

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8497 OF 2022

MOHAMMAD KHIZAR MOHAMMAD ATHAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS

Mr.L.S.Shaikh h/f Mr.D.A.Bide, Advocate for the petitioners.
Mr.S.K.Tambe, AGP for the respondent/State.
Mr.N.E.Deshmukh, Advocate for respondent No.6.
Mr.R.K.Ingole, Advocate for respondent No.7.

(CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.)

DATE : AUGUST 22, 2022

PER COURT :

1. The petitioners have put forth prayer clause C to H as under :-

"C. By issuing appropriate writ, order or directions the office of respondent Nos. 3 to 7 may kindly be directed to remove the illegal construction of house property as well as shops thereof constructed by the encroachers over "The Mira Makka Shah Avliya Badi Dargah, Gadipura, Nanded, District Nanded" within stipulated period.

D. By issuing appropriate writ, order or directions the office of respondent No.7 may kindly be directed to take further legal action against the encroachers for illegal construction of house property as well as shops over "The Mira Makka Shah Avliya Badi Dargah,

Gadipura, Nanded, District Nanded" as per the inquiry held by the office of respondent No.7 dated 04.11.2015 (Exhibit "C")

E. By issuing appropriate writ, order directions the office of respondent No.6 may kindly be directed to consider the report dated 25.11.2019 and to take legal action as per permissible in the provisions of law by removing the illegal construction by the encroachers (alleged mutwalli) and also further may kindly be directed to remove him from the post of Mutwalli by cancelling the Virasat order if any.

F. By issuing appropriate writ, order or directions the office of respondents may kindly be directed to decide the representation tendered by the petitioners dated 31.10.2015, 06.06.2017, 11.09.2019 and 30.11.2021 by considering the ratio laid down by the Hon'ble Apex Court in the case of Jagpal's case as well as the government resolution dated 12.07.2011 and to remove the illegal construction of the house property as well as shop thereof with immediate effect.

G. By issuing appropriate writ, order or directions the respondents may kindly be directed to take criminal action by lodging the criminal complaint against the encroachers as per the guidelines issued by the Government of Maharashtra in its government resolution dated 10.10.2013.

H. The office of respondent Nos. 1 to 3 may kindly be directed to consider the prayer of petitioners and to take legal action for taking all the properties of "The Mira Makka Shah Avliya Badi Dargah, Gadipura, Nanded, District Nanded" in the custody of the Government of Maharashtra and further may kindly be directed to appoint the Administrator on the affairs on the said property."

2. The learned AGP and the learned Advocate representing respondent No.6 / Board, submit that there are several disputed issues involved in this matter. Rights and title of the parties possessing the properties will have to be considered. It will also have to be considered as to whether there is any encroachment or whether there is any illegal structure. The petitioners can avail of the statutory remedy by approaching the Wakf Tribunal and establish the encroachment as well as the illegal construction.

3. The learned Advocate representing respondent No.7 submits that a remedy u/s 54 of the Wakf Act is also available to the petitioners.

4. Considering the above, this petition is disposed off with liberty to the petitioners to avail of the remedy as is permissible in Law. The time spent by the petitioners in this Court from 25.04.2022 till the passing of this order, would be a good ground for condonation of delay, if any.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)