Order-39, Rule-1 and 2 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') seeking temporary injunction restraining the defendants from carrying any kind of construction and creating third party interest in the suit properties.

3. On the date of filing of the suit, the *ex-parte* ad interim injunction was granted in favour of the plaintiffs. The defendants appeared in the matter and filed their say to the application below Exh.5 and written statement to the suit. The defendants also filed the applications under Order-7, Rule-11 of the CPC seeking rejection of the plaint on the ground of jurisdiction and cause of action.

4. The learned Tribunal, after having heard the learned counsel appearing for the parties and after having considered

the documents placed on record by the plaintiffs as well as the defendants, rejected the application below Exh.5. Aggrieved by, the plaintiffs have approached this Court by filing the present Civil Revision Application.

5. It is the case of the plaintiffs that, the suit properties, which were received to the ancestors of plaintiff no.1 in Inam from Raje Shahu Chhatrapati, were dedicated by them for the maintenance of Peer Raje Baksar Dargah and to be used as Idgah and the graveyard for muslim community. It is the further case of the plaintiffs that, ancestors of plaintiff no.1 had transferred the suit properties in the name of Deedali Shah Fakir and the *sanad* in that regard was executed in the year 1952 and said Deedali Shah Fakir was cast with a duty to maintain the dargah of Peer Raje Baksar and to perform religious rituals throughout the year from out of the income of the suit properties.

6. It is the further case of the plaintiffs that, Deedali Shah Fakir and thereafter his successors, in violation of the terms of sanad, illegally and unauthorizedly alienated the suit

properties by effecting sale and leases of the suit properties. It is the further case of the plaintiffs that, sometimes in the year 2017 when such transactions came within the knowledge of the plaintiffs, they obtained the complete information as about the transactions occurred in relation to the suit properties and promptly filed the suit seeking declaration that, the suit properties are the wakf properties and that the transactions entered into by the Deedali Shah Fakir and subsequently by the other defendants to be null and void and consequently sought possession of the suit properties. In the wakf suit so filed, the plaintiffs did also file an application at Exh.5 under Order-39, Rule-1 & 2 of the Code of Civil Procedure seeking temporary injunction restraining the defendants from carrying any kind of the construction and creating third party interest in the suit properties.

7. As against it, it is the contention of the defendants that, the suit properties were never dedicated to the Dargah of Peer Raje Baksar. It is also the contention of the defendants that, the suit properties were transferred in the name of Deedali Shah Fakir in his individual capacity and not as 'mutawalli' of

the dargah of Peer Raje Baksar and not for the maintenance of the said Dargah. It is also the contention of the defendants that, Raje Ratansinha Sambhusinha Jadhavrao was not having any authority to execute *sanad* in respect of Inami lands since the Inams were abolished with effect from 01.11.1952. It is also the contention of the defendants that, Deedali Shah Fakir was having every right and authority to alienate the suit properties. It is also the contention of the defendants that, the transactions which occurred in respect of the suit properties since the year 1965 were fully within the knowledge of the plaintiffs and had the suit properties be the wakf properties, the plaintiffs would not have waited for such a long period to initiate the action, which they initiated in the year 2018. It is the further contention of the defendants that, in the meanwhile, several transactions had taken place in respect of the suit properties. It is the further contention of the defendants that, one of the suit properties i.e. Survey No.252 has been fully developed by the defendants and due permissions for carrying out constructions have also been obtained, the loans have been obtained for development of the said property and as such, balance of convenience is in their

favour and irreparable loss is liable to be caused to them if the temporary injunction as has been sought by the plaintiffs is granted. According to the defendants, the Tribunal after having considered the facts, which are brought on record by the defendants, has rightly refused the interim injunction to the plaintiffs.

8. In his exhaustive argument, the learned senior counsel Shri V.J. Dixit appearing for the plaintiffs criticized the order passed by the Wakf Tribunal below Exh.5 on various grounds. It was the contention of the learned senior counsel that, the Tribunal has failed in appreciating the long standing revenue entries in respect of the suit properties in their proper spirit. It was also the contention of the learned senior counsel that, the Tribunal has utterly failed in appreciating that, once the wakf was created, it continues to be a wakf. Bringing to my notice certain revenue entries and the other documents filed on record, the learned senior counsel submitted that, way back in the year 1938-39 the suit properties were dedicated for the purpose of wakf by the ancestors of plaintiff no.1 and since then

the suit properties had become the wakf properties.

9. The learned senior counsel further submitted that, in the revenue record, the suit properties were throughout shown to be standing in the name of Peer Raje Baksar and the name of ancestors of plaintiff no.1 were entered as the *wahiwatdars* of the said properties. The learned senior counsel submitted that, the name of plaintiff no.1 was also appearing in the revenue record as *wahiwatdar* of the suit properties. The learned senior counsel submitted that, the properties were transferred in the name of Deedali Shah Fakir with an object and for the purpose of maintenance of the Dargah of Peer Raje Baksar and for performance of the religious rituals concerning to the said dargah throughout the year. The learned senior counsel further submitted that, Deedali Shah Fakir was cast with a duty to maintain the dargah and carry out the religious rituals from out of the income of the lands transferred in his name. The learned senior counsel submitted that, the Trial Court has failed in appreciating that, the lands were transferred in the name of Deedali Shah Fakir as the ‘mutawalli’ and not in his individual capacity.

10. The learned senior counsel further submitted that, the *sanad* executed by late Raje Ratansinha Sambhusinha Jadhavrao is legal and valid. The learned senior counsel further submitted that, prior to coming into force of the Inam Abolition Act, the properties were dedicated and transferred in the name of Deedali Shah for the maintenance of the wakf properties and the document executed in the year 1952 was in the form of memorandum of understanding of the said dedication. The learned senior counsel submitted that, the Tribunal has erred in recording a finding that, the *sanad* was executed after coming into force of Inam Abolition Act and hence was not valid and legal.

11. The learned senior counsel further submitted that, the Tribunal has also failed in appreciating that, Deedali Shah, his wife Kutubabi and the father of respondent nos.16 to 18 namely Nivrutti Taware in the previous litigations occurred in relation to the suit properties have clearly admitted that the suit properties were dedicated to the dargah of Peer Raje Baksar and were, thus, the wakf properties. The learned senior counsel
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further submitted that, the properties, which are in use as the idgah and muslim graveyard, have to be held the wakf properties by user.

12. The learned senior counsel submitted that, the Tribunal has also erred in recording a finding that, the plaintiffs failed in making out any *prima facie* case and that the balance of convenience is in favour of the defendants. The learned senior counsel submitted that, the suit properties are not yet developed and constructions have not yet commenced and as such, till the suit is decided, the interim injunction as prayed by the plaintiffs deserves to be granted in their favour. The learned counsel brought to my notice the documents filed along with Civil Application No.8452 of 2019 to urge that, the suit properties are admitted to be the wakf properties by the defendants in the earlier litigation concerning to the suit properties. The learned senior counsel relied upon the judgment in the case of **Sayyed Ali and others Vs. A.P. Wakf Board, Hyderabad and others, (1998) 2 SCC 642** and the judgment in the case of **Motishah and others Vs. Abdul Gaffar Khan, AIR 1956 Nagpur 38** to support his contentions.

13. Shri R.N. Dhorde the learned senior counsel appearing for defendant nos.1 to 14 submitted that, the prayer made by the plaintiffs seeking interim injunction was liable to be rejected on the sole ground that, they suppressed the material fact from the Tribunal that they have filed Writ Petition No.1198 of 2019 before the Principal Seat of the High Court, wherein they have claimed the same relief as claimed in the wakf suit. The learned senior counsel relied upon the Judgment in the case of **T. Vijendradas & Anr Vs. M. Subramanian & Ors, 2008 (1) ALL MR 446** as well as the Judgment in the case of **Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others, 2013 (11) SCC 531** to support his aforesaid argument.

14. The learned senior counsel further argued that, the suit properties were transferred in the name of Deedali Shah Fakir in his individual capacity and cannot be held to have been dedicated to the Dargah of Peer Raje Baksar or absolutely for the maintenance of the said dargah and as such, cannot be held to be the wakf properties. The learned senior counsel submitted
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that, though an attempt seems to have been made by the ancestor of plaintiff no.1 to show one of the suit property i.e. land Survey No.252 to have been dedicated to the dargah of Peer Raje Baksar by executing the sanad, as held by the learned Tribunal the executant was not having any right or authority to execute the said *sanad* of Inami land after abolition of Inams.

15. The learned senior counsel further submitted that, the plaintiffs also did not disclose the fact of executing an agreement of sale by defendant nos.1 to 3 in favour of plaintiff no.1 on 30.12.2006 in respect of Gat No.230 (old Survey No.252) and as about the general power of attorney got executed by plaintiff no.1 in his favour from the said defendants. The learned senior counsel submitted that, the aforesaid documents are sufficient to negate the case of the plaintiffs that, the suit properties were dedicated for the maintenance of wakf and were, therefore, the wakf properties. The learned senior counsel submitted that, though the plaintiffs have come out with a case that, cause of action for filing the suit by them occurred in the year 2017, the said contention is also absolutely false in view of the fact that, the transactions have occurred in respect of ggp

the suit properties since from the year 1965 and all those transactions are well within the knowledge of the plaintiffs. The learned senior counsel submitted that, the Tribunal has rightly rejected the temporary injunction application filed by the plaintiffs and no interference is required in the order so passed.

16. Shri Advant the learned counsel appearing for the respondent nos.19 & 20 adopting the argument advanced by learned senior counsel Shri R.N. Dhorde added that, though the plaintiffs have claimed the suit properties to be the wakf properties have failed in bringing on record any convincing evidence to show that, the properties were duly dedicated to the wakf. The learned counsel submitted that, on the contrary the evidence which has come on record is otherwise. The learned counsel invited my attention to the order passed by the Deputy Collector, Baramati in Tenancy Appeal No.11 of 1958 on 24.04.1959. The said tenancy appeal was filed by Deedali Shah Fakir against Gopinath Chawre. The contents of the said order reveal that, it was argued on behalf of appellant Deedali Shah Fakir that, the income of the land Survey No.252 was meant for

worship of Peer Raje Baksar. The learned Deputy Collector, however, has not accepted his said contention and had recorded a finding that, from the record of rights the land does not seem to be the *devastan Inam*. The learned counsel also elaborated the issue of suppression of facts by the plaintiffs by referring to the provisions in the Code of Civil Procedure. The learned counsel also invited my attention to the documents at page nos.362 to 368 of the paper book. The learned counsel pointed out that, the date mentioned of execution of the said document is 01.11.1962. The learned counsel pointed out that, the varied versions have come on record in respect of the document of *sanad*, which is heavily relied upon by the plaintiffs in support of their contention that, the suit properties are the wakf properties. The learned counsel submitted that, the learned Trial Court has, therefore, rightly discarded the said document. The learned counsel submitted that, the plaintiffs have utterly failed in making out any *prima facie* case and have also failed in proving that, the balance of convenience lies in their favour and the irreparable loss would be caused to them in the event the injunction is refused and in the circumstances, the Trial Court

has rightly rejected the application.

17. Shri V.D. Sapkal the learned counsel appearing for defendant nos.21 to 25 submitted that, non-registration of wakf and non-inclusion of the suit properties in the list of wakf properties published by the Maharashtra State Board of Wakf is the vital circumstance, which negates the case of the plaintiffs that, the suit properties are the wakf properties. The learned counsel took me through the order passed by the Assistant Survey Commissioner (Wakf) in Inquiry No.19 of 2017 passed on 12.03.2018. The learned counsel submitted that, the Assistant Survey Commissioner has recorded an unambiguous finding that, Survey No.252 was transferred in the name of Deedali Shah in his individual capacity and had, thus, become his private property. The learned counsel submitted that, after having conducted the due inquiry in the matter, the Assistant Survey Commissioner declined to include the said property in the list of the wakf properties. The learned counsel submitted that, the Tribunal has, therefore, rightly rejected the request of the plaintiffs.

18. Smt Kamble the learned counsel appearing for defendant nos.26 to 28 submitted that, in the entire suit nothing is alleged against these defendants. The learned counsel submitted that, since no cause of action is made out in the suit plaint as well as in Exh.5 application against these defendants, the application is liable to be dismissed against these defendants.

19. The learned counsel appearing for defendant nos.29 to 31 and 33 to 35 submitted that, from the tenor of the suit, it can be gathered that, plaintiff no.1 is still interested in the suit properties, which he claims to have been dedicated for the wakf institutions. According to the learned counsel, conduct of plaintiff no.1 as above, leads to the only inference that plaintiff no.1 or his ancestors never had intention to dedicate the suit lands for wakf institution. The learned counsel submitted that, plaintiff nos.2 and 3 are the pseudo plaintiffs. The learned counsel submitted that, the suit is liable to be dismissed for misjoinder of parties and misjoinder of cause of action.

20. The learned counsel appearing for defendant no.36 submitted that, the huge amounts have been advanced by the respondent - Patsanstha towards development of the suit properties and if the said development is restrained, irreparable loss will be caused to the defendant – Patsanstha.

21. The learned counsel appearing for respondent no.42 submitted that, the gazette notification dated 30.12.2004 has been withdrawn and hence cannot be acted upon. The learned counsel submitted that, the resurvey of the wakf properties has been directed. The learned counsel further submitted that, no proper survey has been conducted insofar as the Western Maharashtra is concerned of the wakf properties existing in the said area. The learned counsel submitted that, having regard to the evidence on record, there is every reason to believe that, the suit properties are wakf properties and shall be protected as the wakf properties. The learned counsel, in the circumstances, prayed for passing appropriate orders.

22. I have given due consideration to the submissions made by the learned counsel appearing for the respective

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parties. I have perused the impugned order as well as the other material placed on record. There are total three properties involved in the matter. However, it is noticed that, the multiple transactions have occurred insofar as the land Survey No.252 is concerned. The said land was subsequently numbered as Gat No.538-A and 538-B and now its new numbers are Gat Nos.230 and 231 situated at Mauje Malegaon (Bk), Tal. Baramati, Dist. Pune. The total area of the land is 44 Acres, 32 R. Insofar as the land Survey No.444 subsequently numbered as Gut No.1021 and now numbered as Gut No.572/1/A/4 admeasuring 12 acres and the land Survey No.467, subsequently numbered as Gut No.1116/A/1/A and now numbered as Gut No.550/A/1/A admeasuring 6 acres, are concerned, no further transactions seems to have taken place. As per the case of the plaintiffs, the *dargah* of Peer Raje Baksar is existing in present Gat Nos.230 and 231 and the *Kabrastan* and *Idgah* are existing in Gat No.550/A/1/A. Neither in the plaint nor in the application for interim injunction any particulars are provided as about the area occupied by the Dargah of Peer Raje Baksar in Gut Nos.230 and 231. The Gazette Notification dated 30.12.2004, however,

discloses that, the said Dargah is occupying only of 49 sq. meters area.

23. The application seeking temporary injunction has been rejected by the Tribunal on the following grounds:

- (i) that, there is no *prima facie* material to show that, prior to 1951 the suit property was dedicated to the Wakf Institution by the ancestors of plaintiff no.1
- (ii) that, the suit properties were the political *Inam* granted to the ancestors of plaintiff no.1 and since the said *Inam* is abolished with effect from 01.11.1952, the suit properties could not have been dedicated or transferred by plaintiff no.1 or his ancestors on 15.11.1952. There is no reference in the revenue record of any of the suit properties that, Deedali Shah was the *mutawalli* of the Wakf Institution.
- (iii) that, the document of *sanad* does not reflect that, the executant has dedicated the property for muslim religious purpose. The copy of order dated 12.03.2018 passed by the Assistant Survey Commissioner demonstrates that, the suit properties are excluded from the list of wakf properties by holding that, the suit properties are not the wakf properties. That, the Wakf

Institution is not registered up-till now under Section 36 of the Wakf Act, 1995 with the Maharashtra State Board of Wakf, Aurangabad.

- (iv) That, the plaintiffs did not disclose the fact of filing or pendency of Writ Petition No.1198 of 2019 at the Principal Seat of the High Court, wherein also the prayer is to declare the suit properties as the wakf properties and an injunction has also been sought against the respondents therein from creating third party interest.

24. Having regard to the case as has been pleaded by the plaintiffs, it was incumbent on their part to bring on record some convincing evidence for making out a *prima facie* case for grant of temporary injunction in their favour on the following aspects viz: (i) That Prior to 1952 i.e. before transfer of the said land in the name of Deedali Shah Fakir, the properties stood dedicated to the dargah of Peer Raje Baksar by the ancestors of plaintiff no.1 (ii) that, the properties were transferred in the name of Deedali Shah Fakir not in his individual capacity, but as the service Inam for maintenance of the *dargah* of Peer Raje Baksar as well as the *idgah* and graveyard, and that, (iii) the suit properties were transferred in the name of Deedali Shah Fakir

before the abolition of Inams.

25. The learned Tribunal has recorded a finding that, there is no *prima facie* material to show that, prior to 1952 the suit properties were dedicated to the wakf institution by the ancestors of plaintiff no.1. Though a very exhaustive argument has been advanced by learned Senior Counsel Shri Dixit appearing for the plaintiffs and though an attempt was made by him to bring to my notice certain documents and more particularly the entries in Record of Rights to show that, the suit properties stood dedicated for the maintenance of the Dargah of Peer Raje Baksar, it is difficult to record even a *prima facie* finding on the basis of said documents that, the suit properties were dedicated for the purpose recognized by the muslim law as religious, pious or charitable. Mere fact that the land old Survey No.252 is named as 'peerache shet' is not sufficient to hold that, the said land was dedicated for the maintenance of Dargah of Peer Raje Baksar without any other evidence in support of the said contention. Under the Muslim Law, the wakf means dedication by a person embracing the muslim faith or even by a Hindu any property for any purpose recognized by the muslim

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law as religious, pious or charitable. It is also a requirement that, the dedication must be permanent and the owner of the property who dedicates such property should divest himself of such property. In the instant matter, no such evidence is produced on record. The evidence, which has been produced, falls short to record any such conclusion that the suit properties stood dedicated to the wakf institution prior to 1952 or at any time thereafter.

26. It was much emphasized by the learned senior counsel that, the name of plaintiff no.1 and prior to him the names of his ancestors were appearing as the *wahiwatdars* of the said property and the property was shown to be in the name of Peer Rae Baksar. However, as has been discussed by the Tribunal, the said fact also cannot be a sufficient evidence to hold the suit properties to be the wakf properties dedicated by the ancestors of plaintiff no.1 prior to abolition of Inams in the year 1952. No such document is produced on record by the plaintiffs evidencing that, income derived from the said lands was being exclusively spent on the maintenance of dargah or *idgah* or for any other purpose recognized by the muslim law.

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The first attempt of creating wakf seems to have been made in the year 1952 by executing the sanad in the name of Deedali Shah Fakir. According to the averments in the plaint itself, the said sanad was executed in the name of Deedali Shah on 15.11.1952.

27. It is not in dispute that, the land old Survey Nos.252 and 274 admeasuring 44 acres, 32 R as well as the land old Survey Nos.444 and 467 were the Inami lands received to the ancestors of plaintiff no.1 from Raje Shahu Chhatrapati. It is also not in dispute that, all Political Inams were abolished vide the Inam Abolition Act, which came into force with effect from 01.11.1952. It is, thus, evident that Raje Ratansinha could not have executed the Sanad of the said Inami lands and transferred the same in the name of Deedali Shah on 15.11.1952. Though it was sought to be contended by learned senior counsel Shri Dixit that the document of sanad executed on 15.11.1952 was in the form of a memorandum of understanding of the dedication, which had in fact made much prior to that, the submission so made is difficult to be accepted in absence of any cogent evidence produced on record by the plaintiffs.

28. In order to support his said contention, the learned senior counsel relied upon Mutation Entry No.4253 made on 27.10.1952. According to the learned senior counsel, the said mutation entry is the conclusive proof of the fact that the lands Survey Nos.252 and 274 were transferred in the name of Deedali Shah prior to abolition of the Inams. Relying on the said document, it has also been argued by the learned senior counsel that, the said mutation entry sufficiently proves that, the sanad executed on 15.11.1952 was a memorandum of the transfer so made on 27.10.1952. The contention so raised and argument so advanced also cannot be accepted in view of the fact that, in the Mutation Entry No.4253 it is nowhere even indicated that, the transfer of the lands in the name of Deedali Shah was in fact an act of permanent dedication of the said properties for the purpose of maintenance of dargah. The revenue record heavily relied upon by the plaintiffs does not establish that, the suit lands were transferred in the name of Deedali Shah for maintenance of the wakf institutions. Perusal of the revenue record leads to the only inference that, the suit lands were transferred in the name of Deedali Shah in his

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individual capacity.

29. As has been observed by the Tribunal, the plaintiffs have failed in bringing on record any *prima facie* evidence so as to hold that, the suit properties were dedicated for the purse of wakf. Though it is sought to be contended by the learned senior counsel Shri Dixit that the suit properties for maintenance of dargah of Peer Raje Baksar and for other religious purposes were dedicated prior to the year 1952 and to the said dedication legal shape and status was given by executing the Sanad in that regard in the year 1952 more particularly on 15.11.1952 in the name of Deedali Shah, the plaintiffs have not produced any revenue record evidencing the fact of execution of the aforesaid Sanad towards dedication of the suit properties for maintenance of the dargah of Peer Raje Baksar and the other wakf institutions. The suit properties have continued in the name of Deedali Shah and after his demise in the name of his legal heirs in their individual capacity.

30. Having considered the facts as above, the argument advanced by learned counsel Shri Dhorde appearing for the
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defendants that, the document of Sanad is not a trustworthy document and possibility of preparation of said document later on and more particularly after the abolition of Inams to save the said properties from being surrendered to the Government is difficult to be ruled out.

31. The circumstance, which has been discussed by the Tribunal that of non-registration of the wakf and the suit properties as the wakf properties is also an important factor which creates doubt about the claim of the plaintiffs that, the suit properties were and are the wakf properties. It was elaborately argued by learned counsel Shri Sapkal that, had the suit properties the wakf properties, in the survey conducted in that regard the said properties must have been notified as the wakf properties and must have been included in the list of such properties maintained by the Wakf Board. The learned counsel pointed out that, since 1913 number of Acts have been passed by the Central and State regulating the administration of wakfs. The learned counsel pointed out that, the Bombay Mussalman Wakf Act was first enacted in the year 1935. The learned counsel submitted that, it cannot be believed that, the huge properties

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allegedly dedicated for the wakf institution could not have been recorded as the wakf properties in the surveys time to time conducted in that regard.

32. The learned counsel pointed out that, on the contrary the order dated 12.03.2018 passed by the Assistant Survey Commissioner completely rules out the possibility of suit properties to be the wakf properties. In this context, the decision rendered by the Deputy Collector, Baramati rendered in Tenancy Appeal No.11 of 1958 on 24.04.1959 was brought to my notice by Shri Adwant, learned counsel appearing for defendant nos.19 & 20. In the said decision, the then Deputy Collector has categorically observed that, from the record of rights the land does not seem to be a devasthan Inam. The discussion made in the said judgment reveals that, it was argued by the appellant in the said matter that the income of the lands was meant for worship of Peer Raje Baksar. It is significant to note that, said appeal was filed by Deedali Shah against Gopinath Chawre. Rejecting the contention raised on behalf of appellant Deedali Shah, it was held by the learned Deputy Collector that, from the record of rights the land does not seem to be a Devasthan Inam.

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33. Thus, after having considered the submissions advanced by the learned counsel appearing for the parties and after having gone through the documents placed on record, it does not appear to me that, the Tribunal has committed any error in recording a finding that, the plaintiffs have failed in bringing on record any *prima facie* evidence to show that, the properties were dedicated to the wakf institution though they were appearing to be in the name of Deedali shah.

34. The evidence as about the Sanad is elaborately discussed by the Tribunal. I need not to repeat the conclusions which are recorded by the Tribunal in the impugned order, suffice it to say that even in the revision application no such material is brought on record so as to record any contrary finding or to hold that, the finding recorded by the Tribunal in that regard is erroneous. On the contrary as it was pointed out by learned Counsel Shri Adwant that, in two translations existing on record of the alleged sanad, the dates mentioned of the execution of the said document are quite different from each other. The learned counsel pointed out that, in one translation

the date mentioned of execution of Sanad is of the year 1962. The learned counsel pointed out that, in another translation when the document is stated to have executed on 01.11.1952, the stamp on which the said document is scribed is purchased on 15.11.1952, which completely negates the possibility of execution of the said document on 01.11.1952. I do not see any infirmity in the observations made by the Tribunal while declining to accept the evidence in regard to the alleged sanad brought on record by the plaintiffs in support of their contention that, the suit properties were dedicated for the maintenance of the wakf.

35. The Mutation Entry No.5637 was brought to my notice by the learned counsel appearing for the defendants, which clearly shows that, the properties which were not legally transferred by plaintiff no.1 or his ancestors prior to 01.11.1952 stood surrendered to the Government, which include the land Survey No.252. The said document also creates doubt about the claim made by the plaintiffs and there is no satisfactory explanation from the side of the plaintiffs as about the said mutation entry. The said Mutation Entry has not been
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challenged by plaintiff no.1 or the other plaintiffs; at least no such plea is raised and no such evidence is brought on record.

36. The learned counsel appearing for the defendants brought to my notice from the documents on record that, the transactions in respect of the suit properties had been occurring since from the year 1965. There is substance in the submissions made on behalf of the defendants. The documents demonstrate that, the transactions which occurred in the year 1965 thereafter in the year 1995 and onwards have been recorded in the record of rights and entries taken in the revenue record do not seem to have been challenged by the plaintiffs. It is difficult to believe that, the plaintiffs were not at all aware of the transactions so occurred which were duly entered in the revenue record. It was sought to be contended that, the wife of Deedali Shah as well as the father of defendant nos.16 to 18 namely Shri Nivrutti Taware in previous legal proceedings have admitted that, the suit properties were dedicated for the maintenance of dargah of Peer Raje Baksar. It does not appear to me that, on the basis of the said evidence, a conclusion can be recorded that, the suit

properties were the wakf properties in absence of the evidence as about the dedication of the said properties as required under law.

37. One more aspect that, the plaintiffs suppressed the fact of filing of writ petition by them before the Principal Seat of High Court being Writ Petition No.1198 of 2019 also assumes vital importance. Plaintiff No.2 Rahiman Gulabbhai Shaikh is petitioner no.1 in the said writ petition. Prayer clause-A of the said writ petition reveals that, the properties which are the subject matter of the wakf suit are sought to be declared as wakf properties. Similar prayers as are made in the wakf suit are made in the said writ petition. As has been pointed out by the learned counsel appearing for the defendants, in the wakf suit, which has been admittedly filed after filing of the writ petition, the plaintiffs have nowhere disclosed that, plaintiff no.1 has also preferred Writ Petition No.1198 of 2019 before the Principal Seat of the High Court and the same is pending. Hon'ble Apex Court in the case of **Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others, (2013) 11 SCC 531** and in the case of **T. Vijendradas & Anr Vs.** ggp

M. Subramanian & Ors, 2008 (1) ALL MR 446 has held that, the litigant seeking an equitable relief must come to the Court with clean hands and disclose all material facts relating to his case. As held by the Hon'ble Apex Court in the case of **Bhaskar Jadhav** (cited supra) mere giving of passing reference does not amount to the disclosure of the facts and the petitioner has to disclose all the material facts. Non-disclosure of the material fact of filing a writ petition claiming the same relief disentitles the plaintiffs from claiming any equitable relief. The Tribunal has rightly considered the said aspect and that is one of the important reason for rejection of the temporary injunction application by it.

38. After having considered the entire material on record, it does not appear to me that, the learned Tribunal has committed any error in rejecting Exh.5 application. It need not be stated that, for securing temporary injunction, the plaintiff has to prove a strong prima facie case in his favour and also to establish that, the balance of convenience lies in his favour and if the temporary injunction is not granted, he is likely to suffer irreparable loss. In the present matter, none of the aforesaid

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ingredient has been satisfied by the plaintiffs. I reiterate that, the plaintiffs have failed in bringing on record any convincing evidence *prima facie* showing that, the suit properties were ever dedicated for the maintenance of the wakf institutions. Two translations placed on record of the Sanad allegedly executed by the ancestor of plaintiff no.1 namely Raje Ratansinha in favour of Deedali Shah Fakir reveal two different dates of execution of the said Sanad. Even otherwise, the dates mentioned in both the said translations are of the period after 01.11.1952. The suit lands are admittedly Inami lands. After coming into force of the Inam Abolition Act with effect from 01.11.1952 neither plaintiff no.1 nor his ancestors were having any right to dedicate or transfer the said Inami lands. The evidence of Sanad attempted to be brought on record does not in any way appear to be of any help to the plea raised by the plaintiffs. The non-registration of the wakf and non-inclusion of the suit properties as the wakf properties also have proved to be fatal in making out a case by the plaintiffs. The Assistant Survey Commissioner (Wakf) in his order dated 12.03.2018 has declined to hold the suit properties to be the wakf properties. The agreement of sale got executed

by plaintiff no.1 in his favour in the year 2006 in respect of the part of a suit property leads to a reasonable inference that, the suit properties were perhaps not dedicated to the wakf institutions. Though several transactions had occurred in last 40 years concerning to the suit properties, entries of which are taken in the record of rights, none of such entries seem to have been challenged by the plaintiffs. The plaintiffs have utterly failed in bringing on record any convincing evidence to show that, the suit properties were not transferred in the name of Deedali Shah Fakir in his individual capacity. Most importantly, the plaintiffs suppressed the material fact from the Tribunal that plaintiff no.2 has already filed a writ petition claiming the same reliefs as are claimed in the suit. Concerning all above reasons, the Tribunal has declined to grant the interim injunction as was prayed by the plaintiffs. On the other hand, the evidence which is brought on record by the defendants makes out a case tilting the balance of convenience in their favour. The Tribunal has, thus, rightly rejected the application filed by the plaintiffs. No interference is, therefore, required in the said order. For the reasons above, the following order is passed.

ORDER

- (i) The Civil Revision Application is dismissed with costs.

(**P.R. BORA, J.**)

39. At this juncture, the request is made by Advocate Shri Dalvi to stay the effect of the present order for next eight weeks. However, in view of the finding recorded by this Court to the effect that, the plaintiffs have utterly failed in making out any *prima facie* case and balance of convenience also does not lie in their favour, I see no reason to accede to the request so made. The request, therefore, stands rejected.

(**P.R. BORA, J.**)