



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.670/2023

(Gulzar Usman Qureshi & anr. Vs. Nisar Shafi Pathan & anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H. A. Khedikar, Advocate for petitioner.

Mr. A. S. Mardikar, Sr. Advocate assisted by Mr. Harmain Khan, Advocate for
respondent No.1.

Mr. R.P. Meshram, Advocate for respondent No.2.

CORAM: M. M. NERLIKAR, J.

DATED : 09/12/2025.

Heard the learned counsel for the petitioner and
learned Senior counsel for respondent No.1.

2. The order under challenge is dated 03.03.2021,
wherein the order dated 26.12.2012 passed by Sub-
Divisional Magistrate ('SDM') Ramtek under Section 145 of
the Code of Criminal Procedure ('Code') in Criminal Case
No.67/2012 was set aside. In the said proceedings,
before the Sub-Divisional Magistrate, it was held that the
present petitioners appears to be in possession of the
disputed property i.e. Kabrasthan and Darga. The said
finding was based on the fact that the petitioners have
registered the said disputed property before the
Maharashtra State Waqf Board in the year 2008 and it was
shown that the present petitioners are in possession.

Therefore, it was held that the petitioners are in possession and accordingly, the order was passed restraining the other parties from interfering in the peaceful possession of the petitioners. Against this order, the respondent approached the Principal District and Sessions Judge, Nagpur in Criminal Revision application No.37/2013, wherein the application of the respondent herein is allowed and the impugned order passed by the Sub- Divisional Officer, Ramtek in Criminal Case No.67/2012 was set aside. While dealing with the issue, the District and Sessions Court has considered the entire history and it appears that the much importance was given to the findings of the Waqf Tribunal, wherein the temporary injunction application of the present petitioners was rejected on the ground that the present petitioners have failed to prove their possession and the said order is under challenge.

3. Heard the learned counsel for the petitioners as well as learned senior counsel for the respondents. After perusal of both the orders i.e. order under Section 145 of the Code as well as order passed in Criminal Revision application No.37/2013. Admittedly, the present respondent has filed the suit No.64/2009 for permanent

and perpetual injunction. The learned counsel for respondent submits that the suit is still pending, however the learned counsel for petitioner submits that the suit itself is not maintainable in view of the fact that the Civil Court does not have the jurisdiction to entertain the said suit. However, unless and until the parties appear before the Court and obtain findings to that effect, at present the contentions of the present petitioners cannot be considered. However, the fact also remains that the present petitioners have instituted the Waqf Suit No. 4/2008 before Waqf Tribunal, Nagpur, in that suit, the petitioners have filed the application for temporary injunction. That the application which was rejected on the ground that the present petitioners have failed to prove the possession on 06.03.2009. However, subsequently suit was withdrawn on 31.08.2009. Admittedly the order wherein the temporary injunction application was rejected by the Waqf Tribunal was under challenge before this Court by filing Criminal Revision Application No.18/2009. By an order dated 06.05.2009, this Court has rejected the revision application of the present petitioners and therefore, the findings which are recorded by the Waqf

Tribunal have attained finality as there is no further challenge. As could be seen from the record that the SDM ought not to have entertained and passed order under Section 145 of the Code on the point of possession of the petitioners as those findings are against the findings of Waqf Tribunal which has attained finality

4. So far as the impugned order is concerned, the Revisional Court has taken into consideration all the facts, it has also found that the present petitioners though instituted Waqf Suit No.04/2008, however they have withdrawn the said suit. Under such circumstances, the findings of the SDM as held by the Revisional Court are perverse. I do not find any error on the part of the Revisional Court as, once it is held that the petitioners are not in possession and that order has attained finality, under such circumstances, it is not open for the SDM to hold that the present petitioners were in possession. Under such circumstances, there is no merit in the petition, the petition is dismissed.

(M. M. NERLIKAR, J.)