



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 227 OF 2025

NITIN VENUPRASAD BAGDIYA AND ANOTHER
VERSUS
BABA QURESHI S/O MANNA QURESHI AND OTHERS

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Advocate for Applicants : Mr. Syed G. R.
Advocate for Respondent No.1 : Mr. Ashutosh S. Kulkarni a/w
Mr. Deshmukh Balaji J.
Advocate for Respondent No.2 : Mr. Vaidya Ameet R. (Through
V. C.)

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 04.03.2026

PRONOUNCED ON : 11.03.2026

FINAL ORDER :

1. Heard both sides.
2. Applicants are assailing order passed below Exh.29, refusing to reject the plaint in Regular Civil Suit No.10 of 2025. They are original defendant Nos.4 and 5. The suit is filed for declaration that the construction permission dated 08.03.2023 issued by planning authority in favour of defendant Nos.2 to 6 is bad-in-law and perpetual injunction restraining defendants from carrying out the construction.

3. The controversy pertains to 52,017 sq.mtrs. of C.T.S. No.16315 situated at Osmanpura, Aurangabad. The suit property belongs to Dargah Hazrat Shahnoor Hamvi Saheb. It is comprising of Dargah, Kabrastan, Masjid and Sama Khana. Plaintiff claims it to be Wakf property as it was donated by Maharaja Kisan Prasad on 05.10.1948. Defendant Nos.2 to 6 had applied for construction permission. It is stated to have been issued on 08.03.2023 on the basis of bogus search report dated 02.02.2022.

4. Applicant submitted application Exh.29 under Order VII Rule 11 of CPC seeking rejection of plaint in view of Section 85 of the Wakf Act as well as Section 149 of Maharashtra Regional Town Planning Act. By order dated 09.10.2025 application was rejected.

5. Learned counsel Mr. Syed G.R. appearing for the applicants submits that Wakf Tribunal already seized of Wakf Suit No.14 of 2024 as well as 13 of 2025 in which the status of the subject matter is under consideration. Hence, there can be no cause of action to file present suit. It is submitted that in view of specific bar under Section 85 present suit is not

tenable. It is further submitted that impugned permission was issued under Section 45 of M.R.T.P. Act which cannot be challenged in the suit by implication of Section 149 of the Act. It is submitted that respondent No.1 had no locus to file suit because the subject matter is not a wakf property.

6. As against that, learned counsel Mr. Ashotush Kulkarni submits that Survey No.40 has not been included in the gazette and it cannot be said to be wakf property. The matters are adjudicated before the Tribunal for deciding the status of the property. He would further submit that respondent No.1 claims to be the tenant and he is interested in the subject matter. It is submitted that impugned order was passed on the basis of palpably false search report and there is a cause of action to seek declaration. It is submitted that the remedy of appeal under Section 47 of M.R.T.P. Act is not available to respondent No.1. It is submitted that triable issues are involved in the matter and further objective scrutiny is required.

7. I have considered rival submissions of the parties. It reveals from impugned order that there is checkered history. In paragraph No.4 of the plaint number of proceedings are

mentioned. Wakf Suit No.14 of 2024 and 13 of 2025 are also pending before the Tribunal. The Tribunal will have the jurisdiction to decide as to whether subject matter can be treated to be wakf property or not.

8. The permission granted under Section 45 of M.R.T.P Act is sought to be quashed. The consequential relief of perpetual injunction is also solicited in the present suit. This Court need not go into locus standi of respondent No.1 in instituting the suit. The relief solicited in the plaint cannot be granted by the Tribunal.

9. The permission for development granted under Section 45 is susceptible to challenge in appeal under Section 47. But it is only applicants aggrieved who can approach the appellate authority. Respondent No.1 is not applicant, albeit he is aggrieved person. The bar under Section 149 cannot be stretched for instituting a suit at the instance of third party challenging the permission for development. This aspect needs to be gone into during the trial.

10. Learned counsel for the applicants seeks to rely on the judgment of this Court in *M/s. Arihant Construction, Mahesh*

Nagar, Jalna Road, Aurangabad through its Partner Shri. Lalit Gandhi Vs. Subhash Kesharmal Barlota and others in CRA.No.132 of 2014, dated 20.03.2015. In that case, the permission for construction was granted by defendant Nos.1 and 2 in favour of defendant No.3. The plaintiff had claimed suspension/cancellation of the permission of construction with consequential relief of injunction. The preliminary issue was framed regarding the jurisdiction of the Civil Court. Trial Court answered it in favour of the plaintiff. I do not find that any binding precedent is laid down by the Co-ordinate Bench. The observations are applicable to the facts of that case only. Those are distinguishable from facts of the case in hand. Though the judgment of the Co-ordinate Bench is upheld by the Supreme Court on 03.07.2015, no benefit can be given to the applicants.

11. Respondent has also placed reliance on the judgment of *Habib Alladin and others Vs. Mohammed Ahmed ; 2026 Supreme (SC) 97*. In that case, the plaint was sought to be rejected under Order VII Rule 11 on the ground of bar under Section 85 of the Wakf Act. Trial Court as well as High Court concurrently held against the defendant. Supreme Court rejected the plaint. The observations in paragraph No. 46 and

47 support the theory of present respondent.

12. I find that there is no perversity or patent illegality in the impugned order. The triable issues have been raised by the parties and objective scrutiny is required.

13. Civil revision application is rejected.

(SHAILESH P. BRAHME, J.)

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vmk/-