



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

WRIT PETITION NO. 5313 OF 2025

Mohammed Mushtaq Hussain s/o
Mohammed Muzaffar Hussain
Through his Power of Attorney Holder
Maqsood Ali Khan Habib Khan .. Petitioner

Versus

Muzammil Ahmed s/o Mansoor Ahmed
and another .. Respondents

Mr. Amit A. Yadkikar, Advocate for the Petitioner.
Mr. Prashant P. Giri, Advocate for Respondent No. 1.
Mr. P. D. Patil, AGP for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 24th APRIL, 2025.

P C. :-

. Heard learned advocates for the respective parties and learned A.G.P. for respondent No. 2. By consent, taken up for final disposal.

2. The petitioner has challenged an order passed by the learned Additional Collector, Nanded dated 17.04.2025 thereby allowing the appeal of the respondent No. 1. The respondent No. 1 had filed an appeal challenging the judgment and order dated 02.01.2024 passed by the learned Deputy Collector (Atiyat), Nanded thereby the learned Deputy Collector had appointed the petitioner as Mutawalli for

temporary period to look after the Dargah Hazrat Sayyed Shah Kamildad, Masjid Ek-khana and Kabrastan, Nanded. It is the case of the petitioner that, while setting aside the impugned order the learned Additional Collector exceeded his jurisdiction while issuing directions in clause Nos. 3 and 4 of the impugned order. By clause No. 3 he has remanded the matter back to the learned Deputy Collector for deciding the proceeding of Virasat of late Mohammed Mansoor Ahmed s/o Ahmed Shakoor. By clause No. 4 he allowed the first respondent to look after the day to day affairs of the said Dargah.

3. The learned advocate for the petitioner submits that, he had approached the learned Deputy Collector with the prayers which were allowed. If at all the learned Collector, in appeal, wanted to remand the matter, he could have simply set aside the order. It is further case of the petitioner that the power of attorney is executed in favour of the petitioner by Mansoor Ahmed s/o Abdul Shukur and Maqsood Ahmed s/o Abdul Shukur, Mutawallis giving him rights to look after the Dargah and to take out the procession of Sandal. This power of attorney is in force since 2013 till now. Though Mansoor Ahmed died in the year 2023, another Mutawalli Maqsood Ahmed is still alive and therefore, power of attorney is still in force. He submits that, when the appeal was filed in January 2024 and the pleading was completed in August

2024, till the judgment is given only on 17.04.2025 when sandal procession is scheduled to be held on 25.04.2025. Since there were consecutive holidays to Court on 18.04.2025, 19.04.2025 and 20.04.2025, the petitioner could not get sufficient time to approach the proper authority and in that exigency he has directly approached this Court. About the maintainability he submits that, the order passed is exceeding the jurisdiction so far as clause Nos. 3 and 4 are concerned and the order is, therefore, without jurisdiction order. Clause Nos. 3 and 4 are without any prayers in the appeal. He relies upon the judgment in the case of **Radha Krishan Industries Vs. State of Himachal Pradesh and Ors.** reported in **MANU/SC/0293/2021**. He thus submits that, the writ petition is maintainable. He prays for allowing the writ petition.

4. The learned advocate for respondent No. 1, at the outset, raises question of maintainability of the writ petition. He submits that, the impugned order is challengeable before the learned Divisional Commissioner and from the learned Divisional Commissioner there is further remedy of filing revision before the department of revenue i.e. Hon'ble Minister. He further submits that, the respondent No. 1 is son of late Mansoor Ahmed who was Mutawalli and there is no dispute. He submits that, the power of attorney to the extent of Mansoor Ahmed

Abdul Shukur came to an end on the death of Mansoor Ahmed and there is no question of making the petitioner as Mutawalli on the basis of said power of attorney. He further submits that, the petitioner could have approached only when there is failure to observe principles of natural justice. In the present case, not only he appeared in the appeal, but had even filed pleadings in the nature of written statement. The learned Collector has exercised the jurisdiction. So it cannot be said to be a case of inherent lack of jurisdiction. While exercising the jurisdiction the learned Collector is vested with the powers of Civil Court and therefore, the learned Collector is justified in passing incidental orders i.e. clause Nos. 3 and 4. The learned Collector has not even declared the Mutawalli. So, there is no case that the learned Collector has exceeded the jurisdiction. The power to declare Mutawalli is only with the Waqf Board. The learned Collector by the said order has only granted permission to conduct the day to day affairs of the Dargah. He further submits that, Mutawalli deceased father of respondent No. 1 had revoked the power of attorney by giving paper proclamation and thus, the power of attorney does not exist as on today. On all these grounds he prays for rejection of the writ petition.

5. The learned A.G.P supports the impugned order and prays for rejection of the writ petition.

6. After hearing the parties and from the record, following things appear to be undisputed that, there is special power of attorney executed in favour of the present petitioner by both the Mutawallis in the year 2013. Since 2013, except Covid, period the sandal procession is conducted by the petitioner without any gap. There are permissions granted specifically in his name by the authorities. He is maintaining the account of the Dargah. The account is also being audited and submitted before the authorities. The electricity bills are also paid by the petitioner.

7. During the course of argument it is also pointed out by the petitioner that, third party has even filed a Waqf Suit bearing No. 89/2017 wherein, the Mutawallis and this petitioner were added as party defendants. He was added as defendant No. 4 by virtue of special power of attorney holder of the Mutawallis. In that suit, the third person could not get any interim order. The civil revision application was also filed by the plaintiff before this Court. The said civil revision application also came to be rejected by an order dated 31.07.2017. He submits that, after the order of 02.01.2024 passed by the learned Deputy Collector one more chance was taken by the third person by filing another application for injunction in the Waqf suit. Even there, he could not get any order. The respondent No. 1 claims the right only as

being son of deceased Mansoor Ahmed. Till now he has not obtained any Virasat.

8. For all these reasons, this Court finds that, the petitioner has made out a better case to carry out the sandal procession. As though he happens to be only power of attorney holder, but it is still in force. So far as Mansoor Ahmed is concerned, there is nothing on record to show that another Mutawalli Maqsood Ahmed has any time taken objection to the rights of the petitioner. So far as maintainability of the petition is concerned, this Court finds that, taking the dates and the time period that was available to the petitioner, he cannot be faulted with for directly approaching this Court. There is one more reason so far as clause Nos. 3 and 4 are concerned, the order is without jurisdiction. For all these reasons, this Court is inclined to allow the writ petition. Hence, the following order :

ORDER

- . The writ petition stands allowed in terms of prayer clause (A).
2. The writ petition stands disposed of.
3. All these observations are only for the purpose of deciding this writ petition. It is made clear that, no authority shall be influenced by the said observations.

4. The learned Deputy Collector to decide the proceedings within two (02) months from today.
5. Parties to co-operate in speedy disposal of the proceedings.
6. The learned A.G.P to communicate the order to the authorities.
7. Though the order is dictated in open Court, due to paucity of time, the parties to act upon authenticate copy of this order.

(KISHORE C. SANT, J.)

PS.B.