



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (ST) NO.5536 OF 2024

1. Farooq Yasin Sayyad Inamdar,
Adult, Male, Indian Inhabitant,
Occu.: Agri. and Business,
Residing at Sayyed Nagar, Hadapsar,
District – Pune – 411 028.
2. Mohammed Amin Sayyad,
Adult, Male, Indian Inhabitant,
Occu.: Agri. and Business,
Residing at Sayyed Nagar, Hadapsar,
District – Pune – 411 028.Petitioners

Vs.

1. State of Maharashtra,
Through Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. Maharashtra State Board of Waqfs,
Through its Chief Executive Officer,
Panchakki, Aurangabad – 431 002.
3. The Chief Executive Officer,
Having office at the Maharashtra State
Board of Waqfs Panchakki,
Aurangabad – 431 002.
4. Mehboob Abdul Gafar Shaikh,
Adult, Male, Indian Inhabitant,
Occu.: Not known,
Residing at Kavde Basti, Malwadi,
Hadapsar, District – Pune – 411 028.Respondents

Mr. Gulam Dastagir Shaikh with Mr. Hamid Ansari, i/b. Judicare Law Associates, for the Petitioners.

Mrs. P. P. Shinde, APP, for Respondent No.1-State.
Mr. R. M. Momin, for the Respondent Nos.2 & 3.
Mr. Sachin B. Thorat with Mr. Prajwal Thorat, for the Respondent No.4.

**CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.**

DATE : 18th FEBRUARY 2025.

JUDGMENT :- (Per Dr. Neela Gokhale, J.)

1. The Petitioners assail the Show Cause Notice dated 15th January 2024, issued by the Respondent No 3-the Chief Executive Officer of the Waqf Board, Panchakki, Aurangabad ('CEO'). By the Show Cause Notice, the CEO called upon the Petitioners to show cause as to why criminal action should not be initiated to recover the Waqf property as per the provisions of Sections 52 & 52-A of the Waqf Act, 1995 ('the Act').

2. By Order dated 5th August 2024, this Court had noted the submission of the Petitioners that the Respondent No.3 i.e. the CEO cannot be a litigant and a judge in his own cause, at one and the same time. This Court thus, granted time to the Respondents to file their Affidavit in Reply on merits as well as on the ground of maintainability of the Petition, as raised by the Petitioner. Ad-interim

relief thus, ensued staying the operation of the Show Cause Notice impugned in the Petition, till the next date.

3. Accordingly, the Respondent No. 4, i.e. the Complainant/Applicant before the Waqf Board, i.e., the main contesting party in the present Petition filed his reply Affidavit dated 21st October 2024. Besides replying on merits, the Respondent No. 4 stated in his Affidavit that the Petitioners herein had illegally transferred the Waqf property without the previous sanction of the Waqf Board, which is in direct contravention of the provisions of the said Act. Therefore, he submitted that the proceedings initiated against the Petitioners by the Respondent No. 3 as CEO of the Waqf Board are maintainable.

4. Mr. Sachin Thorat, learned counsel appearing for the Respondent No.4 relied on a judgment of this Court in ***Shreyas Infrastructures, A Partnership firm v State of Maharashtra***¹ to suggest that an alternate remedy would not operate as a bar in certain contingencies, which are enumerated by the Supreme Court in its various decisions and reiterated in *Shreyas Infrastructures (Supra)*. He submits that only in the said contingencies, a Writ Petition shall be

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maintainable. The following are the contingencies enumerated in Para 31 of *Shreyas Infrastructures (Supra)*:

“31.

(i) *Where the Writ Petition has been filed for enforcement of any fundamental rights;*

(ii) *Where there has been violation of the principles of natural justice;*

(iii) *Where the proceedings are wholly without jurisdiction;*

(iv) *Where vires of the Act is challenged.”*

5. According to the Respondent, none of the above contingency is attracted to maintain the present Petition. He further says that the challenge is to a mere show-cause notice and that it is open for the Petitioners to appear before the CEO and make their submissions before him, following which the CEO is bound to pass an order. The cause of action will only arise if an order is passed against the Petitioners and then too they have recourse to a remedy of Appeal/Revision against the order.

6. We have heard Mr. Gulam Shaikh, learned counsel

appearing for the Petitioners, Mr. Thorat, learned counsel for Respondent No.4, Mr. R. M. Momin, learned counsel for the Respondent Nos.2 and 3, the Maharashtra Waqf Board and its CEO respectively as well as Ms. P. P. Shinde, learned APP representing the State.

7. In the present case, admittedly, the Respondent No. 3 has simply issued a Show Cause Notice. It is still open to the Petitioners to show cause and justify that there has been no violation of Sections 51 and 56 of the Act. Thus, approaching the Respondent No. 3 in respect of the Show Cause Notice would not be an empty formality and Respondent No. 3 would certainly be under an obligation to consider the reasons placed forth by the Petitioners before taking any decision. Even if it is assumed that the decision of the Respondent Nos.3 and 4 goes against the Petitioners, the Petitioners would have an opportunity to challenge the correctness, legality and propriety of the judgment and order passed by the Board by filing an appropriate proceeding before an appropriate forum/Court.

8. In fact, since the challenge is only to the show-cause notice, there is no violation of the fundamental right of the Petitioners

nor any violation of the principles of natural justice. The jurisdiction and authority of the Respondent Nos.2 and 3 to issue such a show-cause notice is not under challenge. Neither is the *vires* of the Waqf Act under challenge. The facts in the present case do not attract any of the contingencies specified in *Shreyas Infrastructures (Supra)* by the Supreme Court. There is an effective and efficacious remedy available to the Petitioners. In this view of the matter, we are not inclined to entertain this Writ Petition in exercise of the powers under Article 226 of the Constitution of India.

9. For the reasons stated above, the Writ Petition is accordingly dismissed.

10. It is made clear that we have not heard the Petition on merits of the show-cause notice and as such, all contentions of all the parties are kept open.

11. Needless to state, that in case any adverse order is passed by the Board against the Petitioners, the order shall not be given effect to for a period of two weeks thereafter, to enable the Petitioners to assail the same before an appropriate forum/Court.

12. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)