IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

928 REVIEW APPLICATION (CIVIL) NO. 213 OF 2024
IN CRA/3/2021 & CRA/4/2021

Sayyed Moinuddin S/o Sayyed Saifoddin
Age: 52 years, Occu: Mutawali of Masjid
Harsool and business,
R/o. Plot No.19-P, New Aman Colony,
Gut No.95, Mitmita,
Tq. and Dist. Aurangabad ..**Review Petitioner**

***VERSUS***

1. Pratapsing S/o Narsingh Kakarwal,
Age: 50 years, Occu: Agriculture,
R/o. Plot No.10, N-11, Shivsadan,
Behind Rashtravadi Bhavan, Aurangabad

2. The Maharashtra State Board of Wakf,
Through its Chief Executive Officer,
Panchakki, Aurangabad **...Respondents**

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Mr. Rathod Ramesh T., Advocate for Applicant
Ms. Shilpa R. Rajput, Advocate For Respondent No.1
Mr. Deshmukh N. E., Advocate for Respondent No.2

....

CORAM : SANJAY A. DESHMUKH, J.

DATE : 27.10.2026

P.C. :-

1. This Review Application is preferred against the judgment and order passed by this Court in Civil Revision Application Nos.3 of 2021 and 4 of 2021 dated 14.02.2024, which was preferred against the judgments and decrees passed by the

Maharashtra State Wakf Tribunal, Aurangabad in Wakf Suit Nos.4 of 2014 and 6 of 2014 dated 17.12.2020.

2. The brief facts of the case are that the suit was filed by the present Respondent No.1 seeking a declaration that the suit property bearing Survey No. 66, situated at village Harsool, District Aurangabad, now Chhatrapati Sambhajinagar, belonged to him and it was not Wakf property. The cause of action arose when the said property was registered as Wakf property of a Masjid, in accordance with Sections 36 and 37 of the Wakf Act, 1995. Therefore, the suit was filed seeking a declaration that the said property was not Wakf property. The suit was decreed by the Maharashtra State Wakf Tribunal, Aurangabad, by judgment and order dated 17.12.2020, against which Civil Revision Application Nos. 3 of 2021 and 4 of 2021 were filed before this Court. The said Civil Revision Applications were dismissed by this Court by judgment and order dated 14.02.2024, against which the present Review Application is filed.

3. Learned Advocate for the Applicant submitted that the oral and documentary evidence was not properly appreciated. He pointed out the grounds of objections raised in the application and submitted that the impugned judgment and order deserves to be set aside, as the

decision is erroneous for the reasons stated in the grounds of objections of this Revision. He also pointed out the certificate issued under Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 in favour of Respondents and submitted that the said certificate has been challenged by the Applicant before the Deputy Collector (General Administration), Chhatrapati Sambhajinagar. He also produced a copy of the correspondence made by the Deputy Collector. He lastly prayed to allow the review application and set aside the impugned judgments in both cases. He relied upon the following precedents:

a. ***Kunhayammed and Others v. State of Kerala and Another, decided on 19.07.2000***, wherein it was held that the doctrine of merger depends upon the nature of the jurisdiction exercised by the superior court and the subject matter of the challenge. The dismissal of a Special Leave Petition without grant of leave does not result in the merger of the judgment of the lower court with the order of the Supreme Court. The judgment also discusses the circumstances in which a review petition before the lower court remains maintainable.

b. ***S. Shanmugavel Nadar v. State of Tamil Nadu and Another, decided on 18.09.2002***, wherein it was held that the doctrine of merger is not of universal or unlimited application. The effect of

dismissal of an appeal or Special Leave Petition depends upon the nature of the proceedings and the grounds on which the superior court disposed of the matter.

c. ***Pramod Kumar and Another v. Zalak Singh and Others, decided on 10.05.2019,*** wherein it was held that the applicability of Order II Rule 2 of the Code of Civil Procedure, 1908, depends upon whether the subsequent suit is based on the same cause of action as the earlier suit. The judgment also considers the principle of constructive res judicata and the circumstances in which a subsequent claim may be barred.

d. ***Sayyed Ali and Others v. Andhra Pradesh Wakf Board, Hyderabad and Others, decided on 28.01.1998,*** wherein it was held that a grant in the nature of a service Inam may constitute Wakf property if it is dedicated for purposes recognised by Muslim law as pious, religious or charitable. The Court further held that a decision by a revenue authority on a matter beyond its jurisdiction cannot operate as res judicata, and the bar of jurisdiction of the Civil Court would not apply on the basis of such an order.

4. Learned Advocate for Respondent No.1 submitted that the tenancy rights of Respondent No.1 had already been established and

a certificate under Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950, had been issued in his favour in respect of the suit property, bearing Survey No. 66. It is further submitted that the Applicant had no locus standi to file the present Review Application, as the matter had already been decided on merits by the Maharashtra State Wakf Tribunal and this Court. It is submitted that there is no substance in the grounds of objections raised in the Review Application and that the judgment passed by this Court was well-reasoned and rendered after considering all relevant aspects of the facts in issue on merits. He prayed to dismiss the Review Application.

5. Nobody will dispute law laid down in the above precedents. However, it is well settled that the facts of each case are always decisive and each case is to be decided on the basis of peculiar set of facts. However, keeping in mind the principles, guidelines and the law laid down in above precedents, this Court proceed to re-appreciate the evidence.

6. Perused the impugned judgment as well as the judgment delivered by the Maharashtra State Wakf Tribunal, Aurangabad.

7. Following are the grounds of objections raised in this application by the applicant:

I) The discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant.

II) Also important evidence could not be produced by the applicant at the time when the judgment and order was passed and also

III) Review sought on account of error apparent on the face of record with other sufficient reasons and grounds following amongst mentioned below in review petition

IV. That, the Review Petitioner most humbly submit that, the Respondent No.1 challenged mischievously. The order of Registration of Wakf Institution and Jodpatra in File No.MSBW/ABD/319/2012 dated 03.05.2012 and in the File No.ABD/259/2012 dated 30.04.2012 passed by the Chief Executive Officer i.e. C.E.O. of the Maharashtra State Board of Wakfs, Aurangabad by filing Application U/Sec.83(2) of the Wakf Act, 1995 before the learned Maharashtra State Wakf Tribunal, Aurangabad, bearing Wakf Application No.4/2014 with prayer clause (B):- The order dated 30.04.2012 passed by the Chief Executive Officer, Marathwada Wakf Board,

Aurangabad in File No.ABD/259/2012, including the property Gut No.66 of village Harsool in Book/ Register of Wakf Maintained by Board and its Registration No.MSBW/ABD/319/2012 dated 03.05.2012 be quashed and set aside and same may be deleted from the concerned record.

Also prayed by way of Prayer Clause (C) :- The order passed by the Chief Executive Officer, Maharashtra Wakf Board, Aurangabad, about registration of property Gut No.66 of village Harsool, to its record as Registration No. MSBW/ABD/319/ dated 03.05.2012 be quashed and set aside and same may be deleted from the concerned record. And Prayed by way of Prayer Clause (D): On the basis of the impugned orders dated 30.04.2013 in File No.ABD/259/2012, as well as order of its registration MSBW/ABD/319/2012 on dated 03.05.2012 respectively, the further consequential orders passed by the Chief Executive Officer, Wakf Board, Aurangabad in respect of the property Survey/Gut No.66 of village Harsool, Tq. and Dist. Aurangabad be quashed and set aside and same may be deleted from the concerned record. Though the respondent No.1 without having interest in Wakf, i.e. never become the person interested in Wakf, never become the Mutawalli of Masjid, Harsul, property belongs to concerned Masjid as well as never become

person aggrieved by an order made under the Wakf Act, 1995.

V. That, while deciding the Application No.4/2014, learned Wakf Tribunal, Aurangabad and while deciding proceedings of the C.R.A. No.03/2021, Hon'ble High Court not considered that the provision provided Under Sec.83 spells out that, Sec.83: Constitution of Tribunals, etc (1) The State Government shall, by notification in the official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals. Also Sec.83 (2) Spells out that: "Any Mutawalli, Person interested in a Wakf or any other person aggrieved by an order made under this Act, or Rules made there under, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf".

Vi. That, the Section-83 (1) and (2) categorically clears that the disputes or questions relating to the wakf having jurisdiction to the Wakf Tribunal and never having jurisdiction to the Mischievously handing over the ownership and possession of the wakf properties to the person who claims tenancy or any other rights or occupancy

rights of wakf properties to stranger to the wakf who is never the Mutawalli, or never the person interested in wakf or never aggrieved and never concerned with the proceedings of the Registration of wakf bearing Registration No.MSBW/ABD/319/2012 dated 03.05.2012 and never concerned with the file No.ABD/259/2012 dated 30.04.2013. Therefore never having locus-standi to challenge the Registration of Wakf i.e. Registration of Masjid and Graveyard, Harsool which registered Under Sec.37 of the Wakf Act, 1995. In the light of abovementioned provisions of law, the Hon'ble High Court committed gross error of law as well as committed mistake and error apparent on the face of the record, hence Revision Petition sought the Review of the impugned judgment dated 14.02.2024 passed in the Civil Revision Application No.03/2021 with Civil Revision Application No.4/2021 by this Hon'ble High Court. That the judgment dated 14.02.2024 is annexed herewith and marked as EXHIBIT "A".

8. Though learned Advocate for the Applicant pointed out that the Tenancy matter is pending before the Deputy Collector, Chhatrapati Sambhajinagar, it is not demonstrated as to how the Applicant has locus standi to challenge the said order of Tenancy Court. When this Court had finalised all issues between parties on

merit, there cannot be decision on decision by the Revenue or Tenancy Authority as to tenancy rights of respondent No.1 such proceeding must be stopped which is against the provisions of law and against the impugned judgment of this Court.

9. On perusal of the grounds of objections raised in the Review Application, as stated above, this Court found that there is no substance in the grounds of objections raised herein which does not establish legal or factual ground to interfere in limited review jurisdiction of this Court. Considering all these aspects, this Court is of the view that the impugned judgment of this Court passed in Civil Revision Application Nos. 3 of 2021 and 4 of 2021 is legal and correct and does not warrant interference in the limited review jurisdiction of this Court as per Section 114 read with Order XLVII of the CPC.

10. The essentials of Review as per Order XLVII Rule 1(c) are as under:

*"From the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or*

*error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order"*

11. The reasons and findings of this Court in impugned judgment are self explanatory which show that all factual aspects were considered and then said reasoned judgment was delivered on merit.

12. On perusal of grounds of objections raised in the application with above essentials, nothing is pointed out to establish the above essentials of review. The impugned judgment is well reasoned and no illegality or omission on the part of this court is pointed out to review this impugned judgment. The precedents relied upon by the learned advocate for the applicant are not relevant to the facts of the case and not useful to the applicant as no any legal or factual ground as per Order XLVII Rule 1(c) is made out by the applicant. Hence, those are not relied upon. Considering the stand taken by the Applicant to harass respondent No.1 without any justifiable ground, it would be proper to saddle costs of Rs.10,000/-, on the applicant payable to Respondent No.1, who is unnecessary

compelled to face this application. The Review Application deserves to be dismissed. Hence, the following order:

:: ORDER ::

a. The Review Application is dismissed.

b. The Applicant shall pay costs of Rs.10,000/- (Rupees Ten Thousand only) to Respondent No.1 within a period of one month from today in this Court. If it is not deposited within one month, respondent No.1 can recover it as per the provisions of law with 9% interest on the said amount.

c. Pending Civil Applications, if any, are disposed of.

[ SANJAY A. DESHMUKH, J. ]

*HRJadhav*