

**WAQF SUIT NO. 106/2023**

MOHSIN AKBAR KHAN

Vs.

GURU TEGBAHADUR EDUCATION SOCIETY, OSMANAPURA,  
AURANGABAD

**COMMON ORDER BELOW EXHS. 19 AND 42**

1] Both applications are filed by plaintiff for grant of status-quo in relation to the suit land. It is the contention of plaintiff in application at Exh.19 that, respondents by managing police in night by locking main gate without any permission cut down old tree and trying to demolish said Dargah. However, due to sudden interference of devotees they failed to do so. They can do anything as main gate has already been locked. Therefore, in the facts and circumstances, till next date status-quo may kindly be given for protection of said Dargah. Accordingly, made prayer for the same and also requested to open lock for devotees till next date.

2] After reconstruction of application at Exh.19, permission was sought to file say on Exh.19 and in pursuance of order dtd. 15.03.2024 passed below Exh.49, such permission was granted to the defendant Nos. 2 to 5, 7 and 8. Accordingly, they filed their say to application at Exh.19 vide Exh.50 and opposed the application. They denied the contention of plaintiff/applicant.

It is contended that, it is not specifically mentioned as to whose alleged Dargah is there. They further contended that, they are acting bonafidely in all respect. The walls are erected and plastered. There is no substance in the application filed by plaintiff/applicant. Application is filed to harass the defendants and so as to prolong the project. There is no case of grant of status-quo as per pleadings of plaint and documents on record. Accordingly, they prayed for rejection of application.

**3]** In application at Exh.42 plaintiff/applicant has contended that, he has filed complaint before all competent Authorities but no action has been taken to stop the illegal construction over the suit land particularly about the Dargah and that despite assurance given before the Tribunal, defendants are making illegal construction by damaging said Dargah situated in suit land. That, by taking undue advantage of missing file, defendants continued their construction over the suit land. It is contended that, due to non availability of some relevant documents, the plaintiff is unable to argue application at Exh.5. However, construction is going on, so he has filed this application for grant of status-quo till disposal of Exh.5

application. He made prayer that, status-quo as on today may be granted in change of circumstances.

**4]** Defendant No.1 filed say on present application itself and opposed the application on the count that, existence of Dargah is questionable. While defendant Nos. 2 to 5, 7 and 8 opposed the application by filing their say on the same application. It is contended that, Tribunal has directed to decide earlier application of status-quo along with Exh.5 application. So, question of filing present application for status-quo does not arise. The suit is simplicitor for perpetual injunction only and no relief of declaration, etc. is sought. There is no Dargah in existence. Only there is structure of small Grave which is duly protected from all sides. There is also slab laid and passage provided. Full protection is there. No illegal construction is there. The construction is made with permission. Plaintiff has no concern with the suit land. Accordingly, it is prayed that, application be rejected.

**5]** We would like to mention that, upon completion of pleadings of parties, when the matter was posted for hearing on application at Exh.5, advocate for plaintiff insisted that, his application at Exh.19 for status-quo be heard first as he wants

to go through the documents filed by the defendants. Tribunal passed order that, application at Exh.19 would be heard along with application at Exh.5. We have also passed order to decide application at Exh.42 along with application at Exh.5. Thereafter, matter was adjourned for hearing of temporary injunction application and status-quo applications. But subsequently plaintiff has not pressed application at Exh.5. Accordingly, said application is disposed of. In this background, now we consider the applications at Exhs. 19 and 42.

**6]** Plaintiff through pursis vide Exh.30 has not claimed relief in Exh.5 at that stage against the defendant Nos. 6 and 9.

**7]** We heard learned advocate for plaintiff and learned advocates for defendant Nos. 1 to 5, 7 and 8 at length.

**8]** Following points arise for our determination and we have recorded our findings to the same with reasons to follow as under:

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether plaintiff has got prima-facie case?	In the Negative

2.	Whether balance of convenience lies in favour of plaintiff?	In the Negative
3.	Whether plaintiff will suffer irreparable loss if relief as sought is refused?	In the Negative
4.	What order?	As per final order

## **REASONS**

### **AS TO POINT NOS. 1 TO 4 :**

9] We would like to mention that, on carefully going through the applications at Exhs.19 and 42, it is clear that, plaintiff has not laid foundation in order to show as to how he has got prima-facie case. Only he made averment about ongoing construction at the hands of defendant Nos. 2 to 5, 7 and 8. He also shown apprehension about demolition and destruction of Dargah but he has not raised contention as to how the suit property relates with Dargah Hazrat Shamshoddin Saheb, situated at Shahnoorwadi, Osmanpura, Tq. & Dist. Aurangabad. For the sake of discussion, we have gone through the contents in plaint. It transpires from it that, plaintiff has come with the case that, Waqf Institution Dargah Hazrat Shamshoddin Saheb, situated at Shahnoorwadi, Osmanpura, Tq. & Dist. Aurangabad is recorded in Government Gazette dtd. 17.05.1973 and Minister

of the then Nizam Government of Hyderabad, Maharaja Kisan Prasad had gifted a land to said Waqf Institution vide Gift Deed dtd. 05.10.1948 admeasuring 12 Acres 34 Gunthas situated at Shahnoorwadi, Osmanapura, Aurangabad. It is also contended that, said land of Survey No.40 later on converted into CTS No.16315 area admeasuring 52,017.00 sq. mtrs. Plaintiff has also averred that, defendant Nos. 1 to 9 have obtained orders by suppressing material facts from various Authorities and collusive orders and decrees were obtained from various Courts. Those orders are without jurisdiction and are nullity in the eyes of law. It is his further contention that, taking advantage of fact that suit property is recorded in their names in property card, defendant Nos. 2 to 9 have started to shift Grave i.e. mazar of Waqf Institution and illegally started construction and road work over the suit property. The suit property is the Waqf property but defendants refused to pay any heed to the request of plaintiff and continued with construction activity. In light of these contentions he has prayed for relief of perpetual injunction and by applications at Exhs.19 and 42 sought status-quo in relation to the suit property.

**10]** Defendant Nos. 1 to 5, 7 and 8 denied the contention of plaintiff that the suit property is the Waqf property. Defendant Nos. 2 to 5, 7 and 8 denied the Gift Deed in favour of the Waqf Institution. The defendant Nos. 2 to 5, 7 and 8 contended that, property is madad mash inam land. It is not the Waqf property. It is not recorded in the Government Gazette and 7/12 extract as the Waqf property. Plaintiff has no legal right and locus-standi to make averment to file suit. Entries in the name of defendants are legal and valid and the same have also neither challenged by the plaintiff nor by defendant No.10 the Waqf Board. There is presumption in relation to entries in the revenue record about their correctness. It is contended that, Grave claimed by plaintiff first of all is not clear whether it is actually the Grave or shown as Grave and/or being shown to be a Grave to raise a dispute and grab money from the defendants by the plaintiff. Even otherwise, defendants are ready to leave an area surrounding it, even by constructing overhead slab. The construction of defendants is no way will damage the Grave claimed by the plaintiff. Even passage is being left from eastern side with overhead slab for egress and ingress to the Grave claimed by the plaintiff. The entire property is owned by the

defendants and they are in possession of the same. Giving of passage does not mean the ownership over portion and left on all four sides of Grave claimed by the plaintiff. It is contended that, plaintiff has no document with him to connect with the suit property. In light of these contentions, the above referred defendants have sought dismissal of suit in their written statement.

11] Before advertng to the facts of case, we would like to mention the authorities relied upon by the counsel for parties. Learned advocate for plaintiff has placed reliance upon authorities in the cases of

- i) ***Shabir Ahmad Ganai Vs. Gulam Mohi Ud Din*** reported in ***Laws (J&K)-2022-11-8,***
- ii) ***Pranita Kapoor & Ors. Vs. Arvind Malim*** reported in ***2023 HC 1906,***
- iii) ***N. Ramaiah Vs. Nagaraj S.*** reported in ***Laws (Kar)-2001-3-60,***
- iv) ***Madhya Pradesh Peter Vs. State of Kerala*** reported in ***Laws (SC)-2009-5-220,***
- v) ***Shaikh Ali Hossain Vs. Sh. Showkat Ali*** reported in ***Laws (SC)-2008-5-11,***



**vi) Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati** reported in **Laws (SC)-1968-8-23,**

**vii) Mohanlal Gour s/o Prabhu Dayal Vs. Shri. Chetram Chandrakar, Contempt Petition Civil No. 5375 of 2023, High Court of Madhya Pradesh,** and

**viii) NOC Foundation Vs. State of Assam & Ors. Case No. PIL/32/2023, High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh.**

From the authority in the case of **N. Ramaiah Vs. Nagaraj S.** principle can be culled out that, “Courts should indicate the nature of status quo, that is whether the status quo is in regard to possession, title, nature of property or some other aspect. Merely saying 'status quo' or 'status quo to be maintained' should be avoided.” There is no dispute about ratio laid down in the said authority.

**12]** In some of above referred authorities, there is only mention about the grant of status-quo but plaintiff has failed to point out relevancy of those authorities in the facts of present matter.

**13]** On the other hand, learned advocate for defendant Nos. 2 to 5, 7 and 8 placed reliance upon authorities in the cases of

i) **Shipping Corporation of India Ltd. Vs. Machoda Brothers & Ors.** reported in **(2004) 11 SCC 168,**

ii) **K. Raushan Din & Ors. Vs. H. Mohd. Sharif & Ors.** reported in **AIR 1936 Lahore 87,** and

iii) **Omprakash Agrawal & Ors. Vs. Sandeep Kumar Agrawal & Anr. Misc. Petition No. 2448 of 2022, High Court of Madhya Pradesh.**

In the case of **Shipping Corporation of India Ltd.**, the Hon'ble Apex Court has observed that, *“Interlocutory orders are made in aid of final orders and not vice versa. No interlocutory order will survive after the original proceeding comes to an end.”*

Learned advocate for defendants submitted that, as the application for grant of temporary injunction under Order 39 Rule 1 and 2 vide Exh.5 is not pressed by the plaintiff, so application for status-quo is not maintainable. The principle

laid down in the authority in the case of **Shipping Corporation of India Ltd.** cannot be applied in the facts of present matter as the suit is still pending. In the case of **K.**

**Raushan Din & Ors. Vs. H. Mohd. Sharif & Ors.**, it is observed that, *“A Wakf may, in absence of direct evidence of dedication, be established by evidence of user; but the user from which*

*dedication can be implied must be clearly established and must be of such a character as to be consistent with dedication. Such user or dedication is required to be public user of dedication. Where the evidence shows no more than that certain persons were many years ago buried in the place, it does not amount to evidence of public user.”* The existence of Grave in the suit property falls within the meaning of Waqf or not is a question of trial.

**14]** Gist of the authority in the case of ***Omprakash Agrawal & Ors. Vs. Sandeep Kumar Agrawal*** is that, status-quo order cannot be passed by exercising the power under Section 151 of the Code when there is express provision provided under the Code. There is no dispute about ratio laid down in the said authority.

**15]** We would like to mention that, it is required to be born in mind that, status-quo is nothing but a sort of injunction which is required to be granted under Order 39 Rule 1 and 2 of C.P.C. The principle enunciated under Order 39 of C.P.C. is applicable even if the Court is willing to grant status-quo on its satisfaction that there is some case for it. While considering the application for status-quo, the Court is required to examine whether there is

a prima-facie case or not. Prima-facie case, balance of convenience and irreparable injury shall be an important ingredient for the purpose of considering application for status-quo. Now, it is to be seen, whether plaintiff has satisfied those ingredients or not.

**16]** As we already pointed out that, in plaint, averment is made that the suit property is gifted to the Waqf Institution Dargah Hazrat Shamshoddin Saheb, situated at Shahnoorwadi, Osmanpura, Aurangabad by the Minister of the then Nizam Government of Hyderabad Maharaja Kisan Prasad vide Gift Deed dtd. 05.10.1948. But it is admitted fact that, the suit property is not recorded in the Government Gazette dtd. 17.05.1973. Even, it is not recorded in revenue record and property card in the name of said Waqf Institution. Plaintiff has placed much reliance upon copy of Gift Deed dtd. 05.10.1948 to show that, the suit property was donated by the Minister of the then Nizam Government to the Waqf Institution. We have carefully gone through the copy of said document. It is not registered document. Document of Gift Deed is required to be registered in view of Section 123 of Transfer of Property Act. But as pointed above, said document is not registered

document. Further, defendant Nos. 2 to 5, 7 and 8 have filed copy of judgment dtd. 08.09.2008 in O.S. No. 950 of 2003 passed by 8<sup>th</sup> Additional Senior Civil Judge (FTC), City Civil Court, Hyderabad to show that, Maharaja Sir Kisan Parshad died in the year 1940. On perusal of copy of said judgment, it is clear that, there is mention in the facts and also while dealing with issue No.1 that, Maharaja Sir Kisan Parshad died in the year 1940. That being so, it is million dollar question as to how document can be executed by Maharaja Sir Kisan Prasad in the year 1948. This fact also prima-facie cast shadow over the said document.

**17]** Plaintiff has also filed some revenue documents particularly Pahni-patrak, Lawni-patrak, Pratikadil register, Namuna No.3. No doubt, there is entry about inam in relation to the suit property in those documents. But there is no entry to connect said inam with the Waqf Institution namely Dargah Hazrat Shamshoddin Saheb. Plaintiff himself has filed copy of order dtd. 15.07.1966 passed by the Deputy Collector, Inam Abolition which shows that, said Authority declared the suit property as Madad Mash Inam Land. In the said order also there is no mention that, said land relates to aforesaid Waqf

Institution. In the facts of present case, authorities cited supra by the plaintiff are not of assistance to him.

**18]** It is to be noted that, the suit property has been mutated in the name of defendant No.1 and thereafter in the name of other defendants in property card. But nothing is placed on record to show that, either plaintiff or defendant No.10 the Waqf Board has ever challenged those entries. Further, plaintiff has mentioned in the plaint that, defendant Nos. 1 to 9 have obtained various orders by suppressing material facts and obtained collusive orders and decrees from various courts but he has not specifically mentioned about those orders and decrees. Thus, plaintiff has suppressed material facts. So, it can be said that, plaintiff is seeking equitable relief by not coming with clean hands. Although there is existence of Grave but merely on that basis, it cannot be prima-facie said that, the suit property belongs to the Waqf Institution in question. Defendant Nos. 2 to 5, 7 and 8 have categorically mentioned to protect said Grave and made statement about providing passage for said Grave. That being so, question of causing hardship to any person connected with said Grave does not arise. Even question of irreparable loss to such person does not arise. From

the discussion made above, it is clear that, plaintiff has not made out prima-facie case, balance of convenience does not lie in his favour and he failed to establish that, he will suffer irreparable loss if relief sought is refused. Hence, we answer point Nos. 1 to 3 in negative.

**19]** In view of our findings to point Nos. 1 to 3 in negative, the applications at Exhs. 19 and 42 deserve to be rejected. Hence, we pass the following order.

**ORDER**

- 1) Applications at Exhs. 19 and 42 stand rejected.
- 2) Costs of the application will be cause in the suit.
- 3) Accordingly, applications stand disposed of.

Date: 23.04.2024

Place: Aurangabad.

Sd/-

**( M. T. Asim )**

District Judge/Chairman  
Maharashtra State Waqf Tribunal  
Aurangabad.

Sd/-

**( Anees Shaikh )**

Retired Dy. Secretary, State Civil  
Services/Member M.S.W.T.  
Aurangabad

Sd/-

**(Mohd. Mohiuddin Moied)**

Having knowledge of Muslim law  
& Jurisprudence/Member,  
M.S.W.T. Aurangabad.