



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3058 OF 2024

- 1) Jama Masjid Trust,
Tanga Chowk, Yavatmal-445001.
- 2) Naimullah Khan s/o Amanullah Khan,
Aged about 63 years, Occ.-Business,
R/o. Aman Timber Mart, Shastri Nagar,
Lakadganj, Yavatmal-445001.
- 3) Shamsuddin Umrudin Malnas,
Aged about 68 years, Occ.-Business,
R/o. Civil Line, Poonam Chowk,
Opp. T. B. Hospital, Yavatmal.
- 4) Mohammed Shafi Gul Mohammed
Solanki (Since Deceased),
R/o. Telipura, Yavatmal.
- 5) Shahid Hussain S/o Mushtaq Hussain,
Aged about 58 years, Occ.-Business,
R/o. Kalam Chowk, Yavatmal.
- 6) Mohammed Hanif s/o Mohammed
Yusuf Chouhan, Aged about 63 years,
Occ- Business, R/o. Latif Traders,
Marwadi Chowk, Yavatmal.
- 7) Mohammed Shafi s/o Mohammed
Kasam Ansari, Aged about 73 years,
Occ- Pensioner, R/o. Kalam Chowk,
Yavatmal.
- 8) Riyazuddin s/o Haji Najmoddin Lohar,
Aged about 53 years, Occ.-Legal Practitioner,
R/o. Shani Mandir Chowk,
Lohar Line, Yavatmal.

- 9) Mohammed Aman s/o Mohammed Hanif Niban, Aged about 56 years, Occ- Business, R/o. Kalam Chowk, Yavatmal
- 10) Afsar Shah s/o Ismail Shah, Aged about 56 years, Occ.- Business, R/o. Kalam Chowk, Yavatmal.

.... **PETITIONERS**

// VERSUS //

- 1) Maharashtra State Board of Waqfs, Chhatrapati Sambhajinagar-431002.
- 2) Chief Executive Officer, Maharashtra State Board of Waqfs, Chhatrapati Sambhajinagar-431002.
- 3) Habibur Rahman Malani, Aged about 52 years, Occ.-Business, R/o. Chhoti Gujar, Madina Masjid, Allahoakbar Building, Telipura, Yavatmal.
- 4) Mohammed Aasim Malani, Aged about 28 years, Occ.-Business, R/o. Chhoti Gujar, Madina Masjid, Allahoakbar Building, Telipura, Yavatmal.
- 5) Asif Khan s/o Noor Khan, Aged about 50 years, Occ.- Business, R/o. Near Gausiya Masjid, Islampura, Yavatmal.
- 6) Mohammed Javed s/o Mohammed Yusuf, Aged about 50 years, Occ.- Business, R/o. Masjid E Bilal, Bilalnagar, Near Gulshan Nagar, Yavatmal.
- 7) Bahram Khan s/o Ibrahim Khan, Aged ____, Occ.- Business, R/o. Telipura, Yavatmal.

- 8) Mohammed Rasheed s/o Mohammed Saheb,
Aged about 55 years, Occ.- Business,
R/o. Kumbharpura, Yavatmal.
- 9) Jameel Hasan s/o Abdul Rauf Malani,
Aged ___, Occ.- Business,
R/o. Memon Colony, Bhosa Road, Yavatmal.
- 10) Mohammed Arifur Raheman s/o
Abdul Rahim, Aged about 55 years,
Occ.- Business, R/o. Nawabpura,
Kalam Chowk, Yavatmal.
- 11) Ansar Khan s/o Sardar Khan,
Aged – Major, Occ.- Business,
R/o. Telipura, Yavatmal.
- 12) Mohammed Anis Shaikh Musa,
Aged – Major, Occ.- Business,
R/o. Memon Colony, Bhose Road,
Yavatmal.
- 13) Pyar Mohammad Abdul Raheman,
Aged about 60 years, Occ- Business,
R/o. Sharma Layout, Behind Kiran
Petrol Pump, Yavatmal.

.... **RESPONDENTS**

Mr. Masood Shareef, Advocate for the Petitioners.
Mr. Abdul Subhan, Advocate for Respondent No.2.
Mr. G. D. Shaikh, Advocate h/f. Mr. D. B. Walthare,
Advocate for the Respondent Nos.3 to 13.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : **03.03.2025.**
DATE ON PRONOUNCING THE JUDGMENT : **08.04.2025.**

JUDGMENT :

1. **RULE.** Rule made returnable forthwith.

2. Heard finally with the consent of the learned counsel appearing for the parties.

3. Being aggrieved by the order dated 26.03.2024 passed by Chief Executive Officer, Maharashtra State Board of Waqfs, Sambhajinagar/Respondent no.2 and impugned Resolution No.36, dated 06.03.2024, passed by Respondent No.1/Maharashtra State Board of Waqfs, Chhatrapati Sambhajinagar. The Respondent No.2 had also directed rehearing of the matter by the Maharashtra State Waqf Board.

4. Petitioners are managing the affairs of the Waqf Institution i.e. the Jama Masjid, Tanga Chowk, Yavatmal, it is institution which was initially registered under the Bombay Public Trust Act, 1950 with the Charity Commissioner office vide registration No. B-28. After coming into force the Waqf Act, 1995, the same is registered with the WaqF Baord vide registration No. M.S.B.W./YTM/124/2013 on 28/01/2013 under Section 43 of the Waqf Act, 1995.

5. Previous Trustees/Mutawallis of the said Waqf Institution have expired. After the death of all the Trustees/Mutawalis of the Waqf, the present Petitioners were

managing the affairs of the Waqf. The Petitioners were rendering regular services to the Waqf Institution and were looking after the day to day affairs of the said Waqf Institution. The Petitioners, after proper compliance of all the terms and conditions, had filed a Change Report with the office of the Waqf Board for effecting change in the management of the said Waqf Institution. The Respondent Nos.3 to 13 had also filed a false and frivolous Change Report and application for the settlement of Scheme for the 'Waqf' behind the back of the present Petitioners. The Petitioners were unaware of the change report and application for settlement of Scheme for the Waqf filed by the Respondents. The Chief Executive Officer, Maharashtra State Board of Waqf passed an order dated 31.05.2013 thereby accepted and sanctioned the Scheme proposed by the Respondent Nos.3 to 13 with respect to the said 'Waqf', vide Case No.MSBW/ENQ/4929/13. After two days of the passing of the order dated 31.05.2013, the Respondent No.2/Chief Executive Officer, Maharashtra State Board passed another order on 03.06.2013 thereby accepted the false and frivolous Change Report submitted by the Respondent Nos.3 to 13.

6. Being aggrieved by the order dated 31.05.2013 and 03.06.2013 of the Chief Executive Officer, the Petitioners challenged the same before the Maharashtra State Waqf Tribunal, Aurangabad vide Waqf Application No.11/2015, which was partly allowed vide judgment dated 28.09.2018. The Waqf Tribunal set aside the order dated 31.05.2013 passed by the Chief Executive Officer and remanded back the matter to the Board with direction to decide the issue of settlement of Scheme afresh by giving an opportunity to both the parties. In pursuance to the judgment dated 28.09.2018, passed by the Maharashtra State Waqf Tribunal, Aurangabad, the Waqf Board passed a Resolution No.56 on 24.01.2024. In pursuance to the said resolution, the Respondent No.2 passed an order dated 13.02.2024 thereby rejecting the applications of the Respondent Nos.3 to 13 for framing of scheme. By the said order, the Respondent No.2 accepted the Change Report submitted by the Petitioners.

7. Respondent No.3 filed an application before the Waqf Board thereby challenging the order dated 13.02.2024 passed by the Respondent No.2. The Respondent No.2 is presently presided over by Shri Juned Bashir Sayyad, who is an Incharge CEO of the Maharashtra State Waqf Board in as much as the impugned order

dated 26.03.2024 was passed by the said Incharge CEO. The appointment of Mr. Juned Bashir Sayyad is a subject matter of challenge in Writ Petition No.5272/2024, which is pending before this Court as he does not qualify the criteria for the appointment on the post of CEO. The impugned order dated 26.03.2024 passed by the Respondent No.2 is the subject matter of challenge in the present writ petition.

8. Learned Counsel for the Petitioners contended that the Respondent No.2 or for that matter the Waqf board are not vested with any power of review of its own order and there is no express provision under the Waqf Act, 1995 conferring power of Review upon the CEO. Moreover, there was nothing on record to demonstrate that the order dated 13.02.2024 was an outcome of fraud and as such the Respondent No.2 ought not to have passed the impugned order thereby staying the effect and operation of the order dated 13.02.2024. The impugned order needs interference by this Court and which also needs to be set aside.

9. The learned Counsel for the Petitioners is relied on the following case laws :

- (i) ***Kalabharti Advertising Vs. Hemant Vimalnath Narichania & ors.***, reported in ***(2010) 9 SCC 437*** and
- (ii) ***Patel Narshi Thakershi & Ors. Vs. Shri Pradyumansinghji Arjunsinghji***, reported in ***1971(3) SCC 844***,

10. The learned Counsel for the Respondents submitted that the Act provides efficacious remedy to the Petitioners to challenge the order dated 26.03.2024 before the Waqf Tribunal which is constituted under the Waqf Act, 1995 and presently functioning at Aurangabad. The Hon'ble Supreme Court in its judgment in ***Board of Wakf, West Bengal & Anr. Vs. Anis Fatma Begum & Anr.***, reported in ***(2010) 14 SCC 588*** held that, all the matters pertaining to the Waqf should be filed at first instance before the Waqf Tribunal constituted under Section 83 of the Waqf Act, 1955 and straightway the writ petitions should not be filed in the High Court. The Petitioners are aggrieved against the order dated 26.03.2024, therefore they should have approached to the Waqf Tribunal which is functioning at Aurangabad and should not have directly come to this Court. Hence prayed for the rejection of present writ petition as there is alternate and efficacious remedy available.

11. The learned Counsel for the Respondents also relied on the following citations :

- (i) *Rashmi w/o. Shyamkumar Barve Vs. Deputy Commissioner & Member*, reported in *2024 DGLS (Bom.) 3732*,
- (ii) *Mansoor s/o Kasim Mulla Vs. Guddu Saheb Ibrahim Mugale & Anr.*, reported in *2010(6) Mh.L.J. 247*,
- (iii) *Rashid Wali Beg Vs. Farid Pindari & Ors.*, reported in *(2022) 4 SCC 414*,

12. Heard learned Counsel for the both parties. Perused the impugned order and resolution passed by the Board and considered the citations relied on by both the parties.

13. Learned Counsel for the Petitioners submits that Section 25 of the Waqf Act, 1995 provides duties and powers of Chief Executive Officers, however, there is no power given to the Chief Executive Officer to review its own order. There is no provision for review of the order. Section 32 of the Waqf Act, 1995 provides powers and functions of the Board. Section 32(2)(d) provides function of the Board to settle the scheme of management for a Waqf provided that there is no such settlement shall be made without giving the parties affected an opportunity

of being heard. The Waqf Board settles the scheme and appointed trustees on 24.01.2024. The said resolution of Waqf Board challenged before the Tribunal by the Petitioners. This resolution was again considered in the Meeting dated 06.03.2024 by way of Resolution No.36 by Waqf Board and decided earlier objection raised by one Shamshuddin Malnas and to consider rehearing of the management on the Jama Masjid, District Yavatmal. So also, by this resolution stayed the Change Report which was accepted. This resolution is challenge before the Tribunal which is registered as Waqf Application No.11/2015. The Tribunal delivered its judgment on 28.09.2018. The learned Tribunal observed in para 19 as under :

“19. Having gone through the documents in the record and proceeding, it appears that the respondents have filed the change report on the basis of their election as a trustee in the general body meeting of the members at the place of deceased trustees and on the basis of the resolution of general body meeting they had filed the change report. Here the applicants have not denied nor brought any evidence to show that the respondents were not elected in the general body meeting. So, in view of these reasons and for want of any evidence on behalf of the applicants we do not find any scope in the submission made by the advocate for the applicants.”

14. Thus, the learned Tribunal concluded that Respondents were elected in the general body meeting. He further observed in para 21 as under :

“21. It is also clear from the scheme that the respondents were elected for the period of 5 years and from the date of acceptance of the change report, the said 5 years period is already expired and hence, now the trustee period of the respondents is already completed therefore, on this count also the claim of the applicants in this regard becomes infructuous. So, in view of these reasons we are of the opinion that no any illegality and incorrectness was committed by the C.E.O. of the Board while accepting the change report on 03.06.2013 and since the claim in this regard has not become infructuous as the tenure of the respondents as a trustees is already over therefore, we answer the point No.1 in the affirmative and point No.2 in the negative.”

15. The Tribunal also concluded that the order of C.E.O. of the Board dated 31.05.2013 is without jurisdiction as he has not empower by the law to settle the scheme. There is already a scheme settled by the order of the Deputy Charity Commissioner dated 13.11.1975. Thus, in view of existing scheme of the above institution, there is no propriety to accept the new scheme by the C.E.O. of the Board vide impugned order. In view of this position, the learned Tribunal remanded the matter back to the Board to

the extent of the order dated 31.05.2013 with direction to decide the said matter afresh by giving an opportunity to both the parties.

16. The Maharashtra State Waqf Board after remand the matter conducted hearing and heard all the parties and passed the order rejecting application for confirming the scheme vide case No.32/138/2013, Case No.69/117/2019 and case No.69/06/2020 came to be rejected as there was already a sanctioned scheme of the Board. The change report filed by applicant Shamshoddin Malnas came to be accepted and trustees therefore came to be taken on management of Waqf society. The application of Habiburrehman Abdul Sattar Malani for change in management came to be rejected.

17. Learned Counsel for the Petitioners relied on ***Patel Narshi Thakershi*** (supra) in support of his contention that C.E.O. has no power to review its own order, wherein one Mr. Mankodi had quashed the order made by the Saurashtra Government. The Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government.

The Hon'ble Apex Court held that it is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order.

18. Learned Counsel for the Petitioners also relied on ***Kalabharti Avertising*** (supra), wherein the Hon'ble Apex Court discussed the legal issues when the power to review is absent in statutory provision and held in para 12, 13 and 14 as under :

“12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457; and Harbhajan Singh v. Karam Singh & Ors., AIR 1966 SC 641).

13. In Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji, AIR 1970 SC 1273; Major Chandra Bhan Singh v. Latafat Ullah Khan & Ors., AIR (1979) 1 SCC 321; Dr. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur (U.P.) & Ors., AIR 1987 SC 2186; State of Orissa & Ors. v. Commissioner

of Land Records and Settlement, Cuttack & Ors., (1998) 7 SCC 162; and Sunita Jain v. Pawan Kumar Jain & Ors., (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.

19. Against this, learned Counsel for the Respondents relied on ***Mansoor s/o Kasim Mulla*** (supra) wherein this Court held that, “Application filed on 04/09/2009 by Respondent No.1, raising objection in respect of this change report requires to be considered. There are allegations that this change report was submitted without calling the meeting on 06/07/2007 and without obtaining no objection of the earlier members of the managing committee. On the basis of incorrect information

provided to the CEO the change report was submitted and approved, which amounts to fraud”.

20. Learned Counsel for the Respondents also relied on ***Board of Wakf, West Bengal vs. Anis Fatma Begum*** (supra) in support of his contention that if the Petitioner is aggrieved by the order of CEO, he has to first avail remedy i.e. to file Appeal before the Waqf Tribunal. In the matter referred above in para 7, the Hon’ble Apex Court observed as under :

“7. The dispute in the present case relates to a Wakf. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Wakfs were being filed in the courts in India and they were occupying a lot of time of all the Courts in the country, which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.”

21. Learned Counsel for the Respondents also relied on ***Rashid Wali Beg*** (supra), wherein the Division Bench of the Hon'ble Apex Court considered all the citations in para 35 and held in para 65 and 66 as under :

“65. It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).

66. In fact, Section 83(5) of the Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the CPC, while trying a suit or executing a decree or order. This is why this Court held in Mohideen vs. Ramanathapura Peria Mogallam Jamath (2010)13 SCC 62 that the Waqf Tribunal will have power to issue temporary injunctions under Order 39, Rule 1 CPC.

22. It is held that “At the cost of repetition we should point out that Section 83(1) provides for the determination of any dispute, question or any other matter (i) relating to a Waqf and (ii) relating to a Waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and

7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.”

23. Learned Counsel for the Respondents submitted that there is nothing on record to show that prior to acceptance of the change report, they are managing being the trustees. The learned Counsel for the Respondents drawn my attention to the submission in para 10 that there is no efficacious alternate remedy however, the Waqf Tribunal was remedy functioning at Aurangabad and the Petitioners ought to have filed the application before the learned ‘Waqf Tribunal’ for challenging the order.

24. In view of recent judgment of ***Rashid Wali Beg*** (supra) Section 83(1) provides for determination of any dispute, question or any other matter (i) relating to a Waqf and (ii) relating to a Waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a Waqf property. As such,

the Petition is liable to be dismissed on the point of remedy available in the Waqf Act, 1995.

25. As such, the Writ Petition stands **dismissed**. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak