

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 5714 of 2021

(1) Sayyed Firoz Sayyed Lalamiya
Aged about- 42 years, Occ-Private
R/o. Near Chuna Masjid, Timaki,
Nagpur.

(2) Rafique Rashid Sheikh
Aged about- Major, Occ-Private
R/o. Edlabad, Girad
Samudrapur, District Wardha.

(3) Javed Ahmed Taufik Ahmed
Malik Aged about- Major,
Occ-Private, R/o. Near
Gausiya Masjid, Aasi Nagar,
Teka, Nagpur.

(4) Afsar Baldar Khan Pathan
Aged about- Major, Occ-Private
R/o. Sirsi, Tq. Umred,
District Wardha.

... Petitioners

... Versus ...

(1) The Maharashtra State Waqf Board
Through Its Chairman,
Panchakki, Aurangabad.

(2) The Maharashtra State Waqf Board
Through Its Chief Executive Officer
Panchakki, Aurangabad.

(3) Wahid Liyakat Ali,
Aged about 30 years, Occu : Private,
R/o. Yedlabad, Po: Girad,
Tq. Samudrapur, District Wardha

Respondent
Nos. 4 & 5
added vide
Court order
dtd. 1.2.2022

(4) Shakil Nadir Sheikh,
Aged about 30 years, Occu : Private,
R/o. Subhash Ward, Girad,
Tq. Samudrapur, District-Wardha.

(5) Sheikh Maqbool Sheikh Abdul
Gaffar,
Aged about 55 years, Occu : Private,
R/o Yedlabad, Po : Girad,
Tq. Samudrapur, District Wardha.

... Respondents

Mr. Mohd. Ateeque, Advocate for the petitioners
Mr. A. M. Quazi, Advocate for respondents 1 and 2
Mr. A. Z. Mirza with Ms. Shiba Thakur, Advocate for respondent 3
Mr. V. R. Baseshankar, Advocate for respondent 4
Mr. M. B. Turankar, Advocate for respondent 5
Mr. O. W. Gupta, Advocate for intervenors

CORAM : ROHIT B. DEO, J.
DATED : 11-4-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With consent, the petition is finally heard.

2. The petitioners are invoking writ and supervisory jurisdiction presumably since the Tribunal under the Waqf Act, 1995 (Act) is not empowered to stay the operation of the order made under Section 69 of the Act.

3. The relevant facts are brief.

4. The Maharashtra State Waqf Board (Board) has framed a scheme under Section 69 of the Act, which the petitioners have assailed in Appeal 01/2022 before the Tribunal, which is pending.

5. As noted supra, the legislature in its wisdom has specifically precluded the Tribunal from staying the scheme framed under Section 69 of the Act. The provisions of Section 69 of the Act reads thus :

69. Power of Board to frame scheme for administration of [waqf].- [(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.]

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the [waqf] holding office as such immediately before the date on which the scheme comes into force :

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession of the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the [waqf].

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli and all persons interested in the [waqf] :

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order :

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the [waqf], the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

6. At this juncture, the prayer clauses in the petition may be noted.

- (i) Allow the instant petition.
- (ii) By way of suitable writ, order or direction stay the execution, effect, operation and impletion of order dated 28.12.2021, passed by respondent no. 2, Chief Executive Officer, Maharashtra State Waqf Board, Aurangabad (Annexure-12) during pendency of the appeal before the Waqf Tribunal Aurangabad, in the interest of justice;
- (ii-A) Issue suitable order/direction to the Respondents to hand over the charge of the Waqf Institution namely Dargah Sakkar Bawli, Edlabad, Tahsil-Samudrapur, Dist-Wardha to the petitioners during pendency of Appeal No. 1/2022 (Sayyed Firoz and others Vs. MSBW and others) before the Maharashtra State Waqf Tribunal, Aurangabad”

- (iii) Grant ad-interim relief in terms of prayer clause (ii) ; during pendency of the present petition,
- (iv) Any other relief which this Hon'ble court deems fit under the facts and circumstances of the case in the interest of justice.

7. Perusal of the prayer clauses reveals that the scheme is not challenged. All that is prayed vide prayer clause (ii) is an interim order during the pendency of the appeal. Prayer clause (ii-A) seeks a direction to the respondents to handover the charge of the waqf to the petitioners, as an interim arrangement during the pendency of the appeal.

8. As would be discernible from the prayer clauses, there is nothing to be adjudicated in the present petition. It is trite law, that a petition does not lie under Article 226 or 227 of the Constitution of India, for interim relief simpliciter unless there is a challenge to a substantive order and at any rate to some order whereby the interim relief is refused.

9. The matter can be looked at from another angle. The provisions which are reproduced supra manifest the intention of the legislature, which is that during the pendency of the appeal, the scheme which is framed by the Board must be allowed to operate with full vigor. While the Constitutional Court may not strictly be precluded

altogether from exercising writ jurisdiction, the fact that the special enactment precludes the Tribunal from granting stay to the scheme framed under Section 69 of the Act is extremely relevant and ordinarily this Court must be loathe to interfere.

10. Learned counsel for the petitioners, Mr. Ateeque relied on following decisions.

(1) *Magadh Sugar & Energy Ltd. Vs. State of Bihar and others (2021 SCC OnLine SC 801)*,

(2) *Radha Krishan Industries Vs. State of Himachal Pradesh and others [(2021) 6 SCC 771]* and

(3) *Maharashtra Chess Association Vs. Union of India and others [(2020) 13 SCC 285]*

None of the decisions pressed in service has any relevance. The issue is not lack of power or jurisdiction available with the Constitutional Court. The issue is whether in the teeth of the legislative intent which is eloquently manifested by the plain language of Section 69 whether the Constitutional Court is ought to exercise the power or jurisdiction under Article 226 and 227 of the Constitution of India.

11. The petition is dismissed.

JUDGE

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Digitally signed by AVINASH
YUVRAJ WASNIK
Signing Date: 18.04.2022 18:21