

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.131 OF 2021

1. Shaikh Farooq s/o Sk. Yusuf
Age 43 years, Occu. Agri.,
R/o At Post Kurla, Tq. Kandhar,
District Nanded.
 2. Shaikh Sultan s/o Shaikh Rasul,
Age 43 years, Occu. Agri.
R/o At Post Kurla, Tq. Kandhar,
District Nanded.
- ... APPLICANTS

VERSUS

1. The State of Maharashtra,
through District Collector, Nanded
Collector Office, Nanded
 2. The Tahsildar, Kandhar,
Tahsil Office, Kandhar,
District Nanded
 3. Maharashtra State Board of Waqf,
through its Chief Executive Officer,
Office at Panchakki, Aurangabad,
Tq. and Dist. Aurangabad
- ... RESPONDENTS

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Mr. Mujtaba Gulam Mustafa, Advocate for applicants
Mr. S.S. Dande, A.G.P. for respondents No.1 and 2
Mr. N.E. Deshmukh, Advocate for respondent No.3.
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CORAM : R. G. AVACHAT, J.

DATE : 15th December, 2021.

J U D G M E N T :

The challenge in this revision is to the order dated

29/11/2021, passed by the Maharashtra State Wakf Tribunal, Aurangabad on application (Exh.5), in Wakf Suit, being No.110/2021. By the impugned order, the application moved by the applicants herein for temporary injunction restraining the respondents No.1 and 2 from obstructing the applicants' using the suit land as a Wakf property, came to be rejected. The respondents No.1 and 2 are the revenue officials.

2. The facts giving rise to the present revision application are as under :-

The applicants claim to have been professing Islam. The land admeasuring 1 Hector, forming part of Gut No.71(1), particularly described in the plaint, is the subject matter of the suit. The applicants claim the suit land to have been Wakf by user. It is their case that a mosque stands on major portion of the suit land. The remaining land is being used as a graveyard. The authorities of the respondent No.2 unauthorisedly entered on the suit land for construction of a godown. The suit, therefore, came to be filed with an application (Exh.5) for temporary injunction.

3. The Wakf Tribunal found that the land

admeasuring 350 ft. x 128 ft. and 350 ft. x 50 ft. in Survey No.71 was being used for Muslim Kabrastan. On rest of the land, there is an old godown of the Revenue Department Water Tank, Grampanchayat Office, Anganwadi have also been located on the remaining land in Gut No.71. The Government Gazette does not indicate the entire land to be the Wakf property. The mutation entry No.1495, whereby the entry "Kabrastan" has been made in the other rights column of the 7/12 extract, has no legitimate foundation. The Wakf Board recorded the entire land to be the Wakf property pending the suit. There is nothing to indicate the respondents No.1 and 2 to have been issued a notice before the Wakf Board made such entry. The Tribunal, with all these reasons, rejected the application. This is how the original plaintiffs are before this Court in the revision.

4. Heard. Perused the impugned order. Gone through the pleadings and the material relied on.

5. Learned counsel for the applicants would submit that, in view of Section 147 of the Maharashtra Land Revenue Code, 1966, the entries in the revenue record have presumptive value. The survey map disclose the entire land to have been in use of the Muslims in the village. The

Tribunal did not address the points such as prima facie case, balance of convenience and irreparable loss. According to the learned counsel, the order impugned herein is inconsistent with the material on record.

6. Learned A.G.P. would, on the other hand, submit that, photographs on record indicate that, only a small portion of the land in Survey No.71 is under a mosque and graveyard. The rest of the land is in possession of the Revenue Department of the State. The godown of the Revenue Department, Water Tank, Grampanchayat Office, Anganwadi are located on the land Survey No.71. According to learned A.G.P., the Tribunal passed the impugned order consistent with the material on record.

7. The applicants claim the entire suit land to be a Wakf property by user. The suit land admeasures 1 Hector. In the Government Gazette, only land admeasuring 350 ft. x 128 ft. and 350 ft. x 50 ft. has been shown under a mosque and graveyard. The photographs on record indicate there is a wall fencing/ compound to the mosque. Neither the applicants nor anyone else claiming to be interested in the subject matter of the suit land has ever challenged the Government Gazette. It is true that, in the other rights

column of the 7/12 extract, there is an entry of Kabrastan and mosque. It is a specific case of the respondents – revenue authorities that those entries have been made by the then Talathi and Circle Officer unauthorisedly. It needs no mention that entry in the revenue record without having a legitimate foundation does not carry any presumptive value. The major portion of the suit land is vacant. It is a pasture land. The godown of the Revenue Department, Water Tank, Grampanchayat Office, Anganwadi are located on the suit land. Here again it is to be stated that, none of the persons claiming to have any interest in the subject matter of the suit did take recourse to legal provisions for removal of godown, water tank etc. The Tribunal has found the Wakf Board to have recorded the suit land to be the Wakf property during the pendency of the suit. There was nothing to suggest the respondents No.1 and 2 to have been heard before making such entry in the record.

8. It is true that, the Tribunal has not in so many words addressed the points such as balance of convenience and irreparable loss. Based on the material on record, the Tribunal found the applicants to have no prima facie case. The Tribunal addressed these points with cumulative reasons. The Court is concerned with the substance and not the form.

In view of this Court, the Tribunal, after having appreciated the material on record, has passed a reasoned order in exercise of its discretionary jurisdiction. This Court has no reason to interfere therewith.

9. In the result, the Civil Revision Application fails. It is dismissed. The Tribunal is requested to decide the suit as expeditiously as possible within a period of eight months from the date of receipt of the copy of this order.

(R. G. AVACHAT)
JUDGE

fmp/-