

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

WRIT PETITION NO.838 OF 2018

Dargah Hajrat Moulana Shah Muntajibuddin Zar Zari Baksh, Khultabad.

-versus-

Abdul Sattar Burhan Baksh (died), through legal heirs :- (a) Tajoddin
Abdul Sattar (died), through legal heirs (a1) Hoorbano Tajjoddin and
others.

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Ms.Pradnya S. Talekar i/b Talekar and Associates, Advocate for the
Petitioner.

Shri V.H.Dighe, Advocate for Respondent No.2B.

Shri V.D.Sapkal, Advocate for Respondent Nos.2D and 2F.

Shri Vakil Afzal Hussain M., Advocate for Respondent Nos.2C, 2E and 2G.

Shri N.T.Bhagat, AGP for Respondent Nos.5, 6 and 7.

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CORAM: RAVINDRA V. GHUGE, J.

Reserved on 02nd April, 2019

Pronounced on 24th April, 2019.

JUDGMENT:

1 By this petition, the Petitioner Dargah seeks to challenge the order dated 07.07.2016 passed by the Deputy Commissioner (Revenue), Divisional Commissioner's Office, Aurangabad by which, the delay of 48 years and 06 months has been condoned for entertaining the Virasat Application, without issuing notice to the Petitioner.

2 The contentions of the learned Advocate for the Petitioner Dargah can be summarized as under :-

(a) An application No.95/1995 was filed by Mohammad Tahir

s/o Burhan Baksh under Section 7 of the Hyderabad Atiyat Inquiries Act, 1952 seeking grant of succession.

- (b) It was claimed that Amir Baksh Burhan Baksh was Saheb-e-Muntakhab of service inam land granted for the services of the Dargah Hazrat Maulana Shah Muntajibuddin Shaikh Zar Zari Zar Baksh concerning the land old Survey Nos.17 and 24 admeasuring 31 Acres 22 Gunthas and 18 Acres and 38 Gunthas, respectively, in village Deopul, Taluka Kannad and the land Survey Nos.21, 22 and 23 admeasuring 21 Acres 16 Gunthas, 30 Acres 32 Gunthas and 20 Acres 32 Gunthas, respectively, in village Mahegaon, Taluka Kannad.
- (c) These survey numbers and the lands were declared as Wakf properties by the Inspector, Survey Of Wakfs and the Khuddamin Committee is shown as the Mutawalli/ Manager in the Government Gazette dated 14.07.1960.
- (d) Though Amir Baksh claimed to be the original Saheb-e-Muntakhab by the Sanad bearing No.1909 dated 15.07.1933 Fasli, the document dated 04th Shahrivar 1339 Fasli, which would be 1929 AD, indicates that the predecessor in title of the Respondent was selected by all Khuddamins.
- (e) The Petitioner Dargah is managed by the Khuddamins Committee (Committee of Servants).

- (f) The Gazette dated 14.07.1960 indicates that the name of the Mutawalli like Jalal Baksh, Qamruddin Baksh Amir Baksh, Gulam Mohammad, have been removed and the Khuddamin is declared as the Manager of the said Dargah.
- (g) The said Gazette indicates Survey Nos.17 and 24 admeasuring 31 Acres 10 Gunthas and 18 Acres 38 Gunthas, respectively, at village Deopul and Survey Nos.21, 22 and 23 admeasuring 21 Acres 12 Gunthas, 30 Acres 32 Gunthas and 19 Acres 13 Gunthas, respectively, at village Mehgaon. Some more lands are also shown in the said Gazette.
- (h) Burhan Baksh Mujawar has issued a letter dated 05 Asfandar 1333 F, which is of 1923, declaring that all Khuddamins of Hadd-e-Kalan of Khultabad are writing the memorandum with the consent of all that all Khuddamins get Yaumia Mash Mashrutul Khidmat Dargah Hazrat through Hafiz Lal Mujawar from the said zone of Sarkar-e-Ali.
- (i) The Petitioner Dargah Managing Committee is managing the Dargah for several decades.
- (j) By judgment dated 20.09.1968, in ***Special Civil Application No.200/1966 (Hafiz Ahmeduddin Aminuddin and others vs. Renukadas Rao Deshpande and others)***, the learned Single Judge of this Court decided the commutation rights of

the Khuddamins and held that the Dargah is managed by the Committee of Khuddamins, who are elected amongst the Khuddamins.

- (k) It was specifically recorded by the learned Single Judge of this Court that *“From the record, there can be no doubt that the particular mode of management and rendering of services by the Khuddams have been sanctioned by immemorial usage and there is nothing to show that it is contrary to the Muslim Law. Under the circumstances, therefore, the Board must exercise its powers in conformity with the existing usage and it is only when by a proper procedure the Manager or the Mutawalli is removed that the Board steps in for the purpose of framing of a scheme and for purposes of the administration of the scheme the Board is entitled to take into its possession any Wakf if there is no Mutawalli or Manager in existence. Here also the powers are defined by Section 43 of the said Act..... The Khuddams and/or the Wakf Board to apply to the District Court, Aurangabad to frame a scheme for the proper administration of the Dargahs. The scheme shall be framed as early as possible.”*
- (l) By the judgment dated 30.11.2010, in **Civil Revision Application No.59/2010 (Committee Khuddamin Dargahjit**

Hadd-E-Kalan, Khultabad vs. Maharashtra State Board of Wakfs and another), the learned Single Judge has decided the locus-standi of the Committee of Khuddamin Dargahjat Hadd-e-Kalan, Khultabad and the said Committee was accepted as being in-charge for managing the affairs of the Dargah and the properties attached to it.

- (m) By a Sanad / Farmaan, 200 Acres lands in five villages in Kannad Parganah were donated to the Dargah by the Royal Grant issued by Shah Alam Bahadur Badshah Gazi in 1298 Fasli, which would be 1880 Gregorian year.
- (n) The communication dated 04 Shahrivar 1339 Fasli indicates that Vasika (document) was permitted to be issued in the name of Khadin Burhan Baksh, who was selected by all Khuddams and after deduction of regular expenses, all Khuddams were to distribute the money amongst themselves.
- (o) The document dated 09th Dae 1336 F, is a statement of the members of the Dargah indicating that earlier the official document and income was in the name of Amiroddin after whose death, the Khuddamins selected Hafiz Lal, who would not get any special share, but would only be a person in whose name the document and income was received.
- (p) The document dated 1323 Fasli, which is 1917 Gregorian

year, is a statement that all Khuddamins have assigned the service duty of Hafiz Lal to Burhan Baksh, who was not the legal heir of the deceased Hafiz Lal, but was only his disciple. The Mujawari was merely transferred to him as the son of the deceased Hafiz Lal, Mohammad Rafiuddin, was a minor.

3 Though the learned Advocate for the Petitioner has put forth several factors extensively, indicating the existence of the Dargah Committee and its management over the various lands, I am not adverting to all those extensive submissions in their entirety since the issue before me is as to whether, the Petitioner is a necessary party and the Deputy Commissioner was obliged to hear the Petitioner before allowing the application of the Respondents, claiming to be heirs of Burhan Baksh, when they sought condonation of delay of 48 years and six months vide the application No.2015/Mashaka/ Bhusu/Inam/ CR-34, lodged on 04.03.2016 and allowed by the impugned order on 07.07.2016.

4 This Court (Coram : S.S. Shinde, J.) has delivered an order dated 07.08.2012 in ***Writ Petition No.3420/2011 (Ahmed Shah Mehboob Shah and others vs. Mohammed Ismail Gulam Hussain)***, by which, it was held that a delay beyond one year in filing an application under Section 5 of the Hyderabad Atiyat Inquiries Act, 1952 and Rule 12(2)(c) of the Hyderabad Atiyat Inquiries Rules, 1952, can be condoned

by the Divisional Commissioner.

5 Shri Sapkal and Shri Dighe, learned Advocates have extensively canvassed their submissions, which can be summarized as under :-

- (a) An application for condonation of delay was filed by the Respondents under Section 7 of the Hyderabad Atiyat Inquiries Act, 1952 and Rule 12(1) of the Rules of 1952.
- (b) A Muntakhab is an Inam.
- (c) The Respondents claimed holding of an Atiyat Grant under Section 2(d) of the Hyderabad Atiyat Inquiries Act, 1952 on the basis of the Muntakhab.
- (d) Muntakhab No.467, which is at issue, is with respect to the agricultural land as being a service inam.
- (e) The Petitioner has misled this Court by referring to Muntakhab No.1404, which indicates several agricultural lands, which are not with respect to Muntakhab No.467.
- (f) These Respondents are before the competent authorities seeking a succession certificate only with reference to the lands mentioned in the Muntakhab No.467 given to their forefathers through Amir Baksh.
- (g) Mohammad Tahir has filed the application No.95 of 1995 on 06.10.1995 for seeking a Virasat/ Succession with regard to

the suit lands and for the Ek Sala Lavni amounts.

- (h) The names of the forefathers of the Respondents are found in the Aurangabad Gazette No.40 dated 09 Abaad 1309 Fasli.
- (i) The District Collector's opinion dated 1329 Fasli indicates that Muntakhab No.1 Amir Baksh has passed away and his three children Burhan Baksh, Jalal Baksh and Nizam Baksh are his legal heirs and therefore, the Virasat can be sanctioned in favour Burhan Baksh and the names of Jalal Baksh and Nizam Baksh can be entered in the Shikmi.
- (j) The Petitioners are erroneously presuming that the Respondents are interested in the Vasika Muntakhab No.1404.
- (k) The Respondents declared that they have nothing to do with the said Vasika.
- (l) The enquiry is called for, for the grant of succession certificate.
- (m) The succession certificate was earlier granted on 3 Teer 1330 Fasli in favour of Burhan Baksh, being the eldest son of Saheb-e-Muntakhab No.1 Amir Baksh.
- (n) Since the disputed questions of locus standi of the Petitioner have been raised, this Court would not have the jurisdiction to consider such disputed questions.

6 In the light of the submissions of the learned Advocates for the respective sides, I have gone through the voluminous record placed before me by both the sides. I have also perused the old documents that have been cited, with the assistance of the learned advocates.

7 It is tried to be canvassed by the Respondents that in the proceedings in between Ahmed Shah and Mohammad Ismail, Writ Petition No.3420/2011 decided by this Court on 07.08.2012, the issue of Ahmed Shah claiming to be the successor of Smt.Bibban Bee w/o Madar Baksh, was decided and it was held that Ahmed Shah has utterly failed in establishing a locus to challenge the succession proceedings initiated by Mohammad Ismail.

8 However, the issue before this Court is as to whether, the Petitioner Dargah Committee through it's President can be said to be, in any way, connected with the succession certificate demanded by the Respondents under the Hyderabad Atiyat Inquiries Act, 1952. The Deputy Divisional Commissioner, vide the impugned order, has condoned the delay of 48 years and 06 months on the ground that the land at issue is a Khidmat Mash Inam land considering the provisions of the Hyderabad Abolition of Inams and Cash Grants Act, 1954. It was concluded that the Respondents are the servants, who are performing the work of maintenance, cleanliness and Divabatti at the Dargah Hazrat Maulan Shah

Muntajabuddin Zar Zari Zar Baksh at Khultabad. It was then concluded that, by condonation of delay, the rights of the parties can be decided, the historic Nizam era site/ structure can be preserved and the Wakf Board can appoint an appropriate person for performing the Divabatti. It was, therefore, directed that the Deputy Collector (Atiyat) can initiate the proceedings for grant of Virasat under the Hyderabad Atiyat Inquiries Act, 1952. Pursuant to such directions, the Deputy Collector (Atiyat) has commenced the proceedings. As the first stage in the proceedings, a public notice was published calling for objections and the Petitioner Dargah Committee immediately raised an objection contending that it is already administering the Dargah and the Respondents are land grabbers. After the Petitioner realized that the Deputy Divisional Commissioner has passed the impugned order dated 07.07.2016, that it approached this Court on 11.12.2017.

9 It has been strenuously argued by the Respondents that after the Petitioner appeared before the Deputy Collector (Atiyat) in the said proceedings, post condonation of delay and participated on a few dates, it is estopped from challenging the condonation of delay. I am not inclined to accept the said submission since the immediate response of the Petitioner to the public notice published by the Deputy Collector (Atiyat) and the participation of the Petitioner in the said proceedings, would not preclude the Petitioner from challenging the order of condonation of

delay. Had there been an inordinate delay and had the Petitioner approached this Court, when, for example, the proceedings before the Deputy Collector (Atiyat) were at the stage of judgment, this Court would not have considered the challenge.

10 In order to avoid making any observations, which would come in way of either of the litigating parties, I have cautiously gone through the record placed before me. It appears that this Court had delivered a judgment on 20.09.1968 in Special Civil Application No.200/1966 concluding that the particular mode of management and rendering of services by the Khuddams have been sanctioned by immemorial usage. It was also held that the Wakf Board would exercise it's powers in conformity with the existing usage only when, by a proper procedure, the Manager or Mutawalli is removed and then, the Board can step in for the purpose of administration. In Civil Revision Application No.59/2010, this Court delivered a judgment on 30.11.2010 concluding that though there are several complaints of mismanagement against the Committee Khuddamin Dargahjat Hadd-e-Kalan, the procedure laid down in law will have to be followed for initiating action against such a committee. The Maharashtra Gazette dated 02.07.1986 also indicates that the Committee of Khuddamin Hadd-e-Kalan has been appointed as Mutawalli.

11 As such, though disputed questions cannot be gone into in the

writ jurisdiction of this Court, it does prima facie appear that the Petitioner Committee has certain factors to establish its connection with the lands mentioned by the Respondents in their application for seeking the succession certificate. If the Deputy Collector (Atiyat) could follow the principles of natural justice in calling for objections with regard to the enquiry initiated by it, I do not see any reason, which could have precluded the Deputy Divisional Commissioner from calling for such objections in order to ensure that the litigating parties before him, would not have any scope for causing misrepresentation indicating that they are the only persons concerned with such huge immovable agricultural lands, which is almost 123 acres, inasmuch as, interested parties like the Petitioner could present their case.

12 Considering the above, this Writ Petition is allowed. The impugned order dated 07.07.2016 is quashed and set aside. The proceedings File No.2015/Mashaka/ Bhusu/Inam/ CR-34 stands restored to the file of Respondent No.6/ Deputy Commissioner (Revenue), Office of the Divisional Commissioner, Aurangabad. All the litigating sides would appear before the said Respondent No.6/Authority on 03.06.2019 at 11:00 am. Respondent No.6 shall issue a public notice calling for objections by publishing the said notice in a Marathi newspaper having wide circulation in the Aurangabad region like daily Lokmat/ Sakal / Divya Marathi and any largely circulated Urdu newspaper. After

considering the objections of all the parties, who may lodge such objections with Respondent No.6, the said Authority shall proceed to decide the application for condonation of delay on its own merits and pass a reasoned order.

13 Consequently, the proceedings before the Deputy Collector (Atiyat), shall stand stayed at the stage at which they are and shall be subject to the outcome of the proceedings before Respondent No.6/ Deputy Commissioner (Revenue). In the event, Respondent No.6 refuses to condone the delay, the proceedings before the Deputy Collector (Atiyat) shall stand quashed. If Respondent No.6 condones the delay, the said proceedings would commence from the stage at which they were stayed.

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(RAVINDRA V. GHUGE, J.)