

WAQF APPLICATION NO. 19/2023.

SHAIKH ILIYAS S/O SHAIKH MASOOM.

VS

M.S.B.W. & ANR.

[ORDER BELOW EXH. 1]

- 1] Perused the application and documents placed on record.
- 2] Heard Mr. Mazhar Khan advocate for applicant.
- 3] During the course of scrutiny of present application the objection was raised about the maintainability and applicant was directed to satisfy as to how application is within limitation. Keeping open the question of limitation and maintainability present application has been registered.
- 4] We heard learned advocate for applicant on aforesaid aspect.
- 5] During the course of argument learned advocate for applicant submitted that, the Hon'ble High Court has granted liberty to the applicant to move before the Tribunal constituted under the Waqf Act, 1995 so applicant has filed present application.

6] There is no doubt that, the Hon'ble High Court vide order dated 16.02.2023 passed in Writ Petition No. 1899/2023 disposed of writ petition as withdrawn with liberty to the petitioner therein to move before the Tribunal constituted under the Waqf Act, 1995. It seems that, in said writ petition petitioner therein and applicant herein has sought direction against the Chief Executive Officer of the Waqf Board to decide the representations made by him and to delete the suit property i.e. Gut Nos. 556 and 610 situated at Dharur as property of Waqf institution Masjid and Dargah Sajan Sarmast Mehabub Gunj, Beed. In the said writ petition petitioner therein and applicant herein has claimed himself as Mutawalli serving with Masjid Majar Sajan Sarmast Graveyard Mehabub Gunj, Beed and also claimed that suit property belongs to Moglani Masjid, Dharur. In present application the applicant has filed application under Section 83 (2) of the Waqf Act, 1995 challenging the order of registration No. M.S.B.W./127/2007 to the extent of recording of land Survey Nos. 556 and 610 situated at Dharur and prayed for quashing the aforesaid order to

that extent. He has filed present application in the capacity of person interested in the Waqf as defined under Section 3 (k) of the Waqf Act, 1995. He also claimed in the application that, the suit property is personal property of Syed Nusratullah Syed Azmatullah, Syed Shaukatullah Syed Azmatullah and Syed Farhatullah Syed Azmatullah. Thus, it appears that, he has filed present application for protection of alleged rights of private individuals and not for protection of the property of Waqf institution. Although, he has filed application in the capacity of person interested in Waqf institution but he has sought remedy for private individuals which eclipsed his locus to assail impugned order of registration of Waqf institution only to the extent of deletion of suit properties. May it be so, by way of present application applicant wants to challenge the order which came to be passed in the year 2007 whereby suit properties are recorded as property of Masjid and Dargah Sajan Sarmast, Mondha Road, Beed having registration No. M.S.B.W./127/2007. For challenging the said order no limitation period is prescribed under

the Waqf Act, 1995. That being so, one has to take assistance of the provisions contained in Limitation Act. In present matter in our view Article 137 of the Limitation Act, 1963 is applicable which provides limitation of three years "where the right to apply accrues". In present matter right to apply accrues in the year 2007 itself. Further, present application is filed on 14.02.2023 i.e. after more than 15 years of passing of said order. Applicant has not filed any application for seeking condonation of delay caused in filing application. He has not explained as to how his application is within time. There is vague mention that, cause of action arose on 20.01.2023 and it is in existence upto today. It is clear that, the cause of action shown is illusory. It is apparent that, application is time barred and not well within time. Therefore, in present case we invoke Rule 54 of the Maharashtra Waqf Rules, 2022 which empowers the Tribunal after considering all aspects of the application and after hearing the applicants to dismiss the application without sending notice to the respondents. In the light of discussion made above we are of the view

that, present application needs to be dismissed under Rule 54 of the Maharashtra Waqf Rules, 2022 without sending notice to the respondents as it is apparently time barred. Hence, we pass the following order.

:: O R D E R ::

Application stands dismissed and accordingly, disposed of.

Date: 19.10.2023.

[M. T. Asim]

District Judge/Chairman

Place: Aurangabad.

Maharashtra State Waqf Tribunal
Aurangabad.

[Mohd. Mohiuddin Moied]

Having Knowledge of Muslim Law
and Jurisprudence/Member

Maharashtra State Waqf Tribunal
Aurangabad.

[Member]

Vacant

[6/5]

Waqf Application No. 19/2023.
Order Below Exh. 1.

M. S. WAQF TRIBUNAL