

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

WRIT PETITION NO.7130 OF 2022

**AJIT RANGNATH TAJANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
PRINCIPAL SECRETARY AND OTHERS**

**AND
WRIT PETITION NO.7131 OF 2022**

**SAI ANAND SAHAKARI GRUHANIRMAN SANSTHA
MARYADIT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioners : Shri Bhide Vinod Y.
AGP for Respondents 1, 2, 5 to 7/State : Shri S.B. Yawalkar
Advocate for Respondents 3 and 4 in WP 7130 : Shri N.E.
Deshmukh

Advocate for Respondent 10 : Shri M.G. Mujtaba

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 05th July, 2023

Per Court :-

1. After hearing the learned Advocates for the respective sides for sometime, it is apparent that the Petitioners are before this Court for quashing of the notices dated 25.05.2021, 28.07.2021 and 16.09.2021 issued by Respondent

No.4 calling for an enquiry under Sections 40 and 41 of the Wakf Act, 1995. The Petitioners have also challenged the registration of the Wakf as set out in prayer clause B.

2. The learned Advocate for Respondent Nos.3 and 4/ Wakf Board places reliance upon the judgment delivered by the Honourable Supreme Court in the matter of the ***Board of Wakf, West Bengal and another vs. Anis Fatma Begum and another, 2010 (14) SCC 588***, wherein, the Honourable Supreme Court has held that the matters pertaining to the Wakf, which are maintainable before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995, should not be entertained by the Civil Court or the High Court straightaway under Article 226 of the Constitution of India. It is further held that it is not necessary that the party must be aggrieved by the order passed under the provisions of this Act. Only if the party is aggrieved by the order of the Wakf Tribunal, that it can approach the High Court in terms of Section 83(9).

3. In paragraph 17 of ***Anis Fatma (supra)***, it is held as under:-

“17. We may clarify that under the proviso to Section 83(9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can

approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. This provision make it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a Wakf or Wakf property should first approach the Tribunal before approaching the High Court.”

4. The Honourable Supreme Court has held in the matters of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai vs. Tuticorin Educational Society, (2019) 9 SCC 538* and *Genpact India Pvt. Ltd. vs. Deputy Commissioner of Income Tax, 2019 (16) Scale 667 : 2019 SCC Online SC 1500*, that the jurisdiction of this Court suffers a near total bar when a statutory remedy is available and even an admitted petition can be dismissed and the litigating parties should be relegated to the statutory remedy.

5. The learned Advocate for the Petitioners relies upon the following judgments:-

(a) *State of Andhra Pradesh (now State of Telangana) vs. A.P. State Wakf Board and others*, 2022 STPL 1139 (SC).

(b) *Waqf Board, Rajasthan vs. Jindal Saw Limited and others*, 2022 STPL 4693 (SC).

(c) *The Assistant Commissioner of State Tax and others vs. M/s Commercial Steel Limited*, Civil Appeal No.5121/2021 decided by the Honourable Supreme Court on 03.09.2021.

6. It is well settled that there cannot be a ratio that the High Court shall entertain a petition when a statutory efficacious remedy is available. It is only in the peculiar circumstances that the High Court may entertain such petition. When the Wakf Tribunal is at Aurangabad and the parties to this proceeding are from Ahmednagar, we do not find any impediment for these parties from Ahmednagar to approach the Wakf Tribunal at Aurangabad, rather than approaching the Aurangabad Bench of the Bombay High Court directly, which is in opposition to the law laid down by the Honourable Supreme Court in the *Wakf Board, West Bengal (supra)*.

7. In view of the above, we decline to entertain these petitions. **These two Writ Petitions are disposed off.**

8. Needless to state, all remedies available to the Petitioners, as are permissible in law and all grounds and contentions including their objections, are kept open. Their grievance, if voiced before the appropriate forum, shall be

considered on their merits.

9. The time spent by the Petitioners in this proceeding before this Court till the passing of this order, shall be a good ground for condonation of delay, if any.

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(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)