

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.3475 OF 2018

Siraj Nizamuddin Sayyed & Ors.

.. Petitioners

Versus

Chiraguddin Nazir Mohd. Khan & Ors.

.. Respondents

Mr.Manoj J. Bhatt for the petitioners.

Mr.B.V. Samant, Addl.G.P a/w Smt.R.A. Salunkhe, AGP for the respondents-State.

CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATE : 18th March 2024

P.C.:-

. Heard.

2. By the present writ petition, the petitioners seek to raise a challenge to the order dated 2nd June 2010 that has been passed by the Chief Executive Officer, Maharashtra State Wakf Board, Aurangabad registering 'Peer Haji Khamsha (Khaksar) Durgah Trust' as a 'Wakf' under Section 43 of the Wakf Act, 1995.

3. It is the contention of the learned counsel for the petitioners that this order passed by the Wakf Board is illegal inasmuch as the said Trust has already been registered as a 'Public Trust' under the provisions of the Maharashtra Public Trust Act, 1950. On the ground that two

Authorities cannot exercise jurisdiction at the same time, the petitioners have challenged the said order.

4. On hearing the learned counsel for the petitioners, we find that the issue as to whether a particular wakf property is wakf property or Trust property are factual aspects that would be required to be adjudicated under the Wakf Act, 1995. A remedy against an order declaring the Trust as a 'Wakf' is available before the Tribunal under the Wakf Act, 1995.

5. Since the statutory remedy is available to the petitioners and the issue requires factual adjudication, we are not inclined to entertain the writ petition. Instead, the petitioners are at liberty to challenge the order dated 2nd June 2010 passed by the Wakf Board before the Tribunal constituted under the provisions of the Wakf Act, 1995. Accordingly, the challenge to the impugned order is not entertained in exercise of writ jurisdiction. The petitioners are at liberty to approach the Tribunal under the Wakf Act, 1995 for seeking redressal of their grievances. The time spent in prosecuting the present writ petition that is from 12th January 2018 till today shall be excluded if such remedy is availed of.

6. In case, the petitioners move the Tribunal and seek appropriate interim order, the Tribunal shall consider the same expeditiously and on its own merits. Keeping all points raised on merits open, the writ petition is disposed of.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.