



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

CIVIL REVISION APPLICATION NO. 169 Of 2024

1. Ussama s/o Irshan Qureshi
Age : 40 years, Occ. Business,
R/o. T/102 Pump House, Hanjar Nagar,
Andheri (East), Bombay.
2. Sameer s/o. Abbas Pathan,
Age : 26 years, Occ. Business,
R/o. Room No.1, Noor Mohd.,
Chawal, Gondivali Gavthan,
Young Committee, Andheri (East) Mumbai.
3. Ibrahim Khan s/o. Mohamad Khan
Age : 62 years, Occ. Pensioner,
R/o. Bhangar Chawl, Gondewali Talao,
Western Express Highway Andheri East
Mumbai.

.. Applicants

Versus

1. Madarsa Rehmania Talimul Quran,
Situating at Masjid Gundavali Gaothan,
Tq. Andheri (East), Mumbai – 400069
Through its Trustees:
Mohammad Ehtesham s/o. Md. Irfan Qureshi,
Age : 60 years, Occ. Business,
R/o : Bhangarwala Chawl, Gondiwali Tank,
National Highway Andheri East, Mumbai.
2. Mohammad Ehtesham s/o. Mohammad Irfan Qureshi
Age : 60 years, Occ. Business,
R/o : Bhangarwala Chawl, Gondiwali Tank,
National Highway Andheri East, Mumbai.
3. Shaikh Mehmood Shaikh Jamal
Age : 60 years, Occ. Nil,
R/o : Gondiwali, Gavthan, National Highway,
Near Ujala Committee, Andheri East,
Mumbai.

4. Abdul Hafiz s/o. Abdul Aleem,
Age : 47 years, Occ. Business,
R/o. Bhangarwali Chawl, Gondiwali Tank,
National Highway,
Near Ujala Committee, Andheri East,
Mumbai.
5. M/S. Havemore Realty Private Limited,
O/a. Omkar House, Eastern Express Highway,
Opp. Sion Chunabhatti Signal, Sion (East),
Mumbai – 400022.
6. Maharashtra State Board of Waqfs,
Through its Chief Executive Officer,
Having its Office at Panchakki,
Aurangabad.

.. Respondents

- * Advocate for the Applicants :
Mr. Shaikh Mujtaba Gulam Mustafa
- * Advocate for the Respondent Nos.1 to 4 :
Mr. Aditya N. Sikchi
- * Advocates for the Respondent No. 5 :
Senior Counsel Mr. V. D. Sapkal a/w
Mr. Amit Vaidya i/by Mr. Rahul K. Kasat

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 31st JULY 2025

JUDGMENT PRONOUNCED ON : 05th AUGUST 2025

J U D G M E N T :

1. Heard both sides finally at the admission stage.
2. Revision Applicants who are original Plaintiffs, are challenging judgment and order dated 18.10.2024 passed below

Exhibit-48, rejecting application by the learned Chairman Maharashtra State Waqf Tribunal at Aurangabad in Waqf Suit No. 22/2022. Applicants had filed application Exhibit-48 claiming following reliefs :

- “A. This application may kindly be allowed.
- B. The defendant No.5 its servant, agent or anybody claiming through him may kindly be restrained from stopping the plaintiff and Namazi's from performing the Namaz at the suit Masjid by passing injunction order against them.
- C. The Defendant No.5 be restrained from making any sort of construction at the spot of the suit Masjid except than of Masjid.
- D. The defendant No.5 may kindly be directed to maintain status quo ante.
- E. Defendant No.5 may kindly be directed to re-construct the Masjid at its original place / suit Masjid at his own cost and tender apology publicly for his illegal acts.
- F. Any other fit, equitable relief may kindly be granted to which this plaintiffs are entitled.”

3. The controversy involved in the matter pertains to 5000 sq. ft. area of CTS No.78-A to 78-H of Survey No.91/2 and 4/3 situated at Gondavali, Andheri (East), District Mumbai and the structure appertent to it. The Respondent No.1 is a Madarsa registered under the Maharashtra Public Trust Act as well as Waqf Act. A Masjid and the suit land was subject matter of Slum Rehabilitation Scheme under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as Maharashtra Slum Act for the sake of brevity and convenience). Applicant No.3 and Respondent Nos. 2 to 4 are the Trustees of the Respondent No.1. A registered Memorandum of Understand (MOU) was executed on 16.07.2018

in between Respondent Nos. 2 to 4 on one part and Respondent No.5 on another part, being a Developer. As per the terms of understanding, the original structure of Masjid was demolished on 17.09.2022 and a new Masjid is constructed at the adjoining area as part of a rehabilitation measure. The execution of the MOU, demolition of Masjid and its relocation are the causes of action for the Applicants to approach Waqf Tribunal by filing Waqf Suit No.22/2022.

4. Applicants filed Waqf Suit No.22/2022 for the relief of declaration that 5000 sq. ft. area and the Masjid was Waqf property, MOU dated 16.07.2018 is detrimental to the interest of the Waqf and it is bad in law. The mandatory injunction directing Respondent No. 5 to hand over management control supervision of the Waqf to the Waqf Board and direction to reconstruct Waqf institution at its original place are solicited with perpetual injunction and damages. Many consequential reliefs are also solicited. The execution of MOU dated 16.07.2018 is challenged by the Applicants. It is contended that Masjid was a Waqf property. The MOU is against the interest of the Waqf. No permission from the competent authority was solicited for demolition and the relocation of the Masjid. The demolition on 17.09.2022 is stated to be bad in law. It is further contended that new construction is not commensurating with earlier area possessed by the Waqf. The demolition is alleged to have carried out surreptitiously when suit was subjudiced.

5. Alongwith suit, application Exhibit-5 was submitted but it became infructuous as the old structure was demolished on 17.09.2022. Respondents filed distinct written statements. A separate application Exhibit-49 was filed and order of status-quo was passed on 30.09.2022. Application Exhibit-48 is contested by the Respondents. Thereafter impugned order is passed on 18.10.2024.

6. Learned Counsel Mr. Shaikh Mujtaba Gulam Mustafa for the Applicants submits that impugned order is perverse and patently illegal because there is voluminous documentary evidence to show that a Masjid was standing on the demised premises which was unauthorizedly razed by the Respondents in collusion. It is vehemently submitted that there is strong prima facie case to show that 5000 sq. ft. area and the Masjid was the Waqf property which can be seen from MOU and the pleadings of the Respondents also. Learned Chairman erred in holding that Applicants failed to prove Waqf by user. It is submitted that the trust deed and property card at Exhibit-96 would disclose name of Shaikh Noor Mohammad Riyazul Haq who was instrumental in creating Waqf.

7. It is further submitted that there is unimpeachable material on record to show that Masjid was demolished without any permission of Waqf Board or any other competent authority. The Tribunal ought to have exercised the jurisdiction to protect interest of the Waqf Board. It is submitted that learned

Chairman failed to appreciate that the terms of MOU are lopsided, detrimental to the interest of the Waqf and settled by huge monetary consideration. It is further submitted that the relocation of the Masjid by Slum Rehabilitation Authorities is illegal. Learned Chairman failed to take into account the position that existed at the time of filing a suit. The findings regarding irreparable loss and balance of convenience, are perverse.

8. Per contra, the submissions are advanced by learned Senior Counsel Mr. V. D. Sapkal appearing for Respondent No.5. Other Respondents adopted his submissions. He has referred to affidavit-in-reply and documents annexed thereto. He would submit that the Respondent No.1 is not the owner of any area which is subject matter of Slum Development Scheme. On the contrary, area of 3084 sq. mtr. was allotted to it by sale certificate dated 24.12.2019. Under the provisions of Slum Act, Respondent No.5 is developing the land by relocating the properties by following due procedure of law. He would submit that MOU was validly executed and in pursuance of that old structure was demolished and new Masjid is erected at the adjoining area. The possession of the new construction is handed over on 10.07.2022, which is more than eligibility and it is being used. It is vehemently contended that Masjid is not a Waqf property. In pursuance of the notification issued in 1976 and 1982, the land in question was declared to be slum. SRA sanctioned plan on 13.07.2018 and 25.11.2020. Learned Senior Counsel further submits that suit itself is not tenable as the

jurisdiction is excluded by Slum Act. The application Exhibit-48 is untenable because prayers therein, cannot be granted. It is further submitted that the sanction layout and photographs placed on record indicate that MOU has been implemented and every care is taken to protect interest of Respondent No.1 – Waqf. It is submitted that Applicants did not challenge scheme, various sanctions given under Slum Act and the notifications.

9. After considering the rival submissions of the parties, the relevant undisputed facts emerge in the matter are that MOU was executed on 16.07.2018 and it was registered one; Notifications dated 22.01.1976 and 19.01.1982, declaring the land in question as a slum area; Approval dated 13.07.2018 (Exhibit-R3); Revised approval dated 25.11.2020; Commencement Certificates dated 23.12.2020 and 07.07.2022; Sale Certificate dated 24.12.2019 issued by the competent authority the Eligibility Certificate dated 30.12.2019 and Approval of Slum Development Scheme have not been challenged by the Applicants either before Tribunal or before any other competent forum.

10. The Respondent No.5 is executing MOU on the basis of the above referred Notifications, sanctioned Approvals, Commencement Certificates, Eligibility Certificates and approved Slum Development Scheme. The demolition undertaken by the Respondents on 17.09.2022 is in pursuance of MOU. Prior to demolition of old Masjid, newly constructed Masjid was handed over by the respondent No. 5. The approved plans and the

photographs produced on record are not disputed by the Applicants which corroborate completion of the Masjid and it is being put to the use.

11. It reveals from record that prayers in the suit are in respect of MOU dated 16.07.2018 and its execution. The demolition of the old Masjid, construction of the new Masjid, rehabilitation of the Masjid, handing over of the possession would fall within purview of the Slum Act. The prayers in application Exhibit-48 are consequential in nature and they would amount to granting final relief. The Applicants or the stake holders could have taken recourse to Section 35 of the Slum Act by preferring appeal before the competent authority, if they were aggrieved by area relocated by the Respondent No.5. The bar engrafted in Section 42 for granting majority of reliefs is apparently attracted. The submission of learned Senior Counsel for the Respondent is relevant because the reliefs solicited in the present petition are discretionary in nature. A threadbare inquiry needs to be conducted which is possible by full-fledged trial only. If the Applicants are not entitled to the principal relief then consequential relief by way of application Exhibit-48 cannot be granted.

12. Apparently there is voluminous tangible material to indicate that land in question was declared as slum. The competent authority approved the scheme of improvement, clearance and re-development. Eligibility of the area was fixed and thereafter Respondent No.5 executed MOU. There is no

reason to doubt demolition, new construction and handing over of Masjid at this stage of the proceeding. It is not out of context to mention that under development rules, carpet area has been prescribed and Rule 3.10 prescribes rehabilitation of eligible religious structure. Further Rule 8.1 also lays guidelines in respect of religious structure. The same cannot be gone into at the interlocutory stage. The Tribunal has rightly referred to Rule 3.10. No breach of rules is pointed out.

13. A vital document which needs to be considered, is the communication dated 30.12.2019 issued by Deputy Collector/competent authority prescribing the eligible carpet area of the Masjid concerned as 3084 sq. ft. No submission in respect of the carpet area of newly constructed Masjid can be entertained. These disputes or the challenges fall within purview of Section 35, for which remedy of appeal is provided. My attention is adverted to Section 108A of the Waqf Act by Counsel for the Applicants which provides overriding effect. The submission cannot be countenanced because prima facie it has not been established that Masjid, the structure, is Waqf property.

14. Learned Counsel Mr. Shaikh Mujtaba Gulam Mustafa for the Applicants attacked the terms of the MOU and its execution. The trustees have entered into MOU with the Respondent No.5. It would be matter of inquiry as to whether MOU is executed after consultation of stake holders or those are detrimental or not. These are disputed questions of facts for which full-fledged

trial is required. No conclusion can be drawn at the interlocutory stage. I am unable to accept the submission of applicants in this regard. It has been held that no prima facie material is placed to show that Masjid is property of Waqf. The trust deed, record of right, schedule do not indicate that structure of Masjid was Waqf. No material is on record to show that there was donation on the part of Shaikh Noor Mohammad Riyazul Haq so as to create Masjid and it is to be treated as Waqf. A full-fledged trial is required to establish Waqf by user. There is no prima facie material to corroborate that Masjid is Waqf. I find no reasons to interfere with the findings recorded by the Tribunal.

15. The grievance of the Applicants is that no permission is secured from the Respondent No.6-Board. The role of Respondent No.6 comes if it is prima facie established that Masjid is the Waqf. Mere existence of the Masjid is not sufficient. The Respondent No.1 - Madarsa is a Waqf, but that does not mean that erstwhile Masjid was also Waqf.

16. The further grievance of the Applicants is that very less area is provided under garb of rehabilitation. The terms of the MOU shows that Respondent No.5 was obliged to provide 5000 sq. ft. area and accordingly possession was given of the same area. It cannot be overlooked that the eligibility certificate dated 30.12.2019 pertains to eligibility of 3084 sq. ft. only. By way of relocation more area than prescribed has been provided. The submission in respect of huge payment of money to the tune of

Rs. 2 Crore is also misconceived because the parting of the money was towards deposit and as per the terms agreed between the parties. I do not find that any prima facie case is made out by the Applicants. The findings recorded by the Tribunal for balance of convenience and irreparable loss also cannot be faulted.

17. Learned Counsel Mr. Shaikh Mujtaba Gulam Mustafa for the Applicants relied on the judgment of **Smt. Sarladevi widow of Kundanlal Bandawar Dharampeth, Nagpur Vs. Shailesh s/o Gourishankar Namdeo, Tilaknagar, Nagpur**, AIR 1996 Bombay 98. I have gone through Paragraph Nos. 42 and 43 of the judgment. If a person is in peaceful possession for uninterrupted period, he is entitled to protect the same. The facts are distinguishable and this judgment will not apply to our case. He further relied on the judgment of **Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare and Anr.**, 2011 (6) ALL MR 15, to buttress that for temporary injunction factum of possession is relevant one, notwithstanding it is lawful or not. In the present case, the terms of MOU, demolition of Masjid and its relocation are facts in issue. Hence judgment is not applicable. He further relied on the judgment of **Telangana State Wakf Board and Anr. Vs. Mohamed Muzafar**, 2021 ALL SCR 1795. In that case by gazetted notification part of the subject matter was included in the list. Whether subject matter was a Waqf property or not, was the issue and in that context it was held that Tribunal had jurisdiction. The facts are distinguishable from our case. No

benefit of this judgment can be given to the Applicants.

. Further reliance is placed on judgment in the matter of **Syed Mohideen and Anr. Vs. Ramanathapura Peria Mogallam Jamath and Ors.**, 2011 AIR SCW 3568. Waqf Tribunal is like a Civil Court which can issue injunction under Order XXXIX Rule 1 and 2 is the principle laid down therein, which cannot be disputed. But that is not question in the present matter.

18. Learned Senior Counsel Mr. V. D. Sapkal relied on judgment of **Lokhandwala Infrastructure Pvt. Ltd. Vs. Dhobghat Compound Rahiwasi Seva Sangh and Ors.** Notice of Motion No.1516/2011 in Suit No.1108/2011 to buttress a fact that there is a bar under Section 42 of the Slum Act. In the present case, all the prayers in the suit cannot be said to be out of purview of Civil Court. At this juncture, reliance cannot be placed on the judgment. Further reliance is placed on judgment of **Slum Rehabilitation Authority and Ors. Vs. Kohinoor (SRA) Co-Op. Hsg. Society (Proposed) and Ors.**, MANU/MH/1492/2013. I have gone through Paragraph Nos. 12 and 13. The facts are distinguishable from the present matter. It is needed to be addressed as to bar under Section 42 is attracted to the proceeding pending before the Tribunal under Section 7 of the Act. This judgment will not help the Respondents.

. Lastly reliance is placed on judgment of **Abdul Sattar Haji Usman and Ors. Vs. The Archbishop of Bombay and Ors.**, MANU/MH/0509/2016. In that case suit for declaration of

ownership and possession was filed before the Civil Court and it was pleaded that in view of Section 42 suit is not maintainable. In the case at hand, multiple reliefs are claimed including declaration of status before Tribunal. No reliance can be placed on the judgment at this stage.

19. No case is made out to exercise jurisdiction under Section 115 of Civil Procedure Code. The Respondent No.1 has no vested right, title or interest in the land which is subject matter of Slum Development Scheme. At the cost of repetition, it is observed that due care has been taken to safeguard interest of Respondent No.1.

20. Civil Revision Application is dismissed. There shall be no order as to costs.

**SHAILESH P. BRAHME
JUDGE**

bsb/Aug. 25