

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 2916 OF 2022
IN
CIVIL WRIT PETITION NO. 3640 OF 2021**

1. Magdum Bibi Waqf
Through its sole mutawalli,
Haseeb Mohammed Yusuf Mulla,
Add: Patel Mohalla, At Village Panvel,
District Raigad

2. M/s. Okay Estate Developers Pvt Ltd.
A Private Limited Company, having its
registered Office at Shop No.40, Harbour
Crest Building, Shivdas Champs Road,
Mazgaon, Mumbai – 400010

**.. APPLICANTS/
(ORI. RESPONDENT
NOS.4 AND 5)**

In the matter between

1. Samir Gulam Shaikh
Room No.1, Khawaja Nagri Bandar Road
Panvel, Raigad-410 206

...PETITIONER

VERSUS

1. State of Maharashtra,
Department of Minority,
Through the Government Pleader of,
Bombay High Court.
2. Maharashtra State Board of Wakf,
Panchakki, Aurangabad-431002.
3. The Chief Executive
Officer, Maharashtra State Board,
of Waqfs Panchakki, Aurangabad-431002

4. Magdum Bibi Waqf
Through its sole mutawalli,
Haseeb Mohammed Yusuf Mulla,
Add: Patel Mohalla, At
Village Panvel, District Raigad.
5. M/s. Okay Estate Developers Pvt. Ltd.
A Private limited company, having its
registered office at Shop No.40, Harbour
Crest Building, Shivdas Champs Road,
Mazgaon, Mumbai-400010.

.. RESPONDENTS

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Mr. Arif Y. Bookwala, Senior Advocate with Sagheer A. Khan, Sharque Nachan, G.O.Shaikh, Azeem Shaikh and Maaz Syed i/by Judicare Law Associates for applicants in IA/2916/2022 and for respondent Nos.4 & 5 in WP No.3640/2021.

Mr.S.B. Talekar, Advocate i/by Talekar and Associates for petitioner in WP No.3640/2021.

Mr. P.P. Pujari, A.G.P. for the State.

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CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 24th MAY, 2022.
PRONOUNCED ON: 06th JUNE, 2022.

P.C. :

1. This application is moved by the respondent Nos. 4 and 5, in the writ petition No.3640 of 2021 filed by, Samir Gulam Shaikh ('petitioner' for short), seeking to recall of order dated 19th April, 2022 passed by this Court, whereby parties have been directed to maintain

the *status quo* prevailing as on that date, in respect of construction being carried out on plot of land owned by respondent no.4, Wakf.

2. Writ petition, in question challenges the order dated 11th April, 2019 passed by the Wakf Tribunal principally, on the grounds that:

- (i) The Wakf Tribunal has no jurisdiction to set aside the order dated 25th August, 2018 passed, by the State of Maharashtra; and
- (ii) Impugned order was passed ex-parte against the State of Maharashtra.

3. It appears, vide order dated 25th May, 2018, the State of Maharashtra through, its Principal Secretary, Minority Development Department, directed Maharashtra State Board of Wakf, Aurangabad (“the Board”) to cancel the NOC dated 25th July, 2021 issued for development of property of Magdoom BB Wakf, at Pannel, District Raigad; AND vide letter dated 19th December, 2018 the Chief Executive Officer, Maharashtra State Board of Wakf (hereinafter called “CEO”) authorised Regional Wakf Officer, Mumbai to file criminal complaint against the Trustees of Wakf Institution, and the developer, in view of Resolution of Board dated 19th November, 2018.

4. Briefly stated facts of the case are like this. The applicants herein had challenged, states' resolution dated 25th May, 2018 and direction contained in letter dated 19th December, 2018, issued by the CEO, before the Maharashtra Wakf Tribunal at Aurangabad *vide* Wakf Application No.01 of 2019. That, application was allowed by the Tribunal, by which the impugned resolution dated 25th May, 2018 and impugned order/communication dated 19th December, 2018 of CEO of the Board, authorizing Regional Wakf Officer, Mumbai to file complaint against the applicant and trustees of the Wakf Institution was quashed and set aside. Feeling aggrieved by that order, Mr.Samir Gulam Shaikh, preferred this petition under Article 227 of the Constitution of India in February, 2021. Pending proceeding before Wakt Tribunal, Mr. Samir Shaikh (petitioner) in January, 2021, instituted Wakf Suit No.27 of 2021, seeking decree of perpetual injunction to restrain Magdoom BB Wakf (applicant No.1 herein), M/s. Okey Estate Developers Pvt.Ltd., (applicant No.2 herein) and others, from making construction on the wakf property described in the plaint. In the said suit, Samir Gulam Shaikh, has moved an application for temporary injunction under Order XXXIX Rule 1 and 2 of the CPC, wherein learned District Judge/Chairman, Maharashtra State Wakf

Tribunal, Aurangabad has issued notice vide order dated 2nd February, 2021 to the defendants. As such application for temporary injunction is pending for further consideration.

5. In the backdrop of the aforesaid facts, on 19th April, 2022, this Court, on submissions advanced by the petitioner, directed the parties to maintain the *status quo* in respect of construction commenced by the applicant no.2 pursuant to sanction granted by the Wakf Board vide Resolution dated 10th February, 2021 read with NOC dated 25th July, 2018 and as per commencement certificate dated 27th October, 2021, granted by the Municipal Corporation Panvel City.

6. Mr. Arif Bookwala, learned Senior Counsel for the applicant, would submit that, order dated 19th April, 2022, could not have been passed, reason being, writ petition filed by Mr.Samir Gulam Shaikh, neither challenges resolution dated 10th February, 2021 passed by the Wakf Board nor NOC dated 25th July, 2018 nor building permission granted by the Planning Authority. Mr.Bookwala, learned Senior Counsel further submitted, that order dated 19th April, 2022 directing the parties to maintain *status quo*, in respect of construction commenced by the applicant no.2 was beyond, the reliefs sought in the

writ petition. Next, Mr. Bookwala, submitted that order dated 19th April, 2022 has been passed, in absence of pleadings and without affording the opportunity to the applicants – respondent nos. 4 and 5. Mr. Bookwala, submitted since petitioner has filed Wakf Suit No.27 of 2021 in Wakf Tribunal at Aurangabad, questioning legality of Wakf Board Resolution and construction being commenced on the wakf property and further moved an application for temporary injunction this Court could not have directed the parties to maintain the *status quo* in respect of the suit construction. On these grounds, Mr. Bookwala, learned Senior Counsel for the applicants seeks to recall order dated 19th April, 2022 passed by this Court.

7. Mr. Talekar, learned counsel for the original petitioner would submit that the commencement certificate, granted by the Panvel Municipal Corporation under section 45 of the MRTP Act, 1966 to develop final plot No.218 at Panvel was valid for one year and as on date, validity of commencement certificate has neither been extended nor renewed and therefore, the order 19th April, 2022 passed by this Court directing parties to maintain *status quo* in respect of the suit construction may not be recalled. Mr. Talekar, learned counsel, in

support of his submissions relied on the judgment of the Supreme Court in a case of **Shriram Urban Infrastructure Ltd. Vs. State of Maharashtra, 2019 (20) SCC 28**, and in particular paragraph nos.40 and 41 of the cited judgment in support of his contention.

8. Assuming, the commencement certificate granted by the Planning Authority, was valid for a year and has not renewed and therefore, the applicant no.2 could not have further the construction, however, the fact remains that petitioner could not have asked for, directions, to maintain *status quo*, when admittedly, for the identical relief wakf suit has been instituted and an application of temporary injunction is pending for consideration. Even otherwise, relief asked for and granted vide order dated 19th April, 2022 was beyond the scope and subject of writ petition. For all these reasons, the order dated 19th April, 2022 passed by this Court is recalled and application is allowed in terms prayer clause (a).

9. Yet, having regard to the facts of the case in the interest of justice, it would be appropriate to expedite the hearing of an application below Exh.5 moved by the petitioner in Wakf Suit No.27 of 2021 presently, pending before Wakf Tribunal, Aurangabad.

10. In the facts and circumstances of the case, Wakf Tribunal shall make an endeavor to decide the application below Exh.5 in Suit No.27 of 2021 preferably on/or before 30th July, 2022, on its own merits and in accordance with law.

11. Even otherwise, the applicants have filed an undertaking that whatever construction being carried out by the applicant no.2 shall be subject to further order passed by this Court in writ petition No.6340 of 2021. The undertaking dated 4th May, 2022 states that the applicant shall remove the construction and shall not claim any equity on such construction, in case any adverse order passed against me. In my view, this undertaking adequately protects, the interest of the petitioner in the suit property, if any.

12. For all that reasons stated above, the application is allowed and disposed off in terms of prayer clause (a) of the application.

(SANDEEP K. SHINDE, J.)

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