

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.369 OF 2022

ISHWAR BHANUDAS WAKHARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr.H.V. Tungar, Advocate for the petitioner.
Mr.S.B. Yawalkar, AGP for respondent/State.
Mr.M.U. Shelke, advocate for added party.

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CORAM : S.V. GANGAPURWALA
AND
S.G. DIGE, JJ.

DATE : 07th JANUARY, 2022

PER COURT :-

. At the request of Mr.Tungar, learned advocate for the petitioners leave to add one Samadkhan Sattarkhan Pathan as party. Mr.Shelke, learned advocate appears for added respondent. Learned A.G.P. appears for the respondent/State.

2. The petitioner assails the notice dated 31.12.2021 thereby directing removal of encroachment on the premise that this Court in Writ Petition No.11163 of 2018 had passed the order to remove encroachment.

3. In Writ Petition no.11163 of 2018 under order dated 27th March, 2019, this Court recorded the affidavit filed by the Revenue Officers and in view of the affidavit, disposed of Petition.

This Court under order dated 27th March, 2019 in Writ Petition No.11163 of 2018 did not adjudicate any issue. Against the order of eviction passed under section 54 of the Wakf Act, the present petitioners have filed application under section 83(2) of the Wakf Act before the Tribunal. The Tribunal on 5th March, 2021 has directed to maintain status-quo.

4. Learned advocate for the petitioners affirms that the said order of status-quo is still in force and the added party is also party in the said proceedings before the Wakf Tribunal. He has also appeared and filed written statement.

5. *Lis* between the parties is pending before Wakf Tribunal. As observed above, we have not decided or adjudicated any issue while disposing of Writ Petition No.11163 of 2018 under order dated 27th March, 2019. The respondents are entitled to remove the encroachment, however their action are always subject to judicial orders operating. The order of status-quo operates as on the date passed by the Wakf Tribunal in the proceedings between the present petitioner, the Revenue Officer, Wakf Board and present respondent no.3.

6. In the light of that we direct that the authorities can implement the order passed under

section 54 of the Wakf Act for removal of encroachment subject to the decision of the Wakf Tribunal in the pending proceedings. The authorities cannot circumvent the orders of the Wakf Tribunal. So long as prohibitory order of the Wakf Tribunal is in force naturally the authorities cannot proceed against the persons in whose favour the prohibitory orders are operating.

7. Subject to decision that may be taken in the Wakf proceedings, the parties or authorities may proceed further.

8. Writ Petition is disposed of. No costs.

9. It is for the parties to take efforts to get the matter decided before the Wakf Tribunal.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)

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