



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

CIVIL REVISION APPLICATION NO.76 OF 2024

Bhaiji Mussawir s/o Moammad Sayeed
Age : 43 years, Occu.: Muttawalli / Kadim
C/o.: Dargah Peer Hamza Sha at post Mamdapur,
R/o.: At post Damat, Post – Neral,
Taluka : Karjat, District : Raigad **APPLICANT**

VERSUS

1. Mohammad Hussien s/o Ibrahim Palte,
2. Ghulam Mustata s/o Ibrahim Palte,
3. Farukh s/o Hajimiya Palte,
4. Zahoor s/o Hajimiya Palte,
5. Parvez s/o Hajimiya Palte,
6. Naveed s/o Hajimiya Palte,
7. Ahmed Sio Shabbir Palte,
8. Badrunissa Hajimiya Palte,
9. Ashfaq s/o Shabbir Palte,
10. Abdul Wahab s/o Fakeer Mohammad Palte,
11. Javed s/o Fakeer Mohammad Palte,
12. Naseema Fakeer Mohammad Palte,
13. Malika Nazeer Dhaudkar,
14. Mahmooda Parvez Damad,
15. Gulnaar Asmad s/o Fungari

Nos.1 to15 R/o.: At Post Mamdapur,
Post-Neral, Taluka : Karjat,
District : Raigad

16. Maharashtra State Board of Waqfs
Through its Chief Executive Officer
Panchakki, Aurangabad **RESPONDENTS**

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Mr. S. S. Kazi, Advocate for the Applicants
Mr. G. D. Shaikh i/b Mr. Shahed Zaidi, Advocate for Respondent
Nos.1 to 15
Mr. N. E. Deshmukh, Advocate for Respondent No.16

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 19/09/2024.

ORDER :

1. The present application is filed for challenging the order dated 16/04/2024 passed below Exhibit-5 in Wakf Suit No.144 of 2023 by the Chairman, Maharashtra State Wakf Tribunal (hereinafter referred to as 'the learned tribunal'). Under the impugned order, the learned tribunal has partly allowed application Exhibit-5 filed by the present applicant / plaintiff in the aforesaid suit for restraining present respondent Nos.1 to 15 from making any sort of construction over the suit land i.e. Gat No.34/4, admeasuring 53 Gunthas, situated in village Mamdapur, Taluka Karjat, District Raigad. The learned tribunal instead of granting temporary injunction in respect of entire suit land, granted the same only in respect of 3R land out of the suit land by holding that it belongs to Dargah of Peer Hamza Shah and Kabrastan and also put restriction for alienating the aforesaid 3 R land till disposal of the suit. Thus, the applicant / plaintiff filed this application praying that the aforesaid injunction granted by the learned tribunal should have been granted in respect of entire suit land and not restricted to the extent of 3 R land.

2. The applicant/plaintiff is claiming that the suit land belongs to Dargah of Peer Hamza Sha and Kabrastan and is an old Wakf since time immemorial. According to him, Dargah of Peer Hamza Sha & Kabrastan had never been registered under Bombay Public Trust Act nor it was registered with the Wakf Board. However, now he has moved an application for registration of the suit land as a Wakf property, which is pending before the Wakf Board i.e. present respondent No.16. The applicant / plaintiff contended that though the suit property is belonging to Dargah of Peer Hamza Sha and Kabrastan, but respondent Nos.1 to 15 by joining hands with revenue officers, got mutated their names in the record of rights and thereafter started construction over the suit land. They have also undertaken alienation of the Wakf property without any permission and therefore, he has filed a Wakf Suit No.144 of 2023 for declaration and injunction that the suit land is a Wakf property belonging to Dargah of Peer Hamza Sha and Kabrastan and that respondent Nos.1 to 15 be restrained from erecting permanent construction over the same and from alienating the Wakf property by the order of perpetual injunction. However, the learned tribunal granted temporary injunction against respondent Nos.1 to 15 only

to the extent of 3 R land being of said Dargah. Hence, this civil revision application.

3. The learned counsel for the applicant / plaintiff submits that the learned tribunal has definitely erred in observing that only 3 R land belongs to Dargah of Peer Hamza Sha and Kabrastan out of the total suit land of 53 Gunthas. According to him, the application for registration of Wakf in respect of the suit land is pending and if in the meantime on going construction on the suit land is not stopped, then it will cause greater hardship to the applicant / plaintiff. As such, he prayed that the impugned order be modified and it be applicable to the entire suit land.

4. On the contrary, the learned counsel for respondent Nos.1 to 15 by filing a short affidavit in reply alongwith documents, strongly resisted the submissions made on behalf of the applicant / plaintiff. According to him, the institution of Dargah is yet to be registered as a Wakf property which was never registered under the Bombay Public Trust Act. According to him, the entry of Dargah in record of rights of the suit land is only to the extent of 3 R land and not for the total land of 53 R. He pointed out that even in the

revenue record also Dargah is not shown in the ownership column or other rights column but it is only shown in the possessory column and that too for a limited area of 3 R only. As such, he supported the impugned order and prayed for dismissal of revision application.

5. On the other hand, the learned counsel for respondent No.16 – Wakf Board though supported the impugned order, but further requested that the on going construction should be made subject to out come of the application of the applicant / plaintiff for registration of the institution of Dargah and Kabrastan as a Wakf property.

6. Heard rival submissions. Also perused the documents on record.

7. The applicant / plaintiff is claiming that the entire suit land admeasuring 53 R belongs to institution of Dargah and Kabrastan. On the contrary, respondent Nos.1 to 15 are claiming that the entry of Dargah is only for the area of 3 R land. The learned tribunal while passing the impugned order has considered revenue

record of the suit land as well as the report of District Wakf Officer dated 25/08/2023. The revenue record as well as copy of the said report are also filed before this court. The learned counsel for the applicant / plaintiff submits that the learned tribunal did not consider the old revenue record of rights of the suit land, wherein there is a clear-cut mention of Dargah in the possessory / crop inspection column in respect of the entire land. The applicant / plaintiff has produced 7/12 extract of the suit land showing crop inspection column from the year 1941-1942 upto 1962-1963 for that purpose. Admittedly, the copies of 7/12 extracts of the suit land filed by respondent Nos.1 to 15 alongwith an affidavit in reply indicate that Dargah is situated on the suit land on the area of 3 R land. The said 7/12 extracts are from 1985 to 2022. The land admeasuring 22 R is shown as road and 18 R land is shown as a barren land.

8. It is the main contention of the learned counsel for the applicant / plaintiff that the learned tribunal has considered only current 7/12 extracts of the suit property and did not consider the old 7/12 extracts from 1941-1942 to 1962 – 1963. On perusal of the said old 7/12 extracts as produced by the applicant / plaintiff, the entries of the Dargah in the possessory column are only for the

year 1941-1942 and thereafter in the year 1944-1945 and thereafter 1951-1952 onward till 1962-1963. Though earlier entries appear to be in respect of area of 1 Acre 2 Gunthas whereas remaining 10 Gunthas shown as *Pot-Kharab* land but from the year 1955-1956 a land of Dargah is shown only to the extent of 2 Gunthas whereas remaining land of 1 Acre is shown as a grass land. Thus, even by going through the old revenue record it is evident that Dargah was situated in the suit land only on the area of 2 Gunthas. Thus, by considering old and new 7/12 extracts of the suit land, it appears that the land belongs to Dargah is only of 2 or 3 R land. Even the report of District Wakf Officer dated 25/08/2023 indicates that around 7020 Sq. feet of the total land is in actual possession of the said Dargah of Peer Hamza Sha and Kabrastan. Therefore, *prima facie* it appears that the entire suit land is not recorded in the name of institution of said Dargah. Therefore, the applicant / plaintiff has failed to establish the *prima facie* case that the entire suit land belongs to the said Dargah. Respondent No.16 – Wakf Board may decide the application of the applicant / plaintiff independently and on its own merit. However, at present no perversity is found in the order passed by the learned tribunal restraining respondent Nos.1 to 15 from alienating or erecting construction over the aforesaid 3 R land belonging to the

Dargah out of the entire suit property. Therefore, no substance is found in the application and thus, stands dismissed and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-