

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.113 OF 2018

1. Liyakat s/o Kasam Mulla
Age 56 years, Occu. Business
2. Mohammad Ali Hussain Mulla
Deceased through L.Rs.
- 2A) Sugrabi w/o Mohammad Ali Mulla
Age 75 years, Occu. Agri.,
R/o Rahamatpur, Tq. Koregaon,
District Satara
- 2B) Zahida Rafiq Patel,
Age 45 years, occu. Household,
R/o Bapuji Salunke Nagar,
Karve Naka, Karad,
Tq. Karad, District Satara
- 2C) Shakil s/o Mohammad Ali Mulla,
Age 49 years, Occu. Agri.,
R/o Rahamatpur, Tq. Koregaon,
District Satara
G.P.A. Holder of 2A and 2B
3. Rahimatullah s/o Rashid Mulla,
Age 67 years, Occu. Pensioner
4. Inayatullah s/o Rashid Mulla
Age 70 years, Occu. Business,

Nos.3 and 4 R/o Rahimatpur,
Tq. Koregaon, District Satara.

... **PETITIONERS**
(Original Applicants)

VERSUS

1. Maharashtra State Board of Waqf,
through its Chief Executive Officer,
at Panchakki, Aurangabad

2. Chaitanshah Peer Mira Shaha
Sayyed Hussaini Waqf,
Through – Turab Shah @ Dadasaheb
Lalshah Fakir, Age 52 years,
Occu. Agri., R/o Rahimatpur,
Tq. Koregaon, District Satara
3. Aziz s/o Hadi Inamdar,
Age major, Occu. Business,
R/o Rahimatpur, Tq. Koregaon,
District Satara
4. Ayyaz s/o Yakub Mulla,
Age 72 years, Occu. Pensioner,
R/o Rahimatpur, Tq. Koregaon,
District Satara

... **RESPONDENTS**
(Nos.3 & 4 Orig.
Applicant No.3 & 4)

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Shri Y.B. Pathan, Advocate for applicants
Shri N.E. Deshmukh, Advocate for respondent No.1.
Shri Pravin Mandlik, Senior Counsel, instructed by
Shri P.P. Mandlik, Advocate for respondent No.2.

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment: 24th February, 2021.

Date of pronouncing judgment : 10th June, 2021.

J U D G M E N T :

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. The challenge in this revision application is to the order passed by the Chief Executive Officer (C.E.O.),

Maharashtra State Waqf Board, Aurangabad on 21/10/2009 and affirmed by the Waqf Tribunal vide its judgment and order dated 10/5/2018, passed in Waqf Application No.78/2009. The C.E.O., Waqf Board granted the application filed by the respondent No.2 for removal of encroachment made by the applicants herein on the land Survey No.306, situated at village Rahamatpur, Taluka Koregaon, District Satara since the said land has been held to be the property of the Waqf – Chaitanshah Peer Mira Shaha Sayyed Hussaini. The said order has been affirmed by the Waqf Tribunal. The applicants are, therefore, before this Court.

3. Heard Mr. Yunus Basheer Pathan, learned counsel for the applicants, Mr. N.E. Deshmukh, learned counsel for respondent No.1 and Mr. P.V. Mandlik, learned Senior Counsel for respondent No.2.

The learned counsel for the applicants would submit that, the father of the respondent No.2 had filed an application to the Assistant Charity Commissioner (A.C.C.) for registration of the entire land in Survey No.306 as a Waqf property. The learned A.C.C. conducted the enquiry and held that only the land admeasuring 20 gunthas under Kabrastan

in the said Survey Number and other piece of land admeasuring 8 x 7 ft. under mound is Waqf property. Remaining land in Survey No.306 was a private property in possession of the persons including the applicants herein. The A.C.C. personally paid visit to the land before the said order was passed. Although the order of the A.C.C. has been set aside by the Joint Charity Commissioner in Appeal Nos.34/1984 and 37/1984 and Revision Application No.1/1992, the said order of Joint Charity Commissioner has been subject of challenge in Trust Application Nos.291/1996, 292/1996 and 293/1996 before the District Court, Satara. The learned counsel would further submit that, the father of the respondent No.2 had on one hand claimed the entire land in Survey No.306 to be the Waqf property, and on the other sold major portion of the said land claiming it to be his private property. According to the learned counsel, since the dispute dates back to the coming into force of the Waqf Act, 1995, (for short, Waqf Act) by virtue of Section 7(5) of the Waqf Act, the Waqf Tribunal has no jurisdiction to determine the present matter holding it to be Waqf property since the very matter was the subject matter of the proceedings in Trust Application Nos.291/1996, 292/1996 and 293/1996 before the District Court, Satara. In support of his contentions, the learned

counsel has placed reliance on the judgment of the Apex Court in case of **Sardar Khan & ors. Vs. Syed Najmul Hasan (Seth) & ors.** [2007 ALL SCR 1759] and **Md. Moinuddin Vs. Md. Mustafa & ors.** [AIR 2010 PATNA 24]. According to learned counsel, there was no shred of evidence to indicate the property in possession of the applicants to be the Waqf property. He took me through the relevant evidence referred to and observations made by the learned A.C.C. in his judgment dated 6/8/1984. The learned counsel would further submit that, the respondent No.2 has challenged the order passed by the High Court, rejecting the Application No.2127/1990 in Second Appeal No.268/1990 on 12/6/1990. The learned counsel would ultimately urge for setting aside the impugned orders.

4. Mr. Deshmukh, learned counsel representing respondent No.1 and Mr. Mandlik, learned Senior Counsel representing respondent No.2 would, on the other hand, submit that, it is a Waqf Tribunal which has jurisdiction under Section 83 of the Waqf Act to decide whether it was a Waqf property. The learned counsel took me through the relevant documentary evidence on record namely very old 7/12 extracts of the land Survey No.306 to ultimately submit that

the said land is Waqf property. They would further submit that, the applicants did not produce evidence to prove their title to the land in their possession. The learned counsel ultimately urged for rejection of the Civil Revision Application.

5. I have considered the submissions made by the learned counsel. Perused the impugned orders. Gone through the evidence in the matter. The land Survey No.306 totally admeasures 2 acres and 19 gunthas (1 Hectar). The 7/12 extract of the said land for the years 1925 to 1931 is on record. The entire land is shown to be a burial ground (मसनवटा). The same status of the land Survey no.306 continued in the revenue record for years together. The Superintendent of Land Record had informed that the land Survey no.306 has not been subdivided. [पोट हिस्से पडलेले नसल्यामुळे व फाळणी झालेली नसल्यामुळे फाळणी उतारे देता येत नाहीत.]

6. It appears that, it is only in 1977 onwards some plots in the land Survey No.306 have been sold to various persons. Names of purchasers have been entered in the city survey record. The applicants, however, did not have any document of title to substantiate their claim of ownership over the respective portion in their possession, forming part of the

land in Survey No.306. It is true that the A.C.C., after having paid visit to the land and on hearing the parties, held that only 20 gunthas of land and another piece of land admeasuring 8 x 7 ft. under mound in Survey No.306 is the Waqf property. The applicants would not be benefited by relying on the judgment of the learned A.C.C. since the same has been set aside by the Joint Charity Commissioner. Although the applicants and others challenged the order of the Joint Charity Commissioner in Trust Application Nos.291/1996, 292/1996 and 293/1996 before the District Court, Satara, they have been unsuccessful therein. Certified copies of the judgments and orders passed in those Trust Civil Applications have been placed on record of this Court. There is nothing to indicate the applicants to have challenged the said judgments and obtained stay to the findings recorded therein. As such, as of today, the entire land in Survey No.306 is a Waqf property. Whatever dispositions/ sale of land in Survey No.306 have been effected by the father of the respondent No.2 would be illegal and liable to be set aside in appropriate proceedings.

7. After having considered the evidence on record, both the authorities below have held the applicants to be the

encroachers on the Waqf land. They have, therefore, been directed to remove the encroachments. I do not find the authorities below to have acted in exercise of their jurisdiction illegally or with material irregularity. There is, therefore, no reason to interfere with the impugned orders. The Civil Revision Application fails and is thus dismissed. Rule discharged.

**(R. G. AVACHAT)
JUDGE**

fmp/-