



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

CIVIL REVISION APPLICATION NO. 50 OF 2024

Hajra Khan Rayazoddin Khan
Through G.P.A. Shaikh Irfan
Ahmed Abdul Raheman (Patel) .. Applicant

Versus

Pathan Isak Khan Mansur Khan
and others .. Respondents

Shri S. S. Kazi, Advocate for the Applicant.
Shri Hrishikesh V. Tungar, Advocate for the Respondent Nos. 1
and 2.
Shri N. E. Deshmukh, Advocate for the Respondent No. 4.

CORAM : SHAILESH P. BRAHME, J.
DATE : 11TH JULY, 2025.

FINAL ORDER :

. Heard both sides.

2. Being aggrieved by order dated 12.12.2023 passed below Exhibit 20/B by the learned Chairman, Maharashtra State Wakf Tribunal Aurangabad in Wakf Suit No. 46 of 2023 rejecting application U/O I Rule 10 of the Code of Civil Procedure, present revision is filed.

3. Applicant sought impleadment in a suit filed by the respondent Nos. 1 and 2 against the respondent Nos. 3 and 4 for injunction on the basis of decision rendered in suit No. 23 of 2002

and Civil Revision Application No. 157 of 2004 inter alia recognizing him as Mutawalli. Learned counsel for the applicant submits that his client is Mutawalli and is a care taker. He is necessary party as the controversy amongst the respondents is in respect of wakf property. It is submitted that it is a collusive suit. If the applicant is impleaded as party, assistance would be rendered to the Tribunal. It is vehemently contended that lease deed executed on 26.12.2017 for 51 years as well as sub lease executed on 01.04.2008 are void and respondents are unauthorizedly in possession of the property of the wakf. Learned counsel has relied on the judgment of the Apex Court in the matter of Markaz Constructions Vs. Sugra Humayun Mirza Wakf and others reported in *(1996) 10 SCC 289*.

4. Per contra, learned counsel Mr. Rushikesh Tungar for the respondent Nos. 1 and 2 would submit that it is not a collusive suit . Temporary injunction application filed in the suit is rejected due to the contest and civil revision application is required to be filed in the High Court. It is further submitted that application submitted by the applicant U/O I Rule 10 of the C. P. C. exhibit 20 does not indicate that applicant is in possession. It is further submitted that the relief of injunction is personal in nature for which applicant is not necessary party.

5. Learned counsel Mr. Deshmukh for the respondent No. 3 /Wakf Board supports impugned order.

6. I have considered rival submissions of the parties. Applicant is claiming hereditary rights of Mutawalli of Dargah Hazrat Shah Mansoor Wali (Rh) on the basis of decision rendered in Suit No. 23 of 2002, which is confirmed in Civil Revision Application No. 157 of 2004. He is seeking intervention in a suit for injunction preferred by the respondent Nos. 1 and 2 against the remaining respondents. It reveals from record that suit instituted by the respondent Nos. 1 and 2 is not in respect of administration of wakf i. e. Dargah Hazrat Shah Mansoor Wali (Rh). It is for the personal relief of injunction against the respondent No. 3, who is obstructing their possession.

7. No relief is claimed against the petitioner. Merely because petitioner happens to be Mutawalli, it cannot be said that he is a necessary party. His right to administer wakf and look after properties are not disputed. It is open to the applicant to follow proper course if the property or the land in question is being unauthorizedly occupied either by the respondents or any other person. The Tribunal has recorded that the respondent No. 1 and 2 are *dominus litis* and the parties are not castigating any doubt over the office of the applicant or his hereditary rights. Observations recorded by the Tribunal cannot be faulted with.

8. Application for temporary injunction was contested by the defendants in the suit and it was rejected. Against that civil revision application is required to be filed in the High Court and same is pending. There is nothing on record to indicate that

collusive suit has been filed by the respondent Nos. 1 and 2 against remaining respondents. The submissions of the learned counsel Mr. Kazi in this regard have no merit.

9. Reliance is placed on the judgment of the Supreme Court in the matter of Markaz Constructions Vs. Sugra Humayun Mirza Wakf and others (supra). In the reported judgment the decision rendered by the Division Bench of Andhra Pradesh High Court was carried to the Apex Court. It was pertaining to the executing a long term lease deed for construction of commercial complex on the wakf property. In that wakf board had decided to grant lease for development in favour of then petitioner, which was challenged by the Mutawalli. The Division Bench had given direction to Mutawalli for inviting fresh offers. Mutawalli was issued with express direction to undertake a particular procedure so as to ensure that interest of the wakf property is protected and subserved. In that context it was held that Mutawalli is necessary party being the care taker. However, the case at hand pertains to personal relief of injunction. Neither any relief is claimed against the applicant, nor his status is ever challenged. Besides that I have already recorded that it is not collusive suit. The judgment of the Apex Court would not enure to the benefit of the applicant.

10. It is contended by learned counsel Mr. Kazi that if the applicant is impleaded, then applicant would be in a position to file counter claim either for possession or any other relief in the

interest of the wakf. The Tribunal has recorded a find that it would be open for the applicant to take recourse to independent proceeding either against the respondents or anybody. The applicant has efficacious alternate remedy available to protect the wakf property. Apparently any decision rendered in the suit in question is not prejudicial to right of the applicant or the wakf board. In that view of the matter, I find no merit in the submissions.

11. For the reasons recorded above, I find no merit in the application. Impugned judgment does not require any interference. The civil revision application stands dismissed.

[SHAILESH P. BRAHME J.]

bsb/July 25