



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.102 OF 2024**

NATIONAL HIGHWAY SUB-DIVISION BEED AND ANR.
VERSUS
DARGAH HAZRAT PEER BALE SAHEB MASJID AND OTHERS

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Mr. D. P. Madkar h/f Mr. D. S. Manorkar, Advocate for Appellants.

Mr. V. S. Badakh, AGP for Respondent No.2.

Mr. Taher Ali Quadri, Advocate for Respondent No.1.

Mr. N. E. Deshmukh, Advocate for Respondent No.3.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th MARCH, 2025.

ORDER:-

1. The present Civil Revision Application is filed by original defendants in Waqf Suit No.16/2024 pending before Waqf Tribunal at Aurangabad, thereby impugning order passed below Exhibit-5 temporarily restraining them from demolishing Dargah i.e. suit property and changing its nature in any manner without following due process of law till disposal of suit.

2. The applicants i.e. National Highway Sub-Division, Beed and Executive Engineer, National Highway Sub-Division, Beed undertaken construction of Beed-Ahmednagar Highway, which is converted into National Highway No.561 by Notification dated 03.01.2017. According to applicants, construction is within 30 meters width of existing highway. For that purpose structures, trees, unauthorized sheds, compound walls have been removed. The suit structure i.e. Dargah is an encroachment on 30 meter width road. Therefore, vide notice dated 02.02.2024 District Waqf

Officer, Beed was requested to remove structure/obstruction. The respondent no.1, who claims to be President of Managing Committee of Dargah Hazrat Peer Bale Saheb Masjid Ashoorkhana, Khanqa and Kabrastan instituted Waqf Suit No.16/2024 alongwith application seeking temporary injunction claiming that suit property is registered as Waqf property and same is in existence since before its registration. Under the garb of expansion of road, respondents are trying to demolish the same. The plaintiffs relied upon Government Gazette dated 24.01.1974, which shows existence of Waqf on area admeasuring 1 acre 24 gunthas in Survey No.29. The four boundaries of which are described. On Southern side of Dargah there Survey No.29, Survey No.207 i.e. lands of Waqf Institution. According to plaintiffs, structure is beyond boundaries of existing road.

3. Per contra, respondents-Authorities relied upon letter dated 22.02.2024 certifying that structure is not registered or entered into record of Nagar Parishad. At no point of time permission has been obtained to raise construction. The respondents have further relied upon communication dated 29.02.2024 issued by Deputy Superintend, Land Record, Beed indicating that 30.18 meter road is in existence from Nizam period.

4. The Waqf Tribunal upon consideration of rival contentions observed that encroachment plan has been drawn on drawing

central line from existing road on the spot. However, there is nothing to ascertain exact boundaries of existing highway at the spot. The boundaries need to be fixed by measurement through Officer of Land Record or Measurer of Land Record Department. In absence of such measurement map, much reliance cannot be placed upon encroachment plan relied by defendants.

5. Looking to the controversy, it is necessary to find out exact situation of Dargah structure vis-a-vis boundaries of 30 meter existing road from Nizam period. In that view of the matter, District Superintendent of Land Record, Beed is appointed as Court Commissioner, who shall prepare map of measurement depicting situation and area of existing structure and location of encroachment, if any, vis-a-vis boundaries of 30.18 meter road, if any, existing since before Gazette publication of plaintiffs' registration of Waqf Institution. The aforesaid measurement shall be joint measurement at the expenses of applicants/defendants. The Deputy Superintendent of Land Record, Beed or authorized officer appointed by him shall issue advance notices of such measurement to respective parties and after completing measurement work, submit comprehensive report with measurement map containing aforesaid details to this Court. Parties shall provide phone numbers/mobile numbers and E-mail addresses to the Deputy Superintend of Land Record for service of

notice through electronic mode by 07.04.2025. Parties shall cooperate for such measurement and submit relevant documents to Deputy Superintendent of Land Record in support of their claims.

6. The aforesaid exercise shall be completed on or before 21.04.2025. The report shall be submitted to the Registrar (Judicial) of this Court on or before 21.04.2025 in sealed envelope.

7. Post Civil Revision Application for further consideration on 24.04.2025.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025