



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRA NO. 49 OF 2023

ALTAF HUSSAIN ANSARI ALIAS KHALED ANSARI SIRAJUL HASAN ANSARI
VERSUS
NAWAB SYED K ALI KHAN POWER OF ATTORNEY OF NAWAB MIR B KHAN
BAHADUR ALIAS MUKRRAM JAH AND ORS

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Advocate for the Petitioner : Mr. Kazi S. S.

Advocate for Respondent nos. 1 & 4 : Mr. Sk. Mujtaba Gulam Mustafa h/f
Mr. A.L. Kanade

Advocate for Respondent No. 5 : Mr. V.P. Latange

Advocate for Respondent no. 7 & 8 : Mr. Md. Waseemullah Ahmedullah

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CORAM : SHAILESH P BRAHME, J.

DATE : 26.11.2025

PER COURT :

Heard both sides finally at the admission stage with their consent.

2. The revision is directed against order dated 09.01.2023, rejecting application (Exh 23) passed by the Civil Judge, Senior Division (Corporation Court), Aurangabad in Regular Civil Suit No. 2/2022.

3. The respondents have instituted Regular Civil Suit No. 2/2022 for perpetual injunction and mandatory injunction in respect of the scheduled property mentioned in the plaint. After receiving summons the applicant-original defendant nos. 5 and 6 caused appearance before the Court and submitted written statement. The applicant submitted application (Exh. 23) under Order VII Rule 11 of the Code of Civil Procedure stating that the jurisdiction of the Civil Court is barred under Section 85 of the Wakf Act. The suit property has been described as wakf property by the plaintiffs themselves. The application is contested by the plaintiffs. By interim order it was rejected.

4. I have considered rival submissions of the parties. The suit is for

perpetual and mandatory injunction. In paragraph no. 7 a candid pleading is incorporated that the suit property is registered as a wakf property, which was published in Government gazette also. This fact has not been disputed by the respondents. My attention is also adverted to a photo copy of the gazette disclosing registration of the property as a wakf property. In such a situation prohibition engrafted in Section 85 is applicable. The civil court shall have no jurisdiction to entertain the suit for injunction in respect of the wakf property and the Wakf Tribunal shall have the jurisdiction.

5. The learned counsel for the applicant has tendered on record judgment of the Supreme Court in the matter of **Board of Wakf, West Bengal Vs. Anis Fatma Begum and another; (2010) 12 SCALE 323**, to buttress that the Tribunal has jurisdiction like that of Civil Court and the dispute, which is before the Civil Court can be entertained by the Tribunal as it pertains to wakf property. This position is fortified by the Supreme Court in **Rashid Wali Beg Vs. Farid Pindari and others; 2021 SCC OnLine SC 1003**.

6. Impugned order is unsustainable because under the garb that there are disputed questions of facts, learned Judge did not go into the question of meaningful reading of the plaint and the statutory bar under the Wakf Act. He has committed patent illegality. The application Exh. 23 should have been allowed to some extent.

7. In normal course I would have quashed the order under challenge and relegated the matter to the Court for deciding afresh so as to examine as to whether recourse can be had to Order VII Rule 10 of CPC instead of rejecting the plaint. To avoid repetition of hearing, this Court is of the considered view that by resorting to the provisions of Order VII Rule 10, the plaint needs to be returned to the respondent plaintiffs for presenting it to the Tribunal. In this view of the matter, I pass following order:

ORDER

(I) Civil Revision Application is allowed and the impugned order is quashed.

(II) The plaint in RCS No. 2/2022 which is pending before the Civil Judge Senior Division (Corporation Court), Aurangabad, shall stand returned to the respondents-plaintiffs for presenting it before the Wakf Tribunal Aurangabad within a period three weeks from today.

(III) The parties shall appear before the Court on 03.12.2025.

(SHAILESH P. BRAHME, J.)

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