

ORDER BELOW EXH.28 IN REG. CIVIL APPEAL NO.06 OF 2024
(Turabsha alias Dadasha Lalsha Fakir Inamdar vs. Habibsha Lalsha Fakir Inamdar & anr.)

01. Heard Ld. Adv.Shri. S.G.Mulani for appellant and Ld. Adv. Shri.S.I. Shikalgar for the respondents. Perused application, say, written notes of argument and the record.

02. Appellant filed this application to restrain respondent No.1 from taking disadvantage and the benefit arising out of Wakf properties by posing himself as 'Mutawalli' till the decision of this appeal. According to him, respondent No.1 filed R.C.S.No.183/2001 for declaration of registered Will executed by Late Lalsha Halimsha Fakir Inamdar, is illegal and not binding upon him and the suit properties. But admittedly suit properties are Wakf properties, so this Court has no jurisdiction to try and entertain this suit. Hence, as per the said Will, Late Lalsha Halimsha Fakir Inamdar was not having any right to appoint anyone as 'Mutawalli'. But taking disadvantage of this fact, plaintiff will interfere in the Wakf property. The appellant's appointment to act as 'Mutawalli' is declared illegal, so he was unable to take decision to remove the encroachment in the suit property though the order of removal of encroachment is confirmed up to Hon'ble Supreme Court. Now, plaintiff is illegally cutting trees in the Wakf properties and accepting the consideration of it by issuing the receipts, representing himself as 'Mutawalli' of the said properties. Hence he should be restrained from taking benefit as such by posing himself as 'Mutawalli' by allowing this application.

03. Respondent No.1 filed its say at Exh.30 and objected the application alleging that his parents were having no right to execut the Will in favour of appellant on 28/01/1999 and on the basis of said Will he cannot get any right to act as 'Mutawalli'. As per Sec.63 of the Wakf Act, 1995, Mutawalli can be appointed only by the Wakf Board. Plaintiff has not acted as alleged in the application, so application be dismissed.

04. In this case, admittedly the suit properties are Wakf properties and parties belong to Muslim religion. Therefore, there is a material question in this appeal, whether the Civil Court has jurisdiction to try and entertain this suit. As per Sec.63 of Wakf Act, when there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit. So jurisdiction of this Court either to appoint mutawalli or to restrain anyone from acting as mutawalli is expressly barred. Hence, application is devoid of merits. Hence, application is rejected with no order as to costs.

Place : Satara.
Dt.13.01.2025.

Kamala V. Bora
District Judge-2, Satara