

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

915 WRIT PETITION NO.7636 OF 2019

GORAKH S/O. TUKARAM LOKHANDE & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

WITH
CIVIL APPLICATION NO.12787 OF 2021

DARGAH DAWAL MALIK (RAH)
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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Advocate for the petitioners : Mr.Shaikh Mazhar A.
Jahagirdar

AGP for Respondent-State : Mr.S.G.Sangle
Advocate for Respondent no.3 : Mr.K.D.Bade

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**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 27.04.2022

P.C. :

1. The petitioners have approached this Court with a grievance that application Exh.14, by which the proceedings before Waqf Board in Misc. Application No. 20 of 2017 were sought to be taken on record, was not accepted and simply 'filed'. In prayer clause-C, it is stated that the order dated 25.06.2012 passed by the Chief

Executive Officer, Maharashtra State Waqf Board, Aurangabad in case No.54/28/2007, be stayed till the decision on the stay application at Exhibit-5 in Waqf Misc. Application No. 20 of 2017. In prayer clause-D, the order dated 25.06.2012 passed by the Chief Executive Officer, Maharashtra State Waqf Board, Aurangabad, was sought to be stayed by way of interim relief.

2. This petition was filed on 21.06.2019. After hearing the learned Advocate for the petitioners for grant of *ex-parte* ad-interim protection, this Court [Coram : S.V.Gangapurwala & Mangesh S. Patil, JJ.] passed the following order :

1. The learned counsel submits that the application for condonation of delay and stay petition is pending before the Maharashtra Wakf Tribunal, Aurangabad. The contesting respondents are served in the said proceedings. They have not filed their say. The proceedings are challenging the order passed by the CEO directing eviction of the petitioners. According to the learned counsel, notice of eviction for

implementation of the order of the CEO has been issued by the Tahsildar and the District Magistrate, Shrirampur and tomorrow i.e. 25th June, 2019 is the date fixed for taking possession. The petitioners had filed an application before the Wakf Tribunal on 18.06.2019 for taking the matter on board. However, the Tribunal did not grant the said application as the matter was already posted on 6th July, 2019 and directed the parties to come on the said date. The petitioners would be dispossessed without the say application being decided.

2. Considering the above, issue notice to the respondents, returnable on 15.07.2019.

3. The learned AGP waives notice for Respondent No.1. Hamdast allowed.

4. Till then *status-quo*, as on today with regard to the writ property be maintained.

In view of the above order, status quo as regards the writ property was to be maintained.

3. The learned Advocate, who has preferred Civil

Application No.12787 of 2021, points out that he was before this Court in Writ Petition No. 14186 of 2018 wherein this Court (Coram: S.V.Gangapurwala & A.M.Dhavale, JJ.) passed an order on 24th April, 2019, which reads as under:

1. The affidavit is filed by the Sub Divisional Officer. Para 9 of the affidavit reads thus -

9. Thus now I state and submit that, this respondent No. 3 and 4 have prepared a time bound programme to implement the orders of the Wakf Board in following steps.

a) Sub-Divisional Officer, Shrirampur i.e. respondent No. 3 will instruct the Dy. Sp. Land Record, Shrirampur to measure and fix the boundaries of Gat No. 249 to ascertain the exact area of encroachment and total number of encroachers within the period of 15 days from the date of submission of this affidavit.

b) After getting report from the Dy. Superintendent of Land Records, Shrirampur the respondent no. 3 will take a

report from respondent no. 4 i.e. the Tahsildar, Shrirampur on exact number of encroached properties and also exact number of encroachers presently occupying the said property.

c) Since the General Election of Lok Sabha is scheduled and the Model Code of Conduct is in force, the activity of eviction of encroachment will be started immediately after the ceasing of Model Code of Conduct on 27th May, 2019.

d) Respondent No. will give final notice to all the encroachers found as above to submit their claims, if any; or any order of any court of law, within period of 15 days thereafter.

e) If no adverse order with respect to order of Chief Executive Officer, of the Wakf Board, as per provision contemplated in the Wakf Act, 1995 is produced by the encroachers then the encroachment removal drive will be taken up by Respondent No. 4 immediately and will be completed on or before 25th June, 2019.

f) The final report will be submitted to this Hon'ble Court on or before 30th June, 2019.

2. We hope and trust that the Sub-Divisional Officer will adhere to the statement made in the affidavit. Affidavit is accepted.

3. The Writ Petition is accordingly disposed of. No costs.

4. In view of disposal of the Writ Petition, Civil Application also stands disposed of.

4. It is, thus, obvious that considering the issue of encroachment on the properties at issue, the statement of the Sub Divisional Officer made vide his affidavit in paragraph 9 (f) that the final report would be submitted on or before 30th June,2019 to this Court, was accepted and the petition was disposed off. The petitioners before us in Writ Petition No.7636/2019 had moved Civil Application No.5270/2018 for seeking intervention in Writ Petition No.14186 of 2018. The learned Advocate for the petitioner before us makes a statement that he is not aware whether

these petitioners had filed this Civil Application for intervention. We, therefore, called for a copy of the Civil Application and we have compared the names of the applicants in Civil Application from serial Nos.1 to 10 with petitioner nos. 1 to 10 before us. They are these same persons. The learned Advocate for the petitioners clarifies that he did not have knowledge of this aspect as he was not representing the applicants earlier and an another Advocate was representing them.

5. The learned Advocate for the petitioners submits that a statement was made in paragraph no. 7 as regards the encroachment removal drive which was to be completed on or before 25th June, 2019 and on that statement, the earlier Writ Petition No. 14186 of 2018 was disposed off by this Court since this Court was satisfied that encroachment would be removed. Copy of the order dated 24.04.2019 passed in the said Writ Petition is also placed on record. He, therefore, submits that there is no suppression.

6. Considering the order dated 24th June, 2019

passed by this Court and the earlier order dated 24th April, 2019, especially in view of the fact that there is no mention of the earlier order passed by this Court in the order dated 24th June, 2019, it is apparent that the learned Advocate, who addressed this Court on 24th June, 2019, has not specifically brought the said order dated 24th April, 2019 to the notice of this Court. The learned Advocate for the petitioners makes statement that it was brought to the notice of this Court. Considering the order passed by this Court on 24.06.2019, we are unable to be convinced by the said statement since status quo order was granted by this Court which was opposite to the satisfaction expressed by this Court on 24th April, 2019 that encroachments are being removed and the action taken report was to be submitted.

7. Considering the submissions of the learned Advocate for the petitioners, we have perused the eviction notice dated 11.06.2019, which is in Marathi. It indicates that the matter was considered by this Court in Writ Petition No. 14186 of 2019 and this Court recorded the

statement of the authorities that final notice would be given to all the encroachers so as to enable them to submit their claims within 15 days and thereafter, the action would be taken. The learned Advocate for the petitioners initially tried to dodge our query as to whether the said notice dated 11.06.2019 has been challenged before any Court. He kept on repeating that one earlier order passed by the Waqf Board has been challenged before the Waqf Tribunal in Waqf Misc. Application No. 20 of 2017. However, there is neither any application filed in the said proceedings nor any independent proceedings for challenging the eviction notice dated 11.06.2019, have been filed.

8. Considering the above and the conduct of the petitioners as well as the learned Advocate which we are recording in this order with great regret and pain, that we would have been justified in vacating the ad-interim protection granted vide our order dated 24.06.2019. However, since the statutory authorities had informed this Court and which statement was recorded that time would

be granted to the recipients of the notice to make out their case in support of their claim that they are not encroachers, that we are refraining from vacating the interim order.

9. In view of the above, this Writ Petition is disposed off. Civil Application also stands disposed off. We are issuing the following directions : -

a] The petitioners are put to notice that they shall appear before the Sub Divisional Officer, Shrirampur, District Ahmednagar, on 10th May, 2022, as suggested by the learned AGP, at 12.00 noon. Respondent no.1 Tahsildar shall communicate this order to the concerned Authority.

b] These petitioners shall tender their written submissions along with the documents on which they rely to make out their case that they are not encroachers, on 10th May, 2022. They are at liberty to be assisted by a learned Advocate.

c] The hearing before the Sub Divisional Officer would be concluded by the end of 11th May, 2022.

d] Thereafter, the Sub Divisional Officer would pass a reasoned order on or before 20th May, 2022.

e] The ad-interim protection granted by us in the nature of maintaining status quo on 24th June, 2019, would continue till 20th May, 2022.

10. In view of the above order, the Sub Divisional Officer stands released from the statement made in Writ Petition No.14186/2019 that the final report would be submitted to this Court on or before 30th June, 2019.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]

DDC