



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

CIVIL REVISION APPLICATION NO. 257 OF 2015

1. Mastan S/O Papabhai Inamdar,
Age : 57 Years, Occ. Agriculture, Deleted
2. Raosaheb s/o Karbhari Gadekar,
Age : 51 Years, Occ. Agriculture,
Presently working as Sarpanch
3. Subhash s/o Maruti Tambe,
Age : 45 Years, Occ. Agriculture

All Resident of Dadh(Bk), Tq. Rahata
District Ahmednagar. Applicants.

VERSUS

1. The Maharashtra State Wakf Board,
Aurangabad
Through its Chief Executive Officer
2. Adan Madan Baba RA Dargah
-O-Muslim Kabrastan,
At post CTS No. 341 and 342
Dadh (Bk), Tq. Rahata
District Ahmednagar.
3. Inamdar Mohammad Babulal
Age : 47 years, Occ. Nil
4. Inamdar Aziz Ali Mohammad,
Age : 45 Years, Occ. Agriculture
5. Inamdar Raj Masoom,
Age : 42 Years, Occ. Agriculture
6. Inamdar Babulal Umer
Age : 40 Years, Occ. Agriculture
7. Inamdar Sadik Ali Chirakuddin,
Age : 48 Years, Occ. Agriculture

8. Inamdar Salauddin Karamal Ali,
Age : 45 Years, Occ. Agriculture
9. Inamdar Abu Mastan,
Age : 30 Years, Occ. Agriculture
10. Inamdar Sultan Umar,
Age : 56 Years, Occ. Agriculture
11. Inamdar Alam Gulab,
Age : 52 Years, Occ. Agriculture
12. Shaikh Haroon Usman,
Age : 55 Years, Occ. Agriculture
13. Pathan Shabbir Hussain,
Age : 55 Years, Occ. Agriculture

All R/o Dadh (Bk) Tq. Rahata,
District Ahmednagar.

..Respondents

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Mr. A/D/Sonkawade h/f Mr. Ashwin V. Hon,
Advocate for the applicants.
Mr. Y. B. Pathan, Advocate for Respondent
Nos. 3 & 5
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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 21.06.2024.

Judgment Pronounced on : 20.07.2024.

Judgment :

1. The applicants/petitioners, who are the original applicants in Wakf Application No. 87 of 2013, have challenged the order dated 22.09.2015, passed by the learned District Judge/Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad (herein after referred to as the “learned Tribunal”),

whereby the aforesaid application filed by the applicants has been dismissed.

2. Back ground facts are as under :-

The present petitioners/applicants being the villagers of village Dadh (Bk), have challenged the order dated 14.08.2012 (5.9.2012) whereby the registration certificate under Section 36 of the Wakf Act in respect of property of present respondent No.2 Dargah bearing CTS No. 341 and 342 at village Dadh (Bk) Taluka Rahata, District Ahmednagar, is issued declaring the said property as a Wakf property. Under the said order, the present respondent No. 3 to 13 are also appointed as Board of Trustees of the said Trust by respondent No.1 i.e. the Chief Executive Officer of Maharashtra State Wakf Board, Aurangabad. The applicants had challenged the legality and validity of the aforesaid order in Wakf Application No. 87 of 2013, by contending that respondent No.2 Dargah is situated since last more than 100 years to which persons from different caste and religions are offering prayers. Every year on account of Urus, Sandal, Taqatrao etc. near about 50,000/- followers and pilgrims are offering prayers and such tradition is being followed since last 100 or more years. According to them, the aforesaid property of Dargah is not a Wakf property, but it is

only a trust property of respondent No.2 Adan Madan Baba RA Dargah-O- Muslim Kabrastan. As such, they contended that respondent No.2 without following the provision of Section 36 as well as Section 32 of the Wakf Act, 1995 has registered respondent No.1 as Wakf property. Hence, this application.

3. The learned counsel for the petitioners/applicants submits that the registration of respondent No.2 Dargah under the impugned order is *prima facie* illegal and against the provision of Section 32 as well as Section 36 of the Wakf Act. He pointed out that at the place of respondent No.2 Dargah there was a temple and it was a trust property. According to him, respondent No.1 did not issue proper proclamation which was required. He pointed out that the said proclamation was issued in the newspaper of Pune and therefore, when the property is situated at Ahmednagar, there was no notice to the villagers or the applicants as regards the procedure of registration of respondent No.1, being the Wakf property. According to him, no proclamation was received by the villagers and there was no “*Davandi*” during the period from 19.05.2012 to 14.08.2012 about such proclamation. He pointed out that the newspaper “Nav-Bharat” wherein the proclamation was allegedly issued, was in fact circulated in Pune and not in Ahmednagar district and therefore, there was

no publicity to the proclamation to public at large. Thus, he claimed that the impugned order is bad-in-law as no opportunity was given to the public at large. He also pointed out that the enquiry was also not made as contemplated under Section 36. Thus, he prayed for setting-aside the impugned order.

4. On the contrary, the learned counsel for the respondent Nos. 3 and 5 strongly opposed the submission made on behalf of the applicants. According to him, the present applicants are not having any locus-standi to challenge the impugned order. Moreover, he pointed out that there are various documents on record showing that the property of respondent No.2 is capable of registering a Wakf property. He also relied on the definition of Wakf and submitted that the newspaper wherein the proclamation was issued, was infact being circulated in Ahmednagar district though printed in Pune. As such, he prayed for dismissal of the application.

5. Heard rival submissions and also perused documents on record along with the record and proceedings of original Application No. 83 of 2013.

6. Though it is claimed by the applicants that respondent No.2 Dargah is not a Wakf property, and it is in fact a temple

and Kalika Mandir in reality, but from the documents on record such as Exhibit 32, which is city survey extract, indicates that survey No. 341 at Dadh (Bk) Taluka Rahata, District Ahmednagar is property of Adan Madan Baba Dargah Deosthan. Further, as per city survey extract Exh. 33 city survey No. 342 is property of public burial ground. Both these properties are adjacent to each other. The Enquiry Register extract Exhibit 35 indicates that an enquiry was conducted in respect of the said property in the year 1980 and in the entry at Serial No. 186, the city survey No. 341 is shown as 'Adan Madan Baba Dargah Deosthan' and one Babulal Mehboob Inamdar was managing its affairs. Further, the entry at Sr. No. 185 indicates that property of City Survey 342 is mentioned as 'burial ground of Muslim Community'. Thus, as per these entries, the properties of city survey Nos. 341 and 342 are in fact Dargah of Adan Madan Baba and Kabrastan of Muslim Community. There is nothing on record which could indicate that it was Temple of Kalika or it was public burial ground available for all communities. As such, the first objection raised by the applicants has been falsified on the basis of documentary evidence.

7. It is significant to note that as per the definitions mentioned in the Wakf Act,

“Wakf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes -

(i) a waqf by user but such waqf shall not cease to be a waqf by reasons only of the user having ceased irrespective of the period of such cesser;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record

(iii) “grants” including mashrat-ul-Khidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purpose as recognized by Muslim law, and “ Wakf” means any person making such dedications”

8. From the aforesaid definitions, it is clearly evident that the purpose of property of respondent No.2 being a burial ground for Muslim community and Dargah, is pious, religious or charitable recognized by the Muslim law. Therefore, the act

of respondent No.1 registering the property of respondent No.2 Dargah as 'Wakf property' *prima facie* appears appropriate. Moreover, the documents from Ref File No. ADR/215/2012 from Maharashtra State Board of Wakfs, Panchakkai, Aurangabad clearly indicated that respondent No.1 had properly considered the documents relating to the property of respondent No.2 and by following due process of law an enquiry was conducted and thereafter it was held that property of respondent No.2 is a Wakf property.

9. The learned counsel for the applicants strongly argued that the act of registration of property of respondent No.2 as a Wakf property is against the law, mainly because proclamation in respect of the said property was not proper and no opportunity to the villagers was in fact given before passing the impugned order. For that purpose, he pointed out that the proclamation for calling objections was in fact published in newspaper "Nav Bharat" which was in fact in circulation in the area of Pune district and not Ahmednagar. Admittedly, the public notice in respect of the proclamation was published in daily local newspaper "Nav Bharat" printed at Pune. However, that does not mean that it was not at all circulated in the area of Ahmednagar district. There is nothing on record to show that the said newspaper was never circulated in the area of

Ahmednagar. Apart from that, the documents of Wakf Board clearly indicate that the proclamation in respect of the property of respondent No.2 was affixed on the property itself in presence of panchas and panchnama to that effect is also on record along with the photographs. If it is the case of the applicants that, villagers make frequent visits to the property of respondent No.2 for pious purpose, they must have noticed such proclamation. Further, the order of respondent No.1 about affixing such proclamations on the property itself is also in the file of respondent No.1. Moreover, it is not the case of the applicants that they are administrating suit property of respondent No.2. As such, publication of proclamation in the aforesaid daily newspaper and act of affixing the proclamation on the property itself can be considered as sufficient compliance of Section 32 of the Wakf Act. Further, there was no need to issue personal notices to the present applicants for calling their objections. In such circumstances, there appears no force in the submissions of learned counsel for the applicant that the proclamation in respect of property of respondent No.2 was not given wide publicity.

10. Thus, considering all these aspects, it appears that respondent No.1 after due enquiry as per the provision of Wakf Act, has passed the impugned order and thereby declared the

property of respondent No.2 Dargh as Wakf property. Hence, the impugned judgment and order passed by the learned Tribunal in Wakf Application No. 87 of 2013 needs no interference.

11. In view of the same, the present Civil Revision Application stands dismissed and disposed of.

(SANDIPKUMAR C. MORE, J.)

Y.S.K.