

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.479 of 2019

1. Abdul Vahab S/o Abdul Rajjak Aged About 43 Years
2. Haji Abdul Karim Beg S/o Haji Kadir Beg Aged About 43 Years
3. Sheikh Abdul Hamid S/o Peer Mohammad Aged About 51 Years
(All are r/o Luthra Sharif, District- Bilaspur, Chhattisgarh)
4. Alfajuddin S/o Sirajuddin Aged About 45 Years
5. Syed Mahfooz Ali S/o Syed Maksood Ali Aged About 40 Years
6. Abdul Shahnwaz S/o Abdul Gani Memon Aged About 40 Years
7. Amin Khan S/o Habib Khan Aged About 40 Years
8. Mohd. Nazir S/o Mohd. Ashfaque Hussain Aged About 40 Years
(petitioners No.4 to 8 are r/o Khamhariya, District- Bilaspur, Chhattisgarh)
9. Sheikh Nizamuddin S/o Sheikh Karimuddin Aged About 39 Years R/o Bilaspur, District- Bilaspur, Chhattisgarh
10. Abdul Jabbar S/o Jakir Mohammad (Nanki Baba) Aged About 45 Years
R/o Luthra Sharif, District- Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Chhattisgarh State Waqf Board Through The Chief Executive Officer, Office At Sector-3, C-12, Devendra Nagar, Raipur, District- Raipur, Chhattisgarh At Present Collectorate Chowk Raipur, District- Raipur, Chhattisgarh
2. Intejamiya Committee Dargah Luthra Sharif Through Sadar/mutwalli Syed Akbar, Aged About 47 Years, S/o Late Syed Anwar Bakshi, R/o Bhartiya Nagar, Bilaspur, District- Bilaspur, Chhattisgarh
3. Man Khan S/o Sadaruddin Khadim Aged About 72 Years Dargah Luthra Sharif, District- Bilaspur, Chhattisgarh
4. Sher Mohammad S/o Peer Mohammad Khadim Aged About 65 Years Dargah Luthra Sharif, District- Bilaspur, Chhattisgarh
5. Haji Ikhlaq Khan Ashrafi S/o Late Navab Khan Aged About 57 Years R/o Dargah Luthra Sharif, Post Khamriya, Tahsil And District- Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	– Mr. Sumit Singh Rathore, Advocate.
For respondent No.1	– Mr. Prateek Sharma, Advocate.
For respondent No.2	– Mr. R.S. Marhas, Advocate.
For respondents No.4 & 5	– Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

13-01-2021

Heard.

1. This petition has been brought praying for invocation of the Article 227 Constitution of India to quash the order dated 19.03.2019 passed by the C.G. State Waqf Tribunal, Raipur, C.G. dismissing the application of the petitioners filed under Order 1 Rule 10 of C.P.C.
2. The petitioners moved an application under Order 1 Rule 10 of C.P.C. before the Tribunal praying that the President of the Intejamiya Committee Waqf Board has been made a party in the petition, whereas the Committee is constituted of 50 members, who also have a right to make their representation, therefore, not arraying the petitioners as party has affected the right of representation of these petitioners. On this basis, it was prayed that they may be made party in the proceeding before the Waqf Tribunal. No written reply was submitted by the respondent side. The learned Waqf Tribunal has held that the Committee is already represented through respondent No.2, therefore, there is no need to add the petitioners as party in that proceeding, hence, the application was rejected.
3. It is submitted by the learned counsel for the petitioners that the petitioners are the members of the Management Committee and the passing of final order in the proceeding may affect the interest of the petitioners. Therefore, there was no harm in arraying the petitioners as

parties in the proceeding. Hence, the learned Tribunal has committed error in dismissing the application for addition of parties in the proceedings. Therefore, it is prayed that the petition may be allowed and relief be granted to the petitioners.

4. Learned counsel for the respondent No.1 opposes the petition and the submissions made in this respect and submits that there is no need for interference in the impugned order.
5. Learned counsel for the respondent No.2 submits that no error has been committed in the impugned order. The petitioners are proper parties but they are not necessary parties.
6. Reliance is placed on the judgment of Supreme Court in the case of **State of Assam Vs. Union of India and others** reported in (2010) 10 SCC 408 and in the case of **Mumbai International Airport (P) Ltd., vs. Regency Convention Centre and Hotels (P) Ltd.**, reported in (2010) 7 SCC 417, it is submitted that plaintiff is *dominus litis* in the suit and he may chose persons against whom he wishes to litigate and he cannot be compelled to sue and litigate against whom he does not seek any relief. Therefore, this petition may be dismissed.
7. Learned counsel for the respondent No.3 is not represented.
8. Learned counsel for the respondents No.4 and 5 submits that the Committee has been newly formed and removal of the respondents No.3, 4 and 5 from Committee is challenged under Section 83 of the Waqf Act 1995, in which the petitioners are not necessary parties, therefore, no error has been committed and the petition may be dismissed.
9. Heard learned counsel for both the parties and perused the documents present.

10. Considered on the submissions. Respondent No.1 has drawn proceeding under Section 64 of the Waqf Act, 1995 and ordered the removal of respondent No.3, 4 and 5 by order dated 10.09.2018, this order has been challenged before the Waqf Tribunal under Section 83 of the Waqf Act, 1995. Section 83(1) of the Act empowers the Tribunal to determine any dispute, question or other matter relating to a Waqf or Waqf property under the Act. The order of removal of all the respondents No.3, 4 and 5 has been passed by the respondent No.1 i.e. the Waqf Board itself in the proceeding drawn under Section 64 of the Act, 1995. There has been no representation or complaint made by the petitioners against the respondents No.3, 4 and 5, therefore, the petitioners may be persons interested in the waqf but they are neither proper parties nor necessary parties.

11. In the case of ***Mumbai International Airport Pvt. Ltd.*** (Supra) the Supreme Court has held in paragraph 8 and 9 as follows:-

“8. The appellant alleged that the Information Memorandum proposing to privatise the management did not exclude the area which was the subject-matter of the suit; and that the suit plot could not however be leased to the appellant in view of the interim order in the pending suit of the first respondent. The appellant therefore claimed that it had, or would have, an interest in the suit land; and at all events, it was interested in acquiring it by lease depending upon the decision in the suit and therefore it was a necessary party and in any event a proper party.

9. The said application was resisted by the first respondent inter alia on the ground that the appellant did not have any interest in the suit property and therefore the appellant was neither a necessary party nor a proper party to the suit. It was also contended that AAI itself being a substantial shareholder, having 26% share in the appellant company, would protect the interest of the appellant by contesting the suit and therefore appellant was not a necessary party. AAI has also filed a response to appellant's application for impleadment raising two contentions : (i) any

impleadment at that stage of the suit would delay the recording of evidence and final hearing thereby seriously affecting the interests of AAI; and (ii) the suit plot measuring 31,000 sq.m. was not leased to the appellant.”

12. In the present case, the petitioners cannot be made party as that may result in making out of a new case, further, the respondent No.1 is not interested to make them party.

13. Hence, I am of this view that the learned Tribunal has not committed any error in rejecting the application filed by the petitioners, hence, this petition is without any substance, which is dismissed at the motion stage.

14. Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge