



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.67 OF 2024

WITH

CIVIL APPLICATION NO.4554 OF 2024

IN CRA.NO.67 OF 2024

1. Gorakh S/o Tukaram Lokhande,
Age-65 Years, Occu- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
2. Bhagwat S/o Tukaram Lokhande,
Died through his LRs.
Raju S/o Bhagwat Lokhande,
Age- 35 Years, Occu.- Govt. Service,
R/o. Takalibhan, Tal-Shrirampur,
Ahmednagar. Dist.
3. Sanjay S/o Kondiram Lokhande,
Age- 50 Years, Occu. Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
4. Balasaheb S/o Shankar Lokhande,
Age- 48 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
5. Prakash S/o Madhukar Gadekar,
Age-38 Years, Occu. Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar. ... **Applicants**

VERSUS

1. The Tahsildar, Office of Tahsildar,
Shrirampur, Tal. Shrirampur,
Dist. Ahmednagar.
2. Maharashtra State Board of Wakfs
through its Chief Executive Officer,
Panchakki, Aurangabad.

3. Dargah Dawal Malik (Rah),
through its Mujawar,
Shaikh Imam Badshah Shaikh Mujawar,
Age-33 years, Occupation Agriculture,
R/o. Takalibhan, Tal. Shrirampur,
Dist. Ahmednagar.
4. Kondiram S/o Tukaram Lokhande,
Died through his L.R.
4-A) Ramesh S/o Kondiram Lokhande,
Age-58 years, Occu.-Agriculture,
R/o. Takalibhan, Tal. Shrirampur,
Dist. Ahmednagar.
5. Chandmal S/o Chunilal Gaud,
Age-60 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
6. Gorakah S/o Bhimrao Jadhav,
Age-58 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
7. Kerabapu S/o Pandharinath Magar,
Age- 55 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar. ... Respondents.

WITH
CIVIL APPLICATION NO.6911 OF 2024
IN CRA.NO.67 OF 2024

1. Dattatraya Yamaji Lokhande,
Age-59 Years, Occ- Agriculture,
R/o-Taklibhan, Tal. Shrirampur,
Dist. Ahmednagar.
2. Dnyaneshwar Jagannath Lokhande,
Age- 57 Years, Occ-Agriculture,
R/o- Taklibhan, Tal. Shrirampur,
Dist. Ahmednagar. ... Applicants

VERSUS

1. Gorakh S/o Tukaram Lokhande,
Age-65 Years, Occu- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
2. Kondiram S/o Tukaram Lokhande,
Died through his L.R.
4-A) Ramesh S/o Kondiram Lokhande,
Age-58 years, Occu.-Agriculture,
R/o. Takalibhan, Tal. Shrirampur,
Dist. Ahmednagar.
3. Bhagwat S/o Tukaram Lokhande,
Died through his LRs.
3-A) Raju S/o Bhagwat Lokhande,
Age- 35 Years, Occu.- Govt. Service,
R/o. Takalibhan, Tal-Shrirampur,
Ahmednagar. Dist. Ahmednagar.
4. Sanjay S/o Kondiram Lokhande,
Age- 50 Years, Occu. Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
5. Balasaheb S/o Shankar Lokhande,
Age- 48 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
6. Chandmal S/o Chunilal Gaud,
Age-60 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
7. Gorakah S/o Bhimrao Jadhav,
Age-58 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
8. Kerabapu S/o Pandharinath Magar,
Age- 55 Years, Occu.- Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.

9. Prakash S/o Madhukar Gadekar,
Age-38 Years, Occu. Business and Agriculture,
R/o. Takalibhan, Tal-Shrirampur,
Dist. Ahmednagar.
10. The Tahsildar, Office of Tahsildar,
Shrirampur, Tal. Shrirampur,
Dist. Ahmednagar..
11. Maharashtra State Board of Wakfs
through its Chief Executive Officer,
Panchakki, Aurangabad.
12. Dargah Dawal Malik (Rah),
through its Mujawar,
Shaikh Imam Badshah Shaikh Mujawar,
Age-33 years, Occupation Agriculture,
R/o. Takalibhan, Tal. Shrirampur,
Dist. Ahmednagar.

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Advocate for Applicants : Mr. Shaikh Mazhar A. Jahagirdar.

AGP for Respondent-State : Mr. D. B. Bhange.

Advocate for Respondent No.2 : Mr. Rameez M. Shaikh.

Advocate for Respondent No.3 : Mr. K. D. Bade-Patil.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 03.09.2025

PRONOUNCED ON : 09.09.2025.

JUDGMENT :-

1. Heard both sides finally.
2. Applicants are questioning order dated 20.12.2023 passed below Exh.5 in Miscellaneous Application No.20 of 2017 declining to grant stay to the implementation of order 25.06.2012. Applicants are prosecuting Miscellaneous

Application No.20 of 2017, pending before Maharashtra State Wakf Tribunal, Aurangabad.

3. Respondent No.3 is a Dargah. Land Gut No.249 is a Wakf property. The dispute pertains to 10 R. of land, part of which is let out to the applicants. Applicants are in possession of the same and have their houses. They claim to be the lessee inducted by registered lease deed executed on 26.09.1949 at the instance of Mutawalli. They are continuously in possession though lease was initially for period of 20 years.

4. Respondent No.2/Board received complaint regarding illegal occupation of the applicants. It conducted inquiry under Section 54 of Wakf Act, 1955 (herein after referred to as 'Act'). By order dated 25.06.2012 applicants are directed to hand over possession by removing the encroachment within 15 days. Being aggrieved by the order eviction, applicants approached Wakf Tribunal under Section 83 belatedly after four years and 11 months. Apprehending dispossession, application Exh.5 was also submitted. After contest, the same was rejected by the impugned order.

5. Learned counsel Mr. Jahagirdar submits that impugned order is perverse because the judgment and decree dated

21.11.2001 passed by competent Civil Court in Regular Civil Suit No.181 of 1998, which is further confirmed in Regular Civil Appeal No.47 of 2002 is overlooked. It is further submitted that applicants are in lawful possession of the disputed property on the strength of registered lease deed and they cannot be termed as encroachers. It is submitted that if they are dispossessed, then the proceedings before the Tribunal would be infructuous.

6. Learned counsel further submits that order passed by Sub Divisional Officer on 27.06.2022, upon which, reliance is placed by the respondents is without jurisdiction. It is submitted that when the applicants were inducted, there was no prohibition for letting out the Wakf property for any specific time period. It is submitted that *prima facie* case is made out and balance of convenience is in their favour.

7. Per contra, learned counsel Mr. Bade Patil repels the submissions on the basis of affidavit-in-reply. He would submit that present revision application is not tenable and liable to be rejected. It is submitted that applicants have suppressed material facts. Order passed by Division Bench in Writ Petition No.7636 of 2019, order of Sub Divisional Officer dated 27.06.2022 and order dated 14.06.2024 in Writ Petition

No.5696 of 2024 are suppressed. It is submitted that there was no provision for letting out the property for 20 years. The lease deed is void and possession is illegal. It is further submitted that applicants have taken disadvantage of interim relief granted by the Vacation Court on 28.05.2024 and continued to be in possession. It is further submitted that lease deed is against the Wakf Properties Lease Rules, 2014.

8. Learned counsel Mr. Shaikh appearing for respondent No.2/Board adopts the submissions of the respondents. Learned AGP appearing for respondent No.1/State also adopts the submissions.

9. I have considered rival submissions of the parties. Applicants have filed Miscellaneous Application No.20 of 2017 under Section 83 of the Act challenging order dated 25.06.2012 passed by respondent No.2/Board under Section 54(3) of the Act. It transpires from record that there is delay of four years and eleven months in approaching the Tribunal which has not been condoned yet. Apprehending dispossession, application Exh.5 is pressed into service which is rejected by the impugned order. The possession is protected by this Court vide order dated 28.05.2024 when it was represented that

notices dated 24.05.2024 were issued to the applicants for vacating the premises.

10. A preliminary objection is raised by the respondents for maintainability of the revision having being filed against interlocutory order. A reliance is placed on the judgment of Supreme Court in *Tek Singh Vs. Shashi Verma and another, Civil Appeal No.1416 of 2019*, in which, it is laid down that revision under Section 115 of C.P.C. is not maintainable against interlocutory order. The matter before the Apex Court was arising out of suit filed under Section 6 of Specific Relief Act and it was not in the context of any Wakf property or the Wakf Act of 1955. The ratio cannot be made applicable to the present case. Learned counsel for the applicants is right in contending that revision is the only remedy by implication of Section 83(9) and proviso thereto. A Tribunal has all powers of Civil Court. I am of the considered view that present revision is maintainable.

11. There is no dispute that order passed by the respondent/Board on 25.06.2012 is sought to be challenged after four years by filing application No.20 of 2017 before the Tribunal. The delay is yet to be condoned. From 2017 till this date, no endeavour has been made by the parties to request

the Tribunal to consider the condonation of delay. The Tribunal also dealt with application Exh.5 without hearing parties on condonation of delay. The Tribunal does not get jurisdiction to entertain the application without condoning the delay. The Tribunal should have peremptorily decided the issue of delay.

12. Applicants are claiming to be lessee of respondent No.3 on the strength of lease deed dated 26.09.1949, which was for 20 years. Already respondent No.2/Board conducted inquiry under Section 54(3) of the Act and directed them to vacate the premises. Besides that the directions issued by Division Bench in Writ Petition No.7636 of 2019 vide order dated 27.04.2022 are not disclosed. Applicants themselves had filed the said petition and solicited the orders. In pursuance of those orders, further inquiry was conducted by Sub Divisional Officer. The applicants are held to be encroachers and they were directed to remove the encroachment by invoking powers under Section 55(1) vide order dated 27.06.2022 which is also not disclosed. There is substance in the submissions of the respondents that applicants have suppressed material facts from this Court. They are enjoying the interim relief which was secured during vacation.

13. Learned counsel for the applicants is unable to satisfy this Court as to how the applicants are continued in possession after expiry of lease period. Even if some benefits are given to them for having being inducted in the premises vide registered lease deed, their further continuation appears to be *prima facie* illegal. It is further endorsed by detail inquiry and order passed by Sub Divisional Officer on 27.06.2022. I do not find *prima facie* case in favour of the applicants.

14. Applicants are banking on the judgment passed by Civil Court in Regular Civil Suit No.181 of 1998. It is confirmed by Appellate Court in Regular Civil Appeal No.47 of 2002. But, the judgments would show their possession. They do not certify them to be lawful tenant. There is nothing on record to suggest that they are paying rent. I am not inclined to give any benefit to the applicants only on the basis of continuous possession.

15. Parties have raised contentious issues regarding validity of the lease and the authority to let out the property for more than three years. It is appropriate for the Tribunal to examine those issues, if the delay is condoned. It is not necessary to examine purport of Rule 4 of the Wakf Properties Lease Rules, 2014 and the purport of judgment referred by the applicants in

the matter of *Brigadier K. K. Verma and another Vs. Naraindas C. Malkani*. This aspect needs to be gone into in a full-fledged inquiry.

16. I do not find any perversity or material irregularity in the impugned order. It is necessary to request the Tribunal to consider issue of delay peremptorily. The applicants are guilty of lapses and they went on representing this Court that they have eminent threats of dispossession. Tribunal is justified in refusing to exercise discretionary jurisdiction in their favour.

- (i) Civil Revision Application is rejected.
- (ii) Maharashtra State Wakf Tribunal, Aurangabad is requested to consider issue of condonation of delay peremptorily, as early as possible and not more than one (1) month from today.
- (iii) Pending civil applications accordingly disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-

17. After pronouncement of judgment, learned counsel for the applicants prays for continuation of interim relief by way of protection to their possession. It is contended that the

possession is being protected since 28.05.2024 and applicants have residential houses in the suit premises.

18. Request is opposed by the learned counsel Mr. Bade Patil for the respondent. It is contended that the delay is yet to be condoned in the substantive proceedings. Applicants are enjoying their possession, which is unauthorized. It is further contended that similarly situated persons have vacated their premises.

19. I have observed that the Tribunal has not yet condoned the delay. It is further observed that possession of the applicants is illegal and even they are not paying any rent towards the same. I have further recorded finding that applicants have suppressed material facts. In such circumstances, I am not inclined to continue interim protection. Request of the applicants is rejected.

(SHAILESH P. BRAHME, J.)

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vmk/-