

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

WRIT PETITION NO.8953 OF 2022

**BAI FATIMBAI BINTE KAZI ABDUL KARIM MASJID
TRUST MAHIM
VERSUS
MAHARASHTRA STATE BOARD OF WAQFS.**

...
Shri V.D. Sapkal, Senior Advocate i/by Shri A.N. Sabnis,
Advocate for the petitioner.
Shri Y.B. Pathan, Advocate for the sole Respondent.
...

**CORAM : RAVINDRA V. GHUGE
&
ARUN R. PEDNEKER, JJ.**

DATE :- 29th August, 2022

Per Court :-

1. In the morning, the learned advocate Shri Sabnis sought circulation in this matter contending that the Wakf Board would be passing an order on 01.09.2022 or 02.09.2022 in the pending case. He stated that the Board is likely to decide the proceedings in a particular way. When probed, he submitted that it was his apprehension. We, therefore, granted him circulation on the production board.

2. We have considered the submissions of the learned Senior Advocate appearing on behalf of the petitioner and the

learned advocate appearing on behalf of the Respondent/Wakf Board.

3. The petitioner has has put forth prayer clauses (a) and (b) as under:-

- “a) *that this Hon’ble Court be pleased to issue a Writ of Prohibition or any other writ in the nature of Prohibition or any other appropriate writ, order, direction under Articles 226 and/or 227 of Constitution of India, prohibiting the Respondent from exercising its power under Section 69 of the Waqf Act, 1995, in deciding the case no.69-130-2010 and case no.32-49-2014 or any other case having effect of modifying and/or amending and/or replacing and/or nullifying the Scheme (Exhibit C hereto) settled by the Bombay High Court at Bombay by a decree dated 14.02.1936 passed in Suit No.1230 of 1931;*
- b) *in the alternative to prayer clause (a), this Hon’ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ order, direction, under Article 226 of Constitution of India, directing the Respondent to decide the Application dated 04.03.2022 (Exhibit A hereto) raising the preliminary issues of jurisdiction and maintainability before passing any order under Section 69 of the Waqf Act, 1995.”*

4. It is conceded that the petitioners are not the parties to the pending Case No.69-130-2010 and Case No.32-49-2014. It is also conceded that for the last 12 years, in the first case and 08

years, in the second case, the petitioners have not moved a single application praying for impleadment or an opportunity of hearing in the case by taking recourse to Section 69 of the Wakf Act, 1995. What has been filed is the application under Order VII Rule 11(d) of the Code of Civil Procedure alleging that the suit appears, from the statement in the plaint, to be barred by any law.

5. In view of the above, since the matter is before the Wakf Board and the Wakf Board is to consider the application, according to the learned advocate for the Wakf Board, on 01.09.2022 and 02.09.2022, we have no reason to monitor the manner in which the Board should decide a particular proceeding or a particular application. It is undisputed that after the Board passes an order, the petitioners have a remedy of approaching the Wakf Tribunal.

6. In view of the above, this Writ Petition is dismissed.

kps (ARUN R. PEDNEKER, J.) (RAVINDRA V. GHUGE, J.)