

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

CIVIL REVISION APPLICATION NO.21 OF 2020

Syed Mushtaq Ahmed Khatib s/o.
Syed Ashfaq Ahmed Khatib,
Age : 32 years,
Occ. Mutawalli and Agriculture,
r/o. Mahboobpura, Udgir,
Dist.Latur

..Applicant

Vs.

The Maharashtra State Board of
Waqfs, Panchakki, Aurangabad,
through Chief Executive Officer,
Aurangabad
and others

..Respondents

Mr.R.S.Deshmukh, Senior Advocate i/b. Mr.S.A.P.Quadri,
Advocate for applicant

Mr.N.E.Deshmukh, Advocate for respondent no.1 (absent)

Mr.M.B.W.Khan, Advocate for respondent nos.3 to 5

**CORAM : R.G. AVACHAT, J.
DATE : FEBRUARY 18, 2021**

ORDER :-

Heard

2. The challenge in this Civil Revision Application is to
the order dated 21.01.2020 passed by Maharashtra Waqf

Tribunal, Aurangabad, on application (below Exhibit-319) in Waqf Suit No.34 of 2016. By the impugned order, the application moved by the revisional applicant (plaintiff) for production of documents came to be rejected.

3. Mr.Deshmukh, learned senior counsel for the applicant, would submit that the documents sought to be produced were very much relevant for deciding the suit. The applicant/plaintiff has filed the suit for declaration and injunction. The applicant/plaintiff sought relief of declaration as Khatib, Imam, Mutawalli of Jama Masjid, Idgah, Udgir and Inamdar of lands bearing survey nos.8, 9, 84, 85 and 99 Gat Nos.11, 12, 331, 332 and 347. The respondents/defendants, in their affidavit of examination-in-chief, made a reference to the waqf suit nos.86 of 2016, 118 of 2016 and 174 of 2016 and stated that Inamdars filed suit before Waqf Tribunal, Aurangabad. Learned senior counsel would further submit that the Inampatrak is a public document to show Inam land and

names of persons rendering services to the Institution. A copy of Writ Petition No.8177 of 2017 was also sought to be produced along with the withdrawal purshis of the uncle of the applicant/plaintiff. According to learned senior counsel, the trial Court rejected the application simply on the ground of the direction given by the High Court to dispose of the suit within a time frame.

4. Learned counsel for the respondents/defendants would, on the other hand, submit that hearing of the suit has been concluded. The matter is reserved for judgment. The documents sought to be produced are not relevant. Some of the documents sought to be produced pertain to the persons who are not parties to the suit. The documents, production of which was sought for, are not public documents. In the pleadings, relevancy of these documents has not been averred. Learned counsel relied on the Order VI Rule 2 of the Code of Civil Procedure. He would further submit that the plaint, written statement,

etc., are not public documents. Learned counsel supported the impugned order.

5. True, the trial Court has been directed to decide the suit within a time frame. Hearing of the suit has been concluded. The matter is said to have been reserved for judgment. The applicant/plaintiff has filed the suit for declaration as Khatib, Imam, Mutawalli of Jama Masjid, Idgah, Udgir and Inamdar of lands bearing survey nos.8, 9, 84, 85 and 99 Gat Nos.11, 12, 331, 332 and 347. The applicant/plaintiff claims to be successor of the original Inamdar. True, Inampatrak sought to be produced on record, does not contain the names of either original Inamdar or his successor. It, however, contains survey numbers of the lands, with an endorsement that Indamdar is no more. His heirs are rendering services at Jama Masjid and Idgah at Udgir. From the claim in the suit, it is crystal clear that these documents are relevant and required to be before the trial Court.

6. The second document sought to be produced pertain to a withdrawal purshis preferred in Waqf suit No.174 of 2016.

7. An affidavit is filed by Syed Ishtiyaque Ahmad Khatib in support of the withdrawal purshis. It appears that the said suit pertains to the very lands, which are the subject matter of the present suit. The record indicates that the respondents themselves had moved an application seeking the witness summons for production of Record and Proceedings of waqf suit no.174 of 2016. The same itself suggest that these documents are relevant and required to be before the trial Court.

8. The next document sought to be produced is a copy of Writ Petition No.8177 of 2017 and the order of this Court thereon. From reading paragraph 2 of said Writ Petition it would again be clear that it pertained to the subject matter of the present suit. After production of

these documents, the question of the manner in which those are required to be proved, would be relevant.

9. The impugned order indicates that the trial Court has mainly rejected the application on the ground of the suit being time bound. It is also observed that there is no reference to the documents in the pleadings. The documents which are sought to be produced are in the nature of public records kept of private documents. It is reiterated that all these documents pertain to the subject matter of the suit. True, there is delay in seeking production of these documents but the same should not be a cause of miscarriage of justice on account of not granting an opportunity to produce the same. In the Revision Application, it has been averred that respondent (defendant no.3), in his examination-in-chief, referred to the aforesaid three waqf suits.

10. Since the documents sought to be produced are found to be relevant, the trial Court ought to have allowed its production. It could have saddled the applicant/plaintiff with costs.

11. For the aforesaid reasons, Revision Application is allowed in terms of prayer clause (c). The application below Exhibit-319 is allowed to the extent of production of those documents.

[R.G. AVACHAT, J.]

KBP