



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL WRIT PETITION NO. 1504 OF 2023

LAYAK ALI MANNA MULANI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for the Petitioner : Mr. Tungar Hrishikesh V.

APP for Respondent/State : Mrs.Pratibha J. Bharad

Advocate for Respondent no.4 : Mr. Deshmukh N. E.

Advocate for respondent no.5 : Mr.A.M. Inamdar

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CORAM : SANJAY A. DESHMUKH, J.

DATED : 24th JANUARY, 2024.

PER COURT :-

This Criminal Writ Petition is directed against the notice issued by respondent nos.2 and 3 dated 22nd September, 2023, in which the Incharge Police Station Officer of Police Station, Tuljapur directed the petitioner not to cause obstructions to the possession of Ilahi Papamiya Mullani, resident of Sindphal, Tq. Tuljapur, Dist. Osmanabad, who is now respondent no.5, in respect of survey no.221/1 and 221/11.

2. The learned advocate for the petitioner pointed out the photocopy of the acknowledgment issued by the District Wakf Officer. The learned advocate for the petitioner also pointed out the old 7/12 extract of disputed property and other properties in which the names of this petitioner's predecessors are mentioned as possessors of the

property, which belongs to Masjid Darga Sharif Sindphad. He further pointed out mutation entry by which the names of predecessors of the petitioner are recorded to the disputed agricultural land. It is also pointed out that there was panchanama dated 23.10.2013, in which it is recorded in presence of the panchas by Talathi that until there is final decision of Wakf Board, the land will remain in possession of Maimunabi Munna Mullani, the mother of this petitioner. The learned advocate for the petitioner lastly pointed out the impugned communications, which were based on the applications of the District Wakf Board, Osmanabad. The learned advocate for the petitioner submitted that the notice under section 149 of the Criminal Procedure Code, 1973 is illegal and not sustainable. He lastly prayed to allow the Writ Petition and quash and set aside the said notice.

3. The learned APP for the respondent/State strongly opposed the petition.

4. The learned advocate for respondent no.5 strongly opposed the petition and pointed out that the matter is subjudice before the Maharashtra State Wakf Tribunal, Aurangabad in which Wakf Suit No.60/2019 is filed and another Wakf Suit No.84/2019 is also pending. The learned advocate pointed out the decision of the Maharashtra Wakf Tribunal, Aurangabad dated 20.03.2023, in which it is held that land survey no.221 admeasuring 20 Acres and 28 gunthas belongs to said Jama Masjid Sindphal, Tq.Tuljapur,

Dist.Osmanabad. Accordingly, the said property was registered to the register of Wakf Board. The learned advocate for respondent no.5 lastly submitted that respondent no.5 is in possession of the disputed property. He lastly prayed that the notice issued by respondent nos.2 and 3 is legal and correct. Therefore, the writ petition be dismissed.

5. Admittedly both the sides have proceeded in Wakf Tribunal at Aurangabad by Wakf Suits with regards to disputed properties and other properties. In such facts situation, this Court cannot entertain into premise of legal possession of any of the parties.

6. As far as legality of the impugned order is concerned, the impugned order arises out of the communication on request sent by the District Wakf Officer, Osmanabad by its letter dated 29.08.2023. On the basis of that communication, the PSO Tuljapur exercised the jurisdiction under section 149 of the Criminal Procedure Code and directed this petitioner not to cause obstruction to the possession of respondent no.5.

7. The learned advocate for the applicant submitted that the principles of natural justice were not followed prior to passing of the impugned order. The petitioner was not heard. The order passed under section 149 of the Criminal Procedure code is not based on the reasons. There is no such documentary evidence to show that respondent nos.2 and 3 have called upon the petitioner to submit his say. The District Wakf Board also not submitted the copy of that

application to the petitioner. All these facts show that respondent nos.2 and 3 have not followed the principles of natural justice and issued the directions in the form of prohibitory injunction under section 149 of the Criminal procedure Code. The said communication of notice is thus not legal and correct. It deserves to be quashed. Hence the following order :-

ORDER

- (i) The Writ petition is allowed in terms of prayer clause "B".

(SANJAY A. DESHMUKH, J.)

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