

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

ANTICIPATORY BAIL APPLICATION NO. 827 OF 2021

**ASLAM NAWAB KHAN
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Gaware Niteen V.
App for Respondent State : Mr. A. V. Deshmukh
Advocate to Assist PP : Mr. N. E. Deshmukh
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CORAM : PRAKASH D. NAIK, J.

DATE : 21st OCTOBER, 2021

ORDER :

1. The applicant is apprehending arrest in Crime No.205 of 2021, registered with Ashti Police Station, Tal. Ashti, Dist. Beed, on 02-07-2021, for offences punishable under Sections 409, 467, 468, 471 and 120-B r/w 34 of the Indian Penal Code and Section 52(A) of the Waqf Act, 1954.
2. The first information report was registered on 02-07-2021 by Amin Jama P. Khilikhu Jama, District Waqf Officer, Beed. It is alleged that the property situated at Mauje Chinchpur, Masjid and Darga Garib Peer, registered in Government gazette bearing survey No.31 admeasuring 0.29R, survey No.32 admeasuring 28 acre 21 gunthe, survey No.35 admeasuring 26 acre 28 gunthe and survey No.65 admeasuring 17 acre 1 guntha. This is a property from Nizam era and is looked after by Irshan Nawab Khan and Aslam Nawab

Khan as Inamdars. It was noticed that the name of Waqf Board as owner of the said property was deleted and names of Irshan Nawab Khan and Aslam Nawab Khan were inserted in 7/12 and 8A extract and the land was converted into class-1. Irshan Nawab Khan and Aslam Nawab Khan filed proceedings before the Deputy Collector under Sections 2(A) and 6(A) of Hyderabad Abolition of Inams and Cash Grants Act, 1954, for sale of property. Deputy Collector, without making Waqf Board party to the proceedings, declared the property as Madat Mash vide Hyderabad Abolition of Inams and Cash Grants Act, on 09-03-2018, allowing Irshan to deposit possession charges with Talathi and to enter the name as owner in Gat Nos.163, 162 and 188. The complaint was filed with District Collector on 27-05-2021 and directions were issued not to act on the previous order. The accused fabricated documents. The accused are brothers. Sale deed was executed in favour of the applicant.

3. The applicant preferred an application for anticipatory bail before the Court of Sessions at Beed. The application was rejected by order dated 17-07-2021.

4. Learned advocate for the applicant urged as follows:

(i) The accused were Inamdars of the disputed property and they were in conscious possession of the property. It was under the cultivation of Inamdars.

(ii) Necessary proposal was submitted to competent authority i.e. Deputy Collector, Land Reforms, Beed by Irshan Nawab Khan for abolition of Inam towards disputed property. The said lands were in possession of Irshan Nawab Khan since more than 60 years and findings were urged by authorities that the land is Madat Mash Inam Lands.

(iii) Co-accused Irshan has submitted necessary documents with competent authority with proposal for abolition of Inam. On 09-03-2018, Deputy Collector, Land Reforms, Beed in proceedings No. 2017/Samanya/Inam/Kavi-332 has passed detailed order declaring the disputed property as Madat Mash Inam land and Irshan was declared as restricted owner. Reliance is placed on the order dated 09-03-2018 passed by the Deputy Collector, Land Reforms, Beed, along with necessary proposal.

(iv) In accordance with the proceedings, the District Collector, Land Reforms, Beed had issued directions to the District Waqf Officer, through Tahsildar and necessary orders have been passed.

(v) Occupancy price was deposited and thereafter, the co-accused Irshan preferred application before the Deputy Collector, Land Reforms, Beed, on 02-01-2020 for converting land Gut Nos. 162, 163, and 188 of village Chinchpur to class-1 lands and on

05-02-2020, the Deputy Collector, Land Reforms, Beed has ordered the said lands to class-1 after depositing 50% Nazrana amount of market value of the lands. The applicant has relied upon the order dated 05-02-2020, passed by the Deputy Collector, Land Reforms, Beed and the payment receipt of Nazrana amount.

(vi) Irshan has deposited Rs.69,31,300/- as Nazrana amount and land Gat Nos. 162, 163 and 188 of village Chinchpur were converted to class-1 land.

(vii) On 04-07-2020, Irshan Khan executed registered Sale Deed bearing No.1516/2020, in favour of the applicant for consideration of Rs.1,01,00,000/-. The applicant is a bonafide purchaser for value under the sale deed and the said document is in force.

(viii) On execution of sale deed, the applicant took necessary steps for conversion of land to non agricultural land and sold properties in favour of other purchasers by effecting plots. The names of some purchasers were recorded in revenue record. The Waqf Board belatedly preferred the appeal before the District Collector, Ithat Inam Abolition, Beed on 09-11-2020, along with applicant for condonation of delay.

(ix) The applicant is a purchaser of the land from co-accused Irshan Khan who was the original Inamdar of the property. The

transaction was effected as per order dated 09-03-2018 passed by the District Collector. After effecting necessary inquiry N.A. permission has been sought. The applicant is not concerned with any prior action initiated by the co-accused before executing the sale deed. The applicant was not part of the earlier proceedings initiated by Irshan Khan.

(x) In the inquiry conducted by Maharashtra Waqf Board, the Tahsildar submitted fact finding report, which refers to stages of granting permission in favour of Irshan Khan.

(xi) The Deputy Collector, Land Reforms, vide general order dated 27-05-2021 has stated that necessary orders with regard to Devasthan lands which were passed in the year 2018 and even prior to that, may not be given effect and/or the entries taken in that regard may be suspended. The said order is general and vague which has been issued without affording opportunity of hearing to the affected parties.

(xii) The applicant has been falsely implicated in this case. Custodial interrogation of the applicant is not necessary. The allegations in the FIR are false. The applicant is willing to cooperate with the investigation. The investigation relates to the documents, hence, this application may be allowed.

5. The prosecution has filed reply opposing the relief sought in this application. Learned APP has submitted that the disputed land is Inam land which was granted to Masjid and Darga Garib Peer. The land is notified in the Government gazette dated 11-04-1974 bearing survey No. 162 (old survey No.31) admeasuring 00H 29R, admeasuring 28H 21R and old survey No.35 admeasuring 26H 28R is the land granted for maintenance of Masjid and Darga called as Khidmad Inam land. Tajbi Yaqub was appointed as Inamdar to look after the said land, who was required to collect income from the said land and maintain the Waqf property and to do the needful for the property. After demise of Inamdar his son was Inamdar of the land and thereafter his ancestors. The last payment was made by the Bahadur Khan Aabas Khan. The current Inamdar was agreed hand in glow with the applicant and his brother, and they decided to convert the Waqf property into their names for which they created various documents. They were aware that status of Waqf property cannot be changed without the permission of Waqf Board. They created documents known as Samati Patra (consent letter) in connivance with each other. No date is mentioned on the said document. The seal of the office of Sub Treasury of Ashti shows that the stamp was issued on 08-12-2016. It was sold on 19-12-2016 for the purpose of Bank

transaction. Thus, the stamp paper could have been used for bank transaction and not for any other purpose. The names are mentioned as Tajbi Yaqub, Aflaq Shaikh Hussain, Shaikh Razzaq Husain, Shaikh Raheman Hussain, Bahadurkha Abbaskha, Sherkha Abbaskha claiming to be legal heir of the deceased Tajbi Yaqub and Aflaq Hussain. They executed consent letter in favour of Irshan Nawab Khan. The witnesses to the said document were Haridas Dashrath Satpute and Subhash Bhaurao Shelke. These documents have no legal sanity. The applicant and his brother used this document to transfer the land in their names.

6. Learned APP further submitted that the applicant and the co-accused had realised that the said document is of no use for them and they created another document. Purportedly, the consent letter was executed between Irshan Nawab Khan and five other persons, namely Bahadurkha Abbaskha Pathan, Sherkha Abbaskha Pathan, Zakir Bahadurkha Pathan, Jamirkha Bahadurkha Pathan, Aslam Sherkha Pathan. The earlier consent letter was not part of this document. The earlier consent letter was executed by Shaikh Razzaq Bahadurkhan and Sherkhan as legal heirs of Shaikh Razzaq Hussain and Shaikh Raheman Hussain. Their names are missing in the second consent letter. The said consent deed was registered in the said document. It is stated that Rs.10,00,000/- were taken as

consideration by applicant's brother Irshan. During investigation it was found that the cheques were never deposited in the bank and said amount is not withdrawn by them till today, which shows that the consent deed is vague and it was created to obtain orders from the authorities. In the aforesaid documents various money transactions are reflected. There is no sale deed between the brother of applicant and original Inamdar. Another document was executed between Irshan Nawab Khan and Shaikh Razzaq Hussain and Shaikh Raheman Hussain. These documents does not show any date. Various money transactions are mentioned. All these documents were created to show that the applicant and the co-accused are looking after the said land. The applicant and his brother had deceived Waqf Board and without making them a party, application was preferred before the Deputy Collector and obtained order dated 09-03-2018. The then Deputy Collector Shri N. R. Shelke has been suspended during his service by the Divisional Commissioner, Aurangabad, for his misdeeds in various cases. After the Waqf Board learnt about the fraudulent acts committed by the accused, the FIR was registered. The learned APP further submitted that the applicant and his brother are involved in the crime. The Waqf property is illegally sold to the applicant. The accused falsely claims to be in possession of the property since more than 60 years. The applicant has further sold the property to various

persons. The sale deed is bogus. It is merely a paper document. There were no intention to act upon it and no consideration was made. In the sale deed it is mentioned that the consideration amount was Rs.1,01,00,000/- and the details of how payment was to be done is given. Cheque numbers were mentioned. It is also stated that the brother of applicant has received the amount after realisation of cheques. During the investigation, it was revealed that cheque Nos. 557670 to 557679 were never deposited in the bank. It was never presented for realisation. The letter dated 04-09-2021 issued by the bank shows that the said cheques are not presented. The applicant had executed sale deed in favour of original Inamdar Syed Jameel s/o Syed Janimiyan. When the original Inamdar had given consent letter to the applicant, question of creating sale deed in favour of original Inamdars does not arise. This shows that the accused had hatched conspiracy to grab the land of the Waqf board. It is submitted that, in the similar facts and situations, this Court had rejected the anticipatory bail application filed by Syed Jameel s/o Syed Janimiyan. Huge amount is involved in the alleged transactions. Custody of the applicant is required to recover the amount and interrogate him. The bank record shows that the financial condition of the applicant was not sound prior to the transaction and it is difficult to believe that he had huge money to purchase the land. Hence, the application may be rejected.

7. Learned advocate for complainant has adopted submissions of learned APP. Affidavit has been filed on behalf of the informant, opposing the application for anticipatory bail. It is contended that the accused in collusion had approached the Deputy Collector, Land Reforms, Mr. N. R. Shelke, who has been subsequently suspended. Mr. Shelke was involved in illegal transfer of Government lands to private persons and this Court had directed inquiry in the illegal transfer of lands done on the basis of orders issued by Mr. Shelke. The orders were set aside by the Divisional Commissioner. The accused had acted in collusion with the said authority and converted the land from Khidmad Mash service Inam land to Madat Mash service Inam land. The accused were involved in fabricating documents.

8. Initially consent deed was issued by Shaikh Razzaq Bahadurkhan and Sher Khan in their capacity as legal heirs of Tajbi Yaqub and Aflaq Hussain. The consenting parties had consented that the co-accused Irshan Khan, who was given land many years ago, and they have no objection if he mutates his name with land. The witness to the consent deed Subhash Bhaurao Shelke is distant relative of N.R. Shelke, the then Deputy Collector, Land reforms, Beed. The applicant and co-accused, on the basis of the consent deed, entered into the shoes of Inamdars and legal heirs of

deceased Inamdars and applied before the Deputy Collector for conversion of land from Khidmad Mash to Madat Mash. Irshan Khan had no authority to initiate proceedings without making Waqf Board a party. Pursuant to order dated 09-03-2018 name of Irshan Khan was mutated and mutation entry was sanctioned. The accused applied to the Tahsildar to convert the land in non-agricultural land by application dated 17-08-2020. The Gram Panchayat submitted favourable report to convert the land from agriculture to non-agriculture use. Custodial interrogation of the applicants is necessary and the application may be rejected.

9. I have perused the documents on record as well as the investigation papers tendered by learned APP. It is the prosecution's case that the landed properties bearing survey No.31 admeasuring 29 gunthe, survey No.32 admeasuring 28 acre 21 gunthe and property bearing survey No.35 ad-measuring 26 acre 28 gunthe and property bearing No.65 admeasuring 17 acre 1 guntha bearing new Gut Nos. 162, 163 and 188 at Chinchpur belongs to Masjid and Darga Garib Peer and notified to be Waqf property in the gazette of Government of Maharashtra. The applicant and his brother mutated their names in the revenue record of the property as Inamdar. They converted the land from class-2 occupancy to class-1 occupancy. Both of them got the Inam abolished by applying before Deputy

Collector and without making Waqf Board as a party to the proceedings. The accused fabricated documents. In the Maharashtra Government Gazette dated 11-04-1974 at Sr. No.12, it is gazetted that land bearing survey No.31, 32 and 35 of village Chinchpur known as Masjid is a religious Waqf. At serial No.11 property bearing No.65 situated at village Chinchpur is gazetted to be property of Darga Garib Peer Saheb for religious purpose. There are 7/12 extract of the survey numbers in consolidation Gat Nos. 162, 163 and 188, came to be allotted to these survey numbers. The 7/12 extract shows that in the possessory column it is mentioned as Masjid Inam and in the other rights column names of Inamdar are mentioned. Thus, it is a Waqf property. In the other rights column name of Abbas Khan was entered and after his demise Tajbi Yaqub Khan, Bahadur Khan Abbas Khan and others were entered. The accused has not produced consent deed to show that the legal representatives had consented to enter the name of Irshan. The prosecution has pointed out consent deeds executed by legal representatives in 2020 after the order of Deputy Collector dated 09-03-2018. The order dated 09-03-2018 indicates that Shaikh Razzaq Husain, Shaikh Raheman Hussain, Bahadurkha Abbaskha, Sherkha Abbaskha adjudicated consent deed in favour of Irshan. In the consent deed produced by prosecution age of Irshan Khan is mentioned as 26 years. Name of Irshan Khan was recorded

as per the order of Deputy Collector. Irshan has executed number of sale deeds and one of them is in favour of the applicant. The applicant is brother of Irshan. The Sale deed of applicant pertains to Survey No.32 Gut No.163 ad-measuring 11H 39R, the total consideration amount of Rs.1,01,00,000/- is shown in the sale deed. In the consent deed consideration of amount of Rs.10,00,000/- was shown. The said amount was in respect of Gut No.163 and Gut No.188. This creates doubt about the actual consideration amount. The cheques issued towards consideration were not realised. The order of Deputy Collector dated 09-03-2018 makes it evident that the notice of the proceedings was not given to the Waqf Board. The brother of applicant did not make Waqf Board as party to the proceedings and no notice, therefore, was given to the Waqf Board by the Collector. There was no occasion for the brother of the applicant to get executed two consent deeds from the legal representatives of deceased Inamdar after the order was passed by the Deputy Collector. The said transaction was carried out in quick sequence.

10. The applicant is conspirator. He has acted in connivance with his brother Irshan. The documents on record, as referred to herein above, clearly shows dishonest intentions of the applicant and his brother and that they were acted in connivance with each

other to grab the property of Waqf board. The applicant cannot contend that he is barely a bonafide purchaser. His complicity is evident from the record. His offence is of serious nature. Huge property belongs to Waqf Board were attempted to be grabbed. Although the order of Deputy Collector is under challenge and directions were issued thereafter with regard to the previous transactions, that could not absolve the accused of criminal prosecution. The documents are fabricated. They have acted in connivance with the Deputy Collector. The case of the prosecution is that he has acted in connivance with the then Deputy Collector. It is a larger conspiracy. It is deep rooted conspiracy and thorough investigation is required to be conducted. Custodial interrogation is necessary. Hence, no case for granting relief under Section 438 of Cr.P.C. is made out. The application is required to be rejected.

ORDER

The application is rejected.

11. At this stage, learned counsel for the applicant submits that the applicant intends to challenge this order before the higher Court and the interim protection granted to the applicant on 10th August, 2021 may be continued for a period of four weeks. The prayer is strongly objected by the learned APP as well learned counsel for the complainant. Considering the fact that the applicant

intends to approach the higher Court, interim protection is extended by a period of four weeks.

(PRAKASH D. NAIK, J.)

SVH