

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

CIVIL REVISION APPLICATION NO.20 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 learned counsel for the parties.

2. The challenge in this Civil Revision Application is to the order dated 23.01.2020 passed by Maharashtra Waqf Tribunal, Aurangabad, on applications below Exhibit-321 and Exhibit-323 in Waqf Suit No.34 of 2016. By the impugned orders, the applications moved by the revisional applicant (plaintiff) for summoning Record and Proceedings of Waqf Suit Nos.86 of 2016, 118 of 2016 and 174 of 2016 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 had filed suit before Waqf Tribunal, Aurangabad. According to learned senior counsel, the trial Court rejected the application mainly on the ground of the direction given by the High Court to dispose of the suit within a period of a time frame.

4. Learned counsel for the respondents/defendants would, on the other hand, submit that the applicant/plaintiff had moved application below Exhibit-311 for summoning the Record and Proceedings of the aforesaid suits exhibiting certified copy of the plaint in the suit. In the alternative, a summons was sought to the Ex-Superintendent of Waqf Tribunal for evidence along with Record and Proceedings of those suits. The Tribunal

rejected the said application vide order dated 12.12.2019. Said order was not challenged. The applications below Exhibit-321 and Exhibit-323 are not maintainable. Mere production of the documents would not be sufficient. The plaint, written statement and affidavit in the proceedings are not public documents. The concerned persons would be required to be examined in proof of such documents. Learned counsel for the respondents would further submit that the trial Court has rightly rejected the applications below Exhibit-321 and Exhibit-323 as those documents were not necessary to adjudicate the suit. The documents sought to be produced had not been referred to in the pleadings or evidence as well.

5. It is to be stated that the respondents/defendants have filed application below Exhibit-311, seeking production of Record and Proceedings in Waqf Suit Nos.86 of 2016, 118 of 2016 and 174 of 2016 and

exhibiting certified copies of the complaints in those suits. In the alternative, a summons was sought to the Ex-Superintendent of Waqf Tribunal for evidence along with Record and Proceedings of those suits. The same indicates that both the parties to the suit want to place reliance on the complaints and certain documents in the aforesaid three waqf suits. In the given circumstances, the trial Court ought not to have observed that no relevancy of those documents has been shown for deciding the suit.

6. Since the Record and Proceedings of the aforesaid three waqf suits have been relied upon by both the parties to this petition before the Waqf Tribunal, the same indicates its relevancy for deciding the waqf suit pending before the Waqf Tribunal. The Waqf Tribunal, therefore, ought to have allowed the applications below Exhibit-321 and Exhibit-323. Since those applications are not allowed, interference is called for with the impugned order. The Revision Application, therefore, succeeds.

7. Revision Application is allowed in terms of prayer clause (C). The applications below Exhibit-321 and Exhibit-323 are allowed to the extent of summoning Record and Proceedings of Waqf Suit Nos.86 of 2016, 118 of 2016 and 174 of 2016.

[R.G. AVACHAT, J.]

KBP