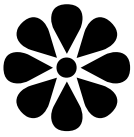
# THE REPORT OF COMMISSION OF INQUIRY WAKF BOARD MAHARASHTRA

(AURANGABAD)



MAHARASHTRA VIDHANMANDAL SACHIVALAY
VIDHAN BHAVAN, MUMBAI
2015

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(AURANGABAD)

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Date: 1-1-2011

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( **A.T.A.K.SHAIKH**)

Commission

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| 88 | Muntkhab 1857 Beed | | 377 |
| 89 | Masjid Chorgalli Beed | | 395 |
| 94 | Masjid Sarangpura Beed | | 401 |
| 99 | Dargah Raja Damgani Beed | | 407 |
| 100 | Dargah Rajiuddin Macci Beed | | 408 |
| 113 | Masjid Pimpalner | | 429 |

**JALNA**

| R.No. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 35 | Noorshawali Masjid | Jalna | 202 |
| 52 | Kabarsthan | Bhokardan | 266 |
| 54 | Satona | Satona | 271 |
| 55 | Masjid | Siporabazar | 273 |
| 56 | Shop Dayma | Jalna | 276 |
| 66 | Abbasiya | Jalna | 314 |
| 67 | Garibsha Bazar | Jalna | 317 |

**JALGAON**

| R.No. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 36 | Dargah Imambadshah | Parola | 208 |

**MUMBAI**

| Sr. no. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 46 | Karm Ali Shah | Panvel | 247 |
| 70 | Karimbhai | Mumbai | 326 |
| 71 | Parel- Mahim | Mumbai | 336 |
| 72 | Developments of Mumbai | Mumbai | 340 |
| 83 | Masjid Byculla | Mumbai | 368 |
| 8 | No property | Mahim | 111 |

**NANDED**

| R.No. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 37 | D.H Makkashah | Nanded | 211 |
| 38 | D. Haji Bashiruddin Kini | Nanded | 216 |
| 39 | D Ashaberasool | Ardhapur | 220 |
| 40 | Maula Ali Panja | Dharmabad | 224 |
| 41 | D H. Fatehjang | Nanded | 227 |
| 42 | D.H Pirsahab | Dhanegaon | 230 |
| 43 | Ashurkhana Maula Ali | Ratnali | 232 |
| 44 | Masjid | Wajegaon | 235 |
| 91 | Masjid Ekkhana | Nanded | 397 |
| 111 | Shahwali | Nanded | 427 |

**NASHIK**

| R.No.. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 45-I | Mothi Mashid | Nashik | 241 |
| 45-II | Urs Sayed Sadiqe Ali | Nashik | 244 |
| 45-III | | | 246 |
| 69 | Dargah Madarsha | Adgaon | 323 |
| 102 | No property | Nashik | 410 |

**OSMANABAD**

| R.No. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 49 | D.H.Yakub Sahab | Terkheda | 255 |
| 51 | Jama Masjid | Naldurg-Osmanabad | 259 |

**PARBHANI**

| R. No. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 47 | H.Turabul Haq | Parbhani | 250 |
| 48 | Memran Gujribazar | Kardgaon | 253 |
| 84 | Masjid Paltan, Borja | Phaltan Hingoli | 369 |
| 95 | No property | Hingoli | 403 |
| 105 | Masjid Maheboob Shahi | Parbhani | 413 |

**PUNE**

| R. No. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 93 | Pune District Wakf Lands | Pune | 400 |
| 96 | No property | Pune | 404 |

**SATARA**

| R. No. | Wakf Institution | Place | Report Page No. |
|---|---|---|---|
| 1 | 3 | 4 | 5 |
| 50 | H Raje Buxarsha | Perwadi | 257 |

**LIST OF REPORTS HAVING REPONSIBILITY OF INDIVIDUALS**

**MR. M.A.AZIZ**

| Report No. | Nature of transaction | Page No. | Remarks |
|---|---|---|---|
| 1 | Lease | 89 | Invalid Resolution |
| 2 | Lease | 92 | Invalid Resolution |
| 3 | Lease | 97 | Invalid Resolution |
| 4 | Lease | 100 | Invalid Resolution |
| 11 | Exchange | 136 | Invalid Resolution |
| 12 | Exchange | 140 | No Resolution |
| 13 | Lease | 146 | Invalid Resolution |
| 14 | Lease | 149 | No Resolution |
| 36 | Sale | 208 | Invalid Resolution |
| 38 | Exchange | 216 | No Resolution |
| 47 | Allotment of land | 250 | No Resolution |
| 49 | Lease | 255 | Invalid Resolution |
| 50 | Sale | 257 | Invalid Resolution |

**MR. M.Y.PATEL**

| Report No. | Nature of transaction | Page No. | Remarks |
|---|---|---|---|
| 1 | Lease | 89 | Invalid Resolution |
| 2 | Lease | 92 | Invalid Resolution |
| 3 | Lease | 97 | Invalid Resolution |
| 4 | Lease | 100 | Invalid Resolution |
| 9 | Exchange | 114 | No Resolution |
| 11 | Exchange | 136 | Invalid Resolution |
| 13 | Lease | 146 | Invalid Resolution |
| 14 | Lease | 149 | No Resolution |
| 36 | Sale | 202 | Invalid Resolution |

| | | | |
|---|---|---|---|
| 37 | Exchange | 211 | No Resolution |
| 38 | Exchange | 216 | No Resolution |
| 39 | Lease | 220 | No Resolution |
| 40 | Lease | 224 | No Resolution |
| 41 | Lease | 227 | No Resolution |
| 49 | Lease | 255 | Invalid Resolution |
| 50 | Sale | 257 | Invalid Resolution |

**MR. S.S.ALI QUADARI**

| Report No. | Nature of transaction | Page No. | Remarks | Place |
|---|---|---|---|---|
| 2 | Renewal of lease | 92 | No Resolution | |
| 4 | Renewal of lease | 100 | Negligence | |
| 6 | Lease | 103 | Negligence | |
| 7 | Sale | 105 | Irresponsible and Adamant | |
| 8 | Encroachment | 111 | Irresponsible | |
| 16 | Encroachment | 154 | Negligence | |
| 17 | Transfer | 157 | Pessimistic approach | |
| 35 | Transfer/Encroachment | 202 | Inaction by D.W.O. | Jalna |
| 49 | Lease | 255 | Suspicious conduct | |
| 59 | Sale of plots | 282 | Malafides | |
| 62 | Lease | 290 | No Resolution | |
| 63 | Encroachment/Lease | 293 | Inaction | |
| 65 | Encroachment/Lease | 310 | Inaction | |
| 67 | Encroachment | 317 | Inaction | |
| 68 | Injustice | 320 | Natural justice not followed | A'bad |
| 72 | N.O.C. | 340 | No Resolution | Mumbai |

| | | | | |
|---|---|---|---|---|
| 75-I<br><br><br>75-II<br><br><br><br>75-III | Interference /Court order<br><br>Appointment of Mutwalli/Relative<br><br>Lease | 352<br><br>352<br><br>352 | No Resolution | |
| 77 | Lease | 356 | No Resolution | |
| 80 | Lease | 362 | Negligence. | |
| 84 | Sale | 369 | Negligence | |
| 86 | Transfer | 373 | Inaction | A'bad |
| 88 | Transfer | 377 | Inaction | Beed |
| 90 | Encroachment | 395 | Negligence | |
| 91 | Encroachment | 397 | Negligence | Nanded |
| 94 | Lease | 401 | Negligence | Beed |
| 107 | Encroachment | 417 | Negligence | A'bad |
| 112 | Encroachment | 428 | Negligence | |

**MR. A.R.SHAIKH**

| Report No. | Nature of transaction | Page No. | Remarks | |
|---|---|---|---|---|
| 7 | Sale | 105 | Adamant and Irresponsible. | |

**MEMBER OF BOARD.**

| Report No. | Nature of transaction | Page No. | Remarks | Members |
|---|---|---|---|---|
| 43 | Lease | 232 | Abuse of powers | Mr. Asifuddin |

**DISTRICT WKAF OFFICERS .**

| Report No. | Nature of transaction | Page No. | Remarks | D.W.O. PLACE |
|---|---|---|---|---|
| 12 | Exchange | 140 | No Resolution | Beed |
| 16 | Encroachment | 154 | Negligence | Beed |
| 17 | Transfer | 157 | Pessimistic approach | Beed |
| 18 | Lease | 159 | Pessimistic approach | Beed |
| 27 | Lease | 178 | Irresponsible act | Beed |
| 35 | Transfer/Encroachment | 202 | Inaction by D.W.O. | Jalna |
| 43 | Lease | 232 | Abuse of powers | Nanded |
| 62 | Lease | 290 | No Resolution | Beed |
| 67 | Encroachment | 317 | Inaction by Mr. Shafiq Ahmed and Mr. Shaikh Munir | Jalna. |
| 68 | Injustice | 320 | Against natural justice by Mr. Munirkhan Pathan | A'bad |
| 77 | Lease | 356 | Malafides | Beed |
| 86 | Transfer | 373 | Inaction | A'bad |
| 88 | Transfer | 377 | Inaction | Beed |
| 90 | Encroachment | 395 | Negligence by Munirkhan Pathan | A'bad |
| 91 | Encroachment | 397 | Negligence by Mr. Abid Khan | Nanded |
| 94 | Lease | 401 | Negligence | Beed |
| 107 | Encroachment | 417 | Negligence by Munirkhan Pathan | A'bad |

**MR. TAREQUE ANWAR**

| Report No. | Nature of transaction | Page No. | Remarks | |
|---|---|---|---|---|
| 2 | Renewal of lease | 92 | No Resolution | |

**MR. A.U.PATHAN**

| Report No. | Nature of transaction | Page No. | Remarks | |
|---|---|---|---|---|
| 2 | Renewal of lease | 92 | No Resolution | |

**MR.AZIZ AHMED EX.ASSTT. CEO.**

| Report No. | Nature of transaction | Page No. | Remarks | |
|---|---|---|---|---|
| 9 | Exchange | 114 | No Resolution | |
| 46 | Lease | 247 | No Resolution | |

**MR.MUZFAR SIDDIQUI EX.SECRETARY OF BOARD.**

| Report No. | Nature of transaction | Page No. | Remarks | |
|---|---|---|---|---|
| 34 | Lease | 200 | No Resolution | |

**MR. SHAIKH ZAFAR SHAIKH IBRAHIM EX.SUPERINTENDENT**

| Report No. | Nature of transaction | Page No. | Remarks | |
|---|---|---|---|---|
| 47 | Allotment of land | 250 | No Resolution | |

**MUTWALLI**

| Report No. | Nature of transaction | Page No. | Remarks | Place |
|---|---|---|---|---|
| 10 | Sale | 118 | No Resolution | |
| 11 | Exchange | 136 | Invalid Resolution | |
| 32 | Lease | 149 | The Mutwalli liable for lease | |

| | | | | |
|---|---|---|---|---|
| 44 | Sale | 235 | The Mutwalli liable for sale | Nanded |
| 51 | Sale | 259 | The Mutwalli liable for sale | Os'bad Naldurg |
| 53 | Sale by forgery | 268 | The Mutwalli & Vendees committed forgery | Paithan |
| 63 | Encroachment /Lease | 293 | Negligence of Mutwalli | A'bad |
| 70 | Sale | 326 | No Resolution | Malbar Hill |
| 84 | Sale | 369 | No Resolution | |
| 88 | Change of character | 377 | Mr. Ahmed Mohiuddin, Mr.Sujawauddin, Mohd. Jainulabuddin, are liable. | |
| 94 | Lease | 401 | Mr. Roshan Ali Munuwar Ali is responsible. | Beed |
| 109 | Lease | 422 | Smt. Noorjah Begum, Smt. Bilkisjah Begum, Mr. Kazi Laik Ahmed and Complainant Mr. Sayed Tajuddin are responsible. | Chandgaon (Vaijapur) |

**MR. MAHEBOOB ALAM (Ex. Secretary)**

| Report No. | Nature of transaction | Page No. | Remarks | Place |
|---|---|---|---|---|
| 57 | Sale | 278 | No Resolution | |

**MR. M.M.SIDDIQUI EX. SECRETARY**

| Report No. | Nature of transaction | Page No. | Remarks | |
|---|---|---|---|---|
| 80 | Lease | 362 | Abuse of powers | |

**MINISTERS**

| Report No. | Nature of transaction | Page No. | Remarks |
|---|---|---|---|
| 50 | Sale | 257 | NO Jurisdiction |
| 88 | Sale | 277 | No jurisdiction |

**MISCONDCUT BY ADVOCATE**

| Report No. | Nature of transaction | Page No. | Remarks |
|---|---|---|---|
| 44 | Misconduct by Mr.M.Z. Siddiqui Adv. | 235 | Appearance of Mr. Siddiqui for opponents will amount misconduct. |

**THE REPORT OF COMMISSION OF INQUIRY WAKF BOARD**
**MAHARASHTRA** (Aurangabad)

## PART II

## PREFACE

The Commission has been appointed by the State Government of Maharashtra under Notification dated 9 October 2007 to make the inquiry on vast subject/s enumerated in preamble. The Commission could carry and complete the work as regards para 4,5, 6 only of notification which are pertaining to the illegalities committed by the Board or by any other authorities or person and the commission made efforts to fix the responsibility about it.

The Commission however could not carry the work as regard para no.1 to 3 of notification. The reason for the same is that the direction in this para pertains to preparation of the list of wakf properties, identification of the properties on which either encroachment is committed or are illegally develop etc. The nature of the work pertain to the field work and not the table work. (I may add that the Govt did not release the funds to the commission for tour in the state). **The joint venture of the Wakf Department, Revenue Department, District Land Records and the City Survey Department is required to carry and complete the such work.** Here the response by other departments is a part, the Wakf Board was most reluctant to provide the information to the Board (See page no.13 and 19 ). The office of the commission issued several letters to the Wakf Board to supply the information but they went on deaf ears of the CEO Mr.A.R.Shaikh and Mr. S.S. Ali Quadari. They did not supply the list of the Wakf properties since October 2007 till this date i.e. January 2011. The letters were issued to the Collectors, (**P.174,175**) and the Officers of District Land Record (**P-182**) and some of them supplied the information to this office however remaining officers did not supply the information to this office. I propose that all the properties of Wakf and particularly the land properties are required to be identified and to be brought on paper by preparing a list thereof. However as stated, unless the departments referred to above do not come together, and make comprehensive efforts, it would be difficult to identify the Wakf properties, and the people who are holding such properties, without having a control of the Wakf Board, would continue to enjoy it against the wish and will of the donor, nay such person would not bother even to transfer the property and to earn money, though they are not entitled to. If the Government and the Wakf Board desire and anxious in its real perception, which is a need of time, the efforts may be made to identify the properties. Signaficantly the employees of the Wokf Board are least bother to make such attempt.

The **meeting was called** by Hon'ble State Wakf Minister in Mantralaya Mumbai **on 21-10-2010** and decision was taken therein, on a proposal in such lines to appoint a committee for this purpose. If such venture is made and if that reached to success, that would be a big achievement to the Wakf and the Wakf Board.

While working as Commission I came in contact with the Divisional Commissioners and Collectors during the last three years. I may express my gratitude to Mr.Sanjay Jaiswal who gave a quite rich and respectable treatment to me. His subordinate officers were also found to be cooperative.

I may further express that, Mr. Misbaullah from Beed is a person who had been to the office of the commission voluntarily and supplied the information to me to great extent. I also found that, Mr. Mohd. Osman s/o Gulam Jilani r/o Ambejogai is exerting from heart to protect the wakf properties and he also gave sufficient material to me. One Mr. Mohd. Hai was also found to be very cooperative who assisted me to detect the record from the record room of the Divisional Commissioner office at Aurangabad.

Lastly I may express that, Mr. Pathan, Steno, Mr. Sayed Salar Ali Tracer, Mr. Siddiqui Jabuddin Ballif and Mr. Shaikh Chand the employees of my office assisted me to complete this work by their full cooperation.

(**A.T.A.K.SHAIKH**)

Commission

## PREAMBLE

The Commission has been appointed by the State Govt. Maharashtra under the notification dated 9-10-2007 to make the inquiry on vast subjects viz.

1) to prepare the district wise and area wise description of the properties regarded as a Wakf property.

2) To find out numbers and areas of properties encroached upon.

3) To find out the properties which are in possession of the Wakf Board and properties which are illegally in possession of individual societies .

4) To examine the legality of legal transfer development of or creation of third party rights of the wakf properties etc.

5) To suggest the scheme to insure the smooth and proper functioning of the Wakf property from which income can be derived.

6) To fix the responsibility on the person, responsible for illegal transfer, development or creation of third party rights.

After pointing out the vast nature of work and **the requirement of assistance, of the Revenue department, District Inspector of Land records and the City Survey office**, the Principal Secretary directed in the meeting dated 20-3-2009 wherein the Commission of inquiry and the CEO Wakf were present that, the Commission shall hold inquiry as regards aforesaid column 4,5 and 6 , whereas the CEO was directed to do needful as regards as column no.1 to 3. The direction being oral, the commission issued a letter on 23-3-2009 to confirm the same. However there has been no communication (**P.S-1 to S-3)**

## RESTRICTIONS ON POWERS

(a) As per the general direction after para 6 of the aforesaid notification the appointment of commission was directed to be under section (2), (3) and (5) of section 5 of the Commission of Inquiries Act. As per these provisions the Commission was conferred with the powers of Civil Court as laid down in section 4 of the said Act. The powers of Sub section 4 of section 5 were not conferred on the Commission, for unknown reasons. Withholding of these powers i.e. section 5(4) in the notification, resulted in withholding the powers of the

Criminal Procedure Code. This Commission therefore, could not approach to the Criminal Court against those who refrained to furnish the information, in response to the summons served on them. Had the powers u/s 5/4 been conferred, the Commission would have approached to the Criminal Court by way of Private Criminal Prosecution and would have secured the required information. The commission also could not issue the orders/directions to the police department. The assistance of Beed police was sought for service of summons vided letter O.W.No.260/08 dated 31-8-2008 (**P-S-4**) and there was a flat refusal even to accept the letter.

This Commission being the Civil Court it was required to avail the provisions u/o 16 and rule 1, to 21 of C.P.C. to compel the attendance and to secure the information. However, this provision is rather complicated and time consuming. As per the provision of law, summons has to be served **in person**, whose presence is required. If he fails to attend, the serving officer who served the summons in person shall certify to that effect by affidavit and that has to be verified by the Competent authority vide rule 10. After such verification the serving officer has to be examined on oath. When the court has reason to believe that, evidence of such witnesses is material and he failed to attend, the court is required to issue a proclamation against him and then the court can issue a warrant either bailable or nonbailable vide R. 10 (3) or can attach his property and also can impose fine of Rs.500/- vide rule 12 (2) of C.P.C. Such is the rigid procedure for compelling the attendance of the witness.

For following such procedure, the main work has to be kept aside.

XXXXXXXXXXXXXXXXXXXXXX

(b) Clause IV of the notification dated 9-10-2007 of appointment of the Commission provided, as far as its jurisdiction is concerned, is as under. It is divided by me in three parts,

"a) to examine the legality of illegal transfer, development or creation of the third party rights of wakf properties or land in State of Maharashtra after coming into existence of the said Wakf Board;

b) and to suggest the scheme for reestablishment of properties which are illegally transferred or developed or illegal creation of third party rights (apart from pending court cases), to the said Wakf Board ;

c) to fix the responsibility on the person responsible for the mis-management of the property or land of the said Wakf Board".

As far as legality of illegal transfers, developments etc. is concerned the Commission is empowered to decide it as per clause (a) and also empowered to fix the responsibility as per clause (b). However, as far as, proposal of the scheme for re-establishment of such property with the Wakf is concerned, the powers are virtually restricted, in case the matter is sub-judiced, or decided by the court of law. In other words the Commission can look into the past events, and it can not look into the future aspects, if the court case is pending. The proceedings being pending in the Court/s in many of the matters, and specially where important properties are involved, it is not proper for the Commission to make any proposal owing to this difficulty, and that is the reason for not making the proposal in some of the matters.

**XXXXXXXXXXXXXXXXXXXXXX**

**BURNING PROBLEMS**

What I noticed during the course of Inquiry is that, the atmosphere of the employees of the Wakf Board including the CEO is hostile to the Board, consequently to the commission. As a matter of fact they being earning their bread from the Board, they should have acted as friend of the commission however, they acted as a enemy.

The Wakf Board and its employees should have voluntarily brought the instances of encroachment/s, illegal development/s etc. on the Wakf property/ies by the people, and also illegalities committed (may be) by the Wakf Board. Such assistance by the employees of the Wakf Board is apart, the CEO and DWO/s of the Wakf Board even did not give reply to hundreds of summons of the Commission, which were by way query. One may understand the difficulty faced by the Commission, viz. the private people do not approach to the Commission through the complaint, for the reason that, they have no interest in the wakf property or they are influenced by some private or Govt. influential person or they are pressurized by some influential person or the office of the Commission is not easily accessible to the public in general and also the approach is rather costly, the office of the Commission being away from the City.

If at all any person approach to this office through a complaint, he hardly turn-up to the office for second time. Therefore, it become a difficult affair for the commission to get the required information in order to verify the contents of such complaint. If the commission issue summons on the basis of such complainant to the opponents, they also do not turn-up to this office, they being either in possession of property or they being under the impression that, what wrong the commission would do to them?.

In view of such situation and circumstances, the Wakf Board remains the only source of collecting the information, as regard such complaint. However, as stated above I noticed that, the CEO Mr. S.S.Ali Quadari, his predecessor and D.W.O. Mr. Munirkhan Pathan and his predecessor and the D.W.O.s of various district in Maharashtra State from 2007 (**except the D.W.O. of Osmanabad**) have turned so adamant that, they did not give reply to hundred of summons of this office. The D.W.O. like Mr. Munirkhan Pathan went to such an extent orally to say that a particular property is a private Inam, though in fact, there are several circumstances to support that, the said property is Mashrutul Khidmat (Service Inam) I am deliberately not given the name of the said property. I remember that, once the CEO Mr. S.S. Ali Quadari dialed phone to me, after getting a summons having the endorsement, " If you failed to comply with this order without lawful excuse, you will be subject to consequences of non attendance laid down in rule 10 and 12 of order 16 of C.P.C. 2002" and he started saying "as to what action the commission would take against him? The commission may do its work and why the commission is asking him". This would mean that, **Mr. S.S. Ali Quadari being the person of treasury department and being person not to have dealt with the quasi judicial work, does not know the norms, and atiquates of a officer of a responsible office and the norms of judiciary.**

The employees of the office of Wakf Board were behaving with the commission in such fashion that, they have nothing to do and no business with the commission. I found that they were worried, may be for their vested interest, which they may be getting beyond their salaries.

I have came across with some of the instances which caused me boiling the blood looking to such illegality or irregularities or the in-action of the Board, as under:-

a) This is pertaining to report no.53 complaint no.85/10, the land Gut No. 27 of Dhangaon Tq. Paithan Dist. Aurangababd which is Wakf property was transferred by Shaikh Ameer and others by creating a forged and fabricated and false documents as under:-

i) Page No.2605 no objection certificate dt. 29-7-2007 of the office of CEO Aurangabad which is fabricated and forged.

ii) Page No.2606 no objection certificate dated 18-6-2009 of the office of Dy. Collector Land Reform which is fabricated and forged

iii) The affidavit dt. 8-6-2009 by Shaikh Ameer and others Page No. 2607 asserting these details, which is false. (Note- Page numbers are referred of the documents of Report).

The factum of falsification and fabrication of record was brought to the notice of the CEO Wakf under the summons O.W. No.104/2/1 the DWO Wakf O.W No.140/2/2 dt. 10-3-2010 (P- 2629) and to the notice of the Dy. Collector L.R. under the summons O.W.No.103 dt. 10-3-10, by enclosing the copies of the fabricated documents to them. As usual though the matter involved a high degree of seriousness, the CEO did not reply it. The Dy. Collector gave a reply (**P.2621**) stating that, the order of no objection was not issued by his office. He enclosed the copy of the letter of CEO of Mr. S.S. Ali Quadari dated 11-12-2009, wherein the CEO stated that, a false letter in his name was attached in the office of the Sub-Registrar. This means both of the authorities have came across with an offence of forgery. Despite it they did not take a action of criminal offence against the mischievous/unscrupulous elements, though this fact was also orally brought to the notice of these authorities.

b) This is pertaining to report no.67 complaint no.2/07 the land 6861 sheet no.51 of Garibshah Bazar Kabarsthan Jalna which is Wakf property. It is under process of illegal development as a function Hall (Shadikhana) through the M.L.A. funds. The summons in such nature was issued to the CEO Mr. S.S. Ali Quadari O.W.No.334/2/1 and DWO Jalna Mr. Shafiq Ahmed O.W. No.334/2/2 dt. 8-7-2010, asking whether the function hall is being constructed on the wakf property at Jalna. The query also was made as to whether the provision u/s 32 (2) (j) r/w section 51 and 56 of the Wakf Act 1995 were followed, and if yes, the details thereof? As usual Mr. Quadari did not give reply to the summons. The D.W.O. Mr. Shafiq Ahmed filed a very cryptic reply by admitting that, the construction work is in progress and the permission u/s 32 (2) (j) of the Wakf Act was not granted.

As a matter of fact when the CEO and/or DWO came to notice such illegal development of permanent nature of the wakf property, they should have immediately reacted and should have taken action, either

by approaching to the police or by approaching to court of law alongwith the application for injunction. However, their cold blood did not react to stop the illegal work. It is likely that the Wakf Board may lose the property, consequently, revenue of the Board and facility of the public.

c) This is pertaining to report no.51 complaint no.73/09, the land Sy. No.104/4, 104/8, 118/1, 118/9, 164/5, 164/8 of Osmanabad and Sy.No.228 Naldurg (P.2363, 2377, 2385, 2398, 2409, 2422,2429, 2439,and 2447) the Wakf properties which were transferred by various persons w.e.f. 1999 to 2002. The D.W.O. Osmanabad brought this fact to the notice of the head office of his department i.e. the CEO Wakf Aurangabad through letter No.SNT/797/03 dt. 10-11-2003 As against this the action was taken u/s 51 by the CEO in respect of Sy. No.228 on 15-5-2004 (**P. 2332**), in respect of Sy.no.164, on 21-2-2005 (**P.2334**) in respect of Sy.No.104/4, on 19-1-2009 (**P.2337**) in respect of Sy. No.104/1, on 20-1-2009 (**P.2339**), in respect of Sy.No.118/1, on 20-1-2009 (**P.2340**). Firstly there was a gross negligence on the part of the CEO right from 2003 to take action against the such serious matter and secondly after taking action it appears that, it is not persuaded, such as, the CEO has nothing to do and has no accountability to the Wakf property, which is lost.

d) This is pertaining to report No.70 (Complaint No.43/08 and 59/09) in respect of Karimbhay Khoja Orphanage Malbar Hill Mumbai. The half hearted action was taken by the then CEO Mr. A.R.Shaikh. He was expected to take action u/s 26 of the Act that, the particular kind of illegality or irregularities was committed. However no such action was taken.

e) Similar is the case in report No.10, in case of Sy.No.39 of Aurangabad known as Kalibawadi,

f) Similar is the case in Report No.7, complaint no.59 about Sy.No.83 and 91 of Aurangabad known as Nirmanbharti.

g) The report no.4 in complaint no.9/08 in respect of Sy.No.289 adm. 1 A. 4 G. situated at Vaijapur is also on the same lines, wherein Mr.S.S.Ali Quadari displayed gross negligence and inaction, may be for his ulterior motive.

I may say that, not only these employees are indulging the activities of negligence and inaction, but the Mutwally/ies, the Chairman and the member/s of the Board are also sailing in the same Boat. When the Mutwallies, Chairman and members themselves indulge in irresponsible activities, may for wrongful gain, the gain which may be comparatively very minor to the value of the Wakf property. When such personalities holding a profile of a particulars status, indulge wrongfully, who will take the cognizance of the matters of illegalities?

Still I say that, there should be a campaign on large scale to bring the awareness in the general public that, the Wakf property belongs to them for utilization of its benefits and whenever some untoward happens they should take action in the matter. Unless the general public is aware it is difficult to find the solution to these problems. (Note-See Scheme)

I have come across with the people like Sayed Raft and Mr. Kazi Salauddin r/o Aurangabad of Aurangabad. Of course Mr. Raft fought in the matter wherein he was remotely having some personal interest viz. Criminal Case No.463/2010 **(P 4624)** however, Mr. Kazi Salauddin fights a litigation (without any personal interest) about the land of Kalibadi and presently matter is pending in the Hon'ble High Court. The awareness should go to such an extent that, there shall be a feeling in every person that, if he comes across with any illegality against the Wakf property, and he observes silence he would be answerable to the great God. If such awareness is brought in the general public, to some extent the illegalities committed by one or other may be curbed

It is true that, presently the grievance/s made by some of the people in the society are altogether ignored by either the DWO, CEO, Chairman of the Wakf or even the Principal Secretary of the Department and consequently such private people are discouraged. I would suggest that the Govt. should setup a agency of particular cadre who shall look after the grievance of general people specially in respect of irregularity in dealings of the Wakf Properties.

Now a days the voice is sounding that the Board lost 70 % properties and still if the board gets revenue of remaining 30% lands, that also may be a achievement. It is true that, 30 % of the properties in Maharashtra State would go to round about 30,000 acres of lands and if this much area is properly protected and developed , that may assist to uplift the Muslim Community. However, such kind of policy of surrender, that too, in respect of about 70% of wakf lands is not at all advisable. The lands which are lost are the cream of the lands held by the Wakf Board. The lands which have been lost were having the building potentiality either in the town-city area or adjoining to it. One plot say of 50x50 feet in such area would cost say to Rs. 25 lacs or 50 lacs. As against this one acre land in remote area would cost hardly 2 lacs to 4 lacs. The theory of surrender of 70% of land is therefore, not at all advisable.

It appears that, majority of lands adjoining to town or city are illegally possessed by the Govt. or semi Govt. agencies. The Govt. or the semi Govt agencies, would be liable to pay the rent to the Board in addition to the reasonable donation. The rent shall be fixed by the Wakf Board as per the then prevailing commercial market rate of rent looking to the value of the property and the Govt. and such agencies shall be compelled to pay to the Board.

**Pessimistic Approach**

The Commission noticed that, there was/is a pessimistic approach not only of the Wakf Board–the CEO but also of the general public. The commission came across with a deed of lease dated 3-11-1961 under which about 1 hundred 95 acres of land was leased to the **Chairman Maulanad Azad Educational Trust, Aurangabad** for social, cultural, educational and economic etc. benefits. **(P S 5-1to5 )** This office issued summons bearing O.W. No.54, dt. 27-1-2010 **(P S 6)** to the President, the Maulana Azad Education Trust, the Principal Maulana Azad College and CEO Wakf Board to make detailed statement as regards the area of the land possessed by the trust and whether any proceedings in between trust and other agencies like Govt., CIDCO, etc. are pending. In response to the summon, the Principal and Superintendent Mr Magdum and Mr. Dastgir

appeared before me, had a discussion with me and they left with oral assurance that, they would file reply. Thereafter I also personally visited the said site and as stated by the aforesaid two employees of the trust, it was noticed that, the trust was holding possession on very short portion of the land say about 30 acres. The aforesaid two person could not give account of remaining 165 acres of land, nor the reply is filed. This is how the responsible institution of the trust had no care of the wakf property and ultimately no care for economic, social, and cultural benefits of the society. It is commonly said that, "What belongs to all, belongs to non" and this saying is exactly applicable in this case.

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The Commission came across with the copy of Gazette dated 17-5-1973 under which the land adm. **about 2146 acres** was donated as a Wakf to Dargah Hazarat Babashah Musafeer, Babashah Palang Posh, Babashah Mahemood Musafir alongwith Masjid, Khankha, Guardian, Baradari, library and graveyard and 300x250 feet site. The Commission issued summon to Mr. S.S.Ali Quadari the CEO and Mr. Munirkhan Pathan the DWO O.W. No.271/10 dt. 25-5-2010 and they did not care to file the reply. (**P-S-7-14**).

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The Commission also came across from the report of action committee dated 9-4-2002 that, Sy.No.37 adm. 21 A. 33 G. of Chitegaon Tq. Paithan Dist. Aurangabad to have been leased in the year 1990 and the lease was to be renewed after each 10years. The summons bearing O.W. No.227, dt. 30-4-2010 was issued to Mr. S.S.Quadari the CEO and Mr. Munirkhan Pathan the DWO calling them upon to make statement and they did not file a reply. (**P-S-10**)(Videocon). Similar is the case in respect of Osummonse O.W No. 435/09 dated 23-11009 (**P-S-10 A**)

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The Commission came across with the long lease of as many as 56 properties detected in the inquiry by Mr. Captain Shaikh the officer on Special Duty of the Govt. and on this basis the summons bearing O.W. No.234, dt. 30-4-2010 was issued to Mr. S.S.Quadari the CEO and Mr. Munirkhan Pathan the DWO calling them upon to make statement and they did not file a rply. (**P.S-11-20**).

The Commission came across from the internet (**P. S- 21-23**) that, the Maharashtra Minority Ministry has reclaimed 120 acres of Wakf land of **Junnar Dist. Pune near Nashik from one Chougule** of the Chateau Indage Group. This office issued summons O.W. No.252 dt, 7-7-2009 (**P.S-24**), 259, dt. 15-7-09 (**P.S -25**), to the CEO 172, dt. 29-3-10 to the CEO and DWO Pune (**P. S-26**) and the proclamations O.W.No.207, dt. 22-7-10 (**P.S-27**) to the CEO and DWO Pune (All by name of Mr. S.S.Ali Quadari and Mr. Sayed Faiz ). The reply however is not filed. The CEO sought time vide letter No.2942 dt. 17-7-2009 (**P.S-28**), letter No.2993, dt. 18-7-2009 (**P.S-29**) and the D.W.O. Pune claimed time vide his letter No.303 dt. 12-4-2010 (**P.S-30)** and though sufficient time has passed the reply is not filed.

This office noticed that several Govt. offices did not give reply to various summons in relation to various properties and lastly the commission issued a **composite letter by way of complaint to the Divisional**

**Commissioner, Aurangabad** vide O.W.No.66, dt. 1-12-2010 (**P.S-31**) and still there is no response from the other end.

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As a matter of fact the Board of Wakf in Maharashtra state is 'Karodpati' or 'Arbpati'. I found from the internet to have been stated by Hon'ble K. Raheman Khan that, " 4 lakhs acres is the Wakf land. According to him, this makes the Board the third largest land holder after Railways and the defence". Such is the position of the Wakf Board. However today, as it is learnt orally from the people approaching this Commission that, the Board is performing the part of begging by collecting Rs.300/- for search record when the application for copy is submitted or the similar excessive amount towards the process fees for issuing the notices to the apposite parties or taking disadvantage of situation by allotting any plot to rich person, on excepting Rs. 1 lakh or 2, to make the sound financial position of the Board, instated allotting the said plot to a poor person who had a priority of claim and who has no money to pay to the Board. (See Report No.68, in complaint no. 82/09). The CEO Wakf categorically stated in his reply that, सदरील जागेचे पूर्वीचे भाडेकरू मंडळास वार्षिक नुझूल अल्प प्रमाणात देत होते. जनाब रजा अली शहा यांनी त्यांचेकडून जागेचा प्रत्यक्ष ताबा घेतला आहे व नवीन दराने भाडे देण्याची तयारी दर्शविल्यामुळे, त्यांचेशी समक्ष चर्चेत भाडे रुपये १६००/- प्रति माह निश्चित केले. तसेच त्यांनी मंडळास देणगी म्हणून रुपये १,५०,०००/- नगदी रोख जमा केले आहेत. मंडळाचे उत्पन्न व आर्थिक स्थिती चांगली व्हावी या उद्देशाने तसेच रजा अली शहा यांचा जागेवर प्रत्यक्ष कब्जा असल्यामुळे दिनांक ६-४-२००९ रोजी आदेश देऊन ११ महिन्यांसाठी जागा भाडेतत्वावर दिली आहे. (**P. 3710**)

As a matter of fact Mr. Raza Ali submitted application to the Wakf Board on 30-3-2009 (**P. 3702)** and he obtained the possession of the land from earlier tenant on the same day under the document (**P.3711**) As against this the opponent Mr. Abdul Karim submitted application for this plot on 12-9-2008.(**P-3701**) Mr. Abdul Karim had a priority of claim but in the definition and scheme of the CEO Mr. S.S.Ali Quadari, the complainant Mr. Abdul Karim was not entitle to the plot only because he was poor person and only because he was not influential to obtain the possession from the earlier tenant before submission of application. The CEO Mr. S.S. Ali Quadari did not assign any reason as to why the claim of Mr. Abdul Karim was dominated besides the aforesaid arbitrary reason. This indicate that, the machinery of the Wakf Board is exerting for the rich people i.e. against the pious aims and object of the wakif – donor. The wakif donated the property for upliftment of the poor and not of the rich. Mr. S S. Ali Quadari the CEO however did not know such simple analogy of donation. ***Note: Page number are of report no.68.***

The CEO, the DWO and the employees of the Wakf including the Board have no time to protect the wakf properties like

(a) the property of Jalna vide report no.67 where the Samaj Mandir is being constructed through the M.L.A. funds and no action is taken or

(b) several properties in Osmanabad district vide Report No.51 which are Wakf are transferred and though the DWO made a report in writing in 2003, the CEO or Board did not get time firstly to take action against the said transaction and secondly if action is taken to peruse it and to take it to the result,

(c) the land Sy.No. 8 adm. 22 A. 2 G. of Wajegaon Dist. Nanded of which the Inam is abolished and no action is taken by the Board may be for the reason that, the property is purchased by the influencial person.

(d) the land Sy.No. 39 known as Kalibawadi Aurangabad which is totally adm. 16 acres 30 Gunthas and the Inam of entire land is abolished and the land went out of the reach of the Board, and the CEO, on his own does not take action. Several examples can be quoted of such nature, which are covered by me in my various reports. If the Wakf Board succeeded to recover the possession of such lands or obtains the adequate compensation as per the Commercial prevailing rates, the financial position of the Board would be 'Karodpati' or 'Arbpati'. Instead taking action for such properties, the CEO is interested to recovery Rs. 300/- or 500/- by way of inspection fees or process fees. This is also one of the reasons that, the private people, though desire, do not approach to the Board; because they do not get any personal benefit, whereas they have the consequence against their pocket. It is therefore necessary to the CEO of the Wakf who is administrative head and also to the Wakf Board to think over and take appropriate action as regards aforesaid properties and the other like properties. At the same time the Govt. also may frame some scheme to take out the lands from the clutches of the aforesaid people who may be regarded as Mafiya .

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**NON-COOPERATION BY THE CEO WAKF.**

The following are the matters in which summons are issued to the CEO Wakf and he did not respond. I mention that, though the period of about 1 to 3 years has passed in some of the matters, after issuing the summons, the CEO Wakf did not take care to make the compliance, by at least filing the reply before this Commission.

Column No. 2 pertains to Report, Column 3 pertains to the Outward No. and Column 4 pertains to the date of summons.

| S. No. | Report. | Outward No. | Date | Remark |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | *R.1 | 52/09 | 25-3-2009 | |
| 2 | R-2 | 52/09<br>296/09<br>324/09 | 25-3-2009<br>3-8-2009<br>21-8-2009 | |
| 3 | R.3 | 52/09 | 25-3-2009 | |
| | R-6 | 320/2/1<br>332/09 | 20-8-2008<br>27-8-2009 | |

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|---|---|---|---|---|
| | Proclamation | 436/09 | 24-11-2008 | |
| 4 | R.7 | 145/08 | 7-10-08 | 233 |
| | | 290-2-1/09 | 31-7-09 | 233-A |
| | | 323/09 | 21-8-09 | 233-B |
| | Proclamation | 339/09 | 29-8-09 | 233-C |
| | Bail able warrant | 388/09 | 14-10-09 | 305 |
| | Fine Rs.500 | | | |
| | **Reply filed** | 417/09 | 10-11-09 | 306 |
| | | | 16-11-09 | 307 |
| 5 | R-8 | 459/2/1 | 7-12-09 | 372-A |
| 6 | R-10 | 381/2/1 | 8-10-09 | 2143 |
| | | 471/09 | 15-12-09 | 2287-13 |
| | | 478/2/1 | 16-12-09 | 2287-14 |
| | | 495 | 30-12-09 | 2283-A |
| | | 94/4/3 | 4-3-10 | 2266 |
| | | 95/5/4/10 | 4-3-10 | 2262 |
| | | 97/2/1 | 4-3-10 | 2283 |
| 7 | R -12 | 378/08 | 4-12-08 | 447. |
| | Confidential | 182/09 | 22-5-09 | 509 |
| | Confidential | 251/09 | 7-7-09 | 510 |
| 8 | R -13 | 109/09 | 13-4-09 | |
| 5 | R-14 | 120/09 | 13-4-09 | |
| | R-15 | 113/09 | 13-4-09 | 517 |
| | | 306/2/1-09 | 10-8-09 | 539-A |
| | | 71/2/1 | 8-2-10 | 539-C |
| 7 | R -16 | 109/09 | 13-4-09 | 545 |
| | | 73/2/1 | 10-2-10 | 550-A |
| 8 | R 17 | 120/09 | 13-4-09 | 553-B |
| | | 76/2/1 | 10-2-10 | 553-L |

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| 9<br><br>NT | R-18 | 58/09<br>98/3/2<br>103/09 | 26-3-09<br>5-3-10<br>13-4-09 | 557<br>568-A |
| 10 | R 19 | 138/09 | 15-4-09 | 569 |
| 11 | R -20 | 317/3/2<br>131/09 | 18-8-09<br>13-4-09 | 578 |
| 12 | R 21 | 103/09 | 13-4-09 | 582 |
| | R-22 | 357/2/1/09 | 16-9-09 | 622-A |
| | R-24 | 285/3/2/09 | 21-7-09 | 669 |
| | R-29 | 150/09 | 21-4-09 | 768 |
| | R-30 | 302/7/4 | 4-8-09 | 837 |
| | R- 31 | 297-6/1 | 4-8-2009 | 846 |
| Beed | R-32 | 193/09 | 10-6-2009 | 877 |
| Beed | R-34 | 342/3/1 | 31-8-2009 | 938 |
| Jalna | R- 35 | 277/6/5<br>279/4/3<br>258/09 | 20-7-2009<br>20-7-2009<br>14-7-2009 | 1457 A<br>1463<br>1471 |
| Jalgaon | R-36 | 54/09 | 25-3-2009 | 1507 |
| Nanded | R- 37 | 123/09<br>455/2/1 | 13-4-2009<br>4-12-2009 | 1614<br>1679-24 |
| Nanded | R-38 | 123/09 | 13-4-2009 | 1614 |
| Nanded | R-39 | 123/09 | 13-4-2009 | 1614 |
| Nanded | R-40 | 123/09 | 13-4-2009 | 1614 |
| Nanded | R-41 | 123/09 | 13-4-2009 | 1614 |
| Nanded | R-42 | 123/09 | 13-4-2009 | 1614 |
| Nanded | R-44<br>Proclamation<br><br>Proclamation<br>Reply filed | 260/2/1<br>299/09<br>321/09<br>358/09<br><br>17/2/1 | 15-7-2009<br>4-8-2009<br>20-8-2009<br>18-9-2009<br>7-1-2010<br>8-1- 2010 | 1789<br>1791<br>1792<br>1794<br>1796<br>1798 |

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| Nashik | R-45 | 266/2/1 | 18-7-2009 | 1915 |
| | | 300/09 | 4-8-2009 | 1916 |
| | | 265/2/1 | 18-7-2009 | 1949-V |
| | Proclamation | 301/09 | 4-8-2009 | 1949-X |
| Panvel | R-46 | 78/09 | 2-4-2009 | 1956 |
| | | 322/09 | 21-8-2009 | 1957 |
| | Proclamation | 340/09 | 29-8-2009 | 1958 |
| | Warrant | 387/09 | 14-10-2009 | 1959 |
| | Fine | 418/09 | 10-11-2009 | 1960 |
| | Cryptic Reply | | 8-12-2009 | 1961 |
| | | 467/2/2 | 10-12-2009 | 1975-A |
| | R-47 | 353/09 | 9-9-09 | 2018 |
| | | 355/2/1/09 | 10-9-09 | 2019 |
| | R-48 | 224/09 | 22-6-09 | 2036 |
| | | 254/4/3/09 | 7-7-09 | 2037 |
| Os'bad | R-51 | 230/09 | 29-6-09 | 2322 |
| | | 452/09 | 1-12-09 | 2323 |
| | | 453/09 | 1-12-09 | 2324 |
| | | 438/09 | 26-11-09 | 2362 |
| | | 439/09 | 26-11-09 | 2376 |
| | | 440/09 | 26-11-09 | 2384 |
| | | 441/09 | 26-11-09 | 2397 |
| | | 442/09 | 26-11-09 | 2408 |
| | | 443/09 | 26-11-09 | 2421 |
| | | 444/09 | 26-11-09 | 2428 |
| | | 445/09 | 26-11-09 | 2438 |
| | | 446/09 | 26-11-09 | 2446 |
| | | 68/10 | 2-2-10 | 2324-A |
| Jalna | R-52 | 382/4/1 | 9-10-09 | 2555 |
| | | 470/09 | 15-12-09 | 2556 |

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| A’bad | R-53 | 104/2/1 | 10-3-10 | 2619 |
| Jalna | R-54 | 236/09 | 30-6-09 | 2642 |
| | | 432/09 | 23-11-09 | 2644 |
| | Proclamation | 472/09 | 16-12-09 | 2646 |
| A’bad | R-59 | 203/09 | 20-6-09 | 2854 |
| | | 206/09 | 20-6-09 | 2857 |
| | | 209/09 | 20-6-09 | 2860 |
| | | 212/09 | 20-6-09 | 2863 |
| | | 215/09 | 20-6-09 | 2068 |
| | | 218/09 | 20-6-09 | 2869 |
| | | 200/09 | 20-6-09 | 2865 |
| | Proclamation | 55/10 | 27-1-10 | 2873 |
| | Fine | 180/10 | 5-4-10 | 2883-A |
| A’bad | R-60 | 357/08 | 20-11-08 | 2903 |
| A’bad | R-61 | 354/08 | 19-11-08 | 2931 |
| | | 487/09 | 30-12-09 | 2933 |
| | | 181/10 | 6-4-10 | 2934 |
| | | 245/2/1 | 6-7-09 | 2935 |
| | | 488/09 | 22-12-09 | 2936 |
| A’bad | R-62 | 287/8/9 | 22-7-09 | 2981 |
| | | 314/2/1 | 17-8-09 | 2983 |
| | | 379/2/1 | 8-10-09 | 2984 |
| A’bad | R-63 | 206/2/1 | 22-4-10 | 3191-A |
| | | 235/3/1 | 3-5-10 | 3191-G |
| | R-64 | 317/08 | 18-11-08 | 3302 |
| | | 218/2/1 | 27-4-10 | 3359 |
| | | 219/3/2 | 28-4-10 | 3358 |
| | | 222/2/1 | 28-4-10 | 3360 |
| | | 220/5/4 | 28-4-10 | 3362 |
| A’bad | R-65 | 79/09 | 2-4-09 | 3459 |

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| | | 397/09 | 28-10-09 | 3460 |
| | | 419/09 | 11-11-09 | 3462 |
| | | 433/09 | 2311-09 | 3463 |
| | | 51/10 | 22-1-10 | 3463-A |
| | | 65/2/1 | 1-2-10 | 3468 |
| Jalna | R-66 | 244/9/1 | 4-7-09 | 3504 |
| | | 482/2/1 | 19-12-09 | 3526 |
| | | 489/09 | 23-12-09 | 3527 |
| Jalna | R-67 | 246/2/1 | 10-6-09 | 3655 |
| | | 253/2/1 | 7-7-09 | 3656 |
| | | 361/09 | 19-9-09 | 3657 |
| | Proclamation | 190/10 | 17-4-10 | 3658 |
| Nashik | R-69 | 296/7/6 | 1-6-10 | 3797 |
| Mumbai | R-70 | 148/08 | 10-10-08 | 3908 |
| | | 64/09 | 1-4-09 | 3909 |
| | Proclamation | 164/09 | 29-4-09 | 3911 |
| | Reply filed on | | 12-5-09 | 3912 |
| | | 276/10 | 29-5-10 | 3944-A |
| Mumbai | R-71 | 297/8/7 | 1-6-10 | 4345 |
| | | 306/5/4 | 10-6-10 | 4346 |
| | | 307/7/6 | 10-6-10 | 4347 |
| | | 308/8/7 | 10-6-10 | 4348 |
| | | 176/7/5 | 31-3-10 | 4349 |
| | Proclamation | 205/10 | 21-4-10 | 4350 |
| | Fine | 241/10 | 4-5-10 | 4351 |
| | | 297/8/7 | 1-6-10 | 4399-A |
| A’bad | R-72 (Rafat Baig) | 335/10 | 8-7-10 | 4451 |
| | | 467/10 | 23-9-10 | 4478-A |
| A’bad | R-73 | 115/08 | 20-8-08 | 4503 |

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| | | 311/08 | 15-11-08 | 4504 |
| | | 362/09 | 19-9-09 | 4505 |
| | Proclamation | 456/09 | 4-12-09 | 4506 |
| | Fine | 46/10 | 21-1-10 | 4507 |
| A'bad | R-74 | 311/3/3 | 17-6-10 | 4558 |
| | | 322/8/7 | 30-6-10 | 4562 |
| A'bad | R-75 | 366/2/1 | 12-8-10 | 4639 |
| | | 367/2/1 | 12-8-10 | 4640 |
| | | 382/10 | 31-8-10 | 4644 |
| | | 383/10 | 31-8-10 | 4645 |
| Beed | R-77 | 395/4/3 | 21-10-09 | 4679 |
| | | 461/2/1 | 7-12-09 | 4680 |
| Beed | R-78 | 396/3/1 | 26-10-09 | 4693 |
| | | 486/09 | 30-12-09 | 4695 |
| Marathwada | R-79 | 228/2/1 | 30-4-10 | 4728 |
| | | 229/2/1 | 30-4-10 | 4737 |
| | | 230/2/1 | 30-4-10 | 4738 |
| | | 231/2/1 | 30-4-10 | 4739 |
| | | 232/2/1 | 30-4-10 | 4740 |
| | | 233/2/1 | 30-4-10 | 4741 |
| A'bad | R-80 | 221/09 | 22-6-09 | 4759 |
| | | 426/2/1 | 17-11-09 | 4761 |
| | | 427/09 | 17-11-09 | 4764 |
| | | 385/09 | 3-9-10 | 4775 |
| A'bad | R-81 | 310/08 | 15-11-08 | 4802 |
| | | 195/10 | 20-4-10 | 4805 |

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| Parbhani | R-84 | 272/7/5 | 25-5-10 | 4842 |
| A’bad | R-85 | 247/10 | 7-5-10 | 4853 |
| A’bad | R-86 | 211/2/1 | 22-4-10 | 4878 |
| Beed | R-87 | 460/09<br>385/3/1 | 7-12-09<br>12-10-09 | 4897<br>4899 |
| Beed | R-88 | 461/2/1 | 15-9-10 | 5020-A |
| A’bad | R-90 | 104/08<br>262/08<br>353/08<br>257/2/1<br>259/10 | 25-7-08<br>31-10-08<br>19-11-08<br>13-5-10<br>13-5-10 | 5356<br>5357<br>5358<br>5359<br>5361 |
| Nanded | R-91<br>Proclamation<br>Fine | 166/2/1<br>196/10<br>262/10 | 20-3-10<br>20-4-10<br>14-5-10 | 5370<br>5371<br>5374 |
| A’bad | R-92 | 388/10 | 6-9-10 | 5382 |
| Pune | R-93 | 240/2/1 | 7-5-10 | 5438 |
| Beed | R-94 | 284/5/3 | 20-7-09 | 5451 |
| Beed | R-99<br>Proclamation<br>Fine | 359/2/1<br>469/09<br>44/10 | 19-9-09<br>15-12-09<br>20-1-10 | 5469<br>5470<br>5471 |
| A’bad | R-103 | 301/08 | 12-11-08 | 5482 |
| A’bad | R-104 | 491/09<br>188/10 | 30-12-09<br>13-4-10 | 5493<br>5494 |

| | | | | |
|---|---|---|---|---|
| | Proclamation | 212/10 | 22-4-10 | 5495 |
| A'bad | R-107 | 256/2/1 | 12-5-10 | 5558 |
| Vaijapur | R-109 | 485/4/3 | 5-10-10 | 5708 |
| A'bad | R-110<br>Proclamation<br>Fine | 380/2/1<br>437/09<br>47/10 | 8-10-09<br>24-11-09<br>2-1-10 | 5778<br>5779<br>5780 |
| Nanded | R-111<br>Proclamation<br>Fine | 167/2/1<br>198/10<br>264/10 | 20-3-10<br>20-4-10<br>14-5-10 | 5785<br>5786<br>5789 |

**<u>GRIVANCE</u> AGAINST CEO WAKF OF OF NON COOPERATION**

WITH PROGRESS REPORT

The Commission also made complaint to the Principal Secretary Minority Development Department and Maharashtra State Minority Commission, Mumbai as under.

| O.W.No.with date | Subject | Remarks |
|---|---|---|
| 26/09, dt.25-2-09 | Assembly question | P-1-2 |
| 80/09, dt.4-4-09 | Assembly question | P-3-4 |
| 194/2/09, dt.10-6-09 to Chief Secretary | Extension | P-5 |
| 194/1/09, dt.10-6-09 Copy to Secretary | Extension | P-5 |
| 1663/09, dt.23-9-09 | by Minority Commission to the Govt. about the complaint against CEO of Non Cooperation | P-6 |
| MDD/6/08(CR 48)<br>Desk-4 dt.26-3-10 | By Joint Secretary, Mantralaya Mumbai direction to the CEO but no avail | P-7 |
| 183/10, dt. 7-4-10 | Extension | P-8-9 |
| 184/10, dt.8-4-10 | Progress report | P-10 |

| | | |
|---|---|---|
| 334/09,dt.27-8-10 | Extension | P-11 |
| 424/09, dt. 17-11-2009 | To Govt. | P-12 |

**INFORMATION SHOUGHT FROM CEO WAKF.**

**NO COMPLIANCE**

| Sr. No. | O.W.No. with date | To whom | Subject | Remarks. |
|---|---|---|---|---|
| 1. | O.No. Dt. 15-12-2007 | To The C.E.O. Wakf | **List of Wakf properties with other details asked by commission** | P-13 |
| 2 | O.No. | To The C.E.O. Wakf | Nizam Banglow being in convenient, two rooms lying vacant in Panchhakki claimed for office of commission | P-14? |
| 3 | O.No. 79/08/dt. 10-01-2008 | To commission by C.E.O. | Ready to give 2 rooms subject to repairs by commission | P-15 |
| 4 | O.No. 37/08/ dt. 14-02-2008 | To C.E.O. Wakf by commission | Handover the keys of two rooms | P-16 |
| 5 | O.No.53/08/dt.19-3-08 | To C.E.O. Wakf by commission as reminder | Handover the keys of two rooms | P-17 |
| 6 | O.No.1415/07 dt.5-04-2008 | To commission by C.E.O. | Ready to give 2 rooms subject to repairs by commission | P-18 |
| 7 | O.No.55/dt.27-3-08 | To C.E.O. Wakf by commission | **List of Wakf properties with other details asked by commission** | P-19<br>(P-13) |
| 8 | O.No.238/08/dt.22-10-2008 | To C.E.O. Wakf by commission | Reminder of ten letters | P-20 |
| 9 | O.No.177/2009/ dt.02-04-2009 | To C.E.O. Wakf by commission | The summons as regards Masjid and Dargha of Mumbai | P-21 |
| 10 | O.No. 1662/09/ dt. 20-4-2009 | To Commission by C.E.O. | Copy of complaint sought and supplied | P-22 |
| 11 | O.No. 141/08/ dt. 9-10-2008 | To Mr. S.S.Ali quadri C.E.O. | Direction to attend personally the office of commission on 10th or 13th of oct.2009- No response | P-23<br>154? |

**Note** :- In reference to Column No. 2 to 6 the negligence and pessimistic approach of the C.E.O. Wakfs is displayed. The C.E.O. stated in the letter P-15 that "he is ready to give the rooms however the commission will have to carry the repairs". The commission naturally claimed possession and keys vide P-16 and then through the reminder P-17. Again the identical reply came that " he is ready to give the rooms however the commission will have to carry the repairs". P-18.

**Bailable warrants and imposing the fine**

The office of the Commission severally made a complaint about the non-cooperation by the **CEO Mr. S.S.Ali Quadari** and also had taken the deterrent action against him by issuance **bailable warrants and imposing the fine** as under:- still no expected response

| Sr. No. | Particulars of the matter | Warrant issued | Fine imposed | Page of Report | Remarks |
|---|---|---|---|---|---|
| 1 | Nirman Bharti (R-7) | Yes (P 305) | Yes Rs. 500/- (P 306) | (P 305) (P 306) | |
| 2 | Panvel (R-46) | Yes (P 1959) | Yes Rs.500/- (P 1960) | (P1959) (P1960) | |
| 3 | Complaint No.64/08 | No | Yes Rs.500 dt. 20-1-10 | (P-5471) | |
| 4 | Complaint No.24/08 | No | Yes Rs.500 dt. 21-1-10 | (P-4507) | |
| 5 | Complaint No.41/08 | No | Yes Rs.500 dt. 21-1-10 | (P-5780) | |
| 6 | Complaint No.6/07 | No | Yes Rs.500 dt. 22-1-10 | (P-3463-A) | |
| 7 | Report No.61 (C-3/07) | No | Yes Rs.500 dt. 5-4—10 | (P-2883-A) | |
| 8 | Complaint No. 89/10 (R.71) | No | Yes Rs.500 dt. 5-4-10 | (P.4351) | |
| 9 | Complaint No.86/10 (Nanded) | No | Yes Rs.500 dt. 14-5-10 | (P.53-74) | CEO and DWO both |
| 10 | Complaint No.87/10 | No | Yes Rs.500 dt. 14-5-10 | (P.5789) | CEO and DWO both |

**Grievence to the Hon'ble High Court**

The Commission also approached to the Hon'ble High Court against the CEO Wakf by sending a complaint which was treated as public interest litigation which was registered Stamp No. 8114 /2009.

One Mr. Misbahulla r/o Beed sent a letter/complaint to the Hon'ble High Court Bench at Aurangabad (W.P. No.3751/08) as a Public Interest Litigation and the Hon'ble High Court had taken the cognizance thereof by directing the CEO Wakf some where in the month June/July 2009, to attend the High Court, however he did not attend. Subsequently the matter did not come on the Board.

**Grievence under Right to Information Act.**

The Commission also approached to the Commissioner, under Right to Information Act, against the CEO Wakf and said complaints are as under :-

O.W.No.185/10, and registered as Appeal No.6802/2010 dt. 19-7-2010, O.W.No.186/10, Appeal No.6803/2010 dt. 19-7-2010,

O.W.187/10, Appeal No.6804/2010 dt. 19-7-2010 and **these complaint are pending.**

**The C.E.O. Wakf was cryptic in giving reply - few example**

| Sr. No. | O.W.No. with date | Particulars | Grievance | Remarks. |
|---|---|---|---|---|
| 1 | O.No. 5757/dt. 16-11-2009 | Nirman Bharti Aurangabad | Very cryptic reply | P-24 |
| 2 | O.No. 6540/dt.8-12-09 | Panwel property | Very cryptic reply | P-25 |
| 3 | O.No.2063/09/dt.12-05-2009 | Currimbhoy orphanage –Malbar hills Anitilia | Very cryptic reply | P-26 |
| 4 | O.No. 153/09/ dt.2-4-09 | By commission to C.E.O. | Summons about Masjid and Dargah near Rani bag Mumbai- No reply. | P-27 |

**NON CO-OPERATION BY DISTRICT WAKF OFFICERS**

| S.No. | Report/Com No. | Outward No. | Date | Page-Report |
|---|---|---|---|---|
| 1 | *R-4 | 348/08 | 19-11-2008 | |
| | R-6 | 320/2/1 | 20-8-2008 | |

| | | | | |
|---|---|---|---|---|
| | R-8 | 459/2/1 | 7-12-09 | 372-A |
| | R-9 | 463/4/3 | 9-12-09 | 400AA |
| | R-10<br>Reply filed | 381/2/2<br>-<br>478/2/2<br>495/2/2<br><br><br>94/4/4/10<br>95/5/5<br>97/2/2 | 8-10-09<br>16-12-09<br>30-12-09<br><br><br><br>4-3-10<br>4-3-10<br>4-3-10 | 2143<br>2243<br>2283-A<br><br><br><br>2266<br>2262<br>2283 |
| | R-12 | 49/09<br>377/08 | 25-3-09<br>4-12-08 | 407<br>447 |
| | R-13 | 49/09 | 25-3-09 | 407 |
| | R-14 | 49/09 | 25-3-09 | 407 |
| | R-15 | 114/09<br>306/2/2<br>71/2/2 | 13-4-09<br>10-8-09<br>8-2-10 | 517<br>539-A<br>539-C |
| | R-16<br><br>Reply filed | 110/09<br>73/2/2 | 13-4-09<br>10-2-10<br>17-2-10 | 545<br>550-A<br>550-B |
| | R-17 | 121/09<br>76/2/2 | 13-4-09<br>10-2-10 | 553-B<br>553-L |
| | R-18 | 98/3/3 | 5-3-10 | 568-A |
| | R-20 | 317/3/3 | 18-8-09 | 578 |
| | R-22 | 357/2/2/09 | 16-9-09 | 622-A |
| | R-23 | 131/09 | 13-4-09 | 641 |
| | R-24 | 285/3/3 | 21-7-09 | 669 |
| | R-30 | 302/7/5 | 4-8-09 | 837 |
| Beed | R -31 | R 31 | 297-6/1 | 4-8-2009 |

| | | | | |
|---|---|---|---|---|
| Beed | R-34 | 342/3/2 | 31-8-2009 | 938 |
| Jalna | R- 35 | 277/6/6<br>279/4/4<br>431/2/2 | 20-7-2009<br>20-7-2009<br>21-11-2009 | 1457 -A<br>1463<br>1484 |
| Nanded | R- 37 | 455/2/2 | 4-12-2009 | 1679-24 |
| Nanded | R-43 | 372/08 | 2-12-2008 | 1756 |
| Nanded | R-44 | 260/2/2<br>17/2/2 | 15-7-2009<br>8-1-2010 | 1789<br>1798 |
| Nashik | R-45 | 266/2/2<br>265/2/2 | 18-7-09<br>18-7-09 | 1915<br>1949-V |
| Parbhani | R-47 | 172/09 | 8-5-09 | 2008 |
| Parbhani | R-48 | | | |
| Pune | R-50<br>(Satara Dist.) | 83/09<br>250/2/2 | 4-4-09<br>7-7-09 | 2105<br>2108 |
| Jalna | R-52 | 382/4/2 | 9-10-09 | 2555 |
| A’bad | R-53 | 104/2/2 | 10-3-10 | 2619 |
| Jalna | R-56 | 264/08 | 31-10-08 | 2744 |
| A’bad | R-61 | 355/08 | 19-11-08 | 2931 |
| A’bad | R-63 | 206/2/1<br>235/3/1 | 22-4-10<br>3-5-10 | 3191-A<br>3191-G |
| A’bad | R-64 | 318/08<br>218/2/1<br>219/3/3<br>222/2/2<br>220/5/5 | 18-11-08<br>27-4-10<br>28-4-10<br>28-4-10<br>28-4-10 | 3302<br>3359<br>3358<br>3360<br>3362 |
| A’bad | R-64 | | | |

| | | | | |
|---|---|---|---|---|
| Jalna | R-66 | 244/9/2<br>482/2/2 | 4-7-09<br>19-12-09 | 3504<br>3526 |
| Jalna | R-67<br><br><br><br><br>Reply filed on | 246/2/2<br>253/2/2<br>191/2/1<br>191/2/2 | 10-6-09<br>7-7-09<br>17-4-10<br>17-4-10<br>14-5-10 | 3655<br>3656<br>3659<br>3659<br>3660-62 |
| A'bad | R-68 | 72/2/2<br>192/2/2 | 10-2-10<br>17-4-10 | 3708<br>3709 |
| Nashik | R-69 | 296/7/7 | 1-6-10 | 3797 |
| Mumbai | R-70 | 67/09 | 1-4-09 | 3914 |
| Mumbai | R-71 | 297/8/8<br>306/5/5<br>307/7/7<br>308/8/8<br>176/7/6<br>297/8/8 | 1-6-10<br>10-6-10<br>10-6-10<br>10-6-10<br>31-3-10<br>1-6-10 | 4345<br>4346<br>4347<br>4348<br>4349 |
| A'bad | R-74 | 316/10<br>322/8/8 | 19-6-10<br>30-6-10 | 4560<br>4562 |
| A'bad,<br>Parbhani | R-75 | 366/2/2<br>367/2/2 | 12-8-10<br>12-8-10 | 4639<br>4640 |
| Beed | R-77 | 395/4/4 | 21-10-09 | 4679 |
| Beed | R-78 | | | |
| Marathwada | R-79 | 228/2/2<br>229/2/2<br>230/2/2<br>231/2/2<br>232/2/2<br>233/2/2 | 30-4-10<br>30-4-10<br>30-4-10<br>30-4-10<br>30-4-10<br>30-4-10 | 4728<br>4737<br>4738<br>4739<br>4740<br>4741 |

| | | | | |
|---|---|---|---|---|
| Parbhani | R-84 | 272/7/6 | 25-5-10 | 4842 |
| A'bad | R-86 | 211/2/2 | 22-4-10 | 4878 |
| Beed | R-87 | 385/3/2 | 12-10-09 | 4899 |
| Beed | R-88 | 461/2/2 | 15-9-10 | 5020-A |
| Beed | R-89 | 136/09 | 13-4-09 | 5303 |
| Aurangabad | R-90 | 257/2/2<br>258/10 | 13-5-10<br>13-5-10 | 5359<br>5360 |
| Nanded | R-91<br>Proclamation<br>Fine<br>Reply filed | 166/2/2<br>197/10<br>263/2/1 | 20-3-10<br>20-4-10<br>14-5-10<br>4-6-10 | 5370<br>5372<br>5375<br>5377 |
| Pune | R-93 | 240/2/2 | 7-5-10 | 5438 |
| Beed | R-94 | 284/5/4 | 20-7-09 | 5451 |
| Beed | R-99 | 359/2/2 | 19-9-09 | 5469 |
| Aurangabad | R-107 | 256/2/2 | 12-5-10 | 5558 |
| Vaijapur | R-109 | 485/4/4 | 5-10-10 | 5708 |
| Aurangabad | R-110 | 380/2/2 | 8-10-09 | 5778 |
| Nanded | R-111<br>Proclamation<br>Fine | 167/2/2<br>199/10<br>264/2/1 | 20-3-10<br>20-4-10<br>14-5-10 | 5785<br>5787<br>5788 |

**SUMMONS TO DISTRICT WAKF OFFICERS AND**

**NON-COMPLIANCE.**

The Commission with a view to collect the information of the Wakf Properties as per the record District Wakf Officers issued letters as under:-

| Place | O.W. No. | Date | Page No. | Remarks |
|---|---|---|---|---|
| Mumbai | 184/08 | 10-10-2008 | 191 | |
| Suberban Mumbai | 185/08 | 10-10-2008 | | |
| Thane | 186/08 | 10-10-2008 | | |
| Raigad | 187/08 | 10-10-2008 | | |
| Ratnagiri | 188/08 | 10-10-2008 | | |
| Sindhadurg | 189/08 | 10-10-2008 | | |
| Nashik | 190/08 | 10-10-2008 | | |
| Dhule | 191/08 | 10-10-2008 | | |
| Nandurbar | 192/08 | 10-10-2008 | | |
| Jalgaon | 193/08 | 10-10-2008 | | |
| Ahmednagar | 194/08 | 10-10-2008 | | |
| Pune | 195/08 | 10-10-2008 | | |
| Satara | 196/08 | 10-10-2008 | | |
| Sangali | 197/08 | 10-10-2008 | | |
| Solapur | 19808 | 10-10-2008 | | |
| Kolhapur | 19908 | 10-10-2008 | | |
| Aurangabad | 200/08 | 10-10-2008 | | |
| Jalna | 201/08 | 10-10-2008 | | |
| Parbhani | 202/08 | 10-10-2008 | | |
| Hingoli | 203/08 | 10-10-2008 | | |
| Beed | 204/08 | 10-10-2008 | | |
| Nanded | 205/08 | 10-10-2008 | | |

| | | | | |
|---|---|---|---|---|
| Osmanabad | 206/08 | 10-10-2008 | | |
| Latur | 207/08 | 10-10-2008 | | |
| Buldhana | 208 /08 | 10-10-2008 | | |
| Akola | 209 /08 | 10-10-2008 | | |
| Washim | 210 /08 | 10-10-2008 | | |
| Amrawti | 211 /08 | 10-10-2008 | | |
| Yevatmal | 212 /08 | 10-10-2008 | | |
| Wardha | 213 /08 | 10-10-2008 | | |
| Nagpur | 214 /08 | 10-10-2008 | | |
| Bhandara | 215 /08 | 10-10-2008 | | |
| Gondiya | 216 /08 | 10-10-2008 | | |
| Gadchiroli | 217 /08 | 10-10-2008 | | |
| Chandrapur | 219 /08 | 10-10-2008 | | |

And there is no response from any of them. The Commission also issued a **reminder** to all of them as under:-

| Place | O.W. No. | Date | Page No. | Remarks |
|---|---|---|---|---|
| Mumbai | 183 to 185 | 10-10-08 | 192 | |
| Thane | 186 | 10-10-08 | 192 | |
| Raigad | 187 | 10-10-08 | 192 | |
| Ratnagiri | 188 | 10-10-08 | 192 | |
| Sindhadurg | 189 | 10-10-08 | 192 | |
| Nashik | 190 | 10-10-08 | 192 | |
| Dhule | 191 | 10-10-08 | 192 | |
| Nandurbar | 192 | 10-10-08 | 192 | |
| Jalgaon | 193 | 10-10-08 | 192 | |
| Ahmednagar | 194 | 10-10-08 | 192 | |
| Pune | 195 | 10-10-08 | 192 | |
| Satara | 196 | 10-10-08 | 192 | |
| Sangali | 197 | 10-10-08 | 192 | |

| | | | | |
|---|---|---|---|---|
| Solapur | 198 | 10-10-08 | 192 | |
| Kolhapur | 199 | 10-10-08 | 192 | |
| Aurangabad | 200 | 10-10-08 | 192 | |
| Jalna | 201 | 10-10-08 | 192 | |
| Parbhani | 202 | 10-10-08 | 192 | Reply.179 |
| Beed | 204 | 10-10-08 | 192 | |
| Nanded | 205 | 10-10-08 | 192 | |
| Osmanabad | 206 | 10-10-08 | 192 | |
| Latur | 207 | 10-10-08 | 192 | Reply.180 |
| Nagpur | 214 | 10-10-08 | 192 | |

The CEO Wakf issued letter to as many as 7 D.W.O. in Marahtwada Area bearing O.W. No.1118/10 dated 26-2-2010 (**P. 193**) asking them to make the compliance. He also issued a letter bearing O.W. No.2645 dated 9-4-2010 asking the Storekeeper and the Record Keeper to provide the Commission the copies of the Gazette (**P.194**)

**The Commission received reply from D.W.O. Parbhani and D.W.O. Latur as under:-.**

| Sr. No. | O.W.No.and date | To whom | Page No. |
|---|---|---|---|
| 1. | 277/22-4-09, | To Commission by DWO Parbhani | 179-A to 179-E |
| 2. | 229/11-5-09 | To, Commission by DWO Latur | 180-A to 180-X |

**SUMMONS TO COLLECTORS**

| Sr. No. | O.W.No. & date | To whom | Page No. |
|---|---|---|---|
| 1. | 20-10-2008 | All Collectors in Maharashtra | 174 |
| 2. | 126 to 160 | All Collectors in Maharashtra | 175 |
| 3. | 111/ 11-3-10 | Collector, Bhandhara. | 175-A |
| 4. | 1406/14-11-08 | To Tahsildar by Collector, Nagpur to make compliance | 176 |
| 5. | 352/6-4-10 Complied | **Reply** To Commission, by Collector, Nagpur | 176-A to 176-O |

| | | | |
|---|---|---|---|
| 6. | 408/20-11-08 complied | **Reply** To Commission by Collector, Osmanabad | 177-A to 177-H |
| 7. | 1861/28-11-08 | To, the SDO by Collector, Bhandhara to make compliance. | 178 |
| 8. | 474/31-3-10 | To, SDO by Dy.Collector, Hingoli to make compliance | 179-F |
| 9. | 167/April 10 | To Tahsildar by Dy. Collector, Sangali to make compliance | 181 |
| 10. | 3R-4/18-5-10 | To Commission by Tahsildar, Jat, Nil information. | 181 |
| 11. | 163/10-8-10 | To Commission by SDO Jawhar | 181-A to 181-C |

**SUMMONS TO DY. DIRECTORS LAND RECORD**

| Sr. No. | O.W.No. & date | To whom | Page No. |
|---|---|---|---|
| 1. | 112/17-3-10 | Dy. Director Mumbai | 182 |
| 2. | 113/17-3-10 | Dy. Director Nashik | 182 |
| 3. | 114/17-3-10 | Dy. Director Nagpur | 182 |
| 4. | 115/17-3-10 | Dy. Director Amravati | 182 |
| 5. | 116/17-3-10 | Dy. Director Pune | 182 |

**REPLY BY DY. DIRECTORS LAND RECORDS**

| Sr. No. | O.W.No. & date | To whom | Page No. |
|---|---|---|---|
| 1. | 721/26-3-10<br><br>1880/23-3-10 | By Sputd.Land Record to C.T.S. Nashik to make compliance.<br><br>By Dy.Director, to five Suptd. Land Records to comply. | 183<br><br>184<br><br>No reply |
| 2. | 965/29-4-10 | By City Survey Officer, Malegaon, Reply filed | 184-A to 184-Q |
| 3. | 1167/14-5-10 | By Suptd. Land Record Nashik | 185-A to 185-Z-3 |

| | | | |
|---|---|---|---|
| 4. | 693/23-4-10 | By T.I.L.R. Bhusawal | 186-A to 186-D |
| 5. | 3565/31-5-10 | By Suptd. Land Records Jalgaon. | 188-A to 188-K |
| 6. | 1628/17-4-10 | By Suptd. Land Records Records Nandurbar. | 189-A to 189-D |
| 7. | 6774/27-7-10 | By Dist. Land Records Ahmednagar. | 190-A to 190-K. |
| 8. | 3155/17-5-10 | By Dy. Director, Land Record Pune. – No compliance | 191 |
| 9. | Nil | The copy of Gazette of Wakf properties in Aurangabad District supplied by City Survey Aurangabad without any forwarding letter. | 192 |

**EXCESS EXERCISE OF JURISDICTION BY THE REVENUE AND OTHER DEPARTMENTS.**

| Report No. | Nature of transaction | Page No. of report | Remarks | |
|---|---|---|---|---|
| 10 | Sale | 52-82 | Dy. Collector Mr. Thombre exceeded Jurisdiction | Aurangabad. |
| 21 | Encroachment | 126-129 | The Zilla Parishd Beed, Grampanchayat Dindrud and B.S.N.L. had high handed action. | Beed |
| 22 | Declaration without jurisdiction . | 130-133 | Land declared as Madad Mash by Dy. Collector Mr. N.T.Dhotre | Beed |
| 22 | Illegal permission | 130-133 | The Town Planning Officer Beed had a high handed action. | Beed |
| 23 | Entry in Kabjedar column | 134-137 | The Subordinate employee of Revenue Department enter the name of private persons. | Beed |
| 28 | No objection | 148-151 | Addl. Collector, Beed exercised powers beyond jurisdiction | |
| 29 | Sub-Division of land | 152-160 | Revenue Officers of Beed sub-divided the land and created complication. | |
| 30 | Mutation Entry | 161-164 | Unauthorized exercise of jurisdiction by Revenue Officer. | |

| | | | | |
|---|---|---|---|---|
| 31 | Mutation Entry | 165-167 | Unauthorized exercise of jurisdiction by Revenue Officer. | |
| 35 | Transfer or encroachment | 181-188 | Inaction by the S.D.O. Jalna | |
| 48 | Supervision of Govt. | 256-259 | Inaction by the Tahsilder Parbhani. | |
| 51 | Sale | 266-277 | Misuse of powers by Dy. Collector. | Os'bad |
| 58 | Reducing the area | 297-299 | S.D.O. Shrirampur | |
| 64 | Encroachment/ Lease /Sale | 329-336 | Excess of Jurisdiction by Dy. Collector | A'bad |
| 65 | Encroachment/ Lease | 337-342 | High handed action by Municipal Council | Khultabad |
| 66 | Sale | 343-347 | High handed action by Municipal Council | Jalna |
| 79 | Encroachment | 411-413 | High handed action by various officers in Marathwada Region | Marathwada Region. |
| 85 | Lease | 430-432 | High handed action by Municipal Council | Khultabad |
| 88 | Change of Character of Inam | 438-464 ????? | Excess exercise of Jurisdiction by Dy. Collectors. | |

**INCONVENIENT ACCOMMODATION.**

| Sr. No. | O.W.No. with date | To whom | Subject | Remarks. |
|---|---|---|---|---|
| 1. | Misc.10/07/PK-175/ L-3 dt.10-10-07 | To the Commission by Govt. | The accommodation will be provide in Commissioner office Aurangabad . | P-60 |
| 2. | 8/2007, dt.28-10-07 | The Chief Secretary Mantralaya Mumbai-32 | Mane Commission and K.N. Patil Commission were accommodated in Collector Office. | P-61 |
| 3. | Dated 3-11-07 | To, The Collector, Aurangabad | Nizam Bungalow inconvient | P-62 |

| | | | | |
|---|---|---|---|---|
| 4 | O.W.2008/ADM/ Kavi/138/dt.24-01-2008 | By Collector to Commission | Meeting for accommodation called but fruitless | P-63. |
| 4. | 34/dt. 7-2-08 | To, The Divisional Commissioner, Aurangabad | The Hall vacant adjoining inward Section-be provided ***OR*** the Hall meant for Department inquiries in Collector Office be provided. | P-64 |
| 5. | Misc. 165 dt. 23-2-08 | Commissioner to Collector, A'bad | The Commissioner directed to Collector to provide the accommodation in Collector office. | P-65 |
| 6. | Inquiry Comm. O.W.No.51, dt. 14-3-2008 | To the Divisional Commissioner, Aurangabad | The Accommodation be provided in the City area | P-66 |
| 7. | Inquiry Comm.O.W. No.74/08 dt, 12-5-08 | To the Collector, Aurangabad | The office of Soldier Board which is recently vacated be allotted. | P-67 |
| 8. | Inquiry Comm. OW No.95/08 dt, 30-6-08 | To the Principal Secretary, Mantralaya | The office of Soldier Board which is recently vacated be allotted. | P-68 |
| 9. | Misc.1014, dt. 31-7-08 | To the Commission by Divisional Commissioner | The Inquiry Hall in Collector office is not available. The Commissioner did not state about the Hall adjoining to Inward in reference to Sr.No.4. | P-69 |
| 10. | Inquiry Comm.OW No.112/08 dt, 31-7-08 | To the Divisional Commissioner, Aurangabad | Information about requirement submitted to the Commissioner. | P-70 |
| 11. | Misc.1120, dt. 8-8-08 | To, the Collector by the Divisional Commissioner | The information asked whether the office of Solder Board is vacant | P.-71 |
| 12. | 222/08,dt.20-10-08 | To Commissioner, Aurangabad. | The Vacant Hall adjoining inward Section-be provided | P-72 |
| 13. | Inquiry Comm.OW No.21/08, dt. 16-2-09 | To the Chairman Minority Commission, Mumbai | Grievance of inconvenient accommodation | P-73 |
| 14. | O.W.680/09, dt.6-4-09 of Minority | To the Divisional Commissioner, | Direction to accommodate this Commission in Collector Officer or | P.74 |

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|---|---|---|---|---|
| | Commission Mumbai | Aurangabad | Commissioner Officer | |
| 15. | 800/09 dt. 15-5-09 by Minority Commission Mumbai | To, the Divisional Commissioner, Aurangabad | The Commissioner is directed to **call the meeting** for provision of convenient site . | P.75. |
| 16. | Inquiry Comm.OW No.232/09 dt. 29-6-09 | To the Divisional Commissioner, | Request to call the meeting for provision of convenient site. ***Meeting not called*** | P-76 |
| 17. | MDD/6/08(CR 48/)/Desk-4 dt. 26-3-10. | To the Collector, By Govt. | W.P.No.3751/08, directions to fined suitable accommodation to Commission | P.77 |
| 18. | O.W.No.MSK-2/ dt. 12-4-10 | To Commission by Collector, | You, yourself find a suitable accommodation | P.78. |
| 19 | O.W.1385/10 Dt 13-9-10 of Minority Commission | To the Principal Secretary, Mantralaya | To Direct the CEO Wakf for co-operation to the commission | P.79 |

**FACILITIES**

| Sr. No. | O.W.No. with date | To whom | Grievance | Remarks. |
|---|---|---|---|---|
| 1. | O.W.4/07,dt.15-10-07 | Secretary, Mantralaya, | Provision of Phone (Not yet made) | P-90 |
| 2. | O.W.No.5/07, dt. 15-10-07 (See Sr.No.4& 8) | Secretary, Mantralaya | Provision of services of (a) **Cadastral Surveyor and (b) Awal Karkoon** | P-91 |
| 3. | O.W.No.39/08,dt. 22-2-08 | Secretary, Mantralaya | **Provision of services of two advocates to assist (Not yet made)** | P-92 |
| 4 | O.W.84 dt. 10-6-2008 | To, E.E. PWD | Non-Supply of water in office for 8-10 days | P-93 |
| 5. | O.W.No.101 dt. 15-7-08(See Sr.No. 2 & 8) | Secretary, Mantralaya | **Provision of** (a) Liaison Officer, (b) Provision of accommodation in M.L. Hostel (c) Soldier Board office for Commission, (d) **Social Workers (e) Cadastral Survey and Awal Karkoon** | P.94 |

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|---|---|---|---|---|
| 5. | O.W.No.146/;08, dt. 8-10-08 | Divisional Commissioner. | Telephone facilities | P.95 |
| 6. | O.W.No.241/08 dt. 21-10-08 | Divisional Commissioner, | Sweeper and Scavenger facilities | P.96 |
| 7. | O.W.No.140/08 dt. 31-10-08 | By Mantralaya to Commission | The provision of telephone and laptop, under consideration of Govt. (But yet not made ) | P.97 |
| 8. | O.W.255/06, dt. 8-7-09 (See Sr.No.2 & 4) | To, Secretary Govt. | **Provision of (a) Social Worker (b) Cadastral Surveyor and Revenue Officer**, | P.98. |
| 9. | O.W.No.250/10, dt. 6-5-10 | To Collector, Aurangabad | Provision of water supply | P.99 |
| 10. | O.W.351/10 dt.7-7-10 | To, Executive Engineer P.W.D. | Cutting of Road side trees. | P.100 |

**STAFF**

| Sr. No. | O.W.No. with date | To whom | Grievance | Remarks. |
|---|---|---|---|---|
| 1. | 33/08, dt. 27-1-08 | To the Collector, Aurangabad | Requirement of Clerks | P-111 |
| 2. | 06/08/PK-23/Desk-2 dt. 2-9-08 | To Commission by Govt. | **Staff sanctioned by the Govt. for the First Time i.e. 12 months** | P-112 |
| 3. | 06/08/PK-23/Desk-2 dt. 12-9-08 | To Commission by Govt. | **The order of appointment of staff by name.** | P-113 |
| 4. | Inquiry Comm. Letter O.W.134/ 08 dt. 25-9-08 | To the Govt. | Corrections of the employees | P-114 |
| 5. | Dt. 14-11-08 | To the Commission by its staff | Threat to proceed to stop the work for want of salaries, - difficulties | P-115 |
| 6. | Dt. 14-11-08 Fax | To the Govt. | Threat to proceed to stop the work for want of salaries, - difficulties | P-116 |
| 7. | dt. 19-11-08 | | Staff proceeded on pen down | |

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|---|---|---|---|---|
| 8. | Dt. 25-2-09 | | Staff members joined after getting payment | |
| 9. | O.W. No.221/08 17-11-08 | To The Govt. | The threat by the Commission also to proceed on similar lines . | P-117 |
| 10 | Dt.18/6/09 | To the Commission by the Staff | Again threat/ proceed on pen down from 1st July, 2009. Thereafter they did not join. | P.118 |
| 11. | O.W.No.197/09 dt. 18-6-09 | To the Govt. | The peon of Mr. Sk. Ajaj has left the service . | P.119 |
| 12. | O.W. No.350/09 Dt.7-9-09 | To the Govt. | Revision of honorarium of the Commission & the Staff vide Six pay Commission. | P.120 |
| 13. | O.W.No.13/10 dt. 5-1-10 | To the Govt. | Revision of honorarium of the Commission & the Staff vide Six pay Commission. | P.121 |
| 14. | O.W.No.273/10 dt. 29-5-10 | To the Govt. | Revision of honorarium of the Commission & the Staff vide Six pay Commission. | P.122 |

**The Commission was appointed vide notification dated 7-10-2007, however the staff was sanctioned by the Govt. vide letter dated 2-9-2008 and (Gross delay in appointment of the staff) the staff members had taken the charge on 24-9-2008.**

**GRANTS**

| Sr. No. | O.W.No. with date | To whom | Grievance | Remarks. |
|---|---|---|---|---|
| 1. | O.W.No.Grants /9/08/PK-105/Desk-2 dt. 2-2-2009 | To Commission | The grants for honorarium released for the first time in Feb. 2009 for Oct. 2007 to Oct. 2008 | P-126 |
| 2. | Released of funds dated 2-2-2009 | To the Commission | The grants for honorarium released for the first time in Feb. 2009 for Oct. 2007 to Oct. 2008<br>The grants for office expenses not released . | P-127. |

| | | | | |
|---|---|---|---|---|
| 3. | O.W.No.33/09 dt. 16-3-2009 | To Govt. | Released of funds to Commission | P-128 |
| 4. | O.W.No.196/09 dt. 18-6-2009 | To Govt. | Released of funds to Commission | P-129 |
| 5. | O.W.No.1667 dt. 23-9-2009 | To Govt. By Minority Commission Mumbai | To released the funds | P-130 |
| 6. | O.W.No.260/10 dt. 13-5-10 | To Govt. | To released the funds | P-130-A |
| 7. | Fax No.2053126, allocation of final report for 2009-10 by Govt. Received on 19-1-2010 | To the Commission. | The grants for honorarium released for the Second time in Feb. 2010 for Oct. 2008 to Oct. 2009<br>The grants for office expenses released for the first time. | P-130-B. |
| 8. | O.W.No.497/2/1/ 10 dt. 25-11-2010 | To Govt. | To released the funds | P.-130-C |

**GRANTS FOR TOUR OF COMMISSION AND BAILLIF**

| Sr. No. | O.W.No. with date | To whom | Subject | Remarks. |
|---|---|---|---|---|
| 1. | Period 9-10-2009 to 31-3-2010. | To the Govt. | Claim for grants of T.A. for Commission on Tour | P.131 |
| 2. | O.W.No.196/09 dt. 18-6-09 | To, the Govt. | Claim for grants of T.A. for Commission and Bailiff on Tour | P-132-133 |
| 3. | O.W.No.9/2008/PK /105/Desk-4 dt. 13-5-09 | To Commission by Govt. | Office expenses and **T.A. for Bailiff on tour**. | P.134 |
| 4. | O.W.No.Inquiry /Comm.336/09 dt. 29-8-09 | To the Govt. | Claim for grants of T.A. for Commission and Bailiff on Tour | P.135 |

## DELAY IN RELEASING THE FUNDS FOR HONORARIUM ETC.

Though the Commission and Staff members had taken charge from the aforesaid dates, the grants for salaries were issued some were in the month of February, 2009 for the first time. Such being the matter the staff members proceeded on **pen down** from 19-11-2008. After getting the honorarium in the month of March 2009 they resumed the duties on 25-2-2009. They again proceeded on **pen down** w.e.f.1-7-2009 and they did not join the services thereafter. The work of this Commission is being carried by the Assistance of the employees given on deputation by the Hon'ble Collector Aurangabad + two employees appointed by the Commission.

The Commission badly need of a good printer to take out the copies of report, since though there are two printers with this office they are old and they require frequent repairs and the repairs takes sufficient long time, the location of the office of Commission being away from the City and in the jungle.

The grant of the office expenses were released for the first time in the month of January 2010 though the Commission is appointed w.e.f.7-10-2007.

Still no grants are released for the tours to be taken by the Commission in various district in the State of Maharashtra for the purposes of inquiry as well as for the purpose of publicity of the Commission. The commission visited some places outside Aurangabad, at its own cost, and the bill is not still reimbursed.

The Commission is required to serve the summons on the parties who may be aggrieved tomorrow with the observation of the Commission. As per the provision of the law the service of the summons shall be the personal service on the incumbent. The bailiff could not be deputed for services of summons out side Aurangabad (except one instance) because the grants for the tour- T.A. & D.A. of the Bailiff are not yet released.

There is one again glaring instance to show as to how the Commission is facing day to day difficulties. The Commission used to forward the electric bills of the office, to the Divisional Commissioner, who in turn used to deposit the bills. However it was in the month of January and February, 2010 the bills were not paid by the office of the Divisional Commissioner for one or other reason and the electric current of this office was discontinued w.e.f. 18-2-2010 and lastly it was re-connected/restored on 3rd March 2010 and this office got the current w.e.f. 4-3-2010, after carrying the necessary repairs. It was also disconnected w.e.f.6-10-2010 to 19-10-2010. Had this office been either in the premises of the Collector or Divisional Commissioner, there would not have been such embarrassing occasion before the Commission.

In short the Commission is left in very helpless and embarrassing position. Though one feel that, the Commission is appointed since three years, in fact the Commission got the Assistance hardly for a year and half, from the Govt. Still there are many aspects as referred hereinabove in which needful is required to be done by the Govt.

I further would like to request to issue the order to release of the funds for the honorarium and the traveling allowance to the Commission as well as staff alongwith the bailiff of the Commission.

### Meetings called by Govt.

| Sr.No. | O.W.No. with date | To whom | Grievance | Remarks. |
|---|---|---|---|---|
| 1. | O.W.P.K.95/Desk-4/ MDD dt. 29-05-2010 | To Commission by Govt. | Meeting called in Mantralaya on 7-6-2010 | P-170 |
| 2 | O.No.281/2010/ dt.01-06- | To Government | Reserve one suit in the Govt.Rest house and | P-171 |

| | | | | |
|---|---|---|---|---|
| | 2010 | | arrange pass for entry | |
| 3 | O.No.P.K.95/Desk-4/MDD/dt.02-06-2010 | To E,E. PWD Copy to Commission by Government | The Commission not inform whether or not reservation was made | P-172 |
| 4 | O.No. 301/2010/ dt. 07-06-2010 | To Government by Commission | Unable to attend the meeting – Grievance | P-173 |

**OBSTRUCTION AND HARASSMENT BY MILITARY PERSONS.**

The Commission is housed in Nizam Bungalow Aurangabad which is in thick jungle and remote from housing developments and also far away from the City. The Commission made grievance severally to Govt. as well other responsible authorities to provide the accommodation in the City Area of Aurangabad however that, was proved to be in vain. The Nizam Bungalow is situated beyond the Military area and the Commission as well staff member and the general public who wanted to make the complaints, were to approach to the office through the military area and they were subjected to the check abruptly. That, caused serious inconvenience to all of the concerned.

The Commission made grievance to the Collector and other authority against the military persons as under:-

| Sr. No. | O.W.No. with date | To whom | Grievance | Remarks. |
|---|---|---|---|---|
| 1 | 26/07,dt.26-12-07 | Collector, Aurangabad | Obstruction by Military person | P.50 |
| 2 | 31/08 dt. 9-1-08 | Collector, Aurangabad | Harassment by Military peon | P.51 |
| 3 | 145/09, dt. 18-4-09 | Collector, Aurangabad | Separate Approach way to Nizam Bungalow | P.52 |

**GRIEVANCE OF ELECTRIC**

The Commission was appointed on 9th October 2007 and the Commission started sitting in Nizam Bungalow w.e.f. 5th of November 2007. As against this the electric current was supplied to the office of the Commission w.e.f.16-4-2008. The Nizam Bungalow is located in remote area. There were frequent problem of electric supply to the office. Moreover there being no grants to this office for office expenses the electric bill was paid by the Divisional Commissioner, Aurangabad. However some times the electric bills were not timely paid by the Divisional Commissioner office and so the electric current was disconnected w.e.f. 18-2-2010 to 4-3-2010, and w.e.f.6-10-2010 to 19-10-2010. On payment of bills by the Div. Comm. Office Aurangabad, the electric current was re-connected.

## GRIEVANCE OF DISCONNECTION OF ELECTRICITY SUPPLY ETC

| Sr. No. | O.W.No. with date | To whom | Grievance | Remarks. |
|---|---|---|---|---|
| 1. | O.W.No.25/09 dt. 18-2-09 | To the Dy. Engr. P.W.A'bad | Remove the branch of the trees covering the main supply electric line | P-141 |
| 2. | O.W. 82/10 dt. 25-2-10 | To, Govt. | Information about disconnection of supply. | P.142 |
| 3. | O.W. 83/10 dt. 26-2-10 | To The Div. Comm. A'bad | Information about disconnection of supply. | P.143 |
| 4. | O.W. 84/10 dt. 26-2-10 | To the Collector, Aurangabad | Information about disconnection of supply. | P-144. |
| 5. | O.W.102/3/1<br>O.W.102/3/2<br>O.W.102/3/3,<br>Dt. 6-3-10 | To the Govt.<br>Copy to Collector,<br>Copy to Comm. | Information about disconnection of supply, | P.145 |
| 6. | O.W.No.202/10 dt. 20-4-10 | To EE MSEB | Frequent stopping of supply of Electricity. Find the fault. | P.146 |
| 7. | O.W.No.203/10 dt. 20-4-10 | To the E.E.PWD | Frequent stopping of supply of Electricity. Find the fault. | P.147 |

## GRIEVANCE OF COMPUTER AND PRINTERS

| Sr. No. | O.W.No. with date | To whom | Grievance | Remarks. |
|---|---|---|---|---|
| 1. | O.W.dt. 11-2-08 | To the Collector, | Supply of Computer | Not traced |
| 2. | Collector Office O.W. Adm./Kavi/ No.2008/335 dt. 22-2-08 | To, NIC A'bad by the Collector, Aurangabad | Supply of computer | P-148 |
| 3. | O.W.No.50 dt. 11-3-08 | To The Collector by Commission | Second hand computer and printer received from N.I.C. A'bad. | P.149 |
| 4. | O.W.No.147/08 dt. 8-10-08 | To Govt. | Demand of Laptop | P.150 |

| | | | | |
|---|---|---|---|---|
| 5. | O.W.No.218/08 dt. 10-10-08 | To, The Div. Comm. A'bad | Supply of inverter. | P.151. |
| 5. | O.W.No.20/09 dt. 16-2-09 | To the Chairman Minority Devl. Mumbai | Supply of computer with printers | P.152. |
| 6. | O.W. Min.Misc. 565/09 dt. 19-3-09 | To, Commission | The **New computer with Second hand printer** deliver to the employee of this office by Minority Commission Mumbai | P.153 |
| 7. | O.W.No.18/10 dt. 11-1-10 | To the Collector, Aurangabad | Supply of new ledger printer. | P.154 |
| 8. | O.W.No.18/10 dt. 11-1-10 . | Copy to NIC | Supply of new ledger printer. | 154 |
| 9. | O.W.No.19/10, dt. 11-1-2010 | To Chairman Minority Comm.<br>Copy to Govt. | Supply of New ledger printer. | 155 |
| 10. | O.W.No.101/10 dt. 6-3-2010 | To the Dy. Commissioner, A'bad | Supply of new ledger printer. | P-156 |
| 11. | O.W.No.298/10 dt. 2-6-2010 | To, the Collector A'bad | Supply of new ledger printer. | P.157 |
| 12. | O.W.No.304/10 dt. 9-6-2010 | To the Div. Commissioner, A'bad | Supply of new ledger printer. | P.158 |
| 13. | O.W.No.353 dt. 30-7-10 | To the Collector, | Supply of new ledger printer | 159. |
| 14. | O.W.No.365, dt. 10-8-10 | To Collector | The Old ledger printer supplied to this office are not given the clear prints. | P.160 |

NOTE: Though the **Second hand** computer was received by this office on 10-3-2008 it was of no use because the electric current supply of this office on 16-4- 2008.

**GRIEVANCE AGAINST REVENUE AND OTHER DEPARTMENT:-**

The Commission noticed that, the Revenue Department and other **either Govt. or Semi Govt. Institution also are not responding to the summons of this Commission. This fact therefore was brought to the notice of the Divisional Commissioner vide letter No. 66/2010 dt.1-2-2010 .(P-S-31)**

(**A.T.A.K.SHAIKH**)

Commission

**THE REPORT OF COMMISSION OF INQUIRY WAKF BOARD MAHARASHTRA** (Aurangabad)
**SCHEME**

**Computerizing and hosting on the website:-** In order to maintain transparency and accountability in Waqf Board, all waqf properties would be computerized and hosted on the website by the board giving the latest and updated details of the Waqf properties, so that the public shall keep watch of the land properties, and would be able to make a report/ complaint either to the concern DWO or the CEO Wakf.

**Survey of Wakf properties :-**Simultaneously, the wakf Board shall hold a survey of the wakf land properties, which shall be completed within 6 months and shall place it in its wabesite, accessible to the general public, so that the public shall keep watch of the land properties, and enable to make a report/ complaint either to the concern DWO or the CEO Wakf.

**CEO from judiciary** :- In fact the CEO Wakf has to function with the semi judicial work, and so the officer to preside in such chair should be the law knowing person. Appointment of an officer from executive department, on such post is nothing but mockery of the post and the duty assigned to him. The Government therefore, should think over, to carry the amendment to the Wakf Act and to appoint the person from the cadre judicial officer, OR from the advocate, by taking a care that such person is god fearing, not only he should believe in but he should be firmly committed to the institution and shall maintain the integrity, transparency and dignity, and his services shall be under the control of the High Court.

There shall be **2 post of the CEO**, to look after

i) the **administration of office** and executive work who will be from administrative department, and
ii) to look after the **judicial work** who will be from the judiciary department.

The CEO shall keep close watch on the work of the board, and whenever necessary, shall exercise the powers u/s 26 of the Act, and if, instead of taking action, he observes silence, he shall be personally liable for the losses caused to the Board

**Criteria for appointment**:-Wakf needs officers of high honesty, integrity, and god fearing to protect the wakf properties, not only he should believe in but he should be firmly committed to the institution and shall maintain the integrity, transparency and dignity,.

**Litigation Department :-**The Board of Wakf shall have such department consisting one law officer, two clerks and one peon, who shall look after all the litigation in the courts through-out Maharashtra, by or against the Wakf Board.

The Board shall appoint a law officer, who shall be directly subordinate to the board, (and not to the CEO). The qualification for the candidate to be appointed on such post shall be that he shall have a standing of 10 years before the district court, or 7 years before the High Court, who has dealt the cases of Wakf before the concern courts, who shall look after the litigation pending in different court/s, including appeal/s.

a) The draft of every Plaint, Reply, Written statement or Appeal Memo to be filed in any court of law, shall be prepared/approved by him and then only it shall be filed in the court. If any employee of the office, directly files the Reply or Written statement in any court of law, he shall be liable for the disciplinary action, as well as, shall be liable for the losses caused to the Board.

b) He shall keep close watch on the proceedings in the court, and shall be in close contact with the advocate appointed by the board to represent the case. He shall give instructions to advocates from time to time, in the prevailing circumstances.

c) he would be at liberty to consult any senior advocate, and the Board would bear the cost/fees.

**Panel Advocates :** The Board shall appoint the experienced and skilled lawyers, to fight the litigation in the court of law, by ignoring the high stake of fees to be paid to them, because, the property worth in croers, would be saved at the negligible more cost of fees paid to the Advocates.

1) The Board of Wakf shall see that competent advocates in merits, viz. Honest, efficient, sincere are taken up.

2) The board shall call monthly statement from such panel Advocate/s, about the cases decided by the tribunal, or any other court/s, wherein he appeared on behalf of Board. The panel Advocate shall state the result of the case, and if the case is lost, what are the reasons for it, what special efforts he made to meet the lacunas noticed by such court.

3) The review of panel advocates shall be taken after each 2 years, and he may be continued if his performance is found satisfactory.

If the Board noticed that the performance of the panel Advocate, is going against the interest of Board, he shall be served with a notice of show cause calling him up on as to why he should not be removed, and on perusing the explaination given by him, if it is found to be unsatisfactory, the reasoned order shall be passed to remove him.

4) The panel Advocates shall be paid equal to the Additional Govt. Pleaders working in the District Court.

**CLERKS AT DISTRICT PLACE** :-

The Wakf Board shall appoint at least 2 God fearing employees of the cadre of clerks for every District,

a) who shall pay visit to every **Wakf Property** in the District at least twice in a year, and shall report to the CEO/Board, whether the property is possessed by the authorized person or not,

b) who further shall visit the office of the Sub-registrar in his jurisdiction, and shall verify the sale deeds and to see whether any of the Wakf Property is involved in the sale deed and if yes, he shall immediately make a report to the CEO. If the clerk makes a report contrary to the actual position, he would be liable for disciplinary action, plus would be liable for the loss of the said property.

c) The Sub-registrar while effecting the registration of the document, shall be under obligation, to verify from the parties to the sale deed and specially from the vendor, whether property under sale is Inam either i) Mashratul Khidmat (Khidmat-Mash) ii) a wakf alal-aulad, or iii) community service Inam (Madad Mash). If he finds answer in affirmative, he shall immediately make a report to the CEO Wakf, and the Dist Wakf Officer, and shall stay the registration for 7 days.

After getting the report as aforesaid, the CEO and DWO shall verify the record and shall present the case before the Sub-registrar, before expiry of the aforesaid period of 7 days.

The Sub-registrar shall pass the necessary order, and shall either reject the registration, or shall proceed to register the document.

Provided : the Sub-registrar shall immediately supply the copy of the order passed by him to the CEO and DWO.

The CEO and DWO shall be under obligation to take a necessary legal step if the order of Sub-registrar goes against the interest of the Wakf.

**Duties of District Wakf Officers & the CEO**

The District Wakf Officer shall visit the town/village, twice in a year, where the **wakf land property** is situated, shall make an enquiry

a) (i) whether there is any dealing either of sale, lease, exchange or the mortgage of the land property, if not, he shall make a nil report; and if yes he shall obtain the details thereof, and if it is with or without permission of the Board, he shall make a report therefore, within 3 days to the CEO wakf.

(ii) The CEO wakf shall take the necessary action within a week.

iii) If it is noticed subsequently that the DWO failed to discharge his duty, viz; there was a transaction either legal or illegal of the property, he shall be immediately placed under suspension, and he shall be subjected to the disciplinary action, which shall be completed within 3 months, and if the charge/s is/are proved, the minimum punishment shall be of dismissal from service, and the fine, which shall be in proportion to the loss/damage caused to the Board and if he fails to pay the fine, he shall suffer the punishment as per provision of the Wakf Act 1995 vide amendment which would be carried in this connection.

iv) If CEO Wakf failed to discharge his duty, viz; even after getting the report from the DWO, the report shall be made to his parent department, who in turn, shall immediately place him under suspension, and he shall be subjected to the disciplinary action, which shall be completed within 3 months, and if the charge/s is/are proved, the minimum punishment shall be of dismissal from service, and the fine, which shall be in proportion to the loss/damage caused to the Board and if he fails to pay the fine, he shall suffer the punishment as per provision of the Wakf Act 1995 vide amendment which would be carried in this connection.

b) it is likely that the wakf Board may not get the employees on deputation, from the Govt. depart, in that case, the Wakf Board shall appoint such officers, of its own, under the supervision of the selection committee, which shall be constituted/appointed by the Govt. The order of appointment of clerks shall contain the terms in clear terms, as referred to above.

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**Provision of Funds to Board** :- Admittedly the Wakf board is not provided with funds/financial grants by the Government. the Board has to maintain the office and the official staff on the money, it is getting from the various wakfs in the state of Maharashtra. It is said that the employees are not paid with their salaries for months together.

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**Ministerial Staff** :- a) The properties of the Wakf are scattered through-out the Maharashtra State, not only at District place but also at Taluka places and even at small villages. The office of the Board at Aurangabad consist of about 20 staff members, at District places 2 to 3 employees, and no staff at villages or group of villages. It may therefore be difficult to the Dist Wakf Officer to keep watch on the properties at village level, and also the evil mentality of some of the Mutawallis and others.

b) The Board does not have force, like police to maintain the possession on the properties. I am told that the decrees for possession are passed by the civil court, the Decree holder i.e. the wakf Board , does not dare to recover the possession, because of the fear and threat of commission of trespass on the property on the next day only, for which again litigation will have to be undertaken, which again will take years to reach to finality. **The following may be the solution to this problem.**

**Development of properties** :- Today the Wakf Board is having the huge properties, but has no money. The properties which are in possession of the board and which are adjoining the city or town, can be proposed to be developed, so that the young generation, on allotment of its portion, either on rent or otherwise, will get self employment, and also the Board will get the source of income, and if one property is developed in such a way, there will be chain to develop other properties, having a result that maximum number of properties would be developed, the board would get a permanent source of income and at the same time the problem of unemployment in the community would be solved.

a) So many lands in city or town area are lying vacant, prone to the encroachment. I propose that the wakf Board shall undertake a scheme to develop it, and shall lease it, to the needy people, for residence as well as for opening the self business. The scheme shall be us under

i) The Board shall develop the outer circle of such open land, having shops with go down on the ground floor, and the residential flats consisting 1/2 room kitchen, 3 room kitchen, and some luxurious flats, on first and second floor.

ii) The flats shall be allotted to the needy people, with one shutter plus the small go down , on rent by way of lease.

iii) The small flats viz. 1/2 room kitchen shall be allotted to those who are below poverty line, of course, at concession rate; the second category flats of 3 room kitchen to those who are from middle class, such as class III employees, just above the concession rate and the like; and the luxurious flats to those who are above those categories, at the market rate.

iv) The question will be of the funds to make the development. I propose, that the builders may called through tenders to make development, and the proposal may be placed before them, either of 60 x 40 % or 50 x 50 %, viz the Board will get 60 % and the developer will get 40 %(on lease of 99 years) or 50 x 50 % of such developed area, or as the Board will deem fit. And after such period, the property will vest in the Board. The developer will be entitled to lease it to the needy people.

v) Suppose such land is 10 acres, the minor area of about 2-3 acres would be utilized for development purposes, and the remaining area of 7-8 acres would be automatically protected.

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**Establishment of committees** :-

1) The committee shall be constituted (otherwise than the Mutawalli) in every Village- Town- City who shall work under the control of the Wakf Board, and such committee shall keep watch, vigilance, on the wakf property situated in its jurisdiction, for the purposes of its perseverance, maintenance, and development, and if any untoward happens, it shall take action, if required in the police station or in the court of law. Such committee shall be responsible, for any negligence in maintenance of the property, or for non-persuasion or improper persuasion of the such proceedings. If the legal proceedings are required to be initiated, it shall be under the control of the Board.

2) It is noticed that the managing committees are appointed by the Board for a very short period of one year or so. Naturally the members of the committee submit application for continuation after expiry of that term. The Board however takes a unreasonably long time to pass the necessary orders, for continuation or otherwise, on such application. That necessarily creates serious problems, Viz if during such hanging period or just before the expiry of the term, any litigation which was already pending, was decided, the committee cannot prefer an appeal, and the question of limitation evolved, and like other so many contingencies.

3) It is further observed that either the Mutawally was removed most arbitrarily, or the members of the Wakf (trust) were added by the board most arbitrarily, which resulted in creation of serious complications in the wakf. The Board shall avoid such arbitrary actions.

**Dealings of the property** :-

a) The sale of the wakf property shall not be permissible at any cost, except the unavoidable and exceptional circumstances, that too, it shall be strictly in four corners of S 32 (2) (j) of Wakf Act.

b) If the property is encroached upon and illegally developed by the third party,

i) the notice shall issued to him calling him upon to vacate the property, and restore its possession to the Board,

ii) if such party vacates the property, it will be well and good

iii) if such party disclose the interests to take the property on long lease, the Board shall negotiate, and shall lease it for a reasonable period, on rent as per the prevailing market rate.

iv) If such party does not respond, the wakf board shall take action u/s 54 of the Wakf Act, read with the provisions of eviction of Government Property Act, which is applicable to the Wakf properties.

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**Judgment of Court** :-Now a days, the Judgment of HC in WP No 2823/ 03 is a big hurdle in the pending court litigation. As far as said Judgment is concerned, that was arising out of the orders of Revenue Authorities, who made declaration about the nature of the Inam property. As held in AIR 1998 SC 712 WP NO 61 A/1982 dt 7-2-1989 (Aurangabad Bench Mr. B.N.Deshmukh and P.V.Nirgude JJ) only the civil court or the wakf tribunal has jurisdiction to decide the nature of Wakf. The orders passed by the Revenue authorities in the said litigation were without jurisdiction, and so upholding of such orders by the HC would not be applicable and operative. What order was upheld by the HC was the one which was passed without jurisdiction.

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**Unwarranted term** :- In some lease transactions the lessee was rightly barred to transfer the property to third person. It was then added that " if the lessee wants to transfer it, he will have to pay a particular quantum of fees to the board". Such term will impliedly authorize, and give temptation to the holder, to transfer the property. The Board shall avoid to incorporate such term/s in the documents.

**Punishment** ;- The Inam property is not transferable without the necessary sanction by the board. Still it is observed, the Mutawally, or even the Chairman in his individual capacity, execute/authorize to execute, the sale deed. What precaution the law should take, in such situation. Punishment is the solution and for that the penal provision is must in Wakf Act.

Various personalities in India were requested to submit the scheme, as they think fit to run the Wakf Board appropriately. I do not want to name them here. Out of them I received the reply from

1) Mr. Vaqar Ahmed Shaikh, r/o Solapur. (**P. S-36** )

2) Mr.Zahed Ali Khan Iqbal, r/o Solapur (**P. S-37**)

They propose the scheme as they thought proper. I tried my best to consider their proposal in proper perspective and to cover it in the scheme prepared by me.

**AMENDMENT**

**Penal provision** :- The chairman, the CEO Wakf, the members of Wakf and the mutwalli who are found liable for the misdeeds viz sale, lease, exchange, mortgage etc, shall be prosecuted in the court of law, and they shall be punished, specially for the reason that they did not care of the feelings and sentiments of the Wakifs, who donated their properties for the pious purpose.

So as to protect the Wakf properties, the provisions u/s 32(2) J, 51 and 56 are material.

**Proposal to amend S. 56 of the Act**

To decide the necessity to amend S. 56 of the Act, consideration of the provisions of S. 32 (2) (j) and S. 51 is necessary

**S. 32 (2) J** of the Act says that

"Without prejudice to the generality of the foregoing power, the functions of the Board shall be- To sanction any transfer of immovable property of a Wakf by way of sale, Gift, mortgage, exchange or **lease**, in accordance with the provisions of this Act. Provided that no such sanction shall be given unless at least two third ($2/3^{rd}$ ) of the members of the Board vote in favour of such transaction."

As per this provision $2/3^{rd}$ majority of the members is necessary to permit the transfer of the wakf property.

**Section 51** then provides that

"Notwithstanding anything contained in the wakf deed, any gift, sale or exchange, mortgage of any immovable property which wakf property, shall be void unless such gift, sale exchange or mortgage is effected with the prior sanction of the board"

The transaction of **lease** is excluded in this provision. I agree that one may say that there being separate provision u/s 56 to govern the lease transactions, it has been excluded here. However whether S. 56 is insufficient to protect the wakf properties. Before considering it S. **51 (2)** may be perused. It provides that-

The board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is –

(i) necessary or beneficial to the wakf;
(ii) Consistent with the object of the wakf;
(iii) The consideration thereof is reasonable and adequate

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed.

The grant of the permission by the Board is subject to these conditions, Viz- 1) publication in the Gazette 2) Consistent with the object of the wakf 3)Necessity and beneficial nature of the transaction and 4) the consideration of the transaction is adequate. These are '**pre-transaction**' conditions Even if these requirements are complied, still it is in the discretion of the Board either or not to grant permission to the transaction.

These conditions however are not there for the transaction of lease. The condition laid down in S. 56 are '**post transaction**' These conditions and criteria's are necessary for the transaction of lease also.

Moreover, the permission to be granted for the transaction of lease also must be subject to the provisions of S. 32 (2) J of the Act, otherwise the transaction should be statutorily declared 'void' as it is declared 'void' for the transaction of gift, sale, exchange, or mortgage u/s 51 of the Act.

If such amendment is carried to S. 64 of the Act, the transactions in close room with at most secrecy would be avoided.

**S.56 of the Act therefore may be drafted as under.**

**Lease of the Wakf property without sanction of board-**

(1) Notwithstanding anything contained in the wakf deed, any lease of any immovable property which is wakf property shall be void unless such lease is effected with the prior sanction of the Board as provided u/s 32 (2) J of the Act

(2) The board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is –

(i) necessary or beneficial to the wakf;

(ii) Consistent with the object of the wakf;

(iii) The consideration thereof is reasonable and adequate.

Provided that the lease of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed.

(3) S.56(1) as it is

(4) S.56 (2) as it is

(5) S. 56 (3) as it is

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S. 61. **Penalties** –

Offence as regards failure to comply the provisions of law:- Failure to comply the provisions of law by only the Mutawally is made punishable. However, **failure to comply the provisions of law** , commission of any mischief such as misappropriation, breach of trust etc, as regards the wakf properties **by the member of staff, or the chairman or any of the members of the board**, shall be made punishable by framing a penal provision.

**S. 61 may be amended as under.**

S. 61. Penalties –

(1) S.61 (1) as it is

(2) S.61 (2) as it is

(3) (a) **If any member of Staff of the board, or the chairman, or any of the member of the board intentionally fails to comply the provisions of law**, and

(b) **If any member of Staff of the board, or the chairman, or any of the member of the board intentionally commits mischief** such as misappropriation, or breach of trust etc as regards the wakf property, **shall be punishable as provided in the Indian Penal Code, or special provision be framed either in Wakf Act or** in **the Indian Penal Code**

(4) S.61 (3) as it is

(5) S.61 (4) as it is

(6) S.61 (5) as it is

(7) S 61 (6) as it is

**Offence as regards the Wokf property** :- It is noticed in several matters that either the Wakf Board or Chairman or the CEO of the Wakf Board violated the law, while dealing with the Wakf property, viz the lands are leased or sold without resolution or with resolution, but not in the four corners of S. 32 (2) (j) of the Wakf Act 1995 i.e. the resolution is passed but not with 2/3rd majority of the members of Wakf Board. If the law in this respect is violated either by the chairman or member/s or the CEO of the Wakf Board , in that case their such act shall be punishable and the punishment against them shall be deterrent. The object behind the deterrent punishment is that (a) such person has committed offence not against the other human being in the world, but against the Great God (b) and that the other people who may be aspiring for the such chair to be assigned to them in future shall think over twice whether or not, they should occupy the chair, and if they occupy the chair, they shall get deterred by the punishment before committing the crime. The punishment shall be as provided in the Indian Penal Code, or the necessary amendment shall be carried to the Wakf Act.

If such kind of violation of law is committed by the Wakf Board while passing the resolution and such resolution which is against the law is implemented, in that case, the CEO who did not exercise his powers u/s 26 of Wakf Act shall be held responsible and he shall be liable for the aforesaid punishment.

If the CEO issued the order without any resolution of the Wakf Board he shall be liable for more serious punishment as the one referred to above.

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**Amendment to S. 32 (4) of the Act –**

This provision lays down the pious object to develop the property as shopping center etc. and if the board is successful, to achieve such object, and if the Board is having sound financial position, that will certainly be a day of fortune to the people, specially the boys who are educated and unemployed, since they will get the source of earning and the lively hood through the Wakf Board. The point is whether the day will come, when the board will be having sound financial position to develop the property/ies. At present, as it is learnt that, the financial position of the Board is miserable and over-coming it, will be nothing but a dream.

Whether it may be proposed to get such property/ies developed through some agency like builders, on share basis, by calling the sealed tenders and by allotting the land to the one who is highest bidder. If the amendment is carried to s. 32 (4) of the Act in such manner the object of the wakf would be achieved to some extent. The department while making the proposal for amendment may consider this aspect from such angle. **(See proposal page 2)**

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**S. 26 Supervisory powers:-**

Appointment of independent authority or the person:-

As per S. 26, if the CEO Wakf finds illegality in the resolution passed by the board, he is under obligation to bring it to the notice of the Chairman, and the Government.

I say that the Government is Ocean having so many other important aspects to be looked into, rather than the problem of the Wakf Board. Moreover, the Government machinery- bureaucrat or the Minister, if they get time to look into, would look in it through the political point of view. I have come across with the instances that the orders to be passed in favour of a private person, and against the Wakf Board, were expedited, whereas reverse in the appeals filed to protect the interest of the Wakf.

I therefore, propose that supervisory and controlling powers u/s 26 shall be given to the District officer or person who is deemed fit by the Govt, (by issuing a special notification), who would exercise the supervisory and controlling powers of the Wakf properties in his territorial Jurisdiction. The person having a grievance would approach him, whenever there is illegality, as regards any policy matter, either in respect of decision in administration of office, or as regards the Wakf property and such officer/ person would decide the grievence.

However, The Government should be confident that such notified officer/person is a man of integrity, and he should not only believe in but firmly committed to the institution to maintain the integrity, transparency and dignity, and special oath shall be administered to him, to protect the interest of the Wakf and the wakf property.

**Presumption as regards the Wakf Property** :- The commission came across with the fact that there is no provision in the Wakf Act, giving rise to presumption as regards the nature of of Wakf- viz Service Inam, as it is there in Tamil Nadu Minor Inams (Abolition and Conservation In to Ryotwari) Act 1963 (Tamil Nadu Act No. 30 of 1963) under S. 44. Such type provision is necessary in the Wakf Act 1995. I propose the following amendment.

(taken from Tamil Nadu Inams (Abolition and Conversion into Ryotwarai Act, 1963 (Tamil Nadu Act No 30 of 1963) & the Judgment in W P No. 15659/03, 44556 to 44558/06, 2/06 taken from (1978) 2 A P L J (HC) 399 : 1 Andh WR 445, Referred to in AIR 1985 AP 127, WP 15659/03 etc) (*Material from internet*)

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**Presumption in case of service Inam** :-

(1) In proceedings under this Act relating to Inam granted for the benefit of any religious, educational or Charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service such as Khitabat, Qazat, Moajjan, Peshimam, or Mujawar, which is pious, religious or charitable purpose, it shall be presumed, unless the contrary is proved that the Inam consists the Service Inam.

Explanation: The provisions of S. 32 (2) (j), S. 51 and S. 56 of the Wakf Act 1995 would be applicable to such Inam.

Provided that if the Khatib, Quazi, Moajjan, Peshimam, or Mujawar, to whom the individual Inam is granted to perform service, fails to render such service, such land or property can be resumed by the Wakif OR Wakf Board, and can be re-granted to another person for rendering service. (taken from (1978) 2 A P L J (HC) 399 : 1 Andh WR 445, Referred to in AIR 1985 AP 127, WP 15659/03 etc

(2) If the individual Inam, having no mention of the nature of Inam, or which is called as Madad Mash, is adjoining to the another Inam called as service Inam in which Dargah, Masjid, Khankha, or Kabarastan is situated shall be presumed to be the Service Inam unless contrary is proved.

Explanation: The provisions of S. 32 (2) (j), S. 51 and S. 56 of the Wakf Act 1995 would be applicable to such Inam.

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**S.22 : Amendment to S 22 is very must**, because it run contrary to S. 32 (2) (j) and S. 17.

**S. 17** governs the conduct of the meetings of the Board. Sub. S 3 says that "**subject to the provisions of this Act**, all questions which come before any meeting of the Board shall be decided by a **majority of votes of**

**the members present**, and in the case of equality of votes, the chairperson or in his absence, any other person presiding shall have a second or casting vote."

**S. 32 (2) (j)** : overrides S 17 (3), as far as disposal of wakf properties, which says that-

"Without prejudice to the generality of the foregoing power, the functions of the Board shall be; - to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act :

Provided that no such sanction shall be given unless at least **two third of the members of the Board** vote in favour of such transaction."

S. 17 (3) as such says the majority of the member present in the meeting, of course subject to the provisions of this Act, meaning thereby, that this would be controlled by S. 32 (2) (j) and the like provision.

**S.22** :-

As against this S. 22 says that, "No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof"

There being no non abstain clause in S 22, resulting to override to the S 17 and 32 (2) (j) and therefore, the construction of S 22 becomes very dangerous to the wakf Board, and its properties. **S. 22 therefore, requires immediate amendment**.

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**Note :- After the term of the board, constituted in 2002, was over in 2007, the board is being run by only two members/persons, Mr. Tareq Anwar and Mr. A.U.Pathan the members of the board, whose term is yet to over, and they had taken several decision of development Bombay properties. (See R 72)**

**Not only this the CEO Wakf, by taking disadvantage of the situation, has issued orders in two matter, even without the resolution even of the said two members.**

**In such contingency, it is necessary to curtail the powers of the existing member, as regards the policy matters, till the reconstitution of the Boarad.**

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**Amendment to S 31 of Indian Limitation Act & S 112 of the Wakf Act.**

**S. 31 of Indian Limitation Act reads as under.**

> "Nothing in this Act shall (a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act 1908 expired before the commencement of this Act or (b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement."

This will have to be read along with S. 107 and S. 112 of the Wakf Act.

**S.107 reads as under-**

"Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property".

**S. 112 of Wakf Act reads as under-**

"(1) The Wakf Act 1954 and the Wakf (Amendment) Act 1984 are hereby repealed.

(2) Notwithstanding such repeal , anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provision of this Act.

(3) If immediately before the commencement of this Act , in any state there is in force in that state, any law which corresponds to this Act, that corresponding law shall stand repealed ;

Provided that such repeal shall not affect the previous operation of that corresponding law and subject thereto anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken."

As such S 31 of Indian Limitation Act & S 112 of the Wakf Act have overridden S. 107 of the Wakf Act. Therefore, the amendment is necessary to S 31 of Indian Limitation Act & S 112 of the Wakf Act.

The object of S. 107 of the Wakf Act is clearly liberal to protect the wakf properties. However, so far as old transactions of Wakf properties are concerned, the effect of S. 107 is taken away by the proviso of S. 112 of Wacf Act, and S. 31 of the Limitation Act.

Nowadays the people having possession of the Wakf Property, generally are acting as enemy to the Wakf. Their attitude is hostile to the Wakf. The misdeeds of such people do not come to light for long years. At the same time the general public has nothing to do with the Wakf Property, unless some body has some vested interest. The vendees of such transactions therefore, naturally get the benefit of S 31 of Indian Limitation Act & S 112 of the Wakf Act.

Both of these sections therefore, require suitable amendment. I propose the following amendment.

**S. 112 of Wakf Act reads as under-**

"(1) The Wakf Act 1954 and the Wakf (Amendment) Act 1984 are hereby repealed.

(2) Notwithstanding such repeal , anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provision of this Act.

(3) If immediately before the commencement of this Act , in any State there is in force in that state, any law which corresponds to this Act, that corresponding law shall stand repealed ;

Provided that such repeal shall not affect the previous operation of that corresponding law and subject thereto anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken."

**Proposed Amendment** :- **Provided that the transactions relating to the wakf properties, shall be exempted from this provision.**

**S. 31 of Indian Limitation Act reads as under.**

"Nothing in this Act shall (a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act 1908 expired before the commencement of this Act or (b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement."

**Proposed Amendment :- Provided that the transactions relating to the wakf properties, shall be exempted from this provision.**

**(The case of T.Kalimaruthi and another V. Five Gori Thaikkal Wakf and others reported in 2009 (1) Mh.L.J. 43** may be read**)**

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**Ceiling Act :-** There shall be a **ceiling** on the holding of the wakf land by a **private person**, by way of lease. If a particular person is holding the Wakf property on lease beyond a particular limit, he shall be divested from the property exceeding the said limit and the said property shall be restored to the Wakf Board and the Wakf shall release it to some other needy person/s. The example of Mr. Jainuddin of Beed may be quoted here, who has grabbed a large area of Wakf land.

Person includes the close member of his family, viz- wife, son, daughter etc.

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**Developments-Exercise of powers by CEO**

The Commission came across with several orders issued by the CEO Wakf granting permission to develop the properties u/s 25 (1) (c) of the Wakf Act 1995 (*See R.72*) As per material available to this office 9 permission for development were granted and the orders were issued under the signature of the CEO Wakf.

i) Out of the said orders first 1 to 7 were with so called resolutions passed by the members of the Board. These orders were issued in the year 2008-09, when there were only two members of the Board viz. 1) Mr. Tareq Anwar and 2) Mr. A.U. Pathan because of non-reconstitution of the Board after dissolution of the Board by efflux of time on 4-8-2007 which was constituted on 4-1-2002. The aforesaid orders were issued, when full-fledged board was not existing and the permission of the development of the properties, mainly the properties of Bombay were issued. The development to be carried appears to be of permanent nature. The law needs the amendment in this provision together with other provisions that, in contingency of non existence of the full fledge Board, the existing members of the Board shall not take the decision of permanent nature. The law further needs the amendment that, whatever decision is taken by the available members in such contingency, shall be placed before the full fledge Board for confirmation.

ii) Out of the said orders, orders no.9 and 8 were issued by the CEO without there being a resolution passed by the member/s of the Board. The CEO however forgot that, (i) his powers u/s 25 (1) (c) are very limited to the extent of "control, maintenance and superintendence" of the Wakfs and not for the changes in the Wakf properties of substantive nature, and (ii) the power of the CEO carry the rider as provided under sub section 1 of Section 25 saying that, **"subject to the provisions of this act"** and of the rules made there under, and "**the direction of the Board",** function of the Chief Executive Officer shall include".

Sub section 3 of Section 25 has further laid down a rider on the powers of the CEO saying **"Save as otherwise expressly provided in this Act-----."** The CEO Wakf Mr. S.S. Ali Quadari appears to have forgotten that, there are aforesaid riders on his powers.

**(See Report 72)** The legal provision laid the rider in clear terms. All of it may be considered, while carrying the amendment, with something more if required.

**Amendment to S. 1 (2) of the Hydrabad Abolition of Inams and Cash Grants Act 1954**.

Sub S. (2-A) is inserted by Bombay 64 of 1959. Vide S. 4 (2) by introducing additional Category of Inam as "Community Service Inam". This amendment has emerged grave problems, and has encouraged unscrupulous elements , who were not faithful and sincere to the Wakf and Wakf Property. They started to exert to shift the Inam to this category, and they succeeded in their such effort, of course with the assistance of the Revenue officers.

**Proposed amendment** :- Sub Section (2-A) be deleted forthwith.

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**DSTINCTION BETWEEN WAKF AND TRUST**

The **distinction** between **Wakf** as known by Muslim law or the Wakf Act 1954 – 1995 and the public charitable **trust** known by the English law

| WAKF | TRUST |
|---|---|
| Section 3 (r) has defined the Wakf as dedication by person who professing Islam of any property for pious, religions, and charitable purpose. | Dedication for any public purpose is sufficient to constitute a trust. |
| The dedication shall be by a person professing Islam. | Dedication by any person belonging to any caste creed or religions, having no restriction can create a trust. |

| | |
|---|---|
| The property vests in the almighty God, and the rights of Wakif are extinguished. | The property vests in the trustees. |
| The Wakf Board or the one intended by the Wakif has a control over the dealings of the property. | The trustee have absolute descrition to deal with the property as they think fit, subject to restriction of the Charity Commissioner. |
| The concept of trust has prohibited the appointment of non Muslim as a trustee. | There is no restriction of religion caste or creed for creation of trust. |
| The Wakf is created with religious motive. | Trust is created with secular motive . |
| Manager of Wakf is Mutwalli. | Manager of trust is trustee. |
| Dedication of by way of Wakf is completed when the Wakif makes a declaration. | It will be after registration of the Trust. |

I have referred the case of Nawab Zain Yar Jung V/s Director reported in AIR 1963 S.C.985 and the case of Vidya Varuthi V/s Baluswami reported in AIR 1922 P.C. 123.

**PROCEDURE**

What I found that there is no system in discharge of duty by the CEO Wafk, and maintenance of record by the office.

a) The Government OR Board shall frame Rules, as they are framed by the High Court by introducing the CIVIL MANUEL and the CEO Wakf shall be under obligation to

i) try dispose the matters of particular category in particular time

ii) deliver the judgment/order in particular time after hearing the arguments.

iii) shall pronounce the order/judgment on the day fixed, within particular time, which shall not be more than 15 days, if the CEO Wakf has heard the arguments in a matter and closed it for orders,

iv) be answerable to the board or to the Government, by submitting the statement of reasons, as to why judgment/ order is not pronounced within that time frame.

v) take day to day hearing of the matters in particular days of month etc.

b) The Government OR Board shall frame Rules, as they are framed by the High Court by introducing the CIVIL MANUEL and the office of the Wakf shall be under obligation to make the categories of the proceedings instituted in the office Viz

a) Sale of wakf property,

b) Lease of wakf property,

c) Exchange of wakf property,

d) Mortgage of wakf property,

e) Appointment of Mutwalli OR Managing committee

f) Continuation of Mutwalli OR Managing committee

g) Mislenious

h) Action taken by CEO U/S 52,54 And OR S. 55 of the Act.

The summonses or notices shall be issued in particular time say on 3rd or 5th day, after payment of the process fees.

If the CEO Wakf takes action u/s 52, 54 and Or 55 of the Act, he shall pursue the matter either through the DWO or through the Advocate, and shall see that such order is executed, rather than completing the legal formality.

b) if any persons, having no concern to the wakf and the property, comes to the office of wakf, and makes a complaint of commission of encroachment or sale etc of wakf property,

a) it shall be the duty of the CEO Wakf to peruse the available record and to pass the necessary order thereon on the same day.

b) to direct the District officer or any other officer not below the rank of the Supt, to visit the site within 3 days, to inspect the site, to prepare the panchanama in presence of 2 respectable persons of the locality, specially the God fearing persons, who are having no concern with the property, and to submit the report to CEO, on 4th day.

c) if the CEO finds substance in the complaint he shall call upon the opposite party by issuing notice, give him an opportunity of 3 days, and after perusing his say/explanation, shall pass the necessary order as permissible by law.

d) if necessary the CEO shall entrust the matter to the advocate and shall file the proceeding in the court of law.

e) The wakf board shall bear the necessary expenses of the litigation.

**Note** : It is said that the when complaint in such terms is presented in the office of the Wakf, such person, who should be treated as a friend of the wakf, is treated opposite to it, he is asked to pay the court fees to the application, process fees, and he is asked to take rounds to the office, the matter rest at the same stage, without any effective orders, for months, at the cost of humiliation to him by the people of office, as well as the people of opposite party. Such attitude of the CEO and his subordinates is very shameful.

If the Board found a substance in his such complaint, and the Board deems it necessary to take action in the matter, the endavour of such person be promoted by paying him at least some amount, may be nominal, and after success in the court of law, he shall be considered for a substantial return in the kind of cash or land on lease. Unfortunately, today such person has to face a great humiliation.

## AWARNESS IN PUBLIC.

The Wakf board generally and the social workers specially should manage to build a considerable campaign at the large scale to bring the awareness and momentum in the common public/masses in respect of the Wakf property/ies, that it is a property of general public, for the benefit of the Muslim people; either the Mutwalli or the person who is holding actual possession on the property, is holding it on behalf of the muslim people , and such Mutwalli or the person who is holding actual possession, has no right to dispose or deal with it, without the permission of the Wakf board. This is the one of the substantive issue to be dealt with priority, which should be focused by all the concern, and the Govt. The public should be motivated, to have a contribution atleast,

i) to keep watch on the property,
ii) its income- i.e. utilisation of the income for the institution, and
iii) also watch on any kind of dealing of the property by Mutwalli or the person who is holding actual possession, and
iv) if any kind of dealing is there, they shall bring it to the notice of the Board, and
v) if the board doesn't take action, even after written intimation/notice they shall institute the proceeding in the tribunal, by impleading the Board as a party, and
vi) if the tribunal finds substance in such matter in favour of the Board, the tribunal shall impose exemplary cost compared to the loss of the property, personally on the CEO and the concern DWO, which shall be recovered from their pay bill directly, plus the disciplinary action by the department. .

## WAY OF AWARENESS

The Board shall exhibit, at every public place including the Chaudi, Ashurkhana, Mosque District Wakf Office, and the office of the Wakf Board, stating that the illegal transaction of the wakf properties shall be brought to the notice of particular authority or a person notified by the State Govt. of Maharashtra and such authority or person shall make an inquiry thereof and shall make a report to the State Govt. or some higher authority who shall decide either to take or not take the cognizance.

## ESTABLSHMENT OF TRIBUNAL

The Wakf Act 1995 has constituted and established a Tribunal at Aurangabad vide section 83. This provision however has empower the State Govt. to established as many tribunals as it may think fit. Presently there being only one tribunal at Aurangabad for entire Maharashtra, naturally it may not /is not easily accessible to the general public. What I noticed during inquiry that the people who are financially reach have nothing to do with the Wakf property on the ground that, "a) They or their keen has grab the wakf property.

b) They may be under influence of their contemporary and

c) They may be of the thinking as to why they should unnecessarily get involved.

The people who gets hurted and who intends to make a grievance against the illegalities are the poor people and because of the poverty they can not approach to the Wakf Board, Tribunal or the enquiry commission, it being a costly affair. I therefore, propose that at least in each Revenue Division a Wakf Tribunal shall be established. It is true that, it would be costly affairs for the State Govt. however it will be necessary in the interest of the general public and the Wakf properties.

## EXHIBITION OF LIST OF WAKF PROPERTIES

The list of wakf properties shall be either quarterly, six month, or yearly be published in ever village, town or city in the respective area enlisting entire wakf properties with nos. and other identification marks for the information of the general public that, the said properties are Wakf and they are not transferable by sale, lease, mortgage, or exchange etc. without the prior permission of the Board and if any misdeed is committed by anybody, he/they shall take action as aforesaid.

## ILLEGALITIES BY BOARD

S.32 of the Wakf Act 1995 is very clear, which lays a bar to sale, lease, exchange the wakf property without the resolution passed by 2/3rd of the total majority of the board. Still in the recent past, the resolutions for such transactions were passed only by 4 members, who attended the meeting, out of total 13 members of the board.

It is seen that the documents of sale, lease or the exchange were executed by the employee of the Board, and not by the Mutawalli. As per rules framed by the Govt, the Mutwalli shall execute the document of lease. In fact the Board holds the supervisory powers on the Wakf, and not the substantive powers to deal with the property.

### Action u/s 54-55 of Wakf Act

The Wakf Board takes an action u/s 55 of the wakf Act to remove the encroachment. This provision directs that the CEO Wakf may apply to the Sub Divisional Magistrate to evict the encroacher, and to deliver the possession to the Board. It is noticed that the SDM does not take action on such application for years together. The case of Jalna of S.No. 109 and 110 is the best example of it. The CEO Wakf passed the regular order to evict the encrocher from the land. He then applied to the SDM Jalna to evict the encrocher in 2007. Though the period of 2 years has passed, the SDM has not taken any action. This is malafide attitude of SDM may be culminated with intention to protect the wrong doers, of course for some consideration. The Government shall take action in such matters with seriousness , and also against the concern SDM who has acted with lethargy.

In some matters the board granted the land on lease with a specific restrain not to sale to anybody. The said clause further added that, if the said lessee transferred the land by sale, he will have to pay the Wakf fund to the Wakf Board. The later part of the aforesaid clause is seriously objectionable. The said clause impliedly permit the lessee to sale the land. The Wakf Board shall take precaution to avoid to mention such part in the clause.

## Constitution of the Wakf Board

The purpose of establishment of wakf board is to maintain, supervise, and protect the wakf properties. Such being the purpose, the State Government shall stop the appointment of unsatisfied souls on the post of the chairman of the Board. **The chairman to be appointed shall be the one who has interest in the wakf and wakf properties, who is social worker, and who is not politician. I propose that the chairman may be taken up either from Retired Judicial officer of subordinate judiciary, or the Rtd. Officer of administrative services such as IAS or equivalent, who has a honorable retirement.**

S 14 of the Wakf Act empowers the Govt to constitute the Board. As per sub. section (b) (iv), (c) and (d) about 4 member are to be opted by the state Government. The then chairman of the Board Mr. M A Aziz stated that the opted member viz Mr. **Dilip Kumar, Mrs Shabana Azmi** and 2 other did not attend a single meeting of the board since after their notification of appointment. In this connection, I suggest that the State Government shall invariably opt the candidates who are working in the field of Wakf, or who have a interest in such work, and shall avoid to opt the candidates who are busy in other fields, and who are likely not to participate in the work of Wakf.

**Revenue Record**

The divisional Commissioner Aurangabad directed his subordinates vide Circular No. 75/RCT/259/8E dated 15-10-1975 (9th January 1983) (**P3134/ R-63**) and vide letter No. 2000/LR/Wakf/ dated 8-3-2001(**P809/R-29**) stating that, when the property belongs to religious institution as service Inam, the name of such institution shall be recorded, plus "Pratibandit Satta Prakar" in the Kabjedar column of 7 x 12 extract. However it is noticed that the subordinates, of the lower lever of the department, do not obey such order, and they record the name of the private person in Kabjedar column. Rather painful thing is that the Divisional Commissioner does not take an action against the defaulting employee. **Solution :** The State Government Shall prescribe a separate extract for service Inam properties, such as 7 x 13 instead of 7 x 12, having a particular different colour of the paper.

**Administrator**

**1)** The State Government shall start the process of reconstitution of the Board 6 months prior to the date of Supercession of the present board, and shall see that the succeeding board has taken over on the very next day of supercession.

2) If the Board is superceded, by efflux of time, and the process of succeeding Board is not complete, the state Govt shall appoint the administrator on the Board, even the time may be of a day, in between supercession, and the reconstitution so as to avoid the confusion, and mismanagement.

**SPECIAL ASSIGNMENT IN THE HIGH COURT.**

3) There shall be a special assignment in the High Court of its every bench, to hear and decide the cases of Wakf, trust, and other endowments.

**CEILING ACT**

As a matter of fact the Inam land should be exempted from application of the Ceiling Act but in Beed District, the Ceiling Act was made applicable to Inam lands and the lands above the prescribed limit were declared surplus.

**SEARCH AND INSPECTION DEPARTMENT**

The Board of Wakf shall have such department consisting one law officer, two clerks and one peon, who shall look after searching the Wakf Properties in Maharashtra, which are actually wakf, but are not under vision/supervision and control of the Board of Wakf.

**CONDUCTING OF WORKSHOPS**

It is noticed by the Commission that many of the Judges of the Civil Court and Revenue Officer do not have a deep knowledge of the Wakf Act 1995 and Hyderabad Abolition of Inam and Cash Grant Act 1954, and the niceties therein. (See judgments in RCS 274/1997 decided on 31-1-2004 and & RCA No 33/2004 decided on 6-10-2007 of Nanded) The Hon'ble High Court may be requested to have this subject in the Workshops conducted in the subordinate judiciary. Similarly the direction shall be issued to the Revenue Department to conduct such Workshop for the Revenue Officers.

(**A.T.A.K.SHAIKH**)

Commission

**THE REPORT OF COMMISSION OF INQUIRY WAKF BOARD MAHARASHTRA** (Aurangabad)

**PART III REPORT**

**Sr.No.1**

**COMPLAINT NO.59/2009**

**COMPLAINT BY SHRI ANEES AHMED THROUGH FAX MUMBAI.**

**DARGAH SHAH SOKTAMIYA AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

Sy.No.40 and 41 admeasuring 3 acres 3 gunthas in M.I.D.C. Area Railway Station Aurangabad leased to Sufa Education Society under the deed of lease dated 31-8-2006, is Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Commission received the complaint by fax from one Anees Ahmed **(P.1-4)** The Managing Committee of Dargah Hazart Shah Soktamiya submitted application **( P. 4A-4C)** on 18-8-2006 to the Wakf Board, claiming the land on lease. On the basis of resolution dated 19-6-2006 **(P.4D)** the lease was granted and the document was executed in favour Sufa Education Society Aurangabad.

**NOTICES TO THE PARTIES:-**

a) The notice **(P.5-6)** bearing outward No.51/09 dated 25-3-2009 was issued to the District Wakf Officer, Aurangabad calling him upon to make the statement on 9-4-2009. He fled reply **(P.7-8, 9)** on 9-4-2009 with documents.

b) The notice **(P.10-11)** bearing outward No.52/09 dated 25-3-2009 was issued to the C.E.O. Wakf Board Aurangabad calling him upon to make the statement by 9-5-2009. He did not file the reply till this date.

c) The notice **(P.12-14)** bearing outward no.137/09 dated 13-4-2009 was issued to the C.E.O. Wakf Aurangabad calling more particulars and to make the statement by 13-4-2009 and he filed reply on 14-5-2009. **(P 15-17)**

d) The notice **(P.18-20)** bearing outward No.146/3/1/09 dated 20-4-2009 was issued to Mr. M.A. Aziz the then Chairman of Wakf Board calling him upon to make the statement as regards this property by 5-5-2009. He did not file reply till this date ( As per the press report he died on 8-5-2009).

e) The notice **(P 21-23)** bearing outward No.146/3/2/09 dated 20-4-2009 was issued to Mr. M.Y.Patel the then C.E.O. of Wakf Board calling him upon to make the statement as regards this property by 5-5-2009. He filed reply dated 8-6-2009, on 10-6-2009 **(P24-31)**, along with the documents **(P32-40)**

**OBSERVATION OF COMMISSION**:-

**Non compliance of section 32(2)(j) of the Wakf Act**:-

The District Wakf Officer stated that, the resolution was passed on 19-6-2006 by five members out of nine. As per the provision of section 32(2)(j) of the Wakf Act the resolution is to be passed by 2/3 rd of the members of Board. It says that, "without prejudice to the generality of the foregoing power, the functions of the Board shall be- to sanction any transfer of immovable property of the Wakf by way of sale, gift, mortgage, exchange or lease in accordance with the provisions of this Act. Provided that, no such sanction shall be given unless at lease 2/3rd of the members of the Board vote in favour of such transaction".

As per this provision the resolution by at least Six Members out of 9 was necessary for valid lease of the land. Here there were five members in the meeting and so resolution was in utter non compliance of the aforesaid statutory provision.

Even besides this the statement of the District Wakf Officer, that five members passed this resolution out of 9 appears incorrect. The copy of resolution dated 19-6-2006 **(P.4 D)** is produced and it display that, there were only two members. This has been confirmed by the C.E.O. Wakf M.R.Shaikh in his order dated 3-2-2008 that, only two members were present in the meeting **(P.41-42)**.

In fact in all only three members including the Chairman were present vide reply of the C.E.O. dated 14-5-2009 **(P.15-17)**

The resolution dated 19-6-2006 display that, the powers to take the final (separate) decision were given to the Chairman. The copy of the so called final decisions is not produced by the District Wakf Officer. The order dt. 3-2-2005 passed by M.R.Shaikh the then C.E.O. impliedly display that no such final decisions was taken by the Chairman separately.

Even factually the grant of the land to Sufa Education Society appears to be arbitrary and suspicious. Here the Wakf Board was moved by the Managing Committee of Dargah Hazart Soktamiya on 18-8-2006 to grant this land to the Sufa Education Society. (Copy of application at Exh. 14(1) with notice Ex.5 bearing outward No.295/06 of complaint No.22/08) When the matter was moved on 18-8-2006 for the first time, the resolution to be passed by the Board of Wakf ought to have been either on 18-8-2006, or thereafter. Here the resolution was passed on 19-6-2006. This gave rise to a great suspicious on the conduct of the Chairman as well as the then Chief Executive Officer Mr. M.Y.Patel.

**Non-Compliance of S.26** – Mr. M.Y.Patel the then C.E.O. of Wakf Board was empowered by section 26 (d) of the Wakf Act to make a grievance either to the Board or the Government if the resolution was not confirmed by the majority of the members of the Board. Here Mr. M Y Patel did not make such grievance. On the contrary he displayed unfairness while drafting the letter dated 23-8-2006 **(P.43-44)** under which he informed Mr. Shaikh Saleemoddin the President of Managing Committee Dargah Hazarat Shah Soktamiya, in respect of grant of the land on lease to the Sufa Education Society Aurangabad, as per the proposal of letter dated 18-8-2006. Mr. M.Y.Patel appears to have avoided to make a statement in respect of date of resolution.

Here the proposal of the grant of the land was on 18-8-2006 (August) and the resolution was passed on 19-6-2006( June) This was self inconsistent.

Mr. M.Y.Patel, the then C.E.O. stated and gave a certificate to Sufa Education Society and about its noble cause. However, only this would not legalize, the aforesaid illegality.

**The inference can be drawn from the above all events that, there was a gross unfairness on the part of the then Chairman and the then C.E.O. of the Board of Wakf. It is likely that, the grant of land may be for extraneous consideration.**

The notice bearing No.342/08 dt. 18-11-2008 also was issued to the present CEO Wakf in Complaint No.19/08 **(P.45-46)** He filed the reply- come letter bearing O.No.MSWB/SNT-1/No.11/1536/09 dt. 15-4-2009 and stated that, the lease dated 13-8-2006 has been cancelled vide the order dated 31-8-2006 and Sy.No.40 and 41 are in possession in Wakf Board. **(P 47)**

As a matter of fact, it appears that, the possession of land was already delivered to Sufa Education Society Aurangabad. The aforesaid statement about possession was made by the CEO without support of any documents.

The notice bearing O.No.239/09 dt. 6-7-2009 was issued to Mr. Shaikh Ramzan the President Sufa Education Society asking him about the possession of property **(P.48)**. He filed the reply/letter dated 18-8-09 and he also claimed the possession of the property. **(P 49)**

He produced the copy of lease deed **(P.50-60)**. He also stated that, the notice issued by the Board dated 13-3-2008 canceling the lease, is challenged before the Wakf Tribunal in Wakf application 11/08. He has produced copy of the application **(P.61-71)**.

The question of grant of lease to the Sufa Education Society is not at all subjoined but cancellation of lease deed by the Wakf Board is subjoined. This Commission therefore, can very well consider the legality or illegality of grant of lease.

The stand taken by the CEO that the Board is in possession of the property appears to be without basis, since possession was handedover vide letter dated 23-8-2006 **(P.38),** whereas the there is no documents in possession of the Board indicating that the possession was re-delivered to it.

**The Chairman Mr. M.A.Aziz and the CEO Mr M.Y.Patel are responsible for this illegal transaction.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.2** **REPORT**

**COMPLAINT NO. 19 /08 AND 59/2009**

**COMPLAINT BY SHRI KAILAS BAPHNA R/O AURANGABAD**

**AND ANEES AHMED THROUGH FAX MUMBAI.**

**DARGAH DAWOOD AULIYA MAGRIBI**

**AURANGABAD (CHITALANGE).**

**DETAILS OF THE PROPERTIES** :-

The disputed property is CTS No.12503 admeasuring 4418.31 Sq. Mtrs of Aurangabad City, admittedly Wakf.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Commission received the complaint 59/09 by fax from one Anees Ahmed **(P.1-4)** and complaint No.19/2008 from Kailash Bafna **(P 71 A-F)**. The property was leased to Dilip Ramgopal Chitlange and Kulbushan Ramchandra Agrawal r/o Aurangabad for 3 years on rent of Rs. 2,40,000/- p.a. + Rs. 5,00,000/- as donation and Rs. 5 per sq. ft. after construction of building by way of lease rent. The document of lease **( P.72-85)** was executed as per the order No.4381 dated 1-8-2005 under signature of C.E.O ( M.Y.Patel then C.E.O.) and as per the order No.MSBW/SNT/240/4380/2005 dated 1-8-2005 of the Chairman Mr. M.A.Aziz **(P.86)**. The resolution No.8 dated 16-6-2004 was passed by 5 members out of 9 **(P.87)**. The Chairman Mr. M.A.Aziz justified this transaction in his detailed order (Consisting of 5 pages) dated nil.**(P.88-92)** *(Copy of documents taken from complaint No.22/08 Insaf)*

**NOTICES TO THE PARTIES:-**

Notice bearing No.85/09 dated 4-4-2009 was served on the then Chairman Mr. M.A.Aziz **(P.93-95)**

The notice bearing No.74/09 dated 4-4-2009 was served on M.Y.Patel the then C.E.O.**(P.96-98)**

And notice bearing No.IWBP /52/09 dated 25-3-2009 was served on present C.E.O.**(P.10-11)**. He did not file reply.

The notice outward No.51/09 dated 25-3-09 was served on the District Wakf Officer, Aurangabad **(P 5-6)**. He filed reply (**P 7-9)**

The Notice O.No.294/08 served on Mr. Aziz Ahmed s/o Siraj Ahmed Asst. Chief Executive Officer, MSBW and he did not file a reply to it. **(P.99-101)**

The notice Outward No.288/08 and 289/08 were issued against Shri Dilip Ramgopal Chitlange and Mr. Kulbhushan Ramchandra Agrawal. As per report of the Beliff they avoided the service. The service therefore, is held as good service. **(P.99-101)**

**Reply by parties:-**

The District Officer filed reply on 19-4-2009 **(P.7-9)** .

The Chairman Mr. M.A.Aziz filed a reply and it is received on 21-4-2009.**(P.102-103)**

Mr.M.Y.Patel filed a reply dated 27-1-2009 It was received on 31-3-2009. **(P.104-106)**

The reply of present C.E.O. dated 14-5-2009 was received the same day.**(P.15-17)** .

**OBSERVATION OF COMMISSION**:-

While perusing the papers of the complaint No.22/08 I found a detailed order dated Nil passed by the Chairman Wakf (Mr. M.A.Aziz) in respect of this property, justifying the transaction, and giving directions to issue the order in particular terms **(P88-92**) Significantly the present C.E.O. did not produce it with his reply.

A) The document of lease was executed by the Assistant C.E.O. Mr. Aziz ( the different persons from the Chairman) vide the order dated 1-8-2005 issued by C.E.O. M.Y.Patel **(P. 107**) delegating the powers. As a matter of fact the Wakf Board has to exercise the general Superintendents to ensure that the Wakf properties are maintained, controlled and administered appropriately. The document therefore, ought to have been executed by the Mutwalli and not by employee of the Board. **Rule 26** of the Maharashtra Wakf Rules 2003 specifically provides that the Mutawalli shall enter in to an agreement of lease in form No.AM. **As such rule 26 of the Rules was violated for the unknown reasons.**

B) As per provisions u/s **32 (2)(j)** of the Wakf Act 1995 the resolution to lease together with other transaction is to be passed by at least 2/3rd of the members of the Board. Admittedly that time there were 9 members of the Board and only 5 out of them had favoured this transactions. **(P.87)** Obviously this mandatory provision of law was violated. The statement of Mr. M.A. Aziz that, 4 members out of 9 namely 1) Dilipkumar Yusuf Khan 2) Shabana Azmi 3) Maullana Nooruddin and 4) Ibrahim Izuddin did not accept the work, carries no meaning. That, time there were 9 members of the Boards and for valid implementation of section 32 (2) (j) of Wakf Act 1995 all of the 9 members of the Board will have to be considered as valid members vide S. 20 of the Wakf Act. The majority of 2/3rd thereof, would come to 6 members. **This provision of law therefore, was clearly violated and the Chairman Mr.M.A. Aziz is liable for such legal infirmity.**

C) Mr. M.Y.Patel stated in his reply **(P.104-106)** that, the C.E.O. has simply to implement the resolution passed by the majority and he has little powers to change the resolution . Such stand of Mr. M.Y.Patel is by way of shirnking the liability. If the Board has passed a resolution in contravention of the statutory provision (here s.32 (2)(j) ) the C.E.O. has ample power u/s 26 of the Wakf Act 1995. As per this provision, if resolution is not confirmed by majority of vote of the members, **the C.E.O. can refer the**

**matter to the Government alongwith his objection. No such step was taken by Mr. M.Y.Patel and so he is also equally responsible for violation of the legal provision.**

D) Admittedly the donation of Rs. 5 lakhs was accepted by the Board for this transaction from the lessee whereas Mr. M.Y.Patel the then C.E.O. worked out the value of this property to the tune of Rs. 3,14,62,000/-. *(Copy of document taken from complaint No.22/08 Insaf)* As against this the proposal No. MSBW/SNT/97/204 dated 6-5-2004 made by Mr. M.Y.Patel to the Chairman indicate that, Mr.Chitlange proposed the donation of Rs. 1 crore. **(P.108-112)** Mr. M.Y. Patel stated in his reply **(P104-106)** that, there was typing mistake committed by the Clerk. This statement also is incorrect. The figure 1 crore has been mentioned at two places in this proposal, in figure as well in words 1) saying as "1,00,00,000/-" and 2) as "1 crore". In view of such matter there is no scope to say that, there was a typing mistake. **This is very conclusive circumstance to say that, the Board was put to heavy loss, may be for the extraneous consideration. Mr. M.A. Aziz the then Chairman and Mr. M.Y.Patel the then C.E.O. both are responsible for it.**

E) As a matter of fact, as far as possible, the proposal for transaction of Wakf property shall be initiated by the Mutwalli of the Wakf. The Board shall publish in the Gazette, a notice of the proposed transaction. The notice shall contain sufficient details etc and shall be duly considered vide Rule 17 of Mah Wakf Rules 2003. **AIR 1996 S.C. 2763.** Hon'ble SC says

> "These provisions are designed to ensure that a property belonging to the wakf is used in the best interest of the Wakf and any disposal of the property by the Mutawalli is required to be sanctioned by the Wakf Board after following the procedure under Rule 12 thus ensuring that there is a proper examination of the proposal in the light of the objections, claims or suggestions received."

As against the this, here as per the statement of Mr. M.Y.Patel **(P 104)** the Chairman directed him to submit the proposal in the Board meeting and so the proposal was submitted. Mr. M.Y. Patel did not raise any objection against such direction of the Chairman, u/s 26 of the Wakf Act. **This also support the conclusion of extra interest and unfair dealings by Mr. M.A.Aziz as well as Mr. M.Y.Patel**

Lastly the then C.E.O. Abdul Rauf Shaikh issued a notice dated 26-7-2007**(P.113)** against the lessee stating that "this transaction prima- facie seems void and cancelled". As such the Wakf office also found this transaction to be illegal.

The office of the Commission again issued the summons O.No.240/09 dated 3-7-2009 **(P.114)** asking the CEO Wakf as to whether any proceeding for legalization of the lease were initiated and materialized. The Board of Wakf filed a reply **(P.115)** alongwith the documents (**P-116-156)**. This office again issued a fresh summons O.No.296/09 dated 3-8-2009 **(P 157)** asking for the production of more documents i.e. the documents which were referred to, in the reply and were not produced . The similar summons bearing O.W. No.324/09 dated 21-8-2009 was issued (**P.157A** )**The Board of Wakf did not reply it.**

The CEO *(Mr. S.S.Gunjal, Dy.Commissioner, Revenue and incharge of the post of CEO)* stated in his communication dt. 6-8-2008 **(P.116)** addressed to Shri Dileep Chitlange and Shri Kulbhushan the leasee that, the period of 3 years of lease was expired on 6-4-2008 and the Board resolved under resolution No.21 /2008 dated 3-4-2008 not to continue the lease any more.

The present CEO Mr. S.S.Ali Quadari also issued communication **(P.139)** to Shri Dileep Chitlange and Shri Kulbhushan the leasee, dated 28-8-2008 stating that, the lease in their favour stands ceased w.e.f. 7-4-2008. He further stated that, all the transactions of exchange or lease made by the then Chairman of the Board stands void. And hence the NOC issued by the office stands void. The lease were requested to cancel the permission given for construction.

Though the Board of Wakf had a firm stand not to continue the lease vide resolution no.21/08 dated 3-4-2008, still a fresh resolution bearing No.85/08 in the meeting dated 21-11-08 was passed as per decision in the meeting dated 27-10-2008 and the orders to that effect were issued on 26-11-2008 **(P.120)**. The Board of Wakf has, as such, taken a inconsistent decision in the resolution No.85/2008, to the resolution bearing No.21/08 and this appears not to be free from suspicious . As per the order dated 26-11-2008 ( **P.120)** the decision was taken in presence of Mr.A.U. Pathan the member, the CEO and the leases. There is no statement as to whether provision of section 32(2) (j) of the Wakf Act r/w rule 25 of the Rules 2003 were followed.

A fresh summons O.No.324/09 dated 21-8-2009 was issued to the CEO (**P.157 A)** . He filed reply dated 9-9-2009 **(P.157A A)** alongwith the documents **(157B,C & D)**. He again filed some documents with his letter dated 7-9-2009 **(P.157E)**. The documents are **(P.157F to 157K)**. The CEO stated in his reply **(P.157AA)** that, there was no meeting of the members of the Board on 27-10-2008. As against this there is specific mention in his order dated 26-11-2008 **(P.120)**. that, the meeting was held on 27-10-2008. **This is how the present CEO Mr.S.S.Ali Quadari has no application of mind to the papers of the proceedings, and has no regard for truth.**

The resolution dated 21-11-2008 **(P.157B)** was passed by the Board having its only two members viz. Mr.Tarekh Anwar and Mr. A.U. Pathan. There is no mention in this resolution as to who presided on the meeting as Chairman. S.17 (2) of the Wakf Act 1995 specifically provide that,

> " The Chairman or in his absence any member chosen by the members from amongst themselves shall preside at a meeting of the Board".

There being no Chairman chosen by the present members of the Board to preside the meeting dated 21-11-2008 it can be concluded that, the said meeting was not a legal meeting.

There were only two members of the Board that day and both of them concurred to renew the lease dated 1-8-2005. The CEO has empathetically stated in his reply **(P.157A A)**, that there were only two members and both of them favoured the resolution and so the resolution was by full corum and as such legal.

Here I mention that, previously the Wakf Board had passed the resolution No.21 dated 3-4-2008 resolving not to grant the further continuation to this lease. There is specific mention of the said resolution in the letter issued

by Mr. S.S.Gunjal Addl. Revenue Commissioner, Aurangabad **(P.116).** The present CEO Mr. S.S.Ali Quadari, also issued a letter dated 28-8-2008 **(P.139)** categorically stating that, the agreement of lease dated 1-8-2005 stands ceased w.e.f.7-4-2008 and all the transactions of exchange or lease made by the then Chairman of the Board stands void. This letter is under the signature of Mr.S.S.Ali Quadari the CEO. However, there is no mention of said resolution No.21 dated 3-4-2008 **(P.116)** in the present resolution dated 21-11-2008 **(P.157B)**. **It was the bounded duty of the present CEO Mr.S.S.Ali Quadari as provided u/s 26 of the Wakf Act 1995 or even otherwise as responsible of the office, to bring this fact to the notice of members of the Board presided over the meeting dated 21-11-2008.** Mr.S.S.Ali **Quadari failed in his duty** in this connection. The **State Govt. of Maharashtra issued specific instruction under letter No.Wakf-10/2007/Prkr/47/**Revenue and Forest Department dated 15-3-2007 **(P.157F)** to **cancel all the transactions which were without resolution** of the Board. The CEO Mr. S.S.Ali **Quadari was under obligation to bring this also to the notice of the Board at the time of resolution dated 21-11-2008.** In short the resolution dated 21-11-2008 by itself was/is illegal, contrary to the earlier resolution, contrary to office discipline and contrary to the provision of law.

A notice bearing O.W.347/2009 dated 4-5-2009 **(P.157 L)** was sent to Mr. A.U.Pathan the Ex-Offico Member of the Wakf Board calling him upon to appear before this Commission on 16-9-2008 and to make a statement. He however did not appear before the Commission.

The second notice bearing O.W.No.371/2/1 dated 1-10-2009 **(P.157M)** was sent to him i.e. Mr. A.U.Pathan under certificate of post **(P.157N)** calling him upon to appear before this Commission and to file the statement on 15-10-2009 and he did not appear. Both of these notices were pertaining to the renewal of lease after the expiry of the first term on 6-4-2008.

As a matter of fact Mr. A.U.Pathan being local person of Maharashtra, (it is said, he usually attends the office of Board), and responsible member of the Board, was under obligation to come forward before this Commission and to make a statement as well as to clarify as to how the resolution dated 21-11-2008 **(P.157B)** was passed inconsistent to resolution no.21/2008 dated 3-4-2008 as stated by Mr. Gunjal the Dy. Commissioner in his letter dated 6-8-2008 **(P.116).** Non appearance of Mr. Pathan before this Commission appears to be malafide and with a ulterior motive not to disclose the real facts before the Commission or he might have been victim of his conscious **Mr. Tarekh Anwar and Mr. A.U.Pathan the members of the Board are responsible for the renewal of the lease. At the same time Mr. S.S.Ali Quadari is also responsible for the reason stated above.**

(**A.T.A.K.SHAIKH**)

Commission

**R.No.3**

**REPORT**

**COMPLAINT NO.59/2009**

**COMPLAINT BY SHRI ANEES AHMED THROUGH FAX MUMBAI.**

**DARGAH NAVGAZIBABA VAIJAPUR DIST. AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

The land Sy.No.253 admeasuring 10 acres 6 gunthas is Wakf of Dargah Navgazibaba Vaijapur Dist. Aurangabad.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Commission received the complaint by fax from one Anees Ahmed **(P.1-4)**. This land Sy.No.253 admeasuring 10 acres 6 gunthas has been leased vide resolution of the Board dated 22-2-2005 **(P 158)** by five members out of nine.

**NOTICES TO THE PARTIES:-**

A) The notice **(P. 5-6)** bearing outward No.51/09 dated 25-3-2009 was issued to the District Wakf Officer, Aurangabad calling him upon to make the statement on 9-4-2009. He filed reply on 9-4-2009 with documents**.(P.7-9)**

B) The notice **(P.10-11)** bearing outward No.52/09 dated 25-3-2009 was issued to the C.E.O. Wakf Board Aurangabad calling him upon to make the statement by 9-4-2009. He did not file the reply.

C) The notice **(P. 12 -14 )** bearing outward No.137/09 dated 13-4-2009 was issued to the C.E.O. Wakf Aurangabad calling more particulars and to make the statement by 20-4-2009 and he filed reply **(P15-17)**.

D) The notice **(P. 18-20)** bearing outward No.146/3/1/09 dated 20-4-2009 was issued to Mr.M.A.Aziz the then Chairman of Wakf Board calling him upon to make the statement as regards this property by 5-5-2009. He did not file reply (As per the press report he died on 8-5-2009).

The notice **(P. 21-23)** bearing outward No.146/3/2/09 dated 20-4-2009 was issued to Mr. M.Y.Patel the then C.E.O. of Wakf Board calling him upon to make the statement as regards this property by 5-5-2009. He filed reply on 10-6-2009 **(P.24-31)** as regards other properties, without making a whisper about this property.

**OBSERVATION OF COMMISSION**:-

**Non- compliance of Section 32(2) (j) of the Wakf Act:-**

The District Wakf Officer, Aurangabad stated in his reply **(P 7-9)** that, the resolution was passed on 22-2-2005 by 5 members out of 9. As per the provision u/s 32 (2) (j) of the Wakf Act the resolution is to be passed by 2/3 rd of the members of the Wakf Board. It says, that,

*" Section 32(2) (j):- without prejudice to the generality of the foregoing power, the functions of the Board shall be – to sanction any transfer of immovable property of the Wakf by way of sale, gift, mortgage, exchange, or lease in accordance with the provisions of this Act. Provided that, no such sanction shall be given unless at least 2/3rd of the members of the Board vote in favour of such transaction".*

As per this provisions the resolution by at least 6 members out of 9 was necessary for valid lease of the land. Here there were 5 members, and so, the resolution was in utter non compliance of the aforesaid statutory provision.

The copy purporting to be the resolution of the Board dated 22-2-2005 **(P. 158)** is produced on record. As per this document it was unanimously decided that, the Chairman will visit the spot and will take the decision. It appears that, the Chairman as per this resolution, did not take any separate decision. The District Wakf Officer also did not specifically state as to whether or not the separate decision was taken by the Chairman. As such the provisions of S.32 (2) (j) of the Wakf Act 1995 were grossly violated.

There was, as good as, no resolution of the Board to lease this land to any body. Despite it the C.E.O. of the Board Mr. M.Y.Patel, passed the order on 25-11-2005 **(P.159)** acording the sanction to lease this land and also empowered the Mutwalli to executive the deed of lease. The names of person to whom the land was leased are not stated. It is not clear as to who moved the proposal for the lease. In the reply to the Summons of more particulars **(P.15-17 )** he give the names.

**As such the land was leased without resolution. The C.E.O. Mr. M.Y.Patel abused his powers by issuing the order dated 25-11-2005. He misused his powers to grant the Wakf land on lease without resolution and he is responsible for the illegality of this transaction.**

**The chairman also would be impliedly responsible, for having no control on the office of Board, and the employees of the Board.**

As a matter of fact, as far as possible, the proposal for transaction of Wakf property shall be initiated by the Mutwalli of the Wakf. The Board shall publish in the Gazette, a notice of the proposed transaction. The notice shall contain sufficient details etc and shall be duly considered vide Rule 17 of Mah Wakf Rules 2003. **AIR 1996 S.C. 2763.** Hon'ble SC says.

"These provisions are designed to ensure that a property belonging to the wakf is used in the best interest of the Wakf and any disposal of the property by the Mutawalli is required to be sanctioned by the Wakf Board after following the procedure under Rule 12 thus ensuring that there is a proper examination of the proposal in the light of the objections, claims or suggestions received."

The Board of Wakf subsequently noticed that this transaction was illegal and so it was cancelled under the separate order dated 8-6-2008 by Mr. A.R.Shaikh the then C.E.O. of the Board **(P.160)**.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.4**

**REPORT**

**COMPLAINT NO. 9/2008**

**Aurangabad District.**

**Complaint By Shri Gulam Rasool r/o Vaijapur Dist. Aurangbaad.**

**DARGAH HAZARAT SIKANDARSHAH WALI**

**AT VAIJAPUR DIST. AURANGABAD**

**DETAILS OF THE PROPERTY** :-

The land Sy.No.289 admeasuring 2 Acres 7 Gunthas of Vaijapur, Dist. Aurangabad is the wakf of the aforesaid Dargah.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Shri Gulam Rasul Kamruddin Inamdar r/o Vaijapur Dist. Aurangabad filed this complaint **(P 161)** alleging that, the Wakf Board leased the land adm. 1 A. 4 G. out of Sy.No.289 to Shri Naresh Shrivastav for Godown of domestic Gas and that is causing damage to the Dargah.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.347/08 dated 19-11-08 calling him upon to appear personally and to file a statement on 26-11-2008 **(P.162)** He filed reply on 11-8-2009 **(P. 163**) alongwith the documents **(P164-166)**

The District Wakf Officer, Aurangabad was served with notice O.No.348/08 dated 19-11-2008 **(P.162)** and he did not file a separate reply.

The notice bearing O. No.345/08 dated 19-11-2008 was sent by ordinary post to the Chief Officer, Municipal Council Vaijapur **(P162)** and he did not respond to it.

The notice bearing O. No.346/08 dated 19-11-2008 was sent by ordinary post to Shri Naresh Shrivastav r/o Vaijapur Dist. Aurangabad **(P162)**. He appeared before the Commission through Advocate Mr. M.M.Qazi **(P. 167)** and he submitted an application for time **(P.168)** on 4-12-2008. However he did not take care of the matter subsequently.

**OBSERVATION OF COMMISSION**:-

The C.E.O. stated in his reply **(P.163)** that, this land was leased to Naresh Shrivastav for term of 51 years, under the letter No.20/96 dated 27-9-1996. The lease for 51 years grossly violets the provisions of S 56 (1) of the Wakf Act. 1995. The complainant meanwhile sent the copy of the order dated Nil on 18-8-2009 by post, in which there is mention of resolution no. 135/96 dated 21-9-1996 **(P.169)** However according to the

CEO, as per section 56 of the Wakf Act 1995 the land could not be leased for more than 3 years and so **the Govt. has cancelled all such transaction which took place on and after 1-1-1996**. The lessee was accordingly informed by the Wakf Board under letter No.MSBW/SNT/774/00 dt. 2-7-2001 and was directed to deliver the possession to the District Wakf Officer. But the Lessee did not reply it. The document **(P.164)**) disclosed that, the regular order to recover the possession was passed by the Board on 2-7-2001. On 10-4-2008 notice was issued **(P. 165)** to the lessee to hand over the possession.

The order was passed by the Board on 2-7-2001 and notice was issued to Lessee on 10-4-2008 i.e. after almost 7 years (**P 164-165)**. There is no explanation on behalf of C.E.O. as to why there has been such gross delay in taking the legal action. **This indicate the malafides on the part of the C.E.O. and also hands in Glues with the Lessee. This is a matter to be viewed very seriously against the C.E.O. and the other responsible employees.**

The climax further lies in the subsequent step and events. The C.E.O. **Mr. S.S.Ali Quadri** then issued the letter on 23-7-2009 **(P.166)** in the name of District Wakf Officer, directing him to inspect the spot and to inform the Wakf Board the name of encroachers and four boundaries of the site. As a matter of fact the C.E.O. was not excepted to go in to such formality. The Govt. had already passed the order canceling the lease on 22-8-2000 as stated in the document **(P.164)** The C.E.O. passed a regular order in pursuance to it on 2-7-2001. Then the notice was issued on 10-4-2008 to Mr. Naresh Shamsundar Shrivastav to handover the possession of the site. **This further indicate that even the present C.E.O. Mr. S.S.Ali Quadri is not very much interested to protect the wakf property/ies. On the contrary he appears to be adverse to the interest of the Wakf.**

**The Chairman Mr. Aziz, the then CEO Mr. M.Y.Patel are responsilbe for this transaction, and the present CEO Mr S.S.Ali Quadri and his predecessor up to the year 2000 (164 ) are also responsible for the (deliberate) negligence to protect the Wakf property.**

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No.5**

**REPORT**

**COMPLAINT NO. 60/2008**

**Complaint by Shri Mohd.Shabbir Mohd. Rafiqu r/o Aurangabad.**

**DARGAH HAZARAT SAYED SHAHSHARIF**

**NAGESWHARWADI AURANGABAD.**

**DETAILS OF THE PROPERTY** :-

C.T.S. No.4624 & 4631 Out of Sy.No.31,46 & 24 are the lands in the name of Dargah.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mohd. Shabbir r/o Aurangabad filed this Complaint **(P.170)** alleging that, the property C.T.S. 4624 and 4631 are leased without the resolution of the Wakf Board, that too, for 51 years, when the lease for 3 years only is permissible. Because of this lease, the way to Mosque is obstructed.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 219/09 dated 22-6-2009 calling him upon to appear personally and to file a statement on 6-7-2009 **(P.171-172)** He filed reply on 11-8-2009 **(P.173)** alongwith the documents **(P 174-180)**

**OBSERVATION OF COMMISSION**:-

The C.E.O. stated in his reply that, C.T.S. No.4624 and 4631 of Dargah Shahsharif Nageshwardi were leased to Sirajul Hassan for 51 years under resolution No.133 dated 30-9-1989. The resolution was passed with full majority . He has produced the copy of lease deed executed on 11-12-1989 on behalf of Wakf Board.**( P. 174-178)**. Since this transaction was prior to the Wakf Act 1995 and since the resolution was passed by full majority it is not necessary to go in deep any more. The complaint therefore, contents no merits.

The complainant has produced the copies of the complaints dated 14-8-2008 and 10-4-2008 **(P.181-182)** wherein it is stated that the Wakf suit No.19/08 is pending before the Wakf Tribunal at Aurangabad for right of way to the Mosque. The question of right of way to Mosque can not come in the jurisdiction of the Commission. Secondly, since the matter is pending before the Tribunal Aurangabad, it would not be appropriate to make any observation in the matter. Hence this complaint is filed.

**( A.T.A.K.SHAIKH**.)
Commission.

**Sr.No. 6**

**REPORT**

**COMPLAINT NO. 11/2008**

**Complaint by Shri Shaikh Khali s/o Shaikh Mahemood**

**r/o Waluj, Aurangabad.**

**DARGAH SAYED SADAT SAHAB AT WALUJ**

**TQ. GANGAPUR DIST. AURANGABAD.**

**DETAILS OF THE PROPERTY** :-

Land Sy.No.211 admeasuring 31 A 35 G. situated at Waluj Tq. Gangapur Dist. Aurangabad is a Inam land of Dargah Sayed Sadat Sahab.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Shaikh Kaleem s/o Sk. Mahemud r/o Waluj filed a complaint **(P. 183-185)** with documents **(P 187-188).** making several allegations that, the land Sy.211 is illegally leased on long term i.e. 51 years under resolution dated 19-3-1996 and subsequently it has been sub-leased. He claimed that, the land may be taken in the possession, for service of Dargah.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 302/08 dated 12-11-2008 **(P.189-190)** and the then reminder O. No.269/ dt. 18.7-2009 calling him upon to appear personally and to file a statement on 31-7-2009 **(P.191)** He filed reply on 13-8-2009 **(P.192)** with documents **(P.193-195)**.

The notice was issued to Mr. Shaikh Ameer Sk. Imam r/o Waluj bearing O. No.116/08 dated 20-8-2008 **(P.196)**. He was reported to be dead. **(P197)** His son Mr. Sk. Irshad Sk. Ameer appeared on 28-11-2008 and submitted an application for time **(P.198-199)** He then the filed a reply on 12-11-2008 **(P. 200-206)** The wodow of Sk Amir was appointed as temporary Mutawalli **(P207).**

**OBSERVATION OF COMMISSION**:-

The Chief Executive Officer, stated in his reply that, the Mutwalli by name Sk. Ameer Sk. Imam submitted a proposal to lease the land on long terms, it being of inferior quality. The portion of the land measuring 15 A. 37 G. was leased to different two persons for 51 years under the resolution no.39 dated 19-3-1996 . The copy of the resolution **(P.193-195)** supported this fact.

Shaikh Irshad the son of Original Mutwalli Sk. Ameer stated in his reply **( P. 200-206)** stated that, his father Sk. Ameer was appointed as a Mutwalli and after his death he (Sk. Irshad) and others were declared as successors to Sk. Ameer in the proceedings No.71/MGG A/A dt. 21-10-2008 by Court of Dy. Collector Atiyat

Vaijapur Dist. A'bad **( P. 208-221)** These documents have proved that Sk. Irshad and others are the successor of the Mutwalli Sk. Ameer. Sk. Irshad then stated that, the Board of Wakf granted permission to Sk. Ameer to sub lease the plots to different persons in particular terms as stated in the order dated 20-3-1996 bearing no. MWB/SNT/96/522/96 **(P. 222)**. As such sub lease of the plots to different persons was on the basis of the permission granted by the Wakf Board. The Wakf Board also admitted this fact **(P. 192)** .

The CEO Wakf Board thereafter stated **(P 192)** that after coming in force the Wakf Act 1995 the land could not be leased for more than 3 years vide section 56 of the Act. The Govt. of Maharashtra therefore issued a letter No.WKF/2000/CR/ - 94 / L-3 dated 22-8-2000 and all the lease for such long terms are cancelled. In view of this the **action is taken by the Board u/s 54 of the Act** by issuing notices to the Lessees to vacate the site of lease and said proceeding are still pending in the office.

The C.E.O. however did not state the date on which the notices were issued to the Lessee and what is progress in the matter . One fact however is clear that, the **Govt. had passed the orders in the year 2000 directing to cancel the lease** and though the period of about **8 years has passed the Board could not obtain the possession** of the land. On the contrary by observing silence as regards the further progress in the matter of recovery of possession, the Board has suppressed the material facts from this Commission and this indicate the malafide.

In the circumstances the fresh notice will have to be issued to the Board asking the details of the proceeding for recovery of possession on the basis of Govt. orders passed in the year 2000.

Keeping open this issue, the complaint does not contain any merits. The land was initially leased under resolution no.39 dated 19-3-1996 on the basis of the proposal made by the Mutwalli Sk. Ameer. The complaint deserves therefore to be disposed off.

Meanwhile Rabiyabi filed WP NO.863/2007 in the Hon'ble High Court, and was disposed by issuing directions to approach to the Board u/s 54 of the Act. **(P.223)**

After dictation this report the CEO and DWO Aurangabad were served the notice bearing O.W.No.320/2/1 and 320/2/2 respectively to appear before this Commission on 25-8-2009. and to make the statement as to what is the progress in respect of the action taken by the Board u/s 54 of the Wakf Act, since there was a simply statement in the reply that such action was taken. **(P.224)** There was no response to it.

The personal summons bearing O.W.No.332/09 dated 27-8-2009 thereafter was issued to Mr.S.S.Ali Quadari the CEO to appear on 5th September 2009 and to make the statement. However he did not respond. **(P.225)** The **proclamation** was directed to be issued.

The proclamation O.W. No.436/09 dt. 24-11-2009 was issued against Mr. S S Ali Quadri the CEO **(P 225- A)** and still there is no response till this date. **This is how, Mr. S.S.Ali Quadri is irresponsible person.**

**( A.T.A.K.SHAIKH**.)
Commission.

**Sr.No. 7**

**REPORT**

**COMPLAINT NO. 22/2008 and 80/2009**

**Complaint by Insaf Newspaper, Gulam Gaus r/o Aurangabad and Abdul Rahimkhan s/o Abdul Karimkhan r/o Aurangbaad.**

**NIRMAN BHARTI AURANGABAD, DISTRICT AURANGABAD.**

**DETAILS OF THE PROPERTY** :-

Land Sy.No.83 admeasuring 10 A. 10 G. to the extent of 313.70 R and 91 admeasuring 3 A. 22 G. to the extent of 131.77 R. was purchased by Nirman Bharti under the sale deed dated 21-7-2005 which is said to be Wakf of Masjid-Dargha Syeed Shaha Husaini.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

There is mentioned of these lands of Wakf in the documents produced by Insaf Newsaper. A sperate complaint is also filed by Mr. Abdul Rahimkhan (**P.226-A to 226-D**)

Land Sy.No.83 admeasuring 10 A. 10 G. to the extent of 313.70 R and 91 admeasuring 3 A. 22 G. to the extent of 131.77 R. was purchased by Nirman Bharti under the sale deed dated 21-7-2005 which appears to be Wakf properties. **(P.226-231)** The Wakf Board has taken action u/s. 52 of the Wakf Act 1995 under the letter dated 11-7-2007 addressed to the Municipal Commissioner, Aurangabad **(P.232)** On the basis of this document alone the present action was taken by this Commission.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with the confidential letter O.W.No.145/08 dated 7-10-2008 and he did not reply **.(P.233)**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with the summons O.W.No. 290-2/1/09 dated 31-7-2009 in reference to O.W.No. 145/08 dated 7-10-2008 and he did not reply **.(P.233A)**

The Chief Executive Officer, Maharashtra State Board of Wakf was again served with summon O.W.No.323/09 dated 21-8-2009 and he did not reply **.(P.233B)**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with the proclamation O.W.No.339/09 dated 29-8-2009 and he did not reply **.(P.233C)**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with the letter O.W.No.293 dated 1-8-2009, asking him to serve as many as 22 notices dated 1-8-2009 to the sellers and purchasers of these properties **(P.234). The C.E.O. returned the said notices on the ground that, his office was not having the address of the addressee.**( **P.235)** One of the copy of the summons is page **No.236**. As matter of fact the full address of Nirman Bharti of Pune was given alongwith which about 12 notices were attached and **the summons**

**could be very well served by the C.E.O. on the addressee through the District Wakf Officer Pune, as other several summons were served by the C.E.O. However, for the reason best known to the C.E.O. these summons were returned back.**

**I may state that the proposal to send the summonses to the parties through his office was made by Mr Zafar the Superintendent of the C.E.O. Office. That was the reason to send he summonses through him.**

The Chief Executive Officer, Maharashtra State Board of Wakf was again served with the letter O.W.No.312/09 dated 13-8-2009 asking him to serve the summons of the said purchasers and sellers .**(P.237).** Surprisingly the C.E.O. turned adamant to the extent to refuse the letter as well as summons. The bailiff of this office requested him at least to endorse to that effect but he refused such proposal also. He suggested the bailiff that, the bailiff may endorse accordingly and so the bailiff endorsed to that effect. This is how there was a total non corporation from the office of the C.E.O. to serve summons of the parties in respect of a very prime properties of Aurangabad.

This office therefore issued the **summonses directly** to Nirman Bharti **through the post** on 26-8-2009 with letter O.W.No.327/09 **(P.238)** with request to serve the summons on the addressee ( i.e. the purchasers ). Fortunately the said letter alongwith the summons was served on Nirman Bharti and the appearance was put before this office on 10-9-2009. An application was submitted by Mr. Ranjeet Darak on behalf of Nirman Bharti for adjournment **(P.239-240)**. The summons of Mr. Deelip Deshmukh was returned back on the ground that, he has no conern at present with this transaction **(P.241**) . The Vakil Patra of Mr. Anil Bajaj Advocate and Vinod Patil Advocate were filed and they are at **(P.242) and P.242-A)** .

The reply **(P.243-247)** is filed on behalf of Nirman Bharti manly stating that Sy.No.83 and 91 are not the Wakf properties and so it was not necessary to obtain the permission of the Wakf Baord. Several documents including copies of judgment are produced alongwith the reply. The documents would be referred at the relevant time and place.

This office also issued a summons O.W.No.333/09 dated 29-8-2009 **(P.248-249)** to the purchasers namely Shardchand Asaram Samdani etc. 12 which was served on all of them but they did not take pains to appear before this Commission.

This office also issued a letter to the District Collector, Tahsildar Aurangabad, as well as the City Survey Officer, under O.W.386/08, 387/08 and 388/08**. (P.250)** The Superintendent of this office had been to the said offices however the report from him is awaited.

This office also issued a letter to the Tahsildar and the City Survey Officer having a copy thereof to the Collector under O. W.No.399/08,400/08, and 401/08 dated 30-12-2008 **(P.251)** asking them to supply the copies of Khasra Pani Ptrak, Village Form No.7 and other relevant documents in respect of land Sy.No.83 and 91 , C.T. Survey No.17849 and 17850 situated behind M.P.Law College, Aurangabad. However, there is no response from the other end. The documents were supplied and are mark as 251-A,B, C, D, E & F showing this lands to be Inam as well as mentioning in Form No.9.

The summons O.W.No.490/2/1 and 490/2/2 dt.24-12-2009 were issued to Tahsildar and City Survey Officer, Aurangabad calling them upon to produce the copies of Pahanipatrak, Khasrapatrak etc. and were accordingly produced. (**P.251-A-251-B**)

The summons O.W.No.457/09 dt. 5-12-2009 was issued to the complainant Mr. Abdul Rahimkhan to produce more documents available with him and he could not produced. (**P.251-C**)

**OBSERVATION OF COMMISSION**:-

The Chief Executive Officer, Maharashtra State Board of Wakf Board Aurangabad **Mr. A.R.Shaikh as well as Mr. S.S. Ali Quadari** turned very adamant particularly in this matter. They did not take care and pains to reply any of the letter or summons as regards this matter. I have already stated that, the properties involved in the matter are very prime, situated in the heart of the City and the C.E.O. being the care taker of the wakf properties was not only expected to reply the notices and summons promptly, of this office but he was expected to take interest and to bring the true picture before this Commission by extending the full assistance. But the conduct and the attitude of both C.E.O. was very pessimistic. The property being prime and situated in heart of the City and the conduct of such higher authorities being such pessimistic, this office would not be wrong to infer that, there must be a ulterior motive of them to behave in such adamant and irresponsible manner. **The State Government may take suitable action against such officers who are having a hard skin.**

***Note*** *After service of the warrant of fine on 11-11-2009 the reply came to be filed by him on 17-11-2009 (**P.307)** alongwith documents (**P.308-3030).***

Mr.Anil Bajaj advocate appeared before the commission on 3-10-2009 and he advanced the argument in reference to the judgments of the various courts. Mr. Bajaj referred to copy of the Judgment dated 29-11-1963 in R.C.S. No.139/59 filed by Mr. Vijandra Kabra against Shah Nadeemulla Hussaini wherein a preliminary issue no.14 and 15 relating to these properties were decided on the point as to whether these properties are Inam and that was answered a negative. **(P.252-261)** The said suit bearing R.C.S.No.139/59 was finally decided on 14-2-1967 and the aforesaid finding were not disturb. **(P.262-275)**. The said judgment was challenged in appeal No.55/1967. It was finally decided on 4-5-1968 **(P.276-288)** and the categorical finding were recorded that, the suit lands are not Wakf properties. The court further observed and held **(P280).**

> "The evidence of 2 witnesses examined by deft no. 7 namely: **D.W.1 Habibullah Khan son of Azizula Khan (Ex. 136)** who had worked as Secretary of the original Wakf Board of Marthawada 1959 to March 1961 and **D.W. 2 Syd. Mohammad Ali (Ex. 151)** who was a member of Hydarabad Muslim Wakf Board and the Chairman of the Reginional Committee for Marathwada of the Wakf Board A'bad makes an interesting reading and shows how the suit fields came to be registered in the Wakf Register on 12-2-1961 i.e. three years after the present suit was filed."

Though the appeal was allowed by modifying the decree, on the ground that, the defendant no.1 shall apply to the proper authority under H.T.and A.L.Act for permission to the alienate the properties. It appears that, the matter went to the Hon'ble High Court through appeal No.1163/1968 **(P.289)** and it was dismissed on 22-11-1968.

Mr.Sayed Shah Nadeemulla Hussaini approached to the Dy. Collector Land Reforms Aurangabad through file No.67/INM/ 25 decided on 13-3-1969 wherein also it was held that, suit lands are not Inam lands and do not attract even the provisions of Hyderabad Abolition of Inam Act **(P.290-292)**. The said judgment was challenged before the Minister who decided it on 22-10-1975 upholding the aforesaid finding **(P.293)** .

It appears that, an objection was raised by some Muslim person in execution petition no.100/1968 before the court of Civil Judge (S.D.) Aurangabad and that also was dismissed with exemplary cost of Rs. 1000/-**( P.294-298).**

It appears that, the C.E.O. Board of Wakf issued notice dated 19-9-2005 and 2-8-2007 **(P.299-300)** taking action u/s 52 of the Wakf Act. Both of these notices are challenged before the Hon'ble High Court Bench at Aurangabad in W.P.No.5778/97 and both of the said notices are stayed and interim relief is continued. **(P.301-304)** .

**In view of all of these documents it is clear that, the Civil Court which is/was then, competent court to decide the issue as regards the nature of the property whether it is Wakf or not, as per the provision of section 6 of the Wakf Act 1954 as well as 1995; has decided that, these lands are not inam lands and the said findings have became final, being not challenged in the Hon'ble Supreme Court. This Commission can not go behind such final adjudication.**

**Even beside this, presently same issue is subjudiced in W.P.No.5778/97 before the Hon'ble High Court Bench at Aurangabad and even on this ground this Commission can not record the finding.**

Since there was no response to the Confidential letter No.145/08 dated 7-10-2008, summons No.290 /21/09 dated 31-7-2009, the Summons O.W.No.323/09 dated 21-8-2009 the proclamation bearing O.W.No.339/09 dated 29-8-2009 was issued in the name of the CEO Wakf Board Mr. S.S.Ali Quadari. There was no response from him to it also. This office thereafter issued the **bailable warrant** O.W.No.388/09 dated 14-10-2009 (**P.305**) and that, could not be served for want of availability of Mr. S.S.Ali Quadari. Lastly this office imposed a fine of Rs. 500/- of him under O.W.No.417/09 dated 10-11-2009 (**P.306**). **The significant fact is that, Mr.S.S.Ali Quadari the CEO turned so adamant, as he was every time adamant, he did not accept the order of fine personally, though it was in his name, when it was tendered to him by the Bailiff of the office on 11-11-2009. He directed the Bailiff to deliver this order in inward outward section. This is how Mr. S.S.Ali Quadari displayed a very objectionable behavior that too, for the Wakf property, which as per law, is a property of God.**

After service of the warrant of fine on 11-11-2009 the reply came to be filed by him on 17-11-2009 (**P.307)** alongwith documents (**P.308-3030**)**.** He simply stated that after service of the notice dated 19-9-2005 u/s 52 of the Wakf Act (**P. 299**), the Nirman Bharti preferred the W.P.No.5778/07 (**P.301**) in the Hon'ble High Court ant it is till pending. Significantly the CEO Wakf or any other responsible Officer of his office did not take care to make the statement as regards the previous litigations such as the Judgment R.C.S. No.139/1959 R.C.A. No.55/1966 and High Court order in Appeal No.1163/1968 (**P.252, 262,276 and 289**) or even whether this property is wakf or not. I feel that, it was bounded duty of the concern officer of the Wakf as a moral

responsibility to make a statement about theses judgments. All of these documents were shown to Mr. Muzafiar Siddiqui the office Superintendent, who has brought the reply (**P.307**) to this office and he orally stated, not to have preferred an appeal against the Judgment of the Hon'ble High Court. **The finding recorded by the court of law in the said litigation therefore reached to the finality, it being not challenged. No other conclusion therefore can be drawn than the one which was recorded by the Competent Court of law in the aforesaid litigation.**

After going through the documents produced by the CEO alongwith his reply (**P.307**) I found a letter dated 26-11-2005 **(P 324)** issued by Mr. M.Y.Patel the then CEO of Wakf stating therein that, the Judgment dated 13-3-1969 (By Dy. Collector Land Reform) (**P.319**) was not challenged in appeal. This is how the litigation of the property of Wakfs was attended with absolutely no care. The CEO of the Wakf working right from 22-11-1968 *(P.289-the date of Judgment of High Court)* are responsible for such carelessness, the matter being rested as it is, though it involved the valuable property in the heart of Aurangabad City. I do not say it was must for the concern authority of the Wakf to prefer an appeal. I say that some observation, by application of mind, as to whether or not appeal should be filed, were necessary by the CEO or concern authority of the Wakf, by way of submission and/or note on the file.

Again significantly, recording such note on the file as to whether or not appeal should be preferred is apart, the file of the matter also was not preserved properly. It was not traced for more than two years by the office of the Wakf. It was traced after this office had taken a deterrent action by issuing bailable warrant and the order of fine. **This is how the present CEO Mr. S.S.Ali Quadari appears to have no control over the Administration of his office, or non tracing of the file was deliberate action of Mr Quadri? Such note is require to be taken in his personal confidential service record.**

Though as per available record it appears that the civil courts have come to the conclusion that the property in question is not wakf property, however it appears after going through the relevant Judgments of the Civil Courts, that the parties to the litigation from Wakf Board do not appear to be faithful to protect the wakf property in a way it was expected. Although the Judgments are Judgments in persona. No doubt the jurisdiction of commission is limited. This commission cannot go, nay, has no authority to comment the judgments of Civil Court. However, I feel from the record that the interest of the wakf Board is not properly and legally put forth and safeguarded before the Civil Courts. As I have no jurisdiction to comment the Civil Court Judgments, I leave to the Government to look in to the matter if advised so.

The Khasara of the year 1954 display that both of these lands appears to be Inam Lands **(P 251-E to 251-J)**.The point is how one can claim these properties to personal, and how can he sale it ?

Here the Dargah and Mosque are situated, said to be in the Middle of these lands. In other words the Dargah and Masque are covered by both these lands. The point arises whether the grant of these lands to the private person may be without any implication by the granter against the grantee/s. In my view since the Dargah and Mosque are situated in the land and since the lands are described as Inam in Khasra in the year 1954, whether, these circumstances would vulnerable and suspitable to draw the presumption and inference that the

grant of lands must be for the services of Dargah and the Mosque?. If a such may be a position, the said Inam may be governed by the views expressed in the following authorities?. In this connection I went through the case of R.Doraswamy Reddy V/s The Board of Wakf (A.P.) reported in 1978 (2) A.P.L.J. 399 wherein it is held –

> "It is true that, the land was granted to an individual to perform service. But it does not mean that, he acquires title to that, property. Similarly, if the land can be resumed for non performance of service and can be regranted to another person for rendering service, it does not mean that, the original granter continues to be owner of the property. When once Wakf is created it continues to be a wakf . When the Inam is resumed and regranted it does not mean that, there is revocation of the service. It only means that, the Wakf property is entrusted to individual to perform service" (**P.923A-923E**) .
>
> (Note:- *I collected the copy of the aforesaid judgment from the Registrar (J) Andhra Pradesh High Court, who was kind enough to transmit it to me on fax).*

The aforesaid view was accepted by the Hon'ble Supreme Court in the case of Sayed Ali V/s Andhra Pradesh Wakf Board reported AIR 1978 S.C.972 at page 975 (**P.896-901**). In other words, the Inamdar of such property cannot be owner of the property, and he cannot transfer it. Either the Wakif or the Wakf Board can change such Inamdar-Mutwalli, and can regrant such property to the new comer. The nature of the property as 'wakf' will be continued for ever. **Whether the sale deeds referred to above may be rendered illegal, being in contravention of S. 32 (2) (j) r/w S 51 of the Wakf Act?.**

> It is held in the case of Syed Maqbool Shah Vs. State Reported **in AIR 2004 J & K 52** that
>
> "As regards the contentions of the learned counsel for the appellant that the writ petitioners being Sajjada Nashins the right in the property is heritable and they have become the owners of the Zirats , it is only to be stated that Sajjada Nashins discharges Spiritual functions as a curator of a Darghah or Shirne and holds the Governance of endowment in his hands. He imparts spiritual instructions. **A Sajjada Nashins has no rights in property belong to wakf and the property does not vest in him. He is not trustee in technical" (P-2180 A to E )**

**NOTE:-** One Mr. Nazir Pasha r/o Buddi Lane, Aurangabad having a Mobile No.9325364947 appeared before me claimaing to be a heirs of the original Mutwalli –Grantee of theses lands and further claimaing as to how the vendors of these lands are ficitious i.e. having no concern. He was directed to file a written complaint and also to produced relavant documents out of a Banch, he had brought. There being no response he was contacted on phone on 15-4-2010 and though assured, he did not turn up. Though there was a substance in his contentions, which was supported by documents, the Commission was rendered helpless, there being no response.

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No. 8**

**REPORT**

**COMPLAINT NO. 21/2008 AND 36/2008**

**Filed by Abdul Aziz Abdul Raheman and Abdul Majid Abdul Rauf respectively r/o both at Aurangabad.**

**BAG-SHER-JANG MASJID GAREVYARD AND DARGAH AT AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

Sy.No.20 (2) CTS No.15158/1 to 15158/7 situated, Chetnanagar, Aurangabad is in dispute. This property is in two part, firstly the site adm. 5937 Sq. Feet which has been registered as a Wakf Property by the Wakf Board vide the application of Abdul Aziz dated 27-10-2005, which was granted by the CEO of Wakf under order dated 2-1-2006 and confirmed by the Wakf Tribunal under the Judgment and order dated 8-8-2008. The dispute, as per order of the Tribunal, is in respect of the site adm. 663 Sq. feet for which the inquiry u/s 40 is directed. The copy of complaint of Mr. Aziz is ( **P.331-333**). Copy of the complaint of Mr. Abdul Majid **(P.334-335)** . Copy of the Judgment of the Wakf Tribunal in appeal No.9/2006 is (**P.336-343**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. **Abdul Aziz stated** in his complaint (P.**331-333**) that, the **entire property is private property out of Jagir** and its such nature is confirmed by the Revenue Tribunal Aurangabad under its judgment dated 25-2-1959 (Copy not produced). According to the complainant the receiver cum Commissioner of Nawab Salarjang Estate Hyderabad issued letter dated 24-1-1967 and 19-12-1968 (Copies are not produced) in favour of Abdul Aziz, appointing him a care taker and owner of the property ; and Mutwalli of the Masjid.

The complainant Abdul Aziz stated that, once he submitted application (as per the judgment of Tribunal on 27-10-2005) for registration of this property as a Wakf property, but it was under pressure of some persons. Still the CEO of Wakf registered the property as a Wakf property. The complainant wants to withdraw the said application and wants to delete this property from the Wakf.

The complainant Mr. **Abdul Majid Abdul Rauf stated** in his complaint that, **the entire property CTS No.15851 is the Wakf property**. Mr. Abdul Aziz (Complaint of the Cross complaint) was a employee of C.T. Survey office and he managed to insert the names of his family members in the C.T. Survey record and subsequently this property is transferred to one Baldawa. The copy of sale deed is (**P.344-348**). The copies of C.T. Survey record wherein the names of Abdul Aziz and his relatives (**P.349-356**).

There is reference of the judgment of RCS No.838/85 in the aforesaid entries. The copy of the said judgment is produced which is (**P.357-363**). The suit of Omprakash and others claiming this property on title was dismissed. This judgment was challenged in RCA No.254/99 (**P.364-369**) and the appeal was dismissed up holding the judgment of the trial court. The entry was taken in C T survey (**P 370)**

**NOTICES TO THE PARTIES:-**

The complainant Mr. Abdul Aziz was served with the notice bearing O.W.No.117/08 dated 20-8-2008 (**P.371**) and the complainant Abdul Majid was served with the notice bearing O.W.No.118/08 dated 20-8-2008 (**P. 372**)both of them appeared and filed several documents which are referred hereinabove.

The CEO Wakf is served with the notice bearing O.W.No459/2/1 dated 7-12-2009 (**P.372-A**) calling him upon to appear before this Commission on 14-12-2009, specially asking him to enlighten this office as to on what particular date this property was registered as a Wakf property and further asking him as to what is result of the inquiry in respect of the site adm. 663 Sq. feet as per the directions dated 8-8-2008 given by the Wakf Tribunal in application No.9/2006.(P 336)

**OBSERVATION OF COMMISSION**:-

The complainant of Mr. Abdul Aziz stated in his complaint (**P.331**) that, the entire property is private property out of Jagir and its such nature is confirmed by the Revenue Tribunal Aurangabad under his judgment dated 25-2-1959 (Copy not produced). According to the complainant the receiver cum Commissioner of Nawab Salarjang Estate Hyderabad issued letter dated 24-1-1967 and 19-12-1968 (Copies are not produced) in favour of Abdul Aziz, appointing him a care taker and owner of the property ; and Mutwalli of the Masjid.

The complainant Abdul Aziz stated that, once he submitted application (as per the judgment of Tribunal was on 27-10-2005) for registration of this property as a Wakf property, but it was under pressure of some persons. Still the CEO of Wakf registered the property a Wakf property. The complainant wants to withdraw the said application and wants to delete this property from the Wakf.

The complainant Mr. Abdul Majid Abdul Rauf stated in his complaint that, the entire property CTS No.15851 is the Wakf property. Mr. Abdul Aziz (Complaint of the Cross complaint) was a employee of C.T. Survey office and he managed to insert the names of his family members in the C.T. Survey record and subsequently this property is transferred to one Baldawa. The copy of sale deed is (**P.344-348**). The copies of C.T. Survey record wherein the names of Abdul Aziz and his relatives (**P.349-356S**) are entered.

There is reference of the judgment of RCS No.838/85 in the aforesaid entries of CTS. The copy of the said judgment is produced which is (**P.357-363**). The suit of Omprakash and others claiming this property on title was dismissed. Abdul Aziz was defendant no.1 therein (the name of Abdul Aziz has not been zeroxed on the first page of the judgment but his name appears in the judgment of the appeal). This judgment was challenged in RCA No.254/99 (**P.364-369**) and the appeal was dismissed up holding the judgment of the trial court . I may mention that, the appellate court has made a reference of Exh.117, the ownership certificate issued in favour of defendant no.1 Abdul Aziz, by the receiver- Commissioner of Salarjang Estate Hyderabad duly sealed by the office seal, further holding that, the possession of Abdul Aziz is right from 1967. Not only this but as per the appellate court his name also was entered in the C.T. Survey record. It is however true, as observed and held by the Wakf Tribunal in his judgment **(P.336**) that, the Wakf Board was not a party to the said litigation and so said findings are not binding on it. Of course the judgment in RCS No.838/85 and RCA No.254/99 would be judgments in persona and not the judgment inrem. The said judgment therefore, would be binding and

applicable against the one who were the parties to said litigation, as per the observation made by the Wakf Tribunal.

Since the matter is decided by the CEO Wakf under his order dated 2-1-2006 on the basis of the application of the applicant Mr. Abdul Aziz dated 27-10-2005 and subsequently confirmed by the Wakf Tribunal under the order dated 8-8-2008 in application No.9/2006, this Commission can not go behind it. The Commission has only to seek the information as referred to in the notice clause of this report from the CEO Wakf.

The summonse O W No.459/2/1 and 459/2/2 were issued and served against Mr. S.S.Ali Quadri the CEO and Mr Munirkhan Pathan the DWO **(P 372 A)** asking the result of the inquiry in respect of site adm 663 sq feet and there is no response. The CEO simply directed the DWO to comply **(P 372 B) but there being no compliance, the responsibility of the CEO was not over. This displayed his irresponsible conduct.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.9** **REPORT**

**COMPLAINT NO. 16/2008**

**Complaint by Shri Shaikh Badiyuddin Shaikh**

**Wahiuddin r/o Khultabad Dist. Aurangabad.**

**DARGHA ZARZARI BAKSH KHULTABAD DIST. AURANGABAD.**

**DETAILS OF THE PROPERTY** :-

The land S.No.27 /28 G.No.59 Admeasuring 43 A.35 G . situated at sangvi Tq. Gangapur Dist. Aurangabad is a Wakf property of aforesaid Dargha.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr. Shaikh Badiyuddin Wahiduddin filed a complaint (**P.373-375**) alleging illegality in exchange of the wakf land **S,No, 27/28 G.No-59 Admeesuring 43 A.35 G. of village sangvi** which is a wakf property **Was exchanged with G.No.33 admeasuring 40 H.48 R.** belonging to Smt. Shobha Narayan Patil and **G.No.54 admeasuring 12 H.59 R.** belonging to Shri, Prakash Laxman Patil **situated at Jogwada** Tq, & Dist. Aurangabad .

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. W. No.359/2/1 /2009 dated 16-10-09 calling him upon to appear personally and to file a statement on 27-10-2009 **(P. 376 )** He did not file the reply.

The Chief Executive Officer, Maharashtra State Board of Wakf was again served with notice, O. W. No.430/2009 dated 19-11-09 calling him upon to appear personally and to file a statement on 07-12-2009 **(P.377)** He did not file the reply but has produced the documents with the letter (**P 378)**which are referred in observation clause. He issued a letter to DWO asking him to make a compliance, copy thereof to this office **( P 379)**. I feel that this will not be sufficient. The CEO being the head of the office would be under obligation to make the compliance, or to see that the compliance is made. The shrinking of responsibility in such a way would not be permissible.

Shaikh Badiyuddin Wahiduddin the complainant was served with notice, O.W. No.492/2/2/2009 dated 16-10-09 calling him upon to appear personally and to file a statement on 27-10-2009 **( P.-380 )** and he did not file the reply. By producing some documents, he filed application on 27-10-2009 requesting to close the matter. (**P 381)** since the SDO Vaijapur stated in his letter dated 5-1-09 the mutation entry Nos. 1322 & 1324 under which the names transferee were recorded, was cancelled **(P 382)**

**OBSERVATION OF COMMISSION**:-

As per documents produced by the office of CEO Wakf Aurangabad, Shaikh Pasha Wahiuddin and 6 others made a proposal for exchange of this land in form No.W vide Rule 16 (**P.383-385**) They also submitted

application on the stamp paper on 17-6-2006 to that effect (**P.386**) together with the consent deed with Prakash Vasant Patil and Shobha Narayan Patil (**P.387**). It appears that, the valuation of the Wakf land as well as the lands of aforesaid 2 private person was obtained. The wakf land was valued to Rs. 30,19,000/- **(P.388)** and private lands were valued to Rs. 18,38,960/- (**P.389**) and Rs. 15,98,930/- (**P.390**). It appears that, the report of D.W.O. A'bad was called, who in turn submitted on 18-9-2006 stating that, **the Wakf land is adjoining to the village** and is lying fallow and is **always prone to encroachment by Dalit People** whose locality is around the land (**P.391**). Unnecessary allegation is made against Dalit people.

The CEO Wakf Aurangabad issued a letter in the name of Chairman on 17-6-2006 making a statement that, the Wakf land is of superior quality and he proposed the publication in the Govt. Gazette (**P.392**). It appears that, the publication was accordingly issued in the Gazette **(P.393)** however objection were not received. Lastly the proposal of the exchange came to be sanctioned which is displayed by the letter dated 31-10-2006 issued under the signature of Asstt. CEO Wakf, having a endorsement thereon, the sanction given by the Chairman, and was issued under the signature of the CEO Wakf on the original **(P.394)**. It is seen from the record that the then CEO Wakf also issued the similar letter , under his signature from Aurangabad Office **(P 395)**. The office of CEO also issued a demand letter dated 17-10-2006 O.W..No. MSBW/SNT 365/ 5645/2006 under the signature of Mr. M.Y.Patel **(P 396)**

The significant fact is that, there is no mention of the resolution as such passed by the Board for the aforesaid exchange of the land either in the aforesaid documents or any other document/s. Obviously this sanction of exchange was without the resolution of the Board as contemplated u/s 32 (2) (j) of the Wakf Act 1995. This statutory provision of law therefore, was violated.

Even beside this, there is no document on record to show that, the Chairman gave a sanction to this exchange. It is not known whether the Chairman really gave the sanction or the Asst. CEO Wakf endorsed to that the effect, of his own. I feel that, the Asstt. CEO Wakf Shri Aziz Ahmed s/o Siraj Ahmed appears to have obviously misused his powers may be or must be for some extraneous consideration. This order **(P.395)** was issued not from Aurangbad office of Wakf but it was issued from Mumbai office i.e.Magistratic Amdar-Niwas Room No.309,310 Mumbai. It is likely that, the Aurangabad office might have been kept in dark. It is necessary to issue the notice to the then Asst. CEO to enlighten this point.

Lastly the transaction of exchange was not materialized due to the death of Shaikh Pasha the Inamdar. Shaikh Saeed the son of Shaikh Pasha wrote to the CEO on 15-12-2006 to keep the matter in abeyance till the matter of succession is finally decided (**P.397**). The CEO also issued a letter to Dy. Registrar Gangapur asking him not to register any document of the aforesaid lands till the succession case is decided (**P.398**).

It appears that, after the letter of sanction to exchange the land (**P.394**) was issued, (simply on this basis,) the revenue Department was prompt to record the mutation No.1322 and 1324 though exchange deeds were not registered. In the subsequent development the said mutation entry No.1322 was cancelled under the separate mutation no.1422 **(P.399)**. The names of Prakash Laxman Patil and Shobha Narayan Patil were deleted from the 7/12 extrcat (**P.400**) and the entry of the Inam land was maintained therein in the Kabjedar Coloumn (**P.400/1**)

As per the above observation Shri Aziz Ahmed s/o Siraj Ahmed who issued the order of sanction **(P.18),** appears to be responsible for this illegal transaction. However, before making any observation to fasten the responsibility against him, it is necessary to serve notice on him.

It is also seen from the record that RCS No 207/07 was filed in the court of CJ (SD) Aurangabad and then the MCA 194/07 was preferred in appealate court. The CEO will have to be asked about the fate of the said litigation.

The summons bearing O.W.No.463/4/1 dt. 9-12-2009 (**P.400A**) was served on Mr. Aziz Ahmed Siraj Ahmed the then Asset. CEO Wakf calling him upon to explain, specially in respect of the order passed under the signature of the Chairman, of the exchange together with other details. He filed a cryptic reply (in fact no reply) on 29-12-2009 ( **P.400B**) and produced the documents (**P.400C-400F**). As a matter of fact he was under obligation to make a categorical statement as regards the order passed by the Chairman to exchange the land. He however, observed silence about it, and simply produced the documents. This is how he displayed gross **irresponsible attitude**. The document (P.**400C**) is the proposal under the signature of the clerk of the office dated 19-9-2006 proposing to sanction the exchange. Mr. M.Y. Patel the then CEO of the Wakf passed the order stating that,

"Submitted for orders to Hon'ble Chairman the post facto

sanction may be obtained of the Board" dated 19-9-2006.

As a matter of fact Mr. M.Y.Patel the then CEO Wakf had taken a practical objection in his communication to the Chairman under the letter dt. 17-6-2006 (**P.392**) stating that, the private land of village Jagwada are inferior in quality, compared to the Wakf land to be exchanged. The then CEO was expected to stickup to his such stand. However, all though there is no change in the circumstances, the CEO changed his stand suddenly in his proposal dated 19-9-2006. Secondly the then CEO Mr. M.Y.Patel went to such an extent, to override the statutory provision of law by stating that, the post facto permission of the Board may be obtained. Mr. Patel may be aware that, section 51 of the Wakf Act provides that, there shall be a **prior permission** of the Wakf Board for any kind of transfer of the Wakf land. The conduct of Mr. Patel therefore, appears to be very suspicious. His subsequent stand was most malafide may be with ulterior motive. I may say that, such sudden change in his conduct may be for extraneous consideration.

The then CEO issued the order in October, 2006 (**P.395**) to exchange the land. Not only this but he permitted the revenue authority to have mutation entries accordingly. Here also there was unnecessary haste on the part of Mr. M.Y.Patel to ask for mutation, although the registration of the exchange was not effected. This haste also speaks in volumes about the malafides on his part.

After passing such endorsement by the CEO the order was passed by the Chairman stating that,

" Gone through the report of W/O Shri Shafee that, Mr. Mustaqu Siddiqui W/O was sent for physical survey. So I am convince that, change of the property is in the interest of the Wafk So also beneficial, therefore it will be kept in Board meeting ----- order may be issued sd/- Chairman 12-10-06".

**It appears that, the Chairman also did not pass the order to exchange the land without the resolution of the Board. Despite it Mr. M.Y.Patel the then CEO issued the order of exchange (P. 395). Mr. M.Y.Patel is therefore responsible for this illegality.**

At the same time Mr. Aziz Ahmed Astt. CEO also issued the order 31-10-2006 (P.394) granting permission to exchange the land with specific endorsement that, the original was singed by Chairman. My aforesaid observation would equally apply here also that, the Chairman passed a conditional order, which was subject to resolution to be passed by the Board. **Mr. Aziz Ahmed the then Asstt. CEO is also responsible for these illegalities.**

The present CEO Wakf Mr. S.S.Ali Quadari was also served with the Summons O.W.No.464/2/2 dated 9-12-2009 (**P. 400F 1**) and he filed reply on 5th June 2010 (Almost after Six months) (**P.400G**) and he display his carelessness and adamant behavior here also. He did not utter a single word as regards the question asked by the Commission in the aforesaid summons, whether provisions u/s 32(2)(j) were followed. He simply stated to have informed to the SDO Aurangabad not to take the mutation entries about this transaction without permission of the Wakf Board and he proposed to take the action who had taken the mutation entries. He however did exercise powers u/s 26 of the Wakf Act.

This office also issued summons to Prakash Laxman Patil and Shobha Narayan Patil bearing O.W.No.465/2/1 dt. 9-12-2009 (**P.400H**) and O.W.No.492/2009 dt. 30-12-2009.(**P.400I**) Both of the summons were not served as required for. The Second summons was accepted by Vinod Narayan Patil appears to be son of Incumbent No.2 Shobha Narayan. Subsequently Prakash Laxman Patil appeared in this office and undertook to file the reply however he did not.

The solace is in the fact that, the transaction did not reach to its finality, still the fact remain that, the aforesaid employees of the Wakf tried their best to indulge in the illegalities and as observed above they are responsible for it.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 10**

**REPORT**

**COMPLAINT NO. 78/2009**

**From Insaf News paper Aurangabad**

**Sy.No.39 situated at Aurangabad.**

**KALIBAWADI, AURANGABAD.**

**Short Notes:-**

*A) The City Survey record and Revenue Record is discussed in para no.5 and 8 (P.12-13) of the report as to how some of the record support that this is a service Inam and some of the other record was subsequently manipulated.*

*B) Order dated 15-2-2001 (P.2170) passed by the Dy.Collector (L.R.) Aurangabad is the first order under which this land is held to be Madatmash and not service Inam. The discussion as regard this order is in para 8 (P-8,9,10,11 of the report). This order is based on the Pahanipatrak which not on record. The Kharsrapatrak which on record and which support the fact of service Inam of this land is disbelived without any reason. This order is further based on survey report dated 11-9-1959.*

*C) The Survey report dated 11-9-1959 is (P.2197). As a matter of fact the survey of the Wakf properties was conducted vide the Govt. G.R. dated 14-5-1962 (P.2282-A), for the first time. The aforesaid survey report therefore appears to be forged. The discussion as regard it is (P.14 15 , 16 of the report).*

*D) There are three Muntkhab with which I came across.*

*i) no. 1366 of 1300 Fasli (P.2184). This Muntkhab appears to be pertaining to Gangapur property. This Muntkhab is disbelieved by the Revenue Minister in his order dated 21-1-2004 (P.2201at page no.2208)*

*ii) no.522 / 1323 Fasli (P.2191). This documents also appears suspicious since there is a mention of abolition of Inam therein when the were Abolishion of Inams Act came in force in 1954 for the first time.*

*iii) again no.522 (P2191-2-6) of the Inam of village Sonari Dist. Aurangabad. How two Muntkhab of same number in one and same districtrict.*

*iv) again one Muntkhab No.585 (P-2191-7-16) of Kalibawadi it was translated by Mr.Abzloddin Nehari Advocate with appears to be genuine.*

*v) no.3068 having a mention thereof in the letters dated 7-9-1979 by the Divisional Commissioner, to the Govt. (P. 2282-L) and another letter dated 5-3-82 by Govt. to Mr. Shahbuddin (P.2282-O)*

*E) Mr .Harmoz the tenant of the land moved an application (P. 2150) for transfer of this land to "K" category from "Y" category meaing thereby that, the land was stated to be service Inam in the revenue record classified in "Y" category and Mr. Harmoz wanted to transfer it in his ownership in "K" category. The document to that effect is produced at (P. 2180) .*

1) **DETAILS OF THE PROPERTY** :-

This Wakf is known as KALIBAWADI, AURANGABAD.

The land Sy.No.39 admeasuring 16 A.30 G. is the Wakf property of Dargah Hazrat Sayed Shaha Ahmed Gujrathi. The copy of the Gazette is (**P-2132**) .

2) **NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The land admeasuring 10 A. 16 G. was leased on long terms of 14 years (**P-2146)** from 19-04-1966 to 18-04-1980 to Mr.Rustumji s/o Bezamji the proprietor of Bezamji Jining and pressing factory by Shah Shahabuddin Shuttari s/o Shah Bahauddin Shuttari and Subsequently the portion of 2282 Sq.Mtrs. Was transferred to Mr.Nirmalchand Kanaiyalal Pagaria and three others for Rs.6500000/- under the documents dated 4-1-2001**(P-2154-2159**)

Both of these transitions were without permissions of the wakf Board u/s 36 of the Wakf Act 1954 and u/s 32 (2) (j) r/d s.-51 and Sy. 56 of the Wakf Act-1995.

3) **NOTICES TO THE PARTIES:-**

The notice bearing outward No.372/5/1 to 372/5/4 dated 5-10-2009 was issued to Shri. Bahauddin , Shri Afsar, Shri.Anwar and Shri.Akhtar s/o Mr.Shahabuddin Shuttari, and it was sufficiently served against them. **(P.2133-2134)**

The notice bearing outward No.372/5/5 dated 5-10-2009 was issued to Shri. Harmoz Bazamji Jalnawala and it could not be served being out of station **(P.2133-2134)**, asking them to produce the copy of the order dated 5-10-2001 pass by the Dy. Collector (land reforms) and as to how the land admeasuring 9 A.12 G. came to Mr. Harmoz Bazamji Jalnawala etc. Mr.Anwar and Mr.Bahauddin appeared before the commission on 15-10-2009 and filed application for adjournment with the power of advocate **( P.2135-2136** ) with undertaking to file the reply and thereafter they did not appear.

The notice bearing outward No.373/4/1 to 373/4/4 dated 5-10-2009 was issued to Shri. Bahauddin , Shri. Afsar, Shri.Anwar and Shri Akhtar s/o Mr.Shahabuddin Shuttari, and it was sufficiently served against them.**( P.2137-2138)** They were called upon to make the statement as to how the land admeasuring 2282 Sq.Mt. out of Sy.No.39 was transferred to Mr.Nirmalchand Kanaiyalal Pagaria and three others by Shri. Sunderlal Murlidhar Patel and Smt.Usha Been Vitthal Patel under the sale deed dated 4-1-2001 this was also sufficiently served against them and they did not file reply.

The notice bearing outward No. 375/4/1 to 375/4/4 dated 5-10-2009 was issued to Mr.Nirmalchand Kanaiyalal Pagaria, Mr, Umesh Popatlal Munot Mr. Manoj Zumberlal Pagaria and Mr.Ajitbhai Hastimalji Gandhi **(P-2139-2141)** asking them as to whether the provisions u/s 32 (2) (j) and S-51 of the Wakf Act-1995 where followed . This was sufficiently served against them. Shri Umesh and Shri Manoj out of them appeared before this Commission on 15-10-2009 **(P-2142)** and Subsequently they did not appear nor they file reply.

The C.E.O. Wakf was served with the notice bearing o.No.381/2/1 dated 8-10-2009 calling him upon to appear and file the reply on 22-10-2009 and he did not attend . **(P-2143-2144)**

The D.W.O. Wakf Aurangabad was served with the notice bearing o.No.381/2/1 dated 8-10-2009 calling him upon to appear and file the reply on 22-10-2009 and he did not attend .**(P-2143-2144)** The Dist. Wakf officer sought time under his application dated 22-10-2009 **(P-2145**)and thereafter he did not care so far.

Subsequently Reply filed.(P-2243), after great delay on 11-2-2010.

The summons O.W.No.471/09 dated 15-12-2009 was issued to the CEO (**P-2287-13**) calling him upon to statement that, the portion of land adm. 2282 Sq. Mtrs. was transferred by Sundarlal and Ushabain, and also to make the statement that, the remain land adm. 7 A. 18 G. possessed by the Inamdar also was transferred by making plot and he did not respond.

The summons O.W.No.478/2/1 dated 16-12-2009 (**P-2287-14**) was issued to the CEO Mr. S.S.Ali Quadari asking him the aforesaid information and he did not respond.

The summons O.W.No.478/2/2 dated 16-12-2009 (**P-2287-14**) was issued to the D.W.O. Mr. Munirkhan asking him the aforesaid information and he did not respond.

4) **OBSERVATION OF COMMISSION**:-

The entry of this land in the inquiry register dated 25-04-1971 (**P-2146)** revels that the portion of the land admeasuring 10 A.16 G. out of the total land admeasuring 16 A. 30 G. was leased on long term of 14 years from 19-04-1966 to 18-04-1980, to Mr.Rustumji Bezamji by Shah Shahabuddin Shuttari. Obviously the permission of the Wakf board was not obtained.

It appears that Mr. Harmoz Bezamji filed an application in the office of the Dy. Collector (L.R.) Aurangabad u/s 5 and 6 of the Hyderabad abolition of Imams and cash grants Act-1954 and Mr.Sayed .Shahbuddin Shuttari filed a reply dt. 19-10-2000 to it. **(P 2147-2149)** Mr. Shahabuddin raised no objection (being hands in gloves) to the said application for declaration of the occupancy rights in favour of Mr Harmoj Bezamji. It appears that the said application was granted.

Mr.Harmoj Bezamji then submitted an application on 12-2-2002 **(P2150-2151)** to the office of superintendent land records, consequent upon the error specially in respect of the area of the land and in respect of treating the land in "K" category instead of "Y" category. The copies of the orders in both of the aforesaid matters are not available. (See para 6 & 10) The incumbents were specifically asked to produce such copies however they did not produce. Subsequently the copy of W.P. No. 1245/2004 **( P 2216)** is produced on record by the Wakf Board, where in the order dated 15-10-2001 **(P 2170)** is challenged and it is still pending. Any way, it appears that this land was treated to be the community service Inam and the Dy. Collector (L.R.) and the Superintendent land records had taken the cognizance and passed the orders. The necessary record was produced later on)

5) Now the point is whether this land was community service Inam or was a Mashratul Khidmat Inam . The entry in complaint register **(P-2146)** and 7/12 extract **(P-2152)** and the extract of city survey **(P -2153)** will through light on this point. The perusal of the entry in complaint register disclose the name of the lessor as – Sayed Shah Shahabuddin s/o Syd. Shaha Bahauddin Shuttari- **Sajda Nashin Dargah Hazrat Shaha Ahmad Gujrathi Saheb**. When this land was a community service Inam and not Mashrattul Khidmat Inam, it was not necessary to make a mention of the name of Dargah as "**Sajda Nashin Dargha Hazrat Shaha Ahmad**

**Gujrathi Saheb".** What does it mean? Whether the mention of the name of Dargah in the public record would carry a meaning that the land may be for the services of the Dargah?. Similar is the position of the 7/12 extract and the city survey record **(P-2152)** The 7/12 extract carries the words as "**Partibandhit Satta Parkar**". If this was a community service Inam, was there a reason to mention "Partibandhit Satta Parkar" in the Kabjedar column of this document?. Referring to the extracts of city survey office, the reference of the Dargah is found to have been specifically made therein. Reading these documents along with the copy of the Gazette (**P-2147-2148)** what safe inference can be drawn? Whether this was a Mashrattul Khidmat Inam or the community service Inam.

. In this connection I went through the case of **R.Doraswamy Reddy V/s The Board of Wakf (A.P.)** reported in **1978 (2) A.P.L.J. 399** wherein it is held –

> "It is true that, the land was granted to an individual to perform service. But it does not mean that, he acquire title to that, property. Similarly, if the land can be resumed for non performance of service and can be granted to another person for rendering service, it does not mean that, the original granter continues to be owner of the property. When once Wakfs created it continues to be a wakf . When the Inam is resumed and re-granted, it does not mean that, there is revocation of the service. It only means that, the Wakf property is entrusted to individual to performance service" (**P.923A-923E**) .
>
> (Note:- *I collected the copy of the aforesaid judgment from the Registrar (J) Andhra Pradesh High Court, who was kind enough to transmit it to me on fax).*

The aforesaid view was accepted by the Hon'ble Supreme Court in the case of **Sayed Ali V/s Andrapradesh Wakf Board reported AIR 1978 S.C.972** at page 975 (**P.896-901**). In other words, the Inamdar of such property cannot be owner of the property, and he cannot transfer it. Either the Wakif or the Wakf Board can change such Inamdar-Mutwalli, and can re-grant such property to the new comer. The nature of the property as 'wakf' will be continued for ever. The point is whether the sale deeds referred to above would be legal? or whether would contravene S. 32 (2) (j) r/w S 51 of the Wakf Act?.

6) The applications dated 12-02-2002 (**P-2150-2151)** given by Mr. Harmoz in the office of superintendent land records also would assist my aforesaid observation. Mr. Harmoj sought the change in the category of the land to "K" instead of "Y". Was there a reason to have and to seek the change of the category of the land?. The Superintendent of Land Records was asked vide the summons O.No.477/2/1 dated 16-12-2009 **( P-2151 A)** as to whether there is statutory provisions or circular or resolutions to classify the lands accordingly. Mr. Bangar City Survey Officer, appeared before me 17-03-2010 and he stated to be having no such legal provision or otherwise .. He stated that there is a uniform practice in the state of Maharashtra and that is being followed. The lands under 'Y' category are religious Inam and 'K' category are private lands. (See page 2150)

7) Unfortunately the parties, though put their appearance and sought adjournments, they did not turn to this office there after, and this is a unfortunate part of the matter.

Thereafter Sundharlal Murlidhar Patel and Ushaben Vitthaldas Patel transferred the site admeasuring 2282 Sq. mtrs. to Nirmalchand Kanyalal Pagariya and three others under the registered sale deed dated 4-1-2001 for the

valuable consideration of Rs.65 lacks (**P. 2154-2159**). The notice could not be sent Mr.Sundharlal and Smt. Ushaben for want of address. The parties also did not co-operate this office as far as their addresses are concerned. The notice (**P.2139-2141**) however was served (**P.2142**) on the vendees Nirmalchand and others . Though they under took to file the reply, on their appearance dated 15-10-2009, they did not take care to file it or even to attend this office thereafter. My above observation in respect of the nature of Inam would very well apply here. The point is whether the provision of the Inam Abolition Act may not be applicable to this land? And whether the transaction of sale would be altogether void-abinatio? since the Inam property of a religious Institution vest in almighty and is not transferable? As per the settled law, "Once Inam is always Inam". The nature of such Inam is irreversible. Whether this transaction would be void as provided u/s 51 of the Wakf Act 1995 , there being violation of the provision u/s 32 (2) (j) of the Act?

It is orally learnt that, even the remaining portion of the land adm. 6 A.14 G. with the Mutwalli has also been transferred by making plots. However, this could not be confirmed. In the circumstances it would be better to issue the fresh summons to the CEO Wakf about it. The reply is filed by the D.W.O (P 2243)

In view of **may above observations the question is whether the total land adm. 16 A. 30 G. is a Mashrutul? Khidmat and whether is not transferable? Whether the lease of the land adm. 10 A. 16 G. in favour of Harmoj Bejamji Jalnawala by Sayed Shahbuddin; the transfer of plots to difference person by Sayed Shahbuddin and /or by his sons out of remaining portion of 6 A. 14 G. and; the transfer of the site adm. 2282 Sq. Mtrs., to Mr. Nirmalchand and three others under the registered sale deed dated 4-1-2001 would be void as provided u/s 51 of the Wakf Act 1995? and whether there is violation of section 32 (2) (j) of the Wakf Act 1995?**

Note. O.W.No. 478/2-1 Dt. 16-12-09 to CEO

O.W.No. 478/2-2 Dt. 16-12-09 to DWO A'bad.

8) The summons bearing O.W.No.474/2/1 dated 16-12-2009 was issued (**P.2160)** to the Dy. Collector, Land Reforms calling him upon to produce the documents as referred to herein-below. He filed a reply (**P.2161)** along with the document as follows,

The copy of the application of Harmoz is (**P.2162-2166**), copy of reply by Shahbuddin is (**P.2167-2169**) and copy of order dated 15-10-2001 passed by the Dy. Collector Land Reforms is (**P.2170-2174**). The Dy. Collector relied on the Original Muntkhab Tameel No.522 dated 25 **(P 2191)** Amardad 1323 Fasli, Namuna no.1 and particularly column no.10 of Khasraptrak to support his conclusion that, this property is Madatmas.

The Dy. Collector however, stated at page 2 para 2 of his order **(P 2170)** that, Namuna no.1 column no.10 bears the entry as **"Khidmatmash"**. According to Dy. Collector this entry was wrong and needs to be corrected. He however did not make a categorical observation as to why this entry was wrong. The Dy. Collector further observed at page no.4 of his order referring to Khasraptrak/Namuna no.1 wherein it was mentioned as **"Khidmati Inam".** He then observed that,

"**Pahaniptrak is prepared on the basis of Khasraptrak and the entries of Khasraptrak should be reflected in the Pahaniptrak. But though the nature of Inam is mentioned in Khasraptrak but it is not mentioned in Pahaniptrak . That is why I agree with the contention of the petitioner that, entry in Khasraptrak as Khidmati Inam seems to be wrong**".

This observation and findings, to my mind speaks in itself. What was clearly stated in the public record (Khasraptrak) was held to be wrong and what was not all stated (Pahaniptrak), was held to be correct. It may be noted that Khasra Patrak is the first documents whereas the Pahani Patrak is the second documents depending on the earlier. Moreover there is no document 'the Pahani Patrak' on record of that proceedings.

The order further display at page 3 that, the Marathwada Wakf Board Aurangabad made a statement that

"**the Dargah Shah Ahmed Gujrathi Kalibawadi, New Mondha Road Aurangabad included in Maharashtra Government Gazette Part-"C" at Sr. No.16 dated 18-5-1983. The said Dargah and open space is shown in that Gazette and Sayed Shahbuddin Suttari is a Mutwalli of that Institution etc. According to this report the contentions of the petitioner that, the suit land is "Madaatmash Inam" etc. is not ruled out"**

It is obvious that, the Marathwada Wakf Board brought the fact of the entry of this land in the Govt. Gazette to the notice of that authority. The entry in the Govt Gazette carries a presumptive value as held in the case of **Syd Ahmeduddin Vs Govidrao in WP No.61A of 1982**, **(P-902)** that, section 6 (Wakf Act ) provides that, if any question arises regarding the entry or nature of wakf property then the Board or the Mutwalli of the Wakf or any person interested therein may institute a suit in Civil Court of competent jurisdiction for decision of the question and the decision of Civil court in respect of such matter shall be final(note the copy of the Judgment is along with report no.33 at p.902) . The point is whether **the Dy. Collector had jurisdiction to decide the question of nature of Inam when a property is enlisted in the wakf register maintained by the Wakf Board and the Govt. Gazette of wakf properties? The Dy. Collector stated that, the contention of the petitioner that, the land is Madatmash Inam is not ruled out. The point is whether this was a finding without a basis and secondly without jurisdiction?**

The Dy.Collector while making discussion in para no.9 of the order made a reference of the report of the Wakf Officer dated 11-9-1959 (which appears to suspicious, see para 11) wherein it was stated that

**"as per record available and after due inquiry the Dargah Mosque and Khankha is in Sy.No.40 situated in an area of 33 Gunthas bounded as West- Road to Mondha, East-Sy.No.39, North-Sy.No.39, South Sy.No.39 and Jalna Road, Sy.no.40 is exempted from the land Revenue. The adjoining Land Sy.No.39 is private adm. 16 A. 30 G. which is a "Madadtmash Inam" land which was formerly a Govt. land. The details of the property of the same is available in the records of Hyderabad Endowments Department. The same is being continued for the registration of Dargah, as per Muntkhab 1366/1300 Fasli. Income of Wakf Rs.3000".**

The reliance on Muntkhab 1366/1300 Fasli was wrong, since this Muntkhab has nothing to do with this land, as observed by the minister in his order **P 2208.**

The point is whether the Wakf Officer made a contrary statement? (The survey report dt 11-9-1959 was subsequently produced at P 2197 In view of such matter it is necessary to call the entire record of case no. 2000/LR/TNC/A/29 decided on 15-1-2001 as well a the original Muntkab issue summons.

Summons issued as under:

*Dy.Collector, Land Reforms A'bad O.W.No.493/2/1 dt.30-12-2009*

*Collector, Aurangabad O.W.No.493/2/2 dt. 30-12-2009*

*Shri Bahuddin etc. 4 O.W.No.494/4/1 to 4 dt. 30-12-09.*

*CEO Wakf Board, O.W.No.495 dt. 30-12-2009.*

9) The summons bearing O.W.No.475/2/1 dt. 16-12-09 (**P.2175**) was issued to the City Survey Officer, Aurangabad calling him upon to produce the mutation entries of lease of the land adm. 9 A. 12 G. in the name of Shri Govind Viramji and Shri Harmoj Barjoji and thereafter transfer of 2282 Sq. Mtr. to Shri Nirmalchand etc. 4 . He has filed the reply **(P 2176)** with the documents (**P.2177-2180**) , in response to it.

Page no.2177 the mutation entry No.12887 contains the entry of the name of Smt. Sayadabegum and Shaikh Makbul in 1983 and the entry of Mutwalli and Sajjada Shri Sayed Bahuddin Suttari s/o Sayed Shahbuddin Suttari . In the title clause of the documents the name of Dargah as

> **"Hazrat Shah Gujrathi Saheb Dargah** Mutwalli Sajjada Shahbuddin s/o Bahuddin -5322 dated 8-5-2002**"**

is stated. When this land was Madatmash as claimed by Bahuddin and others, there would not have been the entry of **"Hazrat Shah Gujrathi Saheb Dargah"**, in this document. The said entry further carries as **"Mutwalli Sajjada** Shahbuddin s/o Bahuddin -5322 dated 8-5-2002" It is held in the case of Syed Maqbool Shah Vs. State Reported **in AIR 2004 J & K 52** that

> " As regards the contentions of the learned counsel for the appellant that the writ petitioners being Sajjada Nashins the right in the property is heritable and they have become the owners of the Ziarats , it is only to be stated that Sajjada Nashins discharges Spiritual functions as a curator of a Darghah or Shrine and holds the Governance of endowment in his hands. He imparts spiritual instructions. **A Sajjada Nashin has no rights in property belong to wakf and the property does not vest in him. He is not trustee in technical (P-2180 A to E )**
>
> In this connection I may also refer the principle laid down in the case of **Vidya Varuthi V/s Baluswami reported in AIR 1922 P.C. 123,** which was followed in the case of **Mt. Allah Rakhi V/s Shah Mohammad report in A.I.R. 1934 P.C.77** wherein it is held that,

"Neither the Sajjada Nashin nor the Mutwalli has any right in the property belonging the Wakf ; the property is not vested in him and his not a "Trustee" in the technical sence".

Page no. **2178** is the C.T.S. entry No.12886 taken in year 1971 having a mention in the title clause as **"Hazrat Gujrath Saheb Dargah and Masjid"**. This document does not contain the subsequent part of the entry "as Mutwalli Sajjada Shahbuddin s/o Bahuddin". Whether the simple entry in the name of Dargah Masjid instead of the name of Mutwalli indicate that, this land was Mashrutul Khidmat and the portion "Mutwalli Sajjada Shahbuddin s/o Bahuddin -5322 dated 8-5-2002" was subsequently added in 2002 deliberately just to grab this property?.

**Page No.2179** is the C.T.S. No.12876 having the entry in title clause as "Shahahmed Dargah Gujrathi Tarphe Sajjada Nashin S. Shah Shahbuddin s/o S.Shah Bahuddin No.5224 dated 21-12-2001". The name of Shri Harmoj Barjoji was mutated therein on 21-12-2001. Such type of long entry is not there in page **No.2178**. The point is whether, the name of Dargah and Masjid was deliberately deleted and the name of private person was malafidely inserted?

10) **Page No.2150** is application dated 12-1-2001 submitted by Mr. Harmoz in the office of Superintendent District Land Record for correction of area of the land and **further to convert the land from "Y" category to "K" category** In this connection the City Survey Officer has produced a extract of the different categories of the properties at **page 2180**. This documents display that, the properties of "Y" category are religious Inam and "K' category are private properties. Submission of an application **page no.2150** by Mr. Harmoz for change of land from one category to the other amounts to his admission that, previously this land was shown as a religious Inam and not a private property.

I feel that, it is necessary to personally examine the original record of the entries at **Page No.2177,2178 and 2179** of the City Survey Office. Issue summons to the City Survey Officer, Dist Land Record A'bad O.W.No.499/ 09 dt. 31-12-09 was served with the summons

11) The summons bearing No.393/2/1 dated 30-12-2009 was issued to the Dy. Collector (Land Reforms) Aurangabad (**P. 2181**) calling him upon to produce the entire file of case No. 2000/LR/TNC/A/ 29 decided on 15-10-2001 (**P.2170**). In response to it the entire file was produced before me and I perused it. A fresh summons bearing O.W.No.16/2010 dt. 7-1-2010 was issued calling the Dy. Collector Land Reforms to produce the copies of as many as 14 documents (**P.2182**). The Dy. Collector produced documents along with his letter (**P.2183-2211**).

The Survey report referred to by the Dy. Collector Land Reform in his order dated 15-10-2001 is at (**P.2197-2198**). This document is a basis of reliance by the Dy. Collector Land Reforms in his Order dated 15-10-2001. I minutely perused this original documents by visiting the record room of the Divisional Commissioner, Aurangabad on 14-1-2010. This document was part of file no.17. The said report was purported to have been prepared and submitted on 11-9-1959 by the survey officer, relating to Sy. No.39 which is in dispute and Sy.No.40 which is of Dargah. The Surveyor called as **Wakf Officer** was **not from the Wakf department** but he was from the Govt. Department. (**See P 2282 A**) I am told that, the survey of the Wakf lands

was carried and for that, purpose the Survey Officers were appointed by Government and not by Wakf Department who were called as Wakf Officers. The said officer stated in the survey report (2197) that, the land Sy.No.39 is the private as Madadmash. I however feel that, this survey report is rather suspicious. It is following reasons.

a) The stroke of pen writing the material on **p.2197** as regards Sy.No.39 appears to be different than the stroke of pen writing the contents of Sy.No.40. Even the sentence that, "Sy.No.39 is private" appears to be subsequently added. Even beside this the sentence does appears to be normal and natural. It is as under:-

"**Sy.No.39** is private admeasuring 16 acres 30 gunthas which is Madatmas Inam land **which was formerly Govt. land**" This sentence is rather not natural if it is read with the earlier and later portion of the document.

b) The **survey of only Inam (Wakf) lands was carried**, and **not of the private lands (Madatmas).** Survey No.39 is stated to be Madatmas and so it was not necessary to have such type of descriptive entry therein much less, no entry of this lands was excepted in this record/file . It appears that, the interested person subsequently managed to manipulate this documents.

c) The stamp below the signatures as " Inspecting Officer" and "Wakf Officer" appears to be computerized, *Survey of Wakfs* with under Line, even not typed or printed. It is well known 1959 computer was not introduced. This document therefore was prepared some were in 1979-80 showing it to be in 1959.

d) I did not find such type of survey report in file nos. 7, 14 19, & 21, which were inspected by me. The point is whether the existence of such type of survey report only in this file is suspicious? and can it be inferred that, the interested person got this documents manipulated, just to create the document for Sy.No.39?.

e) While inspecting the other file I found the formats having the endorsements of printing press having the details of the forms such as a "Accompaniments to GMR & FD Wakf – 1364/100633-L dt. 14 July 1964" (**See P.2281 E to L**) As against this there is no such endorsement on the present Survey report (**P.2197**).

f) I intended to inspect the original Muntkhab No.1366/1300 Fasli, which is referred to in the Survey Report. However, the original is not available in that file. It may be added that Muntkhab 1366/1300 F has nothing to do with this land S.No.39.as observed and held by the revenue minister in his order dt 21-1-2004 see page2201- **2208**-2211. This was an appeal on the order dt 15-10-2001 (P 2170)

From these factual aspects it appears that, the Survey Report may be forged document.

12) The zerox copy of the Muntkab No.1366/1300 Fasli is made available to me by the Dy. Collector (**P.2184-2185**). As regards the land measuring 4 Bighas, it is stated to be the Wakf land. As against this the

land Measuring 32 Bigha is specifically stated to be the Madatmash land. The survey Numbers of both of these lands are not stated in the document. This Muntkhab 1366/1300 F has nothing to do with this land S.No.39.as observed and held by the revenue minister in his order dt 21-1-2004 see page2201- **2208**-2211. This was an appeal on the order dt 15-10-2001 (P 2170)

On making the close scrutiny of the document Muntkhab 1366/1300 F (**P.2184**) I feel that, the handwriting of this entire document excluding the contents of para mentioning 32 Bighas 32 Bigha is different hand, are in different stroke of a hand, moreover they are in dark ink and having very small space in between two wards and two lines, if it is compared with the other contents. It may be added that Muntkhab 1366/1300 F has nothing to do with this land S.No.39. see page 2208.

It appears that, the Muntkhab No.522 (**P.2190-91**)was produced and relied before the Dy. Collector, Aurangabad. This document also does not appear to be genuine for the reason that, it has got a mention of abolition of Inam (Khalsa). This document appears to have been prepared in some where in 1932, when there was no question of abolition of Inam. Secondly this document being original, it ought to have been in the custody of Mutwalli. How it was with the record of the Divisional Commissioner is a question. I feel that, the some interested persons managed to plant it with the said record just to create more evidentiary value.

Contention in WP 1245/2004 disclose that Shahabuddin Mahemud shutari the original Mutawalli, died issue less, and subsequently his servant or others, having the same name 'Shahabuddin Shutari' have/ has taken disadvantage of the situation. (**Read P 2221**)

I came across with another Muntakhab No. 522 which pertains to the institution of village Sonari Dist Aurangabad, having some other properties. **The point is how there can be two Muntakhab of identical number of two different institutions in same district**. I issued a summons dt. 24-1-2011(**P 2191-1**) to the Record keeper Collector Aurangabad, and sought the copy of it (**P 2191-2-6**) The Muntakhab **P 2191** therefore, appears to be bogus even on this ground.

I also came across with another **Muntakhab No. 585** (**P 2191-7-15)** of this institution, which appears to have been translated by Mr. Naheri Advocate (**P 2191-16-17**). This document appears to be genuine. I issued summons dt 24-1-2011 (**P 2191-18**)to Mr. Naheri Advocate calling him upon to confirm the fact about translation of Urdu in English and he did not reply.The Dy.collector Gen. Adm. Considered all of these Muntakhab and accepted Muntakhab No. 585 to be of this Dharga in his judgment dt 26-5-2010 in Case No. 2004/LR/NTC/A/21 (**P 2191-19-25**) The CEO and DWO Wakf Aurangabad were expected to bring of this before the commission. But the employees who may be having hands in gloves did not bring it despite service of summons dated 27-1-2011 calling its copy(**P 2191-26**). The special note may be taken of the fact that though several summonse are served on Mr. Bahauddin Shutari and his 3 brothers, who are the present claimants as Mutawalli, did not respond to any of the sommons, though they are represented by Advocate, and though Mr. Bahauddin personally appeared before me.

I therefore issued a summons bearing O.W.No.494/4 dated 30-12-2009 (**P.2212**) to Mutwalli brothers namely Shri Bahuddin Shabuddin Suttari etc. 4 calling them upon to produce the original Muntkab before this Commission on 18-1-2010 and though this summons is personally served on party no.3 therein, the document is not produced. Mr. Nazim Jahgirdar Advocate appeared on their behalf on 19-1-2010 and submitted application for adjournment(**P.2214**). The matter was adjourned to 28-1-2010. The proclamation bearing O.W.No.107/4/1 to 107/4/4 dated 20-3-2010 was issued against them making a reference of O.W. No.494 dated 30-12-2009 and O.W. No.58 dated 27-1-2010 to attend this office on 22-3-2010 and it was served by affixing the copy therefore on their house (**P.2214-A-2214-B**).

I gave visit to the record room of the Tahsildar/ S.D.O. Collector office, Aurangabad on 12-1-2010 and examined the record. I found that, both the land sy.no.39 & 40 are shown in form no.9 (See P 251 F Report No. 7 Nirman Bharti) which pertain to the Wakf lands. This register was maintained in 1953. The point is whether the existence of sy.no.39 in this record further support that, this is the Wakf property?

The letter bearing No.45 /2010 dt. 20-1-2010 (**P 2238**) is issued to the Superintendent Record office , Collectorate, Aurangabad.

13) The Superintendent District Land Record was served with the summons O.W.No.477 dt. 16-12-2009 (**P.2236**), O.W.No.498 dt. 31-12-2009 (**P.2237**), O.W.No.45 dt. 20-1-2010 (**P.2238**) and O.W. No. 109 dt. 10-3-2010 (**P.2239**) asking him the particulars information. The later forwarded the summons to the City Survey Officer, vide his letter dated 6-1-2010 (**P.2240**) and then filed the reply (**P.2241**), stating that, the matter is sub-judiced in WP No.1245/2004 (P 2246) (The orders dt 15-10-2001 & order dt 21-1-2004 see page 2170 & 2201 are challenged therein). This office then insisted for the reply through O.W.No.109 dt. 10-3-2010 (**P.2239**).

The information as regards the orders passed on the application of Harmoz dated 12-2-2002 (**P.2150**) is concerned the entire file of the matter was brought before me and on its perusal I found that, on request on applicant Mr. Harmoj the file was closed on 29-11-2004 on the ground that, the W.P.No.1245/04 is pending in the Hon'ble High Court.

This office then asked the information as regards the provision of law or the circular or resolution of the Govt. disquisitions the classification of the lands in "Y" Category and "K" category. Mr. Bangar the City Survey Officer, Aurangabad orally sated that, there is no such legal provision or G.R. or circular. Still he stated that, such type of inform practice is being followed through out the state of Maharashtra.

The City Survey Officer was asked to produce the order dated 17-8-2004 referred to in (**P.2179)**. The copy thereof is produced (**P.2242**). On its perusal I found that, this order was based on the order of the Dy. Collector (L.R.) (**P-2170** dt. 15-10-2001) as such this is not any independent order. Similar is the case as regards the order dated 15-9-2004 referred in (**P.2179**) and it is also depending on the order dated 15-9-2004.

14) The summons O.W.No.381/2/2 dt. 8-10-2009 (**P.2143**) and thereafter O.W.No.3/10, 4/10 dt. 4-1-2010 were served on the CEO and D.W.O. calling him upon to make the statement in respect of the transfer of land adm. 2282 Sq. Mtrs. The D.W.O. filed reply( **P-2243**) bearing O.W.No.MSBW/DWO/Inquiry/40/10 dt. 11-2-2010 and stated that, Harmoz Jalnawala is in possession of 9 A. 12 G. of land out of Sy. No.39 and the remaining portion is with several others. (**P.2244-2247**). The D.W.O. also filed the copy of the reply dated 25-9-2006 filed by Mr. Bhikchand G. Chechani (**P.2248-2256**) He also produced copy of the sale deed (**P.2257-2261**) executed by Champalal Pratapmal in favour of Bhikchand Gulabchand Chechani.

15) Consequent upon the statement in the sale deed (**P.2257-2261**) Bhikchand and Champalal were served the summons bearing O.W. No. 95/1 and 95/2 dt. 4-3-2010 ( **P.2262**)and they were called upon to confirm the contents of the sale deed wherein it was stated that, the permission of the Wakf Board Hyderabad and the Wakf Board of the Aurangabad were obtain under letter No.1823 dt. 20-7-1960 and 3139 dt. 17-8-1060 respectively and to produce copies of these documents. Bhikchand filed reply (**P.2263-2265**) and admitted execution of sale in his favour (**P.2257-2261**) and also produced the copy of it. (***It is not separately numbered***) When this property was not a Wakf but was a personal grant to the Mutwalli it was not necessary to obtain the permission of the Wakf Board Hyderabad and the Wakf Board Aurngabad. If the factum of obtaining permission of the Wakf Board is considered from the circumstances discussed above whether the inference can be withdrawn that this property must be a Wakf property?.

16) The D.W.O. produced the copy of reply of Mr. Padmakaravji Muley (**P.2248-2256**) along with his reply **(P.2243)** consequently upon the content of reply of Mr. Padmakar Muley the Summons O.W.No.94/1 dt. 4-3-10 was served on him and he also called upon to confirm the contents thereof.(**P.2266**). Significantly enough though he sought adjournment (**P.2267-2272**) through his advocate Mr. Sable (**P.2273**) he did not file the reply. It was stated by Mr. Padmakaraji Muley in his reply that he purchased CTS No.12878 adm. 52243 Sq. Feet under the registered sale deed dated 5-9-73. He stated in the reply (P 2248) Pare 6 that,

> " *I say that, the vendor of our firm namely Sayed Shahbuddin s/o Sayed Bahuddin Suttari who was /is Jamindar and Sajjada Nashin of Dargah Hazarat Sayed Shah Ahmed Saheb Gujrathi executed the above i.e. sale deed No.1718 dt. 5-9-1973 in favour of our firm in the capacity of owner and possessor with the permission of Marathwada Muslim Wakf Committee Aurangabad vide permission No.3145 dt. 17-8-60 in file No.50/86/59* ***Sinayat for repairing as well as for erection of compound and also for repairs of Mosque and erection of Khankha and rooms and development of the Dargah Hazarah Sayed Shah Ahmed Saheb Gujrati."***

As observed hereinabove when this property was a personal grant to Mr. Sayed Shahbuddin and/or his ancestor it was absolutely not necessary for him to utilize the sell consideration for repairs of Mosque, erecting of Khankha, and development of Dargah. The fact that, the property was transferred for such purpose, whether the safe inference can be drawn that, the property must the Wakf property? Whether the sale of property out of Sy.No.139 and 141 as well as lease to different person by **Mr. Shahbuddin or his successor whould be rendered to be illegal, it being in violation of section 32(2) (j), section 51 Wakf Act 1995 as well as section 36 of the Wakf Act 1954?**

Mr. Padmakar Muley has produced copy of judgment dated 15-10-2001 which is already numbered as (**P-2170-2174**) and the copy of order passed the Revenue Minister which is also ready numbered (**P. 2201-2211**) and so these documents are not separately numbered.

Mr. Padmakaraji Muley has produced the copy of the order dated 9-2-2004 passed by City Survey Officer, Aurangabad (**P. 2274-2276**) and the copy of the P.R. Card **(P.2277**). It is true these documents are in favour of vendees, however, they are not relevant so as to decide the legality or illegality of the said transaction.

The documents were produced Mr. Padmakar Muley along with the application and list. (**P.2278-2279**). Mr. Muley also filed application dated 15-5-2010 and 1-6-2010 (**P.2279-A-2279-B**) and lastly filed reply (**P.2279-C-2279-G**). I found that, his reply is all together vague. Of course he admitted to have purchased this site under the sale deed dated 5-9-1973 and after the permission of the Wakf Board Hyderabad vide letter no.1933 dated 20-7-1960 was obtained, it was purchased. He then vaguely stated that, this question has been properly adjudicated by several revenue authorities, City Survey authority etc. and finally High Court (P.2279-F para –E) He however did not give either numbers or any other details of the said proceeding.

17) The summons bearing O.W. No.312/10 dt. 19-6-2010 was issued to the Dy. Collector Aurangabad (**P-2280**) and in response to it he forwarded a letter dated 24-6-2010 (**P.2280A**)and forwarded the copy of the **say/reply** of the opponent dt 4-1-1991 (**P.2280B-2280E**), for whom Mr.S.A.Naheri Advocate signed

and appeared, together with the signature Mr. Sayed Sahabuddin the Mutwalli wherein he categorically admitted in para 6 page 2 that,

> "that, the above land Sy.No.40 comprised of the Wakf Institution in question is surrounded by Sy.No.39 (Old Sy.No.280) adm. 16 A. 30 G. and has access out of this land only. **This land Sy.No.39 is also a Wakf property concerned to the above Institution and registered as such with the Marathwada Wakf Board Aurangabad, as evident from the documents referred to above and hence the same is also under the management of respondent no.1 as the recognized hereditary Mutwalli of the Institution"**

Such being the categorical admissions, the summons bearing O.W. No.337/2/1 and 337/2/2 dated 13-7-2010 were issued to Mr. S.A. Nehari Advocate and Mr. Sayed Shahbuddin (**P.2280F**). Mr. Nehari Advocate filed application for time (**P.2280G-2280H**)and then he filed reply (**P.2280-I**) stating therein that, the reply dated 4-1-1991 (P-2280B-2280E) was prepared by him on the instruction of his client and the documents shown to him. He further added that, the reply was filed by him in the court under signature of his client. Mr. Nehri Advocae as such gave fair admission that, the reply was drafted by him and it was signed by his client. The point is whether the so called Mutwalli Mr. Shahbuddin and his heirs have now voice to say that, sy.No.39 is not a Wakf property?.

The Divisional Commissioner, in response to the letter of the Collector , dated 10-5-2010 (**P-2280-J**) supplied the attested copy of the order dated 10-12-1991 State V/s Shahbuddin has categorically held in para no.5 (**P.2280-K- 2280-O**). that,

> **"this area along with Sy.No.39 and 41 are Wakf properties. Moreover the boundaries of the Wakf Institution demarcated in the Wakf Gazette coincide with the Khitabul Auqaf maintained by the Ex. Hyderabad State".**

He further stated in para no.7 , (iv) of the aforesaid judgment that,

> **"the 7/12 extract and old revenue record maintained by the Tahsil office Aurangabad show that, Sy.No.39 to 41 are all Govt. lands whereas the inquiry register maintained by the City Survey office shows Sy.No.39 and 41 as Inam lands"**.(**P.2280-K- 2280-O**).

The appeal was preferred on the aforesaid judgment by Mr. Shahbuddin (**P.2280-P-2280-V**)wherein the appellate gave categorical admission as under:-

(P-2280-R) (Para-7) **"The entire land Sy.No.40 is surrounding**

> **by Sy.No.39 adm. 16 A. 13 G. which is also a Wakf property situated and as such maintained by Suttary as hereditary Mutwalli"**

P-2280-S) (Para-12) **"It is alsongwith Sy.No.39 and 41 which are Wakf properties".**

(P-2280-T) (Para-13)

**"Both the City Survey Nos. are to be read with each other by considering the map of Sy.No.39 and 40. The Dargah Khankha, Mosque are shown in the above lands and Sy.No.40"**

The point arises whether these categorical admission will permit the Mutwalli to say that, this land is not Mashrutul Khidmat? The collector Aurangabad issued a letter Dt 10-5 2010 **(P 2280 V-1)** with the copy of Judgment dated 8-12-1993 (**P-2280-W-2280-Z**) wherein the Collector observed and held at page 3 para 5 that,

**"revenue records show that, land Sy.No.39 and 41 are Govt. lands whereas inquiry register maintained by City Survey officer show Sy.No.39 and 41 as Inam lands."**

The aforesaid order was challenged in appeal and the copy of appeal memo was asked vide the summons O.W. No.352 dated 28-7-2010 and it was supplied (**P2280-AA-EE**). Wherein the appellant Mr. Shahbuddin gave the admission

**"this area is cover and surrounded by Sy.No.39 and 41 and they are Wakf properties"**. (P. internal page no.2).

**"The entire Sy.No.40 is surrounded by Sy.No.39 adm. 16 A. 13 G. which is also a Wakf property registered as such and maintained by Shri Suttari as a hereditary Mutwalli"**.(Internal p. 3)

The summons O.W. No.238/10 dated 4-5-2010 and O.W. No.352/ 10 dt. 28-7-2010 were issued to the Dy. Commissioner (ADM and appeal ) calling them upon to furnished the copy of the appeal memo and the order passed thereon and that has not been supplied. (**P.2280-FF-2280-GG**). The office of the Commissioner could not supply the attested copies of these documents for one or other reason. I therefore have no other alternative then to use the documents possess by me. The copy of appeal memo dated 28-3-1994 preferred by Mr. Shahbuddin Bahuddin Suttari and one (**P.2280-GG-1-3**) wherein the appellant stated at eternal page two.

**"the area of Dargah, Khankha, Mosque and other buildings are shown 1 A. 33 G. This area is covered by Sy.no.39 and 41 and they are Wakf properties".**

He further stated at enter page that,

**"the entire Sy.No.40 is surrounded by Sy.No.39 adm. 16 A. 13 G. which is also a Wakf property registered as such and maintained by Shri Suttar as hereditary Mutwalli"**

The order dated 2-12-1995 passed by the Commissioner, Aurangabad in this appeal (**P-2280-HH 1-5**), wherein the Commission observed at page 4 that,

**"in support of this contents the appellant has brough on record a copy of Muntkhab and copy of Govt. Gazette dated 17-5-1973. A copy of Muntkhab no.585 dated 20 Feb. 60 reveals that, is meant for Dargah, Khankha, Masjid and house of Hazart Ahmed Shah Gujrathi Kalibwadi Aurangabad"**

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18) I have already referred the survey report (P.2197) and I have observed that, the said document appears not to be genuine and not capable of being relied. I came across with the another survey report of the same lands Sy.No.39,40 and 41 (**P.2281A-2281-D**) and I found that the Mutwalli was asked to produce the legal proof in his support or he may be dispossessed and property may be taken under supervision of M.B.W. This report was in printed format. I also found that survey reports of other properties were on a printed format. (**2281-E)(2281F-2281L)**. As against this the survey Report page 2197 was not on printed format. I may further add that, the notices dated 20-8-1965 and 11-10-1965 were issued to Mr. Sayed Shahbuddin Suttari calling him upon to attend the inquiry. (**P-2281-M-2281-P**)

The disputed survey report page 2197 is dated 11-9-1959 I have already observed that, the date has been mentioned thereon at as many as three places and these circumstances support my conclusion that, this survey Report whether may be a fabricated and manipulated. On my visit to the Divisional Commissioner, before 23-9-2010, I came across with the fact that, the Charity Commissioner was appointed as Survey Commissioner and the G .R. was issued by the Govt. on 14-5-1962.(I could trace this documents and some others with the kind co-operation of Mr. Hai Sahab who did the research on history) The summons O.W. No.466/10 dated 23-9-2010 (**P.2282**) was issued to the Dy. Commissioner (General)Divisional Commissioner calling him upon to furnish the attested copy of particular documents and accordingly were supplied to this office. As stated above the Govt. appointed the Charity Commissioner as Survey Commissioner on 14-5-1962 (**P.2282-A**). There is specific statement in this G.R. that the Charity Commissioner was specified as a authority for discharging the function of the Commissioner of the Wakf under the Wakf Act 1954 vide notification no. 25398/B dated 1-11-1956 and the Charity Commissioner shall under take the survey of the Wakf properties in Hyderabad area of the state of Maharashtra. Since the Commissioner of Wakf being appointed in the year 1962 (and since the Survey report. P-2197 being of the year 1959-being suspicious), this commission wanted to know the names of those who were appointed as Survey Officer, Survey Asst. etc. to verify the signature from their office record and tally it with the signatures on the Survey report page 2197. This office therefore issued a letter to the Charity Commissioner bearing O.W. No.477/10 dated 29-9-2010 (**P-2282-B**) and to the Joint Charity Commissioner bearing O.W. No.476/10 dated 29-9-2010 (**P-2282-C**) asking them to provide such information and this office is awaiting for the same. This office also made a several attempts to collect the names of the Survey Officers so as to find the reliability or otherwise of the Survey report (P-2197). The summons O.W. No. 342/10 dated 16-7-2010 was issued to the Addl. Commissioner (Record) Aurangabad (**P-2282-C-1**) calling upon to furnished the copies of the documents vide the letter dated 7-11-2003 of the CEO Wakf (**P-2282-C-2**). The summons O.W. No.344/10 dated 17-7-2010 was issued to the Dy. Commissioner (GAD) Aurangabad calling the same information (**P. 2282-C-3**). The summons O.W. No. 354/10 dated 30-7-2010 was issued to the Tahsildar Aurangabad asking the same information (**P.2282-C-4**). The summons O.W.No.384/10 dated 2-9-2010 was issued to the Dy. Commissioner (General) Aurangabad asking him the same information (**P.2282-C-5**) and the information was not supplied.

According to the aforesaid GR (P 2282 A) the Charity Commissioner issued a public notice in Urdu as well in Marathi and gave it for publication to the publicity Officer Bombay with the letter dated 9-7-1962 (**P. 2282-D**) with the draft of notices in Urdu and Marathi (**P.2282-E-2282-F**). The head quarter of the

Asst. Commissioner Wakf and his staff was specified at Aurangabad vide the resolution dated 24-9-1962 (**P.2282-G**). The Commissioner of Wakf sought the appointment of the rank of Sub-Divisional officers to assist him as well as he sought the instruction to be issued to the Inspector General of Registration, Municipal Board and Panchayat etc. to extend to assistance to him to conduct the survey.(**P-2282-H-2282-K**).

The Commissioner Aurangabad issued a letter dated 7-9-1979 to the Govt. Revenue and Forest Department Mantralaya Mumbai-32 (**P.2282-L-2282-N**) stating therein that, the land Sy.No.39 is granted by the Govt. to Dargah Hazarat Ahmed Gujrathi vide Muntkhab No.3068 dated 28-2-1332 Fasli. He further stated at page no.2 thereof that, Shri Shahbuddin Suttari with malafide intention to earn huge profit had demarcated the plots on the entire land which is situated in the heart of the City and adjacent to important market place Mondha. As per this letter the grant was under Muntkhab no.3068 whereas Mr. Shahbuddin and his heirs are referring the Muntkhab no.522 or 1366. I could not get the copy of Muntkhabno.3068.

The Asst. Secretary to Govt. R and F issued a letter dated 5-3-1982 (**P.2282-O**) addressed to Mr. Shahbuddin Suttary stating that, Sy.No.39 16 A. 30 G. together with Sy.No.41 are grant by the Govt. to render services to Dargah Ahmed Shah Shuttari vide Muntkhan no.3068 dated 28-2-1338 Fasli. The reference of section 6 of Hy. Atiyat Inquires Act 1952 was made and it was added that, the grants are not liable to transfer or encumbered in any manner.

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19) The Commission found from the letter dated 22-3-2001 (P-2195) issued by the Secretary, Marathwada Wakf Board stating therein that, the inquiry report dated 31-12-1992 was submitted to the Dy. Collector (LR.) Consequent upon it the summons bearing O.W. No.97/2/1 and 97/2/2 dated 4-3-2010 (**P-2283**) was issued to Mr. S.S.Ali Quadari and Mr. Minirkhan Pathan the D.W.O. calling them upon to produce the copy of the said report dated 31-12-1992 and they did not comply.

The Dy. Collector (LR) Aurangabad observed in his order dated 15-10-2001 (P.2170) and internal page no.4 that, Sy.No.39 is private land adm. 16 A. 30 G. Consequent upon such observations the summons bearing O.W.No.495/2/1 and 495/2/2 dated 30-12-2009 was issued against the Mr. S.S. Ali Quadari and Mr. Munirkhan Pathan the D.W.O. calling them upon to make the statement in respect of aforesaid observation. (**P-2283-A**). As usual both of them did not take care to make any comments.

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Consequent upon the copy of list of the persons holding possession over the remaining land 6 A. 14 G. (excluding 10 A. 16 G. held Mr. Harmoz), the summons bearing O.W. No.106/2/1 and 106/2/2 dated 9-3-2010 (**P-2284**)was issued against Bahuddin Suttari and Shri Afsar Suttari the Mutwallies calling them upon to make the statement as regards possession over the remaining land. The list enclosed by D.W.O. is (**P-2244-2247**) This list appears to have been signed by Mr. Abed Ali and Mr. Isaqu Mohiuddin the Clerk of the Wakf Board. The incumbents Bahuddin Suttari and Shri Afsar Suttari however did not reply it.

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The summons O.W.No.499/09 dated 31-12-2009 was issued against the City Survey Officer Aurangabad to produce the original City Survey record of C.T.S. No. 12887, 12886, and 12876 and on production it was verified. (**P-2285-2285-A**).

The summons O.W. No.53/2010 dated 27-1-2010 was issued against Taluka Inspector of Land Records calling him upon to produce the copies of Shetwarbook and Wasulbaki register of Sy.No.39 and that was not complied. (**P. 2285-B**)

The confidential letter bearing O.W.No.50/2010 dated 21-1-2010 was issued in the name of Divisional Commissioner, Aurangabad asking him to keep file no.17, the document "Survey Report" (P.115) in safe custody so that, no body should tamper it, or it may not be misplaced, the Commission of offence of forgery under penal code being suspected to have been committed. (**P-2285-E**).

The confidential letter bearing O.W. No.49/201 dated 21-1-2010 was issued to the Collector Aurangabad asking him to keep the file of case No.2000/LR/TNC/A/29 decided on 15-10-2001 regarding Kalibwadi shall be kept in the safe custody. (**P-2285-F**)

Xxxxxxxxxxxx

Mr. Kazi Salauddin appears to have filed Regular Civl Suit No.16/2002 in the Wakf Tribunal. It is decided on 15-12-2007(**P.2286/1-36**) and suit which was filed to protect the Wakf property was dismissed. I may not comment on it but I may make the mention of the following facts.

1) Peculiar words in the judgment-

a) **Lady luck shining** (P.20)

b) It is binocular ice apparent (P.21)

c) who is speaking as a **Proxy** for the Wakf Board.(P.23)

d) **Pock his noise** (P.25) .

e) **Crocodile tears** (P.25)

Such type of typical words are used in the judgment. I restrain to make any comments thereon. The court further used the following words.

f) This Wakf Tribunal Hon'ble Forum (P.30)

g) This Hon'ble Tribunal (P.33)

Whether the judge dictating/writing the judgment does call his own court or Tribunal as Hon'ble?.

Jurisdiction of Tribunal

"This Tribunal can not grant declaration that, Judgment of Dy. Collector (LR ) is null and void and such declaration does not come in the scope and preview of the specific relief act".(P-27)

There is sufficient law to say that, Civil Court is court of General Jurisdiction.

As against this the said Court held that,

"the Dy.Collector (LR) Aurangabad has correctly held that, suit land to be a ' Madatmash' Inam land after considering the entire record and after hearing defendant no.3 Wakf Board".82

I came across with few judgments of this judge and I found him showing his humbleness frequently, such as "in my humble opinion, humble view etc" Such words are no where used in this judgment. (See Page No.336 with report No.8).

This judgment is challenged in C.R.A. No.60/2008 and its pending (**P.2287-1-12**).

The Commission called upon the Municipal Commissioner, Aurangabad to make available the Muntkhab of Land Sy.No.39 and 40 vide the summon O.W. No.20/10 dated 12-1-2010 and it was not responded.(**P-2287-15**)

After having the over all consideration of the matter I feel that, the CEO and D.W.O. of Wakf right from 15-10-2001 (**P.2170**) are equally responsible for negligence and for allowing the property to go out of hands, though a private person like Mr. Saluddin Kazi brought this fact to their notice and lastly he initiated the legal proceeding. Fourtunately the Wakf Board filed a Civil Revision Petition No.60/08 before the Hon'ble High Court Bench at Aurangabad against the Judgment in Suit No. 16/2002 (**P.2286**). WP No. 1245/2004 also appears to be pending The Board if Wakf may persue this litigation, and if succeeded, may take action under Bombay Government Premises (Eviction) Act 1955, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

The Mutwalli and his sons namely 1) Mr. Bahuddin, 2) Mr. Afsar, 3) Mr. Anwar and 4) Mr. Akhattar **who are not at all Mutawalli** (**see P.2221 WP 1245/2004**) are responsible for all of these illegalities and creation of complication, since they turned hostile to the Wakf. I may further add that, the authorities of the Wakf Board are also equally responsible for negligence and inaction. I may say that, they might have joined hands with the so called Mutwallies for such complication. The cryptic reply by D.W.O. Aurangabad (**P.2243**) is a example as to how the Wakf officers are most irresponsible. The stand of the Wakf Board as regards the nature of this property, either it is Wakf or otherwise, has not been made out therein. Needless to state that, the CEO Wakf has not filed a reply to bunch of summons issued against him. As such Mr. S.S.Ali Quadari the CEO and Mr. Munirkhan Pathan the DWO are equally responsible in the matter.

**NOTE:-** On 21-12-2010 one Mr.Laik Ahmed Shutari had been to my office alongwith one Mr.Dr. Mujahed, claming himself to be the heir of original Mutwalli. He had brought some of the documents and to some extent the documents were worth. Mr.Laik Ahmed assured to file the complaint supported with documents. I talk him on phone on 29-12-2010 and he expressed his enability for want of the copies of some of the documents. He however did not approach to this office till this date thereafter. His mobile is 9225306277.

Note – The portion of this property is again under transfer for Rs.5,75,00,000/- The property being Wakf, this transaction also will be rendered illegal. The Board of Wakf will have to take the urgent step in the matter(**P 2287-16 to 23**)

( **A.T.A.K.SHAIKH**)

Commission

**Sr.No. 11**

**REPORT**

**COMPLAINT NO. 20/2008 & 59/2009**

**Complaint by Misbahulla r/o Beed**

**and Anees Ahmed, Mumbai**

**JAMA MASJID, KEJ DIST. BEED**

**BEED-EXCHANGED (*Sunny Jawala*)**

**DETAILS OF THE PROPERTIES** :-

Four annas out of (Wakf Properties)

| Sy.No. | Area | Four annas | Remarks |
|---|---|---|---|
| 13/1 | 2.69 | 0.67.25 | |
| 13/2 | 2.34 | 0.58.50 | |
| 17/1 | 8.65 | 2.16.25 | |
| 17/2 | 2.77 | 0.69.25 | |
| | Total | 4.11.25 | 10 A. 11 G. |

Was exchanged with Four annas of the following lands of **Suny Jawala.**

| Sy.No. | Area | Four annas | Remarks |
|---|---|---|---|
| 122/Kh/2K | 0.91 | Full | |
| 122/A1 | 2.32 | 0.75 | |
| 122/B2 | 0.91 | 0.45.50 | |
| 117 | 4.70 | 1.43 | |
| 122/A1 | 2.32 | 0.74 | |
| Total | | 3.37.50 | 8A. 17 G. |

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Misbaullah R/O Beed and Mr Anees Ahmed file the complaints **(Page 400 J to J & Page 1-4)** respectively alleging that the lands admeasuring 4 H. 11.25 R.= 10 A. 11 G. situated Kaij of Jama Masjid Kaij were exchanged with the lands admeasuring 3 H. 37.50 R = 8 A. 17 Gunthas of Sunny Jawala under the registered deed dated 8-12-2004 **(P.401-406)** Mr. Shaikh Ziyauddin the Mutwalli appointed Sayed Nawab as his G.P.A. and the aforesaid lands of Sunny Jawala belonging to Sayed Nawab and others were exchanged with the Wakf properties.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.50/09 dated 25-3-2009 calling him upon to appears personally and to file a statement on 6-4-2009 **(P.407-408)**. He filed a reply on 13-5-2009 **(P. 409-412)**

The District Wakf Officer, Beed was served with notice, O. No.49/09 dated 25-3-2009 by post, calling him upon to appears personally and to file a statement on 6-4-2009. (**P.407-408)** He did not file reply. He however was also served with the notice O.No.282/08 in Complaint No.20/08 **(P.413-415)**. He filed his reply dated 23-12-2008**(P.No.416-422**) and simply admitted the transaction dated 8-12-2004. He stated **(P 421-422)** that, the exchange of the Khidmat Inam land was by permission of the Chairman of Maharashtra Wakf Board . He did not give any more detail of this transaction.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.175 dated 14-5-2009 calling him upon to appear personally and to file a statement on 28-5-2009 **(P.423-425)** with documents ***(P.430-435)***

Notice was not issued to Mr. M.A.Aziz he being died on 8-5-2009 as per the press report (i.e. Newspaper).

**OBSERVATION OF COMMISSION**:-

**Non-compliance of S.32 (2) (j)** of the Wakf Act 1995- The Chief Executive Officer, Wakf Board Aurangabad stated in his reply that, resolution no.44 dated 20-8-2004 **(P.436)** was passed by five members out of nine members. As per S.32(2)(j) of the Wakf Act the resolution should be passed by 2/3rd of the members of the Wakf Board. **As such the resolution should have been by six members out of nine members for its validity. The resolution being passed only by five members out of nine members, it was in total non compliance of this statutory provisions of law.**

The Board had passed aforesaid resolution no.44 on 20-8-2004 stating that, (P 436)

"It is resolved that, Hon'ble Chairman and the Member Mr. Chand Pasha Inamdar, will go and take the final decision in this regard **(P.436)**

The resolution as such was not passed by the Board that day. The powers were delegated to the Chairman and one of the members. **S.27 of the Wakf Act of course empowers the Board to delegate the powers** either to the Chairman or member/s. **However, this provision would not override the mandatory provision of S. 32 (2) (j) of the Act 1995 which says that the resolution should be by 2/3rd majority.**

Even beside this neither the Chief Executive Officer, nor the District Wakf Officer stated that, the final decision was taken by the Chairman and Mr. Chand Pasha. It will be therefore, presumed that, no final decision was taken. **Therefore, this is a case of no resolution and so it is in utter violation of S. 32(2) (j) of the Act. The then chairman of the Board Mr. M.A.Aziz, was responsible for this illegality.**

Even though there was no resolution the order no. Wakf/SNT/3964 dated 2-12-2004 (**like P-439 because this is addressed to collector)** (as stated by the District Wakf Officer, Beed) and the order No.3904 dated 19-11-2004 {as stated by the C.E.O. Aurangabad in his reply) (**P 409**) was issued by the then C.E.O. and the lands were exchanged on 8-12-2004 under the registered deed **(P. 401-406)**.

As a matter of fact the Chief Executive Officer Mr. M.Y.Patel was empowered by S.26 of the Wakf Act to make grievance to the Board and then to the Govt., when the resolution was not confirmed by the majority of the members of the Board. Mr. M.Y. Patel did not make a such grievance and issued the orders to implement illegal order of exchange. **Mr. M.Y.Patel the C.E.O. was equally responsible for this illegal transaction along with the chairman.**

**Non compliance of Rules** :- Even beside this the C.E.O. or D.W.O. did not state whether the notice as provided in Rule 17 was published in the official Gazette in form No.X . Rule 18 provides that such publication of notice shall be made by the Mutwalli in Form Y.

The approval given by the Board to exchange shall then be published in the Daily Newspaper u/s 51(3) of the Wakf Act having a vide circulation and shall be communicated to the Mutwalli in Form AB of Rule 19. No statement is made by the aforesaid authorities about its compliance and it can be presumed that, there was no such compliance of the statutory provision. The CEO and the DWO are liable for non making the clear statement, and for suppression of material facts.

**Mr. Patel misguided the Board** -Mr. M.Y.Patel appears to have made a wrong statement, may be intentional or otherwise and by his such statement, the Chairman who approved the proposal of Mr. Patel was kept in dark. Mr. Patel stated in his proposal No.MSBW/SNT/2.3/3597 dated 30-9-2004 **(P. 437-439)** the area of lands of Sunny Jawala was 12 A. as against the area of said land from the document of exchange appears to be 8 A. 17 G. only.

**Potentiality of Land** :-Even beside this the Wakf lands appears to be adjoining to Kaij which is a taluka place in Beed Dist. Whereas Sunny Jawala appears to be village which is at sufficient long distance from Kaij and the potentiality of these lands would differ. The potentiality of the Wakf land would be much more than the potentility of the lands under exchange. It is true that, the Chairman directed in his order under the proposal of the C.E.O. dated 30-9-2004 **(P 437-438)** that, the second party should deposit Rs. 3 lakhs and it appears that, that might have been deposited, may be to meet the difference of the area of land. However the difference of potentiality was not balanced by obtaining more money from the Second party and **I am of the concrete view that, these transaction may be for extraneous consideration.**

Mr. M.Y.Patel has no answer to the aforesaid laps of law, illegalities and irregularities. He emphasized on the valuation of the land however the right or wrong valuation would not be a answer to the aforesaid legal lapses. Mr. M.Y.Patel state that:-

(**P 426**)

> *"I apprehended the danger that in fiture the land will be treated as non Wakf land and Wakf Institute will be deprived of any benefit. Such 36 cases were there in the District and on technical grounds courts treat them non- Wakf land and then lot of litigation are started in the process the Wakf land remain unutilized. This was a main intention to give permission of exchange of the land. In Kej if we survey all Wakf lands 75% Wakf lands are declared as non Wakf land are declared as non wakf land either or encraed (Encroached) by the several persons and in the process Wakf Institute stends……So no where. I have asked the persons to deposit Rs. 3,00,000/- in the Wakf Board which he deed…… If the Tahsildar valuation is not perfect it is Tahsildar to blame and not myself"*

The tenor of the aforesaid statement is that, Mr. Patel M.Y. had taken the aforesaid decision in his exclusive capacity. He stated that the valuation of the land is to be obtained from town planner however, he did not make any statement that, he referred the matter to the Town Planner for valuation. His such conduct is contrary to the Govt. Circular dated 30-10-81 (**P.435)**. The statement of Mr. Patel M.Y. that, he had taken the decision of exchange because of fear in his mind due to the threat of the legal processes of the revenue authorities to declare the Wakf lands as non Wakf can not be a answer to commit the illegality. Mr. Patel can not escape from the procedural and legal flaws committed by him.

Mr. Shaikh Ziyuddin Afzluddin was/is the Mutwalli of Jama Masjid. He appointed Sayed Nawab Imamsaheb as a G.P.A. The land Sy.No.122/A1 exchanged to the extent of 74 R was owned and possessed by Saye Nawab Imamsahab. **(P 401-- & 404)** The appointment of owner of one of the lands under exchange as a G.P.A. by Mutwalli and completion of the exchange involved a serious suspensions on the conduct of the Mutwalli Mr. Shaikh Ziyauddin also .

**The safe inference therefore, can be drawn that, the then Chairman Mr. M.A. Aziz and the then C.E.O. Mr. M.Y. Patel and the Mutwalli Mr. Ziyuddin are responsible for this illegal transaction as well as non following the mandatory provisions of law.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.12**

**REPORT**

**COMPLAINT NO. 20/2008 & 59/2009**

**Complaint by Misbahulla r/o Beed**

**And Anees Ahmed Mumbai.**

**JAMA MASJID AND (YAWALWADI)**

**BEED-EXCHANGED**

**DETAILS OF THE PROPERTIES** :-

Wakf land of Jama Masjid Beed (Tarafgiram):-

| Sy.No. | Area | Share | Remarks |
|---|---|---|---|
| 122 | 25.01 | Full | |
| | **Total** | **25.01** | **25A.01 G.** |

Was exchanged with the following lands of Yawalwadi

Tq. Shirur (Kasar) Dist. Beed.

| Gut No. | Area |
|---|---|
| 1163 | 0.23 |
| 1157A1 | 0.49` |
| 1157A2 | 0.49 |
| 1162 | 0.18 |
| 1158AA3 | 0.98 |
| 1157AA1 | 0.46 |

| | |
|---|---|
| 1157AA2 | 0.49 |
| 1162 | 0.18 |
| 1163 | 0.33 |
| 1158AA3 | 0.97 |
| 1157A1 | 0.50 |
| 1157AA2 | 0.51 |

| Gut No. | Area |
|---|---|
| 1162 | 0.18 |
| 1163 | 0.23 |
| 1158AA3 | 0.98 |
| 1153 | 2.00 |
| 1097 | 0.81 |
| **Total** | **25.00 Acres** |

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Wakf land admeasuring 25.01 acres of Jama Masjid situated at Tarafgiram Beed was exchanged with the various lands of Yawalwadi under the orders of the Chairman vide MSWB-CH-88-2006 dated 24-3-2006 **(P-440-441)** (***As stated by the C.E.O. Wakf in his reply dated 12-5-2009***) **(P 409)** under the document of exchange dated 19-5-2006 **(P.442-446)**

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.50/09 dated 25-3-2009 calling him upon to appear personally and to file a statement on 6-4-2009 (**P.407-408)**. He filed a reply on 13-5-2009 **(P. 409-412)** *He also was served notice bearing O.No.378/08 dated 4-12-2008 and did not file the reply.***(447-448)**

The District Wakf Officer, Beed was served with notice, O. No.49/09 dated 25-3-2009 by post calling him upon to appear personally and to file a statement on 6-4-2009 **(P.407-408)** He did not file reply. He also was served with the notice bearing O.W. No.377/08 dated 4-12-2008 **(P.447-448)** and he did not file reply.

Md.Aminuddin, Md. Abdulla, Md. Muzfaruddin and Md. Mazharoddin all r/o Beed were served with the notice **(P.449-450)** bearing O.No.376/08 dated 4-12-2009 . Aminuddin filed reply **(P 451-453)** and he admitted

the transaction of exchange saying that, the land being adjoining to Beed City and being stony (Khadkal) was incapable to give more yield and so it was exchanged. Mohd.Abdulla Filed the reply **(P. 454-456)** with the one document-the copy of the report of the Dist Wakf officer. They adopted the aforesaid statement. **(457-458)**

The same notice bearing O.No.376/08 was served on Md. Mujibuddin, Md. Latifuddin and Md. Saiuddin. **(P 449-450)** The service repost is **(P 450A)** They filed their reply stating that, the land was exchanged as per the order of Chairman of the Wakf Board **(P. 459)**

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.175 dated 14-5-2009 calling him upon to appear personally and to file a statement on 28-5-2009 **(P.423-425)** He did not file a reply. *However he also was served with the notice bearing O.No.380/08 dated 12-12-2008* ***(P.447-448)*** *in Complaint No.20/08 and he filed reply dated 31-3-2009.* ***(P.460)***

*The notice bearing O.No.379/08 dated 4-12-2008 was issued against the Mr. M.A. Aziz the then Chairman in Complaint No.20/08 and he did not filed the reply.****( P.447-448)*** *under certificate of posting* ***(P 448 A)***

Noticed dated 14-5-2009 was not issued in Complaint No.59/09 to Mr. M.A.Aziz he being died on 8-5-2009 as per the press report (i.e. Newspaper).

Pathan Gulabkhan, Pathan Hameedkhan, Pathan Basheerkhan and Karimabee Bashirkhan were served through DWO Beed with the notice O.No. 382/08 dated 11-12-2008 **(P. 463-464)** Copy of this office letter and the compliance report are at **P 464 A 464 B.**They filed reply dated 21-12-2008 **(P.465-472)** One Mr. M.P.Kale Advocate filed a Vakilipatra for Pathan H.B.**(P.473)** and thereafter on 6-7-2009 he filed reply cum argument on their behalf **(P.474-479)** he again filed the reply cum argument on 10-8-2009 **(P.480-485)**, alongwith the copy of Muktyarpatra (A.G.P.) in favour of Hameed Pathan and Yousuf Pathan **(P.486-489)** .

**OBSERVATION OF COMMISSION**:-

**Non-compliance of S.32 (2) (j)** of the Wakf Act 1995- The Chief Executive Officer, Wakf Board Aurangabad stated in his reply **(P409-412)** that there is no record in his office showing the resolution to have been passed by the Board. This is therefore, a **case of *no resolution.*** The mandatory provision of law was violated by the Chairman. The copy of the order dated 24-3-2006 passed by the Chairman **(P.440-441)** is produced by the C.E.O. alongwith his reply stating that,

> *"**the decision has been taken and will be rectified in the coming Board's meeting and thereafter notification in the Govt. Gazette will be issued u/s 51 of the Wakf Act regarding the exchange of the land".***

**These observations clearly indicate that, the resolution was not passed by the Board and as such the provision of S. 32(2) (j) were violated by the Chairman Mr. M.A. Aziz.**

` Mr. M.Y.Patel the then C.E.O. stated in his reply dated 31-3-2009 **( P.460)** that, the decision as regards the exchange of this land was independently taken by the Chairman while sitting in Bombay office, by directly obtaining the report of the District Wakf Officer. The order dated 24-3-2006 **(P.440-441)** passed by the Chairman has got a specific mention about the report of the District Wakf Officer dated 21-1-2006 vide No.L. 31/2006. The District Wakf Officer appears to have reported that,

"*half of Sy.No.122 is **Khadkal and Murmad** and for doing cultivation it becomes very difficult for which income is decreased . Further reported that, the because of which the proposed land to be undertaken for exchange bearing Sy.No.1163, 1157,1162,1158,1097 situated at Yawalwadi Tq. Shirur (Kasar) Dist. Beed is beneficial and necessary for the exchange and its valuation is also more than the original land. The District Wakf Officer, Beed himself has inspected both the land and verified the valuation and other record and recommended for the same"* (The report of the DWO is at **page 457**)..

**This indicate that, the then District Wakf Officer Beed had a major roll in this transaction and he is equally responsible alongwith the Chairman.**

Even though there was no resolution the transaction of exchange was completed meaning thereby that, the provision of law u/s 32(2) (j) were violated.

**Non compliance of Rules** :- Even beside this the C.E.O. or D.W.O. did not state whether the notice as provide in Rule 17 was published in the official Gazette in form No.X. Rule 18 provides that such publication of notice shall be made by the Mutwalli in Form Y and there is no statement by the C.E.O. Wakf in this respect. **The CEO and the DWO are liable for non making the clear statement, and for suppression of material facts.** The approval given by the Board to the exchange shall then be published in the Daily Newspaper u/s 51(3) of the Wakf Act having a vide circulation and shall be communicated to the Mutwalli in Form AB Rule 19. No statement is made by the aforesaid authorities about its compliance and it can be presumed that, there was no such compliance of the statutory provision.

**DISTANCE OF THE LAND UNDER EXCHANGE**:- Even beside this the Wakf land appear to be adjoining to Beed city whereas (as per allegations in the complaint dated 2-4-2007 by the General Public to the Sub-Divisional Officer in Complaint No.20/08) , village Yawalwadi is 38 K.M. away from Beed and also that, these lands are situated adjoining to Hillock and are of very inferior quality.

In this connection the reference may be made to the reply dated 21-12-2008 **(P.465-472)** given by Pathan Gulabkhan and other four wherein they stated that, the Wakf land Sy.No. 122 is only five K.m. away from the City whereas Yawalwadi is 27 Km. away from Beed. Mr. Aminuddin and other who are the Inamdar and who executed the deed of exchange also admitted that, Sy.No.122 the Wakf land is adjoining to Beed City and half of the land is Khadkal **(P 451)**. As such they also admitted that, the Wakf land Sy.No.122 possess the building potentiality. The potentiality of both these lands therefore, obviously differ. The Wakf lands certainly possess the non agricultural potentiality having its high value as against, Yawalwadi lands are having comparatively very low petentiality. The Wakf land being adjoining to the City area possess building potentiality whereas the Yawalwadi lands possess the agricultural potentiality. The complainant has produced the copy of the affidavit dated 24-10-2005 **(P.490-492)** sworn Md. Vajiruddin Moniruddi, Md. Ameenuddin etc. 7 ( ***i.e. the executor of the exchange deed P.442***) wherein they sought permission of the Chairman Wakf Board to convert this land as non-agricultural This document as such has thrown a clear light on the fact that, the Wakf land Sy.No.122 is having non agricultural potential.

There is again one circumstance indicating as to how the then Chairman Mr. M.A.Aziz was interested in the exchange. There was agreement in between Md. Ameenuddin and other at one side and Pathan Bashir khan

on the other side, on 12-12-2004 to sale Yawalwadi lands to Ameenuddin. **(P.493-494 )** The said transaction was purely private one, having no concern with the Wakf properties. As against this the Chairman made a reference of the said transaction in his order dated 24-3-2006 **(P. 440)** stating that-

***"It is seen that, the Inamdars Md. Abdullah Md.***

***Vajiruddin and others has obtained the above lands by way of agreement dated 12-12-2005 on consideration of Rs.2708200.00 from Pathan Bashirkhan Abdul Khan, Pathan Gulabkhan Bashirkhan, Pathan Hameedkhan Bashirkhan, Karimabee Bashirkhan Pathan all r/o Yawalwadi Tq. Shirur (Kasar) Dist. Beed and Rs.3,00,000/- was also given to owners of the land by the Inamdars subject to condition that, the said sale deed will be completed on 6-3-2006 failing to which the said agreement presumed to the cancelled. The said agreement has been notrified ……..***

***In view of the above facts, if the approval of the exchange is not granted u/s 51 of the Wakf Act 1995 then the Inamdars well put to loss of Rs. 3,00,000/-, as the condition of agreement had elapsed on 6-3-2006 (already delayed 3 weeks) and there would be complications arises in future "***

The said transaction being private one there was nothing to worry the Chairman. However, here the Chairman had shown the extra interest in the matter. He has been exposed by his above observation.

Here the Wakf land admeasuring 25 acres 1 gunthas was exchanged against only 25 acres of Yawalwadi having no further transaction. **This transaction therefore, was very suspicious and malafide, might be for some extraneous consideration.**

There is again one aspect worth to make the reference. The W.P.No.762/98 was filed in the Hon'ble High Court in reference to this land. The District Wakf Officer Beed was respondent no.6 therein. The Order of the Hon'ble High Court dated 10-4-2001 indicate that ( **P 494A 494 B)** respondent no.6 was absent and order of status-co was continued. It appears that, non of the advocate was engaged on his behalf. This is how the District Wakf Officer had a pessimistic approach.

I collected the copy of W.P.No.762/1998 from Madam

Ansari Advocate by issuing a official letter,**(P.495)** so as to find, whether the issue relating to instant transaction of exchange is involved therein. (**P 496-508)** I found that an application was moved before the Dy Collector Atiyat to take the lands of Jama Masjid Beed in Government custody, and to lease it on Lavani Basis. That application was granted on 22-1-1998. This order was challenged before Maharashtra Revenue Tribunal in appeal and that also was dismissed on 5-2-1998. Both of these orders are challenged before the Hon'ble High Court in WP No 762/1998. In short the transaction of Exchange dated 24-3-2006 is not directly or indirectly involved in the writ petition No.762/1998.

Mr.Basheerkhan Pathan and others gave very glaring admission in the reply **(P.474 -450).** They admitted that, the lands under the exchange Sy.No.1157, 1162 etc. are owned by them. However, according to them there was no transaction of exchange as such. They had sold the lands out and out. They stated

***"The said exchange was made by answering respondents as the person from Beed are come to their village and asked for to purchase the land for the religious purpose. Therefore, the answering respondent***

***has sold their lands for the consideration. ------ . It is true that, Yawalwadi is small town whereas the land near the Beed is high. But the exchange of 25 acres lands they are corruption in the said transaction. The answering respondent here to explain that, it is never the intention of the answering respondent to help to any one in the corruption. The answering respondent has only sale out their property at Yawalwadi by consideration. The rest of transaction, the non-complainant – answering respondents being illiterate persons they have no knowledge about the same----------. All the lands belonging to answering respondents are situated at village Yawalwadi Tq. Shirur kasar and as on today also the answering respondents are the owner and possessors of the said lands. The said lands are not yet transferred to any body. The entire transaction is only be the paper transaction. The consideration for the land of answering respondents yet not received by them. ---- The entire transaction was made by keeping the answering respondent in darak."***

**All of these admission speak for themselves that the transaction of exchange was a simply paper transaction having no concern with Basheerkhan pathan and others with it. It appears that, the Mutwallies and other interested persons had ulterior motive to grab the Wakf property and to earn money by illegal means. The transaction of exchange was a just sham, without any actual transaction**. Pathan Gulabkhan and others were expected to be in possession of S.No. 122 and the lands of Yawalwadi were expected to be in possession of the Wakf board. However, Pathan Gulabkhan and others stated that they are still holding possession of the Yalwadi lands.

**Mr. M.A. Aziz the then Chairman, Mr. Shaikh Maksud the District Wakf Officer and the Mutwallies Mr. Md. Aminuddin Muniruddin R/O of Azizpura Beed, Md. Abdulla Vaziruddin R/O Shahinshanagar, Beed, Md. Muzfaruddin Muniruddin R/O Shahhinshanagar, Beed and Md. Mazruddin, Md. Rahimuddin R/Oof Azizpura Beed are responsible for this transaction.**

The then CEO Mr. M.Y.Patel stated in his reply **(P.460)** that, the decision about the transaction of this land was taken by the Chairman while sitting at Bombay, without any information to Aurangabad office. The office of the Commission therefore, issued a confidential letter bearing O.W.No.IBW/182/09 dt. 12-5-2009 calling him upon to inform this office in this regards. This office then issued a reminder under O.W.No.251/09 dt. 7-7-2009 and still there is no reply.**(P.509-510).**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 13**

**REPORT**

**COMPLAINT NO. 59/2009**

**Complaint by Shri Anees Ahmed by fax Mumbai**

**MASJID NALWANDI (BEED)BEED-LEASE ( *NALWANDI*)**

**DETAILS OF THE PROPERTY** :-

The land admeasuring 5 A. out of Gut No.583 situated at Nalwandi Dist. Beed, is the service Inam Land of the Masjid Nalwandi.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Commission received the complaint by fax from one Anees Ahmed **(P.1-4)**

This land has been leased to Mr. Minesh s/o Baliram Raut for period of three years on rent of Rs. 15000/- p.a. vide the order No.Wakf/ SNT/2167/2006 dated 19-4-2006 issued by the then Chief Executive Officer, Wakf Board **(P.511 )**. As per the say of the present C.E.O. **(P 409-412)** the resolution No.32 was passed on 26-8-2005 by five members out nine members. **(P.512)**

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.50/09 dated 25-3-2009 calling him upon to appear personally and to file a statement on 6-4-2009 **(P.407-408)**. He filed a reply on 13-5-2009 **(P. 409-412)**

The District Wakf Officer, Beed was served by post with notice, O. No.49/09 dated 25-3-2009 calling him upon to appear personally and to file a statement on 6-4-2009 **(P.407-408)** He did not file his reply.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.175 dated 14-5-2009 calling him upon to appear personally and to file a statement on 28-5-2009 **(P.423-425)** *He filed reply on 10-6-2009 and claimed time, on the ground that he did not get the papers from the Board. (**P.426-429**)* He stated as under:-

"3) Masji Nalwandi Dist. Beed.

4) Idgah Georai.

I could not get papers from the Wakf Board at this two cases only. Kindly grant two days time for filing reply but as far I recollect, all procedure were followed and land to C.E.O. Zilla Parishad Beed only N.O.C. was given as far as I remember and that, for Urdu School purpose intention to serve to Minority"

Notice dated 14-5-2009 was not issued in Complaint No.59/09 to Mr. M.A.Aziz the then Chairman, he being died on 8-5-2009 as per the press report (i.e. Newspaper).

**OBSERVATION OF COMMISSION**:-

**Non-compliance of S.32 (2) (j)** of the Wakf Act 1995- The Chief Executive Officer, Wakf Board Aurangabad stated in his reply (**P 409-412)** that resolution No.32 dated 26-8-2005 was passed by five members out of total nine members of the Board. **(P. 512 ) S.32 (2) (j) of the Wakf Act 1995 provides that, the resolution should be passed by 2/3rd of the members of Wakf Board. This provision dose not say that, 2/3rd majority should be of the present Corum.** As such the resolution should have been passed by 2/3rd of the total members for its validity. The resolution being passed only by five members out of nine, it was in total non compliance of this statutory provisions of law.

The Board has passed the aforesaid resolution No.32 dated 26-8-2005 stating that:-

> *"It is decided that, market value should be obtained and Hon'ble Chairman and Mr. Chand Pasha Inamdar are delegated powers to decide the case finally. Meanwhile the procedure prescribed u/s 56 should be followed by the C.E.O"*.

As such no resolution passed by the Board that day. The powers were delegated to the Chairman and one of the Members. **S. 27 of Wakf Act of course empowers the Board to delegate the powers** either to the Chairman or member/s. **However, this provisions would not override the mandatory provisions of S.32(2) (j) of the Wakf Act 1995 which says that, the resolution should be by 2/3 rd majority.**

Even beside this the C.E.O. did not state in his reply **(P.409-412)** that, the Chairman and Mr. Chand Pasha had obtained the market valuation of the property as per resolution and that, they had taken the final decision. **Therefore, this is a case of no resolution and so it is in utter violation of section 32(2) (j) of the Act. The then Chairman Mr. M.A.Aziz and the then C.E.O. Mr. M.Y.Patel are liable for this illegality.**

Mr.M.Y.Patel while filing his consolidated reply (**P 426-429**) dated 8-6-2009 filed on 10-6-2009 claimed time for 2 days and he did not file it.though sufficient time passed. He then added that, as he recollect, he followed the entire procedure.

His such statement is far from the reality, if it is considered through above discussion.

Even thought there was no resolution the order bearing No. Wakf/ SNT/2167/06 dated 19-4-2006 **(P.511)** was issued under the signature of the then C.E.O. and the land was leased.

As a matter of fact the then C.E.O. Mr. M.Y.Patel was empowered by S.26 of the Wakf Act to make a grievance to the Board and then to the Govt., when the resolution was not confirmed by the Majority of the members of the Board. Mr. M.Y.Patel did not make such grievance and went on to issue the aforesaid order. **Mr. M.Y.Patel appears to have abused and misused his powers by issuing such order** . **Mr. M.Y.Patel the then C.E.O. was equally responsible along with the Chairman.**

**Non compliance of Rules** :- Rule 25 provides that 1) the person interested in obtaining lease shall make application to Mutwalli in Form AL. 2) The Mutwalli shall examine the same and shall place before the Committee of the Wakf for a decision 3)The Mutwalli shall forward the application alongwith the decision to the Board through the District Advisory Committee 4) The Board shall then take the decision. It appears that, these mandatory provisions were not followed.

**IN ADIQUATE CONSIDERATION**:-

The land Gut No.583 appears to be adjoining to Nalwandi and it must be possessing the Building potentiality. It was leased on Rent of Rs. 15000/- p.a. This consideration appears to be very inadequate specially when the valuation of the land was not done, in pursuance to the Resolution. .

**Mr. M.A. Aziz the then Chairman and Mr. M.Y.Patel the then C.E.O. were/are responsible for this illegal transaction.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.14**

**REPORT**

**COMPLAINT NO. 59/2009**

**Complaint by Shri Anees Ahmed by Fax Mumbai.**

**IDDGAH GEVRAI (BEED) BEED-LEASE ( IDDGAH GEVRAI)**

**DETAILS OF THE PROPERTY** :-

Wakf land of Iddgah Gevrai Dist. Beed:-The site admeasuring 50x200 ft. out of Sy.No.126 situated at Gevrai Dist. Beed which is a Wakf property of Iddgah was leased.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Commission received the complaint by fax from one Anees Ahmed **(P.1-4)**

The aforesaid plot out of Sy.No.126 situated at Gevrai which is a Wakf property of Iddgah has been leased to Zilla Parishad, Primary Urdu School at Gevrai for 11 months on rent of Rs. 9293/- p.m. The order No.WAKF /SNT/5143/2006 dated Nil was issued under the signature of Mr. M.Y.Patel the then C.E.O. **(P.513-514)**

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.50/09 dated 25-3-2009 calling him upon to appear personally and to file a statement on 6-4-2009 **(P.407-408)**. He filed a reply on 13-5-2009 **(P.409-412)**

The District Wakf Officer, Beed was served by post with notice, O. No.49/09 dated 25-3-2009 calling him upon to appear personally and to file a statement on 6-4-2009 (**P.407-408**) He did not file his reply.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.175 dated 14-5-2009 calling him upon to appear personally and to file a statement on 28-5-2009 **(P.423-425)** *He filed reply on 10-6-2009 and claimed time, on the ground that he did not get the papers from the Board.* ***(P 426-429)*** He stated as under:-

"3) Masji Nalwandi Dist. Beed.

4) Idgah Georai.

I could not get papers from the Wakf Board at this two cases only. Kindly grant two days time for filing reply but as far I recollect, all procedure were followed and land to C.E.O. Zilla Parishad Beed only N.O.C. was given as far as I remember and that, for Urdu School purpose intention to serve to Minority"

Notice dated 14-5-2009 was not issued in Complaint No.59/09 to Mr. M.A.Aziz the then Chairman, he being died on 8-5-2009 as per the press report (i.e. Newspaper).

**OBSERVATION OF COMMISSION**:-

**Non-compliance of S.32 (2) (j)** of the Wakf Act 1995:- The Chief Executive Officer, Wakf Board Aurangabad stated in his reply **(P 409-412)** that, there is **no resolution** of the Board in the file of the board. This would mean that, the resolution was not passed by the Board. **The provision of S.32 (2) (j) of the Wakf Act 1995 therefore was violated.**

Mr.M.Y.Patel while filing his consolidated reply **(P 426429**) dated 8-6-2009 filed on 10-6-2009 claimed time for 2 days and he did not file it. He then added that, as he recollect, he followed the entire procedure.

His such statement is far from the reality, if it is considered through above discussion.

Even though there was no resolution, the order No.WAKF /SNT/ 5143 dated Nil was issued under the signature of the Mr. M.Y.Patel the then C.E.O. and the property was leased. **Mr. M.Y.Patel appears to have abused and misused his powers by granting lease of the plot without resolution and he is responsible for this transaction. Mr. M.A.Aziz the then Chairman also is equally responsible for the same, he being head of the institution.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 15**

**REPORT**

**COMPLAINT NO. 50/2008**

**Complaint by Abdul Khalekh Painter r/o BEED DIST. BEED.**

**DARGAH HAZRAT KOCHAKSHA WALI.**

**DETAILS OF THE PROPERTY** :-

Mr. Khalekh Painter filed the complaint before this Commission **(P.514-516)** alleging the lease of the land Sy.No. 95 admeasuring 14 Acres 19 Gunthas of Dargah Hazrat Kochaksha Walli at Beed Dist. Beed. The Govt Gazette is (**P 516 A**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

As per the complaint the land Sy.No. 95 totally admeasuring 14 acres 19 gunthas was Leased to difference institution and private persons in parts as under:-

I) 2 acres of land leased by Inamdar to Maharashtra State Electric Board for manufacturing Poles .

II) 5 acres of land was leased to Sakharam Keshav Gore and Rajaram Keshav Gore for Rs. 3000/- under the registered dated 4-8-1970 for 99 years. Subsequently the Wakf Board regularized the lease under the resolution no.118 dated 30-10-1989 for 50 years.

III) 2 acres 12 gunthas of land was leased to Ramsingh Karmsingh Patel and Hersingh Karamsingh Patel as per the order no.4032/ 94 dated 18-10-994 for 51 years.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.113/09 dated 13-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 **(P.517-518)** He did not file a reply.

The District Wakf Officer, Beed was served of notice O.No.114/09 dated 13-4-2009 and he filed a reply dated 5-5-2009 **(P.517-518).**

The DWO Beed made a report of the service of sommenses on the following persons **(P519)**. Notice was sent by hand to Mr. Sakharam Keshav Gore O.No.115/09 dated 13-4-2009. He refused to accept. **(P 520-521)**

Notice was sent by hand to Mr. Rajaram Keshav Gore O.No.116/09 dated 13-4-2009. He refused to accept.**(P 522-523)**

Notice was sent by simple post to Mr. Ramsingh Karmsingh Patel O.No.117/09 dated 13-4-2009 and it was reported that he does not reside there. **(P 524-525)**

Notice was sent to Mr. Hersingh Karmsingh Patel e O.No.118/09 dated 13-4-2009 and it was reported that he does not reside there. **(P526-527)** Non of them filed a reply.

**OBSERVATION OF COMMISSION**:-

The District Wakf Officer Beed filed reply along with documents (**P 528-539)** He admitted in his reply that, the land Sy.No.95 of Tarfgiram admeasuring 14 acres 11 gunthas is a Khidmat Inam of Dargah Rajiyoddin Makkisaheb Beed and it was leased as under:-

I) 7 acres of land was leased to the Maharashtra State Electric Board for 99 years on rent of Rs.7000 p.a. The details of this transaction are not stated in the reply but document (**P 530-531)** in Urdu script) is produced.

II) 2 acres 19 gunthas was leased to Anjum Ishat-e-Talim Beed, the Urdu Institution on the rent of Rs.7000/- p.a. for 99 years, under the Board Resolution No.1308 dated 2-8-1971. **(P.533-537)**

III) As far as the aforesaid column no.1 and 2, the transaction therein being quite old are beyound the jurisdiction of the Commission and so no observation about it.

IV) Remaining 5 acres of land was leased **by Inamdar Sayed Hussain** to Sakharam Rajram Gore for 99 years under the registered deed no.2508 dated 4-8-1970. Thereafter the Wakf Board passed the resolution No.118 dated 30-9-1989, by obtaining Rs. 77,500/- as advance lease money, and regularized the said lease.**(P 538-539) No document is produced** to support this transaction The DWO stated in his reply (**P 528-529**) that

> "But permission was never granted to Sakharam Rajaram to sell the Inam Land." (**See the observations in last para**)

V) The DWO then stated in his reply (**528**) 2 acres 12 gunthas of land was illegally leased by Rajaram to Karmsingh Ramsingh Patel for 99 years . Subsequently the Wakf Board regularized the said lease under the order dated 18-11-94, 19-12-94, 23-3-94 and 21-4-1994. Subsequently the Wakf Board issued the order on 15-4-1995 (**538)** and granted permission to Narayan Karmsingh Patel to divide the land measuring 2 acres 12 gutnahs in plots and to allot it to the private persons. **(P 534-539)**

VI) The Dist Wakf officer stated that the permission to sale was not granted to Sakharam Rajaram. The District Wakf Officer however, did not specifically state as to whether Sakharam Rajaram exceeded his powers and transferred by sale the plots to the Difference persons. As far as this transaction is concerned the District Wakf Officer was expected to make clear statement. When he states that, the permission to transfer the plots was not granted, remotely means that, Sakharam Rajaram might have transferred the plots by sale to difference persons. The Dist. Officer as well as C.E.O. will have to be asked as to whether Sakharam Rajaram has transferred some of the plots by sale to different persons and if the answer is in affirmative, they will have to be asked the relevant details of such transaction. Issue notice.

Sumonse issued under O.No. 306-2/1 to CEO & 306-2/2 to DWO 10-8-2009 and there is no reply.

I may however, mention that (1) the grant of 7 acres of land to M.S.E.B. for 99 years and (2) grant of 2 A. 19 G. of land to Anjum Ishate Talim for 99 years under resolution No.1308 dated 2-8-1971 was beyond the statutaory provision of section 36 A of the Wakf Act 1954 (**P.530 & 533**).

Simiraly the grant of 1 A. 10 G. of land to Ramji Karmsi Patil for 51 years under the order dated 24-3-1994 **(P.537)** was also beyond the staturtory provision section 36A of the Wakf Act 1954.

The land adm. 2 A. 12 G. also granted to Mr.Karmsi Harsi Patel under the order dated 18-10-1994 **(P.534**) without mentinong period of lease.

Most objectionable aspects is grant of no objection certificate dated 15-4-1995 (**P.538**) in favour of Mr. Narayan Karmsi Patel authorizing him to sub-lease/morgate the plots for shops etc. for period of 51 years.

**All of the aforesaid transactions appear to be beyond staturtary provision of section 36 A of Wakf Act 1954 and the Wakf Board and/or the State Govt. of Maharashtra may reconsider all the transactions either for continuation, non-continuation or atleast for re-assessment of valuation, for determination of the rent amount. I may propose that, the assessment of valuation shall be made after each 3 years or at the most five years, looking to the increasing high prices of the properties now a days.**

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No. 16**

**REPORT**

**COMPLAINT NO. 50/2008**

**Complaint by Khalekh Penter r/o Beed.**

**DARGAH HAZRAT KOCHAKSHA WALI BEED DIST. BEED.**

**DETAILS OF THE PROPERTY** :-

**Compliance of Order dated 27-9-2004**

Mr. Khalekh Painter filed the complaint before this Commission **(P.514-516** with R. 15**)** Alleging the lease of the land Sy.No. 95 admeasuring 14 Acres 19 Gunthas of Dargah Hazrat Kochaksha Walli at Beed Dist. Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Additional Collector directed in the order Dt. 27-9-2004 **(P.540-544)** in proceeding No. 2000/Inam/land/Beed/61 to the various subordinate Revenue authorities, to take the land S.No. 95 admeasuring 14 A 19 G in possession and to lease it on Ek-Sala basis; to cancel various mutation entries, and to prosecute the concerned Talathi etc.

As per the complaint the lease of the land Sy.No. 95 totally admeasuring 14 acres 19 gunthas was Leased to difference institution and private persons in parts as under:-

IV) 2 acres of land leased by Inamdar to Maharashtra State Electric Board for manufactories .

V) 5 acres of land was leased to Sakharam Keshav Gore and Rajaram Keshav Gore for Rs. 3000/- under the registered dated 4-8-1969 for 99 years. Subsequently the Wakf Board regularize the lease under the resolution no.118 dated 30-10-1989 for 50 years.

VI) 2 acres 12 gunthas of land was leased to Ramsingh Karmsingh Patel and Hersingh Karamsingh Patel as per the order no.4032/ 94 dated 18-10-994 for 51 years.

**NOTICES TO THE PARTIES:-**

So as to verify whether the order dated 27-9-2004 was complied or not the notices were issued as under,

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.109/09 dated 13-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 **(P.545-546)** He did not file a reply.

The District Wakf Officer, Beed was served of notice O.No.110/09 dated 13-4-2009 and he filed a reply dated 5-5-2009 **(P.545-546).**

Notice O.No.108/09 dated 13-4-2009 (**P 545**) was sent by simple post to S.D.O.Beed . There is no compliance.

Notice O.No.111/09 dated 13-4-2009was sent by simple post to Tahsildar Beed. The Tahsildar Beed issued a letter to Circle Inspector bearing O.W.No.209/Inam/Kavi-39 dated 6-5-2009 **(P.546A)** directing to attend the office of the Commission and to make the necessary compliance. The later however, did not attend this office nor made any compliance.

**OBSERVATION OF COMMISSION**:-

The DWO Beed filed the reply bearing O.W.No.Wakf/216/dated 30-4-2009 stating that one Mr. Ahemadbin Abud has challenged order 27-9-2004 in the Hon'ble High Court bench at Aurangabad. **(P547)** He has produced the copy of the W.P.No.622/06 dated 14-10-2008. **(P 548-550)** The matter is decided on 14-10-2008 setting aside the order dated 15-7-2005 and remitting back to the addl. Collector Beed to reconsider the matter of Ahmedbin Abud r/o Beed.

Significantly enough the order dated 27-9-2004 which is the subject matte of the present notice is not set aside, though the subsequent order dated 15-7-2005 is set aside. The later order being available with this record, it is difficult to know whether both of these orders are coinciding having one subject matter and the cause of action. Moreover the order dated 15-7-2005 relating to Sy.No.95 is quashed to the extent of 2 acres 35 gunthas only.

As a matter of fact the Dy. Collector Beed passed the order on 27-9-2004 and the W.P.No.622/06 was filed in the High Court in 2006. During this vast span of period the Dy. Collector Beed could see that, the order passed by him was executed, however it appears that, the said order was not executed. The Dy. Collector Beed to whom the notice O.No.108/09 and the Tahsildar Beed to whom O.No.111/09 were issued, did not even take care to make a statement to this notice **(P.545)**. In the circumstance the **fresh notice** will have to be issued .

Here the District Wafk Officer Beed and Chief Executive Officer Wakf were expected to be more interested to see that, the order dated 27-9-2004 which was in their favour was executed and complied with. The District Wakf Officer Beed simply stated in his reply that, Mr. Ahmedbin Abud has filed W.P.No.622/06 and he even did not take care to peruse the said order. If he had perused the said order, he could find that, the W.P.was disposed off by the court. His reply is in the tone that, he is third person having no concern with the matter. ***As a matter of fact the D.W.O. is a care taker of the Wakf property and his such pessimistic approach is highly disapproved by this Commission.***

**Even besides this, the D.W.O. Beed and /or the C.E.O. got a span of two years from 27-9-2004 to 2006 wherein they could persuade the Dy. Collector Beed and other concern authorities to executive the order, however both of them displayed a approach of third person and this also is highly disapproved.**

**Moreover, the order dt. 15th July 2005 was set aside in the W.P.No. 622/2006 and not the order dt. 27-9-2004 (P 540). The DWO Beed had no time to see the record in such angle. The order dated 27-9-2004 is still standing/ operative, and it is executable. Unfortunately no such steps appear to have been taken.**

**Few days/months before, the DWO Beed attended then office, and aforesaid fact was brought to his notice. Still he did not file another reply, to enlighten the position.**

**The CEO Wakf and DWO Beed are responsible for gross negligence, carelessness, and attitude of 3rd person.**

O.W No.73/2/1 dt 10-2-2010 to CEO Aurangabad **(P 550 A)**

O.W No. 73/2/2 dt 10-2-2010 to DWO Beed. **(P 550 A)**

O.W No.74/4/1 dt.10-2-2010 to SDO Beed **(P 550 L)**

O.W No.74/4/2 dt 10-2-2010 to Tahasildar Beed **(P 550 L)**

O.W No.74/4/3 dt 10-2-2010 to Div.Commission Aurangabad

**(P 550 L**)

O.W No.74/4/4 dt 10-2-2010 to Collector Beed. **(P 550 L**)

O.W No. 75 dt 10-2-2010 to DWO Beed**(P 553 N** with R 17) **issued**

There has been no response to the above summons.

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No. 17**

**REPORT**

**COMPLAINT NO. 50/2008**

**Complaint by Khalekh Penter r/o Beed**

**DARGAH HAZRAT KOCHAKSHA WALI BEED**

**BEED DIST. BEED.**

**DETAILS OF THE PROPERTY** :-

Mr. Khalekh Painter filed the complaint before this Commission **(P.514-516** with Report 15**)** alleging the sale of the land Sy.No. 95 admeasuring 14 Acres 19 Gunthas and land Sy.No.27 admeasuring 9 A. 31 G. of Dargah Hazrat Kochaksha Walli at Beed Dist. Beed .

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Khaleq Painter alleged that, Mr. Jakiyoddin @ Munna who is the son of Mutwalli Mr. Fazluddin has made the plots in these lands adjoining to Dargah and transferred it to the different persons.

**NOTICES TO THE PARTIES:-**

The notice bearing O.No.119/09 and 112/09 dated 13-4-2009 **(P.552-553A)** was served on Mr. Jakiyoddin Fazluddin @ Munna and he filed a reply dated 10-6-2009.**(P 553-E-H)**.

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.120/09 dated 13-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 **(P.553B - 553C)** He did not file a reply.

The District Wakf Officer, Beed was served of notice O.No.121/09 dated 13-4-2009 and he filed a reply (with R 15) dated 5-5-2009 **(P.553B – 553C)** He filed reply to other notices pertinent to Sy.No.95 Bearing O.No.2/8,2/9/09 dated 5-5-2009 **(P.528-529)** and other reply bearing O.No.216/09 dated 30-4-2009 **(P.547** with R 16**)** and did not utter a single word about the present notice against Mr. Jakiyoddin.

The Tahsildar, Beed was served bearing O.W.No.122/09 dated 13-4-2009 (**P.553 B-C)** calling him upon to appear personally and to file reply on 5-5-2009. The tahsildar issued a letter bearing O.W.No.2009/Inam/Kavi/37 dated 6-5-2009 **(P.553 D)** directing the Circle Inspector to attend the office of the Commission and to make the necessary compliance. The later however, did not attend this office.

**OBSERVATION OF COMMISSION**:-

Mr. Jakoyoddin admitted in his reply **(P.553E-553H)** that, land Sy.No.25 adm. 19 acres 24 gunthas and Sy.No.27 adm. 9 acre 31 gunthas are the Inam land of Dargah Hazart Kochakshah Shahinsha Walli Beed and he alongwith others are the Inamdars. He is holding 50% share in both of these lands. He did not transfer any

portion of the land to anybody. On the contrary he stated that, the people have encroached on Sy.No.25 and suit bearing 61/08 is pending in the Civil Court; suit No.12/08 and suit no.79/08 are pending in the Wakf Tribunal Aurnagabad . He also has produced the copy of the application for interim relief filed in Wakf Suit No.12/08 claiming the interim injunction against those who are making interference in his possession.**(P.553-I-553 K)**.

After having a careful a perusal of aforesaid statement and the documents it appears that, the allegation in the complaint of making the transfer of the plots by Mr. Jakiyoddin to different persons is in correct. On the contrary I would be justified to say that, Mr. Jakiyoddin the Inamdar and Mutwalli is making every effort to protect the wakf property and his such attempt should be appreciated.

On the contrary the responsible authority like the C.E.O. and D.W.O. Beed have a **pessimistic approach in the matter. It appears that, such responsible authorities do not take care to protect the Wakf property,** even do not file a reply to the summons of this Commission. In the circumstances it would be appropriate to issue the fresh summons by way of reminder.

O.W No.76/2/1 dt 10-2-2010 to CEO Aurangabad **(P 553 L)**

O.W No. 76/2/2 dt 10-2-2010 to DWO Beed. **(P 553 L)**

O.W No.77/2/1 dt 10-2-2010 to Tahasildar Beed **(P 553 M)**

O.W No.77/2/2 dt 10-2-2010 to Collector Beed. **(P 553 M)**

O.W No. 75 dt 10-2-2010 to DWO Beed **(P 553 N with**

**R 17) issued**

There has been no respond from them.

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No.18**

**REPORT**

**COMPLAINT NO. 56/2008**

**Complaint by Shri Abdul Khalekh Penter r/o Beed.**

**MASJID DIVANWADA BEED DIST. BEED**.

**BEED DIST. BEED.**

**DETAILS OF THE PROPERTY** :-

The land Sy.No.168 admeasuring 15 Acres 17 Gunthas Masjid Divanwada Beed Dist. Beed is the Wakf Property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Khaleq Painter alleged in the complaint **(P.554-556)** that,S.No. 168 is illegally leased for long period of 40 years to Pradipkumar Dwarkadas Mantri by the Wakf Board. The 7/12 extract is **(P.557A-B)**

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.58/09 dated 26-3-2009 calling him upon to appear personally and to file a statement on 15-4-2009 **(P.557)** He did not file a reply.

The District Wakf Officer, Beed was served with notice O.No.56/09 dated 26-3-2009 **(P 557)** and he filed a reply dated 1-4-2009 and 14-5-09 **(P 558)** alongwith documents **(P.559-561)**.

Pradipkumar Dwarkadas was served of notice O.No.57/09 dated 26-3-2009 **(P 557)** vide the report of the Wakf Officer **(P.563)** and he filed a reply dated 15-4-09 **( 564-565)**

**OBSERVATION OF COMMISSION**:-

The Dist Wakf Officer Beed stated in his reply dated 1-4-2009 and 14-5-09 **(P .558 and 560)** that the land S.No. 168 was leased to Dwarkadas from 1-1-70 After expiry of his term of lease of 25 years, the possession of the land was obtained from him on 26-7-1999 and on the same day was delivered to the Mutawalli by name Md. Habibuddin Nasiruddin. He produced the copy of the notice of restoration of possession **(P.559)**, possession receipt by Mohd. Habibuddin s/o Nasiruddin **(P.560)** and the Panchanama **(P.561)**

As such according to DWO the land is in possession of the Mutawalli by name Md. Habibuddin Nasiruddin.

As against this, Pradipkumar Dwarkada stated in his reply **(P.564-565)** that he is still holding the possession of the land. He has produced the copy of the order dated nil in proceeding No.2002/

ROR/45 **(P.566-568)** and he claimed that this was in his favour. On perusal of it, it appears that the order passed against him by the lower court, was reversed by allowig the appeal. His claim of possession is based on this document .

Since, the Mutawalli is holding the possession of the land, and at the same time Pradipkumar is also claiming the possession, the Mutwalli will have to be asked about possessin by issuing the notice, and DWO Beed will have to be asked whether appeal has been preferred against this order. It is not necessary, to go in any more details of the matter. The complaint contents no merits.

Notice issued to the parties O.W.No.98/3/1and DWO Beed 98/3/3/ and CEO 98/3/2. **(P 568 A)** issued, and that has not been respond. The commission could not make observations, as regards this issue.

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No. 19**

**REPORT**

**COMPLAINT NO. 56/2008**

**Complaint by Shri Abdul Khalekh Penter r/o Beed.**

**MASJID DIVANWADA BEED DIST. BEED**

**DETAILS OF THE PROPERTY** :-

The land Sy.No.170 admeasuring 22 Acres 38

Gunthas is of Masjid Divanwada Beed Dist. Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Khaleq Painter alleged in the complaint **(P.554-556** with R 15**)** that, S.No. 170 is illegally leased for long period of 40 years to Kailas Babarao Narwade r/o Beed by the Wakf Board.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.138/09 dated 15-4-2009 calling him upon to appear personally and to file a statement on 15-5-2009 **(P.569-570)**) He did not file a reply.

The District Wakf Officer, Beed was served with notice O.No.139/09 dated 15-4-2009 and he filed a reply dated 14-5-2009 **(P.562** with R 18**)**

The notice was issued to Kailas Babarao Narwade under outward No.140/09 dated 15-4-2009 he was **not served vide the report of the District Wakf Officer, Beed (P.519)**

**OBSERVATION OF COMMISSION**:-

The Dist Wakf Officer Beed stated in his reply dated 14-5-2009 **(P 562** with R 18**)** that the land S.No. 170 was never leased to Kailas Babarao Narwade The name of this person shown in the **7/12 extract (P. 557B)** was encircled , indicating some thing otherwise and specially supporting the contentions of the District Wakf Officer, Beed. Kailas Babarao could not be served and so he did not come before this Commission. Any way there is no reason to disbelieve the contention of the D.W.O. Beed . It appears that, the land may be in possession of the Wakf Board, since the D.W.O. Beed made a categorical statement that, the land was not leased. The complaint therefore, does not contain any merits.

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No.20**

**REPORT**

**COMPLAINT NO. 47/2008**

**Complaint by Shri Shaikh Akattar Hussain s/o Shaikh Maheboob and other 2 r/o Beed**

**CHILLA SHAIKH FARID SHAKHARGAND**

**AND GRAVEYARD NEKNUR DIST. BEED**

**DETAILS OF THE PROPERTY** :-

Land Sy.No.49 admeasuring 9 A 32 G. and Sy.No.23 5 A. 31 G. situated at Neknur Dist. Beed is Wakf property .

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainants Shaikh Aktar Hussain etc. 3 made a complaint **(P.571-572)** that, the aforesaid lands are Inam of Chilla Shaikh Farid Shakarganj and unless the name of Sayed Hussain is recognized as a heirs of Mutwalli under the Atiyat Act, his name can not be entered in the Gazette. According to complainant Sayed Hussain did not obtain the succession certificate from the Atiyat Court and so entry of his name in the Gazette is wrong and incorrect.

**NOTICES TO THE PARTIES:-**

The Notice, O. No. 46/09 dated 24-3-2009 was issued against Sayed Hussain Malangsha r/o Beed through the District Wakf Officer Beed under O.No.53/09 **(P.573-574)** This office however, did not receive any report from D.W.O. Beed in respect of service. Sayed Hussain was called upon to appear on 13-4-2009 and to make statement. There has been, however, no appearance by him.

**OBSERVATION OF COMMISSION**:-

The complainants categorically admitted in the complaint itself that, the name of Sayed Hussain and others is entered in the Govt. Gazette against the record of the aforesaid land. When such is the matter, Sayed Hussain and others whose names are existing in the Gazette, he will have to be presumed to be the Mutwalli of this Institutions. This Commission will not be competent to go into the question of the legality or illegality of the appointment of Mutwalli. The complainants did not produce the copy of the Gazette.

The complainants alleged that, Sayed Hussain and others have leased Sy.No.49 adm. 9 A. 32 G. to Nimbaji Pandrinath Karande. The complainants however did not produce any document to support this fact. Assuming for a while that, the land is leased to Limbaji, I feel that, Sayed Hussain being recognized as Mutwalli would be competent to lease it subject to limitation and conditions laid down in section 56 of the Wakf 1995. Mr.Limbaji Pandrinath Karande however made a statement **(P.575)** as well a agreement **(P.576)** to be

having no objection to enter the name of the Wakf Board in the record of this land. Since the Complainants did not produce any documents to support the facqtum of lease to Limbaji; and since the name of Sayed Hussan and others are recognized as Mutwalli as per entry in the Gazette, it would not be proper for this commission to go in any more deep. Wakf Board will be the proper authority to look into the matter and complainant would be free to take necessary action.

I however, may make my observation as regard the entry of the name of Sayed Hussain in Kabjedar Column in 7/12 extract of Sy. No.23 **(P.577)**. As per the directive issued by the Divisional Commissioner in his letter No.2000/ Land Reform /Wakf dt. 8-3-2001**(P 654** with R 23**)** to delete the entry of the name of private person and the enter the name of Wakf in the Kabjedar Column. As such the maintence of the 7/12 extract was contrary to the directives. The letter will have be issued to the S.D.M. Beed to this extent to carry out the necessary correction.

The letter bearing O.W.No.317/3/1 dated 18-8-2009 issued to S.D.O.Beed. The letter bearing O.W.No.317/3/2 dated 18-8-2009 issued to C.E.O.Wakf Board, Aurangabad. The letter bearing O.W.No.317/3/3 dated 18-8-2009 issued to District Wakf Officer Beed **(P.578).**

**No response.** The CEO simply forwarded the summonse to DWO Beed. **(P 578A)**

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No. 21**

**REPORT**

**COMPLAINT NO. 53/2008**

**Complaint by Shri Khalekh Penter r/o Beed**

**DARGAH HAZART UMARSHAWALLI AND GRAVEYARD**

**AT DHINDURD BEED DISTRICT BEED.**

**DETAILS OF THE PROPERTY** :-

Land Sy.No.14 , Gut No. 731 admeasuring 3 A 35 situated at Dhindrud Tq. Majalgaon Dist. Beed is a wakf property, notified in Mah. Govt. Gazette at Sr. No. 6 Part 'C' of the year 1974.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Khaleq Musa Penter stated in the complaint that **(P 579-581)**

(i) The Zilla Parishad Beed carried unauthorized construction of the school in this land,

(ii) The Grampanchayat Dindrud constructed the building for it's office, by committing encroachment.

(iii) The The Grampanchayat Dindrud, has given permission for the weekly Bazar, and it is being called there. The Grampanchayat Dindrud is collecting the rent of Rs, 60000/- P.A. from the Thekedar. (Contractor)

(iv) The Grampanchayat Dindrud has given permission to the B.S.N.L. for construction of the tower and the work is going to start.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 103/09 dated 13-4-2009 **(P.582-583)** calling him upon to appear personally and to file a statement on 5-5-2009. He did not file reply.

The District Wakf officer Beed was served with notice, O. No. 104/09 dated 13-4-2009 **(P.582-583)** calling him upon to appear personally and to file a statement on 5-5-2009. He filed reply dated 12-5-2009 vide O.No.Wakf/226/2009 **(P. 584)** with the documents P. **(P.585-597)**.

The Notice was sent to Chief Executive Officer, Zilla Parishad Beed vide O. No. 105/09 dated 13-4-2009 **(P.582-583)** calling him upon to appear personally and to file a statement on 5-5-2009.) He did not file reply.

The Notice was sent to Sarpanch Grampanchayat Dindrud vide O. No. 106/09 dated 13-4-2009 **(P.582-583)** calling him upon to appear personally and to file a statement on 5-5-2009.) He did not file reply.

The Notice was sent to Executive Engineer BSNL vide O. No. 107/09 dated 13-4-2009 **(P.582-583)** calling him upon to appear personally and to file a statement on 5-5-2009.) He did not file reply.

**OBSERVATION OF COMMISSION**:-

The District Wakf Officer, Beed stated in his reply **(P.584)** that, the aforesaid 3 A. of land out of Gut No.731 i.e. Sy. No.14 is a Wakf Property notified in the Govt. Gazette part 'C' at Sr. No.6 and the necessary entry is taken in the 7/12 extract.

He then stated to have issued the letter **(P. 585 )** to The Tahsildar Majalgaon on 10-9-1996 requesting him to take the mutation entry of the Wakf in the record of this land, and accordingly the entry bearing no.2127 dated 15-2-2007 **(P.587)** verified on 24-3-2007 was taken in the Revenue Record. The 7/12 extract **(P.588)** produced by the Wakf Officer, display the mention of Muslim Kabrasthan in "Otherwise rights" of this document. The Talathi recorded 1 H. 20 R. of land under mutation entry no.2127 by specifically mentioning 67 R for Kabrasthan .

However, the entry of the Wakf is not taken in Kabjedar Column of the 7/12 extract. The necessary instructions are required to be issued by the S.D.O. or by other competent authority to the Talathi to carry the necessary correction vide Circular dated 15-10-1975 (9-1-1985) issued by the Divisional Commissioner, Aurangabad.(**P-5013** )

The D.W.O. then the stated in the reply **(P.584)** that the Grampanchayat Dhindurd started making ***construction of the road through the Kabarsthan.*** He issued a letter dated 29-1-2007 **(P.586)** to the Tahsildar requesting to stop the construction of road otherwise, that would result unrest in the Muslim Community and then only the said work was stopped.

The District Wakf Officer, then stated that, the Grampanchayat started calling the weekly Bazar in this area, the Zilla Parishad constructed the School, and the Grampanchayat gave a permission to the BSNL to construct the Tower. However according to D.W.O. the matters are being agitated before the concern authority. The D.W.O. has produced the copy of the letter dated 20-11-2007 address to the Gramsevak Grampanchayat Dhindrul **(P.589)** making a grievance of construction of school building and calling of the weekly Bazar. The D.W.O. has also produced the copy of letter dated 11-12-2008 **(P.590-591)** addressed to the Collector making grievance on all of the aforesaid counts . However, it is not known as to what action was taken by the Collector or even whether or not any cognizance was taken by the Collector of this letter.

Significantly the **Zilla Parishad Beed , Grampanchayat Dindrud and the B.S.N.L**. did not respond to the summons of this office. This can lead to infer that they **have a high handed action in the matter**.

It appears that after recording the mutation entry no.2127, the Grampanchayat was aggrieved and it filed a regular civil suit against the State Govt., the Revenue Department and the Wakf Board in the year 2008 **(P.593-5995)** The Wakf Board has produced copy of reply **(P.595-599)** and has taken the stand that, the aforesaid land is a Wakf property. The Board also challenged the jurisdiction of Civil Court, since the matter of Wakf properties are seized with the jurisdiction of the Wakf Tribunal. The said suit appears to be still pending .

In the Circumstances I feel that the notice will have be issued to the Collector, S.D.O and Tahsildar concerned in this connection. Issue notice.

Notices issued to:-

1) S.D.O. Beed O.W.N0.326/3/1dt.26-8-09. **(P-326/3/1)**

2) Thasildar Beed O.W.N0.326/3/2dt.26-8-09. **(P-326/3/2)**

3) The Collector, Beed O.W.N0.326/3/3 dt.26-8-09 **(P-326/3/3)**

**No response.**

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No. 22**

**REPORT **

**COMPLAINT NO. 52/2008**

**Filed by Khaleq Painter r/o Beed.**

**JAMA MASJID BEED.**

**DETAILS OF THE PROPERTY** :-

Sy.No.46 admeasuring 28 A. 35 Gunthas of Beed is the Wakf property and it is leased for 51 years.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr Khaleq Penter filed the complaint **(P-602-605)** stating that Sy.No.46 admeasuring 28 A. 35 Gunthas of Beed is the Wakf property of Jama Masjid Beed and is leased on long term of 51 years under the order dated 19-7-1996 vide resolution No.88. The order dated 19-7-1996 was issued by the Secretary Marathwada Wakf Board **(P.606-607)**. Out of this, the land admeasuring 14 A 17 G. was leased to Shri/s Masu, Govind and Rohidas s/o Balya, whereas remaining 14 A 17 G. was leased to Shri Khatib Jilani s/o Shamshoddin and Syed Hameed Syed Banemiya.

Looking to the long term of the lease that too, of the land which is adjoining to Beed town, the complainant made a grievance to this office.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 124/09 dated 13-4-2009 **(P.608)** calling him upon to produce the copy of the original Resolution No.88 dated 7-7-1996, on 6-5-2009.

The District Wakf Officer Beed was served with notice, O. No. 125/09 dated 13-4-2009 **(P.608)** calling him upon to produce the copy of the original Resolution No.88 dated 7-7-1996, on 6-5-2009. The CEO Wakf Board produced the copy of resolution on 15-5-2009 **(P.609-610)** along with his forwarding letter **(P.611)**

The notice was issued against Shri Jilani Shamuddin vide O.No. 250/08 dated 31-10-2008 and it could not be served, he being not available.**(P No. 612)**

**OBSERVATION OF COMMISSION**:-

The perusal of resolution **(P.609)** display that it was passed by as many as seven members including the Chairman. The total number of the members at that time has not come on record. Still the fact remains that, sufficient number of members including the Chairman passed this resolution, by keeping its validity open for consideration.

The only objectionable aspect of the matter is that, the land was leased for long term of 51 years, as also the rate was only Rs. 1000/- p.a. for big area of the land admeasuring 14 A. 17 G. As on 7(3)-7-1996. The Wakf Act 1995 came into force on 1-1-1996 and this transaction was sufficiently governed by its provisions. Section 56 of the Act specifically provides that, the lease for more than 3 years is void. **This transaction of lease therefore, was obviously void.**

Still the CEO Wakf will have to be asked as to how many were the total members of the Wakf Board, including the Chairman.

The resolution further directed that, there shall be a review of the lease after each 10 years. It is however not clear as to whether this lease was reviewed in 2006 when the period of 10 years has elapsed. While making review the Board may consider the quantum of lease money. The Board can resume the possession of the land, it being leased for more than three years, and the said agreement being contrary to the legal provision.

Still the CEO Wakf will have to be asked whether, the lease have been renewed in 2006, if not why ?

Reference will have to made to the order dt. 27-6-2001(**P No,613-615)** passed by the Dy. Collector Land Reforms (Mr.N.T. Dhotre) making ***"A declaration that, the land Sy.No.46 adm. 28 A. 35 G. is Madatmash and granted the lease to aforesaid person.***

(**This document is taken from complaint No. 20/2008**).

As a matter of fact this land was a service Inam of Jama Masjid i.e. a Wakf property and the Dy. Collector Beed had no jurisdiction to make any "declaration" and to pass any kind of order as regards the nature of the Inam. The Civil Court or Wakf Tribunal alone are vested with the jurisdiction as provided by section 6 of the Wakf Act. **Exercise of the jurisdiction by the Dy. Collector (Mr. N.T.Dhotre) was high handed and in excess of his jurisdiction. It appears that Mr. Dhotre was suspended vide Divisional commissioner Aurangabad Order No. 2003/MSKA-1/ESD 301 Dt14-10-2005(P No. 616)** (**This document is taken from complaint No. 20/2008**) **The serious view is required to be taken against the such Govt. irresponsible officers.**

It appears that the **order dt. 27-6-2001(P 613) is challenged in appeal before the Government** and that order has been stayed as per the commutation dt. 16-8-2002 **(P 617)**. The **said appeal is still pending**, as per the oral statement of Mr. Khaleq Penter. If it may be true, the **matter becomes more serious, being for the laps on the part of the Government.**

Same is the case in respect of S.No. 45 admeasuring 32 A 21 G of Taraf Giram Beed.

Reference will have to made to the order dated 28-8-2000 **(P 618-620)** passed by the Dy. Collector Land Reforms (Mr. N.T. Dhotre) who had passed the order dt. 27-6-2001(**P No,613-615)** making ***"A declaration that, the land Sy.No.45 adm. 32 A. 21 G. is Madatmash and granted the lease to the person therein.*** **Exercise**

**of the jurisdiction by the Dy. Collector (Mr. N.T.Dhotre) was high handed and in excess of his jurisdiction.**

It appears that the **order dt. 28-8-200 (P 620) is challenged in appeal before the Government** and that order has been stayed as per the commutation dt. 13-8-2002 **(P 621)**. The **said appeal is still pending**, as per the oral statement of Mr. Khaleq Penter. If it may be true, the **matter becomes more serious, being for the laps on the part of the Government.**

It appears that the **Town planning officer** has further committed the complication. He granted permission to Mr Zainuddin and other vide order No. **45 TP /TP Beed 392, 401, 390 Dt.19-5-2003 & 386, 387 Dt 17-5-2003** without obtaining the no objection from either Wakf office or the Revenue Department. The CEO Wakf therefore raised objection to it vide letter No.MSBW/SNT 161/4069 Dt 8-12-2004 **(P622) The action of the town planning office also was high handed. The rerious action therefore, is required to be taken against him who was working on 17-5-2003 &19-5-2003.**

**Summons issued to :**

CEO Wakf Ow. No. 357/2/1 Dated 16-9-2009 **(P-622-A)**

DWO Beed Ow. No. 357/2/2 Dated 16-9-2009 **(P-622-A)**

**No response.**

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.23**

**REPORT**

**COMPLAINT NO. 54/2008**

**Filed by Hazi Mohd. Takiyoddin r/o Neknur Dist. Beed.**

**MASJID NEKNUR DIST. BEED.**

**DETAILS OF THE PROPERTY** :-

Sy.No.333 admeasuring 1 A. 4 Gunthas situated at Neknur Dist. Beed is the Wakf property for service of the Masjid Neknur Dist. Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mohd. Takiyoddin has moved this office. **(P.623-624).** One Shaizadi Begum w/o Walliyuddin r/o Neknur Dist. Beed created and manipulated the forged revenue documents and made the unauthorized possession over the this land. She was prosecuted in R.C.C. No.45/2008 of the offence u/s 420, 464, 465, 471, and 218 of I.P.C. and She was convicted under the Judgment and order dated 8-6-2006 by the Court Judicial Magistrate F.C. Beed **(P.625-640)** She did not vacate the possession over the land. It appears from the documents with complaint that, the Revenue Officer have taken the cognizance of the matter at least to the extent to remove the name of Shaizadi Begum from the Revenue Record, However, the Talathi, who is lowest in the hierarchy of Revenue Department, did not listen and follow the order of the superior.

**NOTICES TO THE PARTIES:-**

The District Wakf Officer Beed was served with notice, O. No. 131/09 dated 13-4-2009 **(P.641)** calling him upon to appear and to file the reply on 6-5-2009. He did not file the reply.

The Tahsildar Beed was served with notice, O.W. No. 126/09 dated 13-4-2009 **(P.641)** calling him upon to appear and to file the reply on 6-5-2009 He also was served with second summons bearing O.W. No.242/09 dt. 3-7-2009 calling him upon to appear and the file reply on 23-7-2009 **(P.642)**. He did not file the reply. He simply directed the Circle Inspector to attend the matter vide his letter dated 6-5-2009 **(P.643)** .

The Sub-Divisional Officer Beed was served with notice, O. No. 127/09 dated 13-4-2009 **(P.641)** calling him upon to appear and to file the reply on 6-5-2009. He did not file the reply.

The Dy. Collector, Land Reforms Beed was served with notice, O. No. 128/09 dated 13-4-2009 **(P.641)** calling him upon to appear and to file the reply on 6-5-2009. He did not file the reply.

The Circle Inspector Beed was served with notice, O. No. 129/09 dated 13-4-2009 **(P.641)** calling him upon to appear and to file the reply on 6-5-2009. He did not file the reply.

The Talathi Sajja Neknur Dist. Beed was served with notice, O. No. 130/09 dated 13-4-2009 **(P.641)** calling him upon to appear and to file the reply on 6-5-2009. He filed the reply 1-6-2009 and on 3-8-2009 **(P.644, 645)** with the 7/12 extract **(P-646)**

Smt. Sajeda Begum r/o Beed was served with notice, O. No. 132/09 dated 13-4-2009 **(P.641)** calling her upon to appear and to file the reply on 6-5-2009. She did not file reply though she appeared in the proceedings through Mr. M.A.Khan Advocate who filed his power **(P.647).**

**OBSERVATION OF COMMISSION**:-

Mr. Khaleq Painter moved the office of S.D.O. Beed through application dated nil **(P.648)**, another application dated 13-9-2006 **(P.649)** and third application dated 18-1-2008 **(P.650)** stating that, Shaizadi Begum has been convicted by the Court of law and her name should be removed from the Revenue Record . The complainant Mr. Takiyoddin also moved the Chairman Joint Parilimentary Commission on 18-6-2007 making a grievances that, though Smt. Shaijzadi Begum is convicted by the Court of Law her name is still continued in the revenue (**P.651)**

The Tahsildar Beed in response to such application issued a letter to the Circle -Inspector on 22-1-2008 asking the explanation as to why the name of the religious institution in the revenue record was not inserted. **(P.652)** The Tahsildar again issued a reminder to the Revenue Inspector on 30-1-2008 **(P.653)**. However, no such action was taken.

In this connection the Divisional Commissioner Aurangabad also issued a general letter on 8-3-2001 directing all the Collectors to take the entry of the Wakf in the 7/12 extract of service Inam properties. **(P.654 & 5013**)

Despite such matter the Talathi did not follow such directions. The Talathi in his reply (**P.644)** dated 1-6-2009 stated to have sought the guidance from the Tahsil office Beed on 2-2-2008. If both of these dates are visualized, it is seen that the Talathi kept mum for about 1 year and 4 months. He has no explanation for such gross delay to take action. The Talathi stated in second reply dated 3-8-2009 **(P.645)** that, the land owner and Talathi have preferred an appeal against the Judgment of the Criminal Court and so the matter is subjudiced. Significantly he neither produced the copy of the said appeal or at least, he did not state the number of it. This is how he took the matter very lightly, may be with deliberations, and alterior motive. He further stated not to have received any communication from the appellate court. He then stated to be having no document as a evidence to show that the land Sy.No.333 belongs to the Masjid or Dargah . As such the Talathi does not want to obey the orders of the superior, though he was specifically directed to delete the particular name from the revenue record and to insert the name of the institution. He still requires further evidence. ***I feel that, the subordinate employee, who does not obey the orders of the superior is required to be dealt with seriously and he should be compelled to obey the orders of the superior with*** **Disciplinary** ***Action.***

It is astonishing that, the Talathi wants to continue the orders and entries which are not legal; and he does not want to take the entry which is legal one. The only inference which can be drawn from such conduct of the

subordinate employee is that, he must be having the ulterior motive, may be for the extraneous consideration. **The revenue department may take the matter with particulars seriousness.**

I want to suggest to the complaint to approach to the Talathi with the documents relating to the Wakf and to request the Talathi to take the entry of the Institution in the 7/12 extra.

I also want to suggest the Wakf Board and its officers (who are care taker and not thirt persons) to initiate an action u/s 52 of the Wakf Act 1995 so as to evict the unauthorized person i.e. Shaizadi Begum of this land.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.24**

**REPORT**

**COMPLAINT NO. 67/2009**

**Filed by Moh. Osman Gulam Jilani r/o Ambejogai Dist. Beed.**

**DARGAH KHAZA SHAIKH MASUD KRIMANI SITUATED**

**AT CHANNAI DIST. BEED.**

**DETAILS OF THE PROPERTY** :-

Gut No.65, adm. 8 H.59 R. and Sy. 71, adm. 2 A. 10 G. and 233 adm. 1 A. 28 G. situated at Channai Dist. Beed are the service Inam Land of this Dargah. Govt. Gazette and 7/12 extract **(P-661-662)**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant filed the complaint **(P655-660)** alleging these properties to be in possession of various third persons. The complainant has produced the copy of the Gazette **(P 661-662)** and the 7/12 extracts **(P 663-665),** order of proceeding bearing No.2001/Inam/BD/2213 dated 3-3-2002 decided by Dy. Collector (Atiyat) Ambejogai. **(P.666-668)** This order display that, previously regular civil suit 79/63 and 81/75 (1978) were filed in the Civil Court and were decided holding that, these lands are not Mashratul Khidmat, but were community service Inam. The copies of Judgments of Civil Suits however are not produced. The Dy. Collector (Atiyat) dismissed the aforesaid petition on such ground . The complainant filed this complaint on the ground that, these lands are Mashrtul Khidmat whereas the unauthorized persons are disposing it by making plots **.**

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 285/3/2/09 dated 21-7-2009 **(P.669-670)** calling him upon to personally appear and file the say on 3-8-2009. He however did not file reply.

The District Wakf Officer, Beed was served with notice, O. No. 285/3/3/09 dated 21-7-2009 **(P.669-670)** calling him upon to personally appear and file the say on 3-8-2009. He however did not file reply.

Mohd. Osman the complainant was served with notice, O. No. 285/3/1/09 dated 21-7-2009 **(P.669-670)** calling him upon to personally appear and file the say on 3-8-2009, specifically asking as to whether the appeal was preferred against the aforesaid judgment of the court .He filed a reply dated 11-8-2009 **(P.671)**

**OBSERVATION OF COMMISSION**:-

The complainant specifically stated in his reply to the notice that he and Inamdar who are presently living did not prefer an appeal against the aforesaid judgment. As far as appeal by his predecessors is concerned, he has no knowledge about it. The complainant Mohd. Osman personally appeared before me some where after service/summons and he firmly stated, not to have preferred an appeal. The Civil Court who was quite competent to decide the nature of Inam before 1995 i.e. before coming to force the Central Wakf Act 1995, has decided that these Inam are not service Inam of Dargah and those judgment were not challenged. Therefore, the judgments of competent court have reached to the finality and so this Commission can not look into the said Judgments.

Of course, if the copies of all the pervious litigation are produced before this Commission or before law knowing persons, the complainant may get a proper advice, since in the Govt. Gazette of 7th March 1974 **(P.661-662)** these lands are shown as Wakf properties I may simply call upon the complainant to produce the copies of the Judgments Regular Civil Suit No.79/63 and 81/75 /78 for perusal, so that, the Commission reach to the proper conclusion. At present no opinion.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.25**

**REPORT**

**COMPLAINT NO.20/2009**

**Filed by Mr.Misbahulla r/o Beed.**

**JAMA MASJID BEED ANJUMAN ISHATE TALEEM.**

**DETAILS OF THE PROPERTIES** :-

The site of Jama Masjid Beed is alleged to have been encroached by Ahmedbeen Abud and Khaleque Painter r/o Beed .

The site measuring 82083 Sq Ft. appears to be in dispute.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr.Misbahulla s/o Sayed Ahmed r/o Beed filed complaint **(P. 400 J-Y R-11)** alongwith so many documents and he has alleged the commission of encroachment on the site of Jama Masjid by Ahmedbeen Abud and Mr. Khaleque Painter r/o Beed.

**NOTICES TO THE PARTIES:-**

Mr. Ahmedbeen Abud and Mr. Khaleque Painter were served with the notice bearing O.W.No.281/08 dated 3-11-2008 **(P. 672)** Mr. Ahmedbeen Abud filed a reply **(P.673)** He had produced the copy of lease deed **(P.674-675)**

Mr.Khaleque Painter filed a reply **(P.676-682)** alongwith the power of Mr. Suryawanshi Advocate **(P.683)**

**OBSERVATION OF COMMISSION**:-

Mr. Ahmedbeen Abud r/o Beed stated to be in possession of the property on the basis of the agreement executed by the Marathwada Wakf Board in his favour. He challenged the jurisdiction of this Commission saying that, the Commission can not entertain the complaint. The copy of the lease deed **(P.674-675)** 26-1-1970 disclosed that, the site of Mosque admeasuring 82083 Sq.feet was **allotted to him for 99 years under the registered lease deed to be renewed after 99 years**. When such is the matter there is no question of commission of encroachment either by Mr. Ahmedbeen Abud or by Mr. Khaleque Painter .

Mr. Khaleque Painter r/o Beed denied to have committed encroachment and/or the damage to the Mosque from the Northernside as alleged in the complaint. Mr. Khaleque Painter alleged in the reply that Mr. Misbahulla who is a Mutwalli of one Mosque having the land Sy.No.102/2 adm. 8 A. 6 G., himself has transferred the plots by sale to the People.

As per section 36 of the Wakf Act 1954 which was in force till 1995, the lease of the property could be made only for three years. **The Wakf Board may consider this aspect particularly from the point of view that, the lease money of such big portion of land was only Rs.100/- per annum and the lease was to be renewed after 99 years. (P-674) The then chairman and the Secretary/CEO of the Board may be responsible, for violation of law.**

Beside the aforesaid suggestions by this Commission, there is no substance in the complaint and so the complaint deserves to be filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.26**

**REPORT**

**COMPLAINT NO.20/2008**

**Filed by Mr.Misbahulla r/o Beed.**

**JAMA MASJID BEED.**

**DETAILS OF THE PROPERTY** :-

The land Sy.No.121 adm. 25 A. 32 Gu. of Beed is the subject matter and a Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr Misbaulla R/O of Beed filed a complaint **(P 400 J-Y)** The name of Mr. Mohd. Mazruddin, Mohd. Khaliluddin, Mohd. Latifuddinn, and Mohd. Sainuddin s/o of Mohd. Rahmuddin was found in the 7/12 extract **(P.684)** enclosed with the complaint **(P.400 J-Y)** and so the action was taken to ascertain as to what was the basis of possession of these persons on the Wakf land.

**NOTICES TO THE PARTIES:-**

The aforesaid four persons were served with the notice bearing O.W.No.285/08 dated 3-11-2008 **(P.685)** calling them upon to make the statement as to what was basis of the existence of their names in the 7/12 extract. **(P.684)** Mr. Latifuddin appeared on 20-11-2008 **( P.686)** and asked for the copy of complaint which was provided to him. He then appeared on 26-12-2008 and claimed time of 7 days **( P.687)**. He then filed a reply on 11-12-2008 **(P.688)** alongwith the copy of succession certificate **(P.689-691)**

**OBSERVATION OF COMMISSION**:-

Since aforesaid four persons appear to be Mutwalli, and they are holding the possession in such capacity, the complaint renders without substance. Hence it is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 27**

**REPORT**

**COMPLAINT NO.20/2008**

**Filed by Mr.Misbahulla r/o Beed.**

**JAMA MASJID BEED.**

**DETAILS OF THE PROPERTIES** :-

The complainant filed a complaint **(P 400 J-Y)** alleging that the site admeasuring 30' X 20'adjoining to Jama Masjid Beed has been illegally leased by Mr. Maksud Ahemad the Dist. Wakf Officer Beed, to minor Mr Abrarkhan Aslamkhan, showing his father Aslamkhan Gulam Mohammadkhan, as a guardian. **(P 692-693).**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The site admeasuring 30' X 20'adjoining to Jama Masjid Beed is alleged to have been illegally leased by Mr Maksud Ahemad the Dist Wakf Officer Beed to minor Mr Abrarkhan Aslamkhan showing his father Mr.Aslamkhan Gulmohammadkhan as a guardian. And the illegal possession is being continued, on the site which is a part of the city.

**NOTICES TO THE PARTIES:-**

Mr.Aslamkhan Gulmohammadkhan was served with notice O W No.275/2008 dated 1-11-2008 **(P.694).** He filed reply **(P.695-696)** together with the power of Mr.Sayed Sajjad Ali, Advocate (**P.697)** and various documents viz. the deed of lease dated 26-10-05 **(P.698-700)** and receipts (only few are taken) **(P.701-706)** . He also produced Judgment in RCS No.371/04 **(P.707-717)**, and the copy of statement on oath of himself in the suit **(P.718-720)**

The District Wakf Officer Beed was served with notice O.W.274/08 dated 1-11-2008 **(P.721)** He filed reply (**P.722-724)** alongwith the copy of judgment **(P.707)** and the copy of Gazette **(P.725-726)** together the copy of lease executed by Aslamkha s/o Gulmohammadkha on behalf of his minor son Abrarkha dated 23-12-1994 **(P.727)** and the copy of the order passed by the Wakf Board dt. 24-5-1994**(P. 728)**.

**OBSERVATION OF COMMISSION**:-

District Wakf Officer stated in his reply that, the site was allotted to Abrarkha on rent of Rs. 75/- p.m under the order of the Wakf Board dt 24-5-1994 **(P728)**. He made reference of the Judgment in RCS No.371/04 wherein, according to him the court held that, the property is not the Wakf property. In such background he stated that,

no question arises that, the said property is a Wakf property. As a matter of fact the District Wakf Officer, who is a custodian of the Wakf property, was expected to express the displeasure that, the court recorded finding that, it is not a wakf property, when this property is shown to be Wakf in the Gazette **(P.725-726),** and when in fact it is wakf property. It would be better to record his statement in his own words.

> ***" In the Background of the judgment of the Civil Court no question arises that, this property is wakf property".***

He then admitted that, this site was given to Aslamkha on rent by the Wakf Board. When he expressed pleasure that, this is not a Wakf property, how he could state in his reply that, it was leased by the Marathwada Wakf Board. **I feel that, Mr. Maksud Ahmed the District Wakf Officer, is not a care taker of the Wakf but he is acting as a enemy to the Wakf Board**.

Mr. Maqsud Ahmed simply relied on the Judgment of Civil Court and expressed the pleasure on the basis of some observation. He however forgot that, the wakf board was not a party to the said suit. When the Board was not a party to the suit, how the findings or mere observation against the Board would be binding against the Board.

Even beside this, it is necessary to take into consideration the observation made by the court in this connection .The Court stated that,

> " It is a fact that, at Exh.43 there is copy of Government Resolution dated 24-1-1974. I had given careful thought to the said documentary evidence and when it is compared with the case of the plaintiff one will say that Exh.43 no where show the disputed property as a property of Wakf Board"

The court nowhere specifically stated that, these observations were relating to the suit property. Moreover the copy of Ex.43 is not produced by the District Wakf Officer, alongwith his reply to inlight this position. As against this the Govt. Gazette (**P.725-726**) together with the circumstance that, the Wakf Board admittedly leased this property, clearly indicate that this property is Wakf property. **I would like to propose the Wakf Board as well as State Govt. of Maharashtra to take a serious action against the employee Mr. Maksud Ahmed.**

Mr. Aslamkha filed a reply **(P.695-696)** and admitted to be the leasee of the Wakf Board for suit property. He supported his claim by the deed of lease dated 26-10-2005 **(P.698-700)**. He also has produced the copy of receipts of rent and his own statement on oath in RCS No.371/04 **(P.701-718).** All of these documents are

conclusive to prove that, the property in dispute is a Wakf property but it was leased to him for period of 11 months on rent of Rs. 75/- p.m. It is not clear as to whether or not the lease was renewed, 11 months thereafter. The District Wakf Officer, has produced the copy of the deed of lease **(P.727)** appears to be dated 23-12-1994. On going through this document I found that, the question of quantum was not considered while obtaining the document. **I would suggest to the Board of Wakf that, the quantum of rent of Rs. 75/- p.m. would require reconsideration while renewal of lease, in the background of the fact that, this quantum was fixed in 1970 and some increase would be justified.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr..No.28**

**REPORT**

**COMPLAINT NO. 57/2009**

**Filed by Abdul Khalekh Painter r/o Beed**

**MASJID AND DARGAH HAZARAT DAYMSHAH**

**MULAYAMSHAH DHARUR, DIST. BEED.**

**DETAILS OF THE PROPERTIES** :-

Masjid and Dargah Hazarat Daymshah Mulayamshah Dharur, Dist. Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The land Gut No.362 admeasuring 3 H. 44 R. situated at Dharur, Dist. Beed is a subject matter of this Complaint. It appears that, the land adm. 33 G. or so has been allotted to Mr. Ambadas Biruba Nirmal r/o Dharur for the petrol pump. The 7/12 extract for the year 2006-07 is the document under which this property is shown of Dargah Dayamshah Mulayamshah under Mutation no.2019. There being unauthorized allotment of the site by the Addl. Dist. Magistrate Beed to Shri Ambadas, the complainant Mr. Khalekh Painter filed a complaint before this Commission **(P.729-731)**. The 7/12 extract showing this land in the name of Hazarat Mulayamshah Dyamashah **(P.732-733)**. The order passed by Addl. District Magistrate Dated 31-12-2004 is **(P.734)**

**NOTICES TO THE PARTIES:-**

The Addl. District Magistrate was served with the notice O.W.No.63/2009 dated 26-3-2009 calling him upon to make the statement as to under what circumstance the no objection certificate was issued . (**P.735)** He did not attend this office.

The Mutwalli by name Sayed Rais Ahmed, Sayed Jamsed, Sayed Rashid, and Sayed Zahir s/o Sayed Amjad Ali, r/o Beed were served with the Summon O.W.No.335/4/1 dated 29-8-2009 calling them upon to appear before this Commission on 10-9-2009 and to file reply. They did not attend this office.(**P.736).**

**OBSERVATION OF COMMISSION**:-

There can be no dispute of the fact that, Gut No.362 is a Wakf Property of Dargah Hazarat Dayamshaha Mulyamshah , if it is read alongwith the 7/12 extract **(P.732-733)**. It appears that, the Addl. District Magistrate issued a letter dated 24-12-2004 to the Tahsildar and D.W.O. Beed asking them about the land Sy.No.362/4

because the prayer for allotment for installation for Petrol Pump was made (**P.737**). **The D.W.O.Beed immediately reacted it by giving a reply dated 30-12-2004 stating that, Sy.No.362 is a Wakf property having it's mention at Sr.No.123 Part A of the Govt. Gazette (P.738).** Unfortunately the D.W.O. Beed made a reference of only 33 G. of this land in this letter. In fact as per 7/12 extract for the year 2006-07 it is totally adm. 3 H. 24 R.**(P.739) Despite such specific communication the Addl. District Magistrate issued no objection certificate on next day only i.e. on 31-12-2004 (P.734) When the D.W.O. Beed brought the fact to his notice that, this land is a Wakf property, the Addl. District Magistrate was under obligation to make the necessary inquiry and then to pass the necessary order. However, he may be adversely interested against the Wakf and malafidely interested in the private party namely Ambadas and so he passed the order (P.734) in so hurry.**

The District Wakf Officer Beed again brought this fact to the notice of Addl. District Magistrate on very next date i.e. 1-1-2005 that, this property belongs to the Dargah Hazarat Daymshah **(P.740)**

The D.W.O. then made a report to the C.E.O. Wakf on 11-7-2005 stating that, though he communicated to the Addl. District Magistrate that it is wakf property, the later allotted it for the petrol pump to Ambadas. He requested to take the action u/s 54 of the Wakf Act. **(P.741-742)**

The D.W.O. Beed issued a notice dated 3-8-2005 to Ambadas s/o Beruba Nirmal r/o Beed asking for explanation as to why the encroachment committed by him should not be removed **(P.743)**

He again issued a similar notice dated 16-8-2005 asking Ambadas as to why the encroachment should not be removed **(P.744)**

The C.E.O. issued a regular notice dated 19-9-2005 to Ambadas u/s 54 (1) of the Wakf Act asking his explanation as to why the encroachment should not be removed.**(P.745)** This notice was sufficiently served on Ambadas vide report dated 29-9-2005 of the D.W.O. **(P.746)**.

The C.E.O. Wakf in the case bearing No.129/2005 , the inquiry bearing No.3663 /06 District Wakf Officer V/s Ambadas Beruba Nirmal, passed a regular order on 19-06-2006 **(P.747-749)** asking Ambadas to remove the encroachment .

The C.E.O. Wakf then took the action u/s 55 of the Wakf Act and moved the Sub-Divisional Officer, Ambejogai to remove the encroachment under O.W. No.4867/06 dated 11-8-2006 **(P.750-751).**

**The above observation disclosed that, the Addl. District Magistrate passed the high handed order on 31-12-2004 allotting this site to Ambadas for petrol pump, though the fact was brought to his notice that, this land is wakf property. The Addl. District Magistrate was excepted to make inquiry before passing the order dated 31-12-2004 (P 734). Had he made the necessary inquiry he would have certainly come to the conclusion that, this is wakf property and that, he had no powers and jurisdiction to allot it for the petrol pump. The State Govt. of Maharashtra is expected to take a serious action against such Addl. District Magistrate.**

At the same time the C.E.O. of the Wakf and D.W.O. Beed are also equally responsible for the lethargy on their part. The C.E.O. passed regular executable order on 19-6-2006 (**P.747)** and also issued the communication to the Sub-Divisional Officer Beed on 8-8-2006 (**P.-750)** u/s 54 of the Wakf Act to remove the encroachment. It appears that, thereafter they did not the pursued the matter. The Wakf Board may take the necessary action against such negligence and careless officers.

The summons O.W.No.480/09 dated 18-12-2009 was issued to the Collector Beed questioning the allotment of site to Ambadas for petrol pump and he did not response. (**P.75-1**)

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.29**

**REPORT**

**COMPLAINT NO.63/2009**

**Filed by Mr.Mohd. Usman Gulam Jilani**

**Inamdar-Khatib, R/O Ambejogai, Dist- Beed.**

**JAMA MASJID, IDDGAH, DARGAH SHAIKH**

**MASUD KIRMANI, AMBEJOGAI, DIST. BEED.**

**DETAILS OF THE PROPERTIES** :-

The complainant alleged in the complaint **(P 752-757)** that, Sy.No.573 was one unit of the total land admeasuring 35 A. 12 G. having no sub-division. This land is the subject matter of the complaint. This land together with total 462 A. 5 G. of land was granted by way of Wakf under Muntakb No.1857 **(P.758).**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant produced the copy of Gazette dated 7-3-1974 showing this land to be one unit. **(P.759)** He further has produced the copy of Wasulbaki register **(P.760)** and Inampatrak in form No.9 **(P.761)** In both of these documents this land is shown under one unit as Sy.No.573 having no sub-division. According to the complainant the Revenue Authority Sub-divided it into two parts viz. 573/A/1, admeasuring 3 A. 35 G. and 573/B/2 admeasuring 31 A. 17 G. **(P.762-763)**. Not only this but the revenue authority started distributing it to various institutions and societies. The land admeasuring 3 A. is granted to Swatrank sainik Housing Society under Mutation Entry No.4178 **(P.764)**, the land admeasuring 10 R to Sainikbhawan under mutation entry no.11770 **(P.765),** the land admeasuring 1 H.21 R. to Magas-vargiya Housing Society under Mutation Entry No.9957 (**P.766)** and the land admeasuring 85 R to Hostel for the boys of Ex-Solders, under Mutation Entry No.9857 **(P.767)**. As a matter of fact the land being service Inam for the religious institution as referred to above, it was and is, under the Control of the Wakf Board and so, it could not be allotted to any institutions by the Govt. much less without the permission of the Board.

**NOTICES TO THE PARTIES:-**

The Sub-Divisional Officer, Ambejogai was served with the summons O.W.No.148/09 Dated 21-4-2009 **(P 768-769)** and O.W.No.307/6/1/09 dated 10-8-2009 calling him upon to appear before this Commission on 18-5-2009 and 24-8-2009 **(P.780-781)** . The S.D.O. issued direction to the Tahsildar, Ambejogai under his letter dated 13-8-2009 **(P.782)** asking him to attend the office of the Commission alongwith the necessary documents and specially with the mutation entries referred to in the notice. The copy of the letter was received by this office by post. The Tahsildar however, did not attend the office.

The Tahsildar Ambejogai was served with the summons O.W.No.149/09 Dated 21-4-2009 **(P768-769)**O.W.No.307/6/2/09 dated 10-8-2009 calling him upon to appear before this Commission on 24-8-2009 **(P.780-781)** he did not attend the office. He sent an application **(P.783)** for adjournment on 7-9-2009 alongwith his representative and matter was fixed to 29-9-2009. He then contacted this office on phone and he was again accommodated . Thereafter he did not take care of the matter.

The Circle Inspector Tahsil Ambejogai was served with the summons O.W.No.307/6/3/09 dated 10-8-2009 calling him upon to appear before this Commission on 24-8-2009 **(P.780-781)** .

He did not attend.

The Talathi was served through Tahsildar, Ambejogai with the summons O.W.No.307/6/4/09 dated 10-8-2009 calling him upon to appear before this Commission on 24-8-2009 **(P.780-781)** . He did not attend the office.

The CEO Wakf was served with the summons O.W.No.150/2009 dated 21-4-2009 calling him upon to appear before this Commission on 24-1-2009 **(P.768-769)** . He did not attend the office.

The District Wakf Officer Beed was served with the summons O.W.No.151/2009 dated 21-4-2009 calling him upon to appear before this Commission on 24-1-2009 **(P.768-769)** . He filed reply **(P 770-771)** with documents **(P 772-779)** He stated to have brought the fact of wakf nature of property to the notice of the revenue authorities.

The Collector, Beed was served with the summons O.W.No.141/2009 dated 21-4-2009 calling him upon to appear before this Commission on 24-1-2009 **(P.768-769)** . He did not attend the office.

The copy of this notice **(P.780-781)** was forwarded to Complainant and he produced some documents alongwith the application **(P.784-788)**, to have been received by him from the office of Tahsildar Ambejogai under Right to Information Act 2005.

The Taluka Inspector of Land Record Ambejogai was served with the summons O.W.No.313/2/1 dated 17-8-2009 calling him upon to appear before this Commission on 24-8-2009 **(P.789)** . He attended this office firstly on 24-8-2009 and filed application for adjournment **(P.790)** by producing the documents **(P791-800)**. He also appeared on 3-9-2009 and filed a statement (**P.801)** alongwith documents (**P.802-808).**

**OBSERVATION OF COMMISSION**:-

The documents (**P.760-761)** referred to hereinabove i.e. the extract of Wasulbaki register and Inampatrak in form No.9 are very clear to display that this entire land adm. 35 A. 12 G. was under one unit having no sub-division. The Revenue Officer was asked by this office to produce the order/ documents under which the land was sub divided in two parts. Mr. Bodhkhe the S.D.O. appeared before the Commission some where after 17-8-2009 and had a detailed discussion with me of this matter together with other matters. He however, did not produce such document/s. He pointed to the figures 1926 recorded in the extreme left side of the 7/12 extract **(P.762-763)** and he stated that, the said mutation was by the Land Record. The Revenue officer wanted to say

(Of course in oral discussion) that, the Sub-division of the land might have been made by the office of the Land Record.

The Taluka Inspector of Land Records, besides producing the copies of the revenue record, did not explain independently the basis for sub-division of this land into two parts. The extract of 7/12 produced by him **(P.803-804)** and the map **(P.807-808)** indicate the sub-division of this land from 1959-60. However the position prior to it has not been brought on record by such responsible authorities. **The fact that, this land was originally one unit, that, it is seen to have been sub-divided from 1959-60 and the silence on the part of either the revenue authority or the office of the land record is sufficient to infer that, this land must be one unit originally and that must have been sub-divided arbitrarily by some mischievous and adversely interested element**. The copy of the map of Sy.No.266 produced by the T.I.R.L. **(P.786)** clearly indicate the Muntkab No.1857 and display that, the lands under this Muntkab are service Inam. This document support my aforesaid conclusion. The complainant also has produced the copy of map of Land Sy.No.553 showing it to be one unit **(P.787)**. **The T.I.L.R. produced the copy of form No.1 of 1350 Fasli showing the land to be of Deosthan (Religious Institution) (P.788).** In view of such matter **I conclude that the entire land Sy.573 adm. 35 A. 12 G. is one unit that too, belonging to the Muslim Religious Institution and the Govt. has absolutely no right to allot it to the private Institution and societies.**

I may refer to the letter dated 8-3-2001 by the Divisional Commissioner, Aurangabad, to all the Collectors in the Division, directing to take the entry of Wakf in 7/12 extract of the lands belonging to wakf and to make specific mention as "Pratibandhit Sattaprakar". (**प्रतिबंधित सत्ता-प्रकार**) However such directions are not followed unfortunately (**P.809)**. The District Wakf Officer, Beed also recorded his protest of course in respect of Land Sy.No.20,38,45, 46 and 148 addressed to the Tasildar Beed. That however, went on deaf ears of the responsible authority/ies **(P.810).**

One Mr. Asifuddin appears to have filed an application bearing No.ROR/A/94/2006 in the Court of Dy. Collector, Ambejogai asking for injunction against the Ex. Solider Housing Society, Magaswargiya Housing Society and the Chief Officer, Municipal Council, Ambejogai **(P.811-812). As such the legal action was taken by the aggrieved persons against the illegality.** It appears that, the **Talathi Ambejogai informed the Naib Tahsildar Ambejogai -cum – the officer under Right to Information Act. 2005 under the letter dated 17-1-2007 to be having no record as to how the land Sy.No.573 was sub-divided under A and B (P.813).** As such there is clear admission by the concern Talathi that, the mutation entry dividing this land into two parts is arbitrary i.e. without any order of the authority.

The TILR has produced the copy of the mutation entry register **(P 805)** wherein the mutation entry No.1926 was recorded on 31-8-1972 under the signature of the Addl. Circle Inspector, Tahsil Office, Ambejogai. It appears that, the land was sub-divided for the first time under the this entry in the year 1972. The Addl. Circle Inspector did not specifically state as to under what circumstances, powers, authority and/or the order of the higher authority this entry was recorded. **This would therefore mean that, the then Addl. Circle Inspector who was working in the Tahsil office at Ambejogai as on 31-8-1972 recorded this entry most arbitrarily by misusing his powers. This action was high handed and was the abuse of his powers. The said Addl.**

**Circle Inspector therefore is responsible for this mutation entry as well as for the serious damage caused to the Wakf Board.**

The District Wakf Officer, Beed stated in his reply (**P.770-771**) to have raised objections by issuing letters to the Sub-Divisional Officer, Ambejogai stating that, this land is a Wakf property as under:-

a) The letter dated 24-1-2006 O.W.No.33/06 stating that this is Wakf property and to issue the directions to record the name of religious institution in the 7/12 extract.**(P-773)**

b) The letter dated 24-3-2008 O.W.No.297/08 stating that this is Wakf property and to issue the directions to record the name of religious institution in the 7/12 extract.**(P.774)**

c) The letter dated 21-3-2007 stating that this is Wakf property and to issue the directions to record the name of religious institution in the 7/12 extract.**(P.776)**

d) The letter dated 28-8-2007 O.W.No.1558/07 stating that this is Wakf property and to issue the directions to record the name of religious institution in the 7/12 extract.**(P.777)**

e) The letter dated 8-2-2006 O.W.No.749/06 stating that this is Wakf property and not to grant permission to alienate this property.**(P.775)**

f) The Wakf Officer also has produced the copy of Gazette **(P.772)**, showing this property to be the Wakf.

As such the Wakf Officer, tried is best to bring the fact to the notice of the Sub-Divisional Officer, that this is Wakf property. However the DWO Beed proposed action u/s 45 of MLR Code 1966 in his letter (**P. 775)** addressed to the Sub Divisional Officer Beed, as well as in his reply **(P 770-771). I do not understand as to why he proposed action under MLR Code, instead of u/s 55 of the Wakf Act 1995. Impliedly he supported the wrongdoer, by taking the wrong action.**

The complainant and others have persuaded the matter with the Government and with other institutions and the complainant has produced the instances/documents to support it.

a) One Ahmed Mohiuddin Md Khairuddin and others filed a Reg. C.S. No.14/1989 in the court of Civil Judge (SD) for declaration and injunction in respect of this land. **(P 814-820)**

b) Mr.Mohd. Osman submitted a complaint to the Dy. Collector, Land Reform in respect of this land on 15-5-2007 (**P.821)**

c) Mr.Mohd. Osman further submitted an application to the Dy. Collector (Atiyat), Ambejogai requesting to stop the construction being carried in Sy.No.573 (**P.822-823)**

d) The S.D.O.Ambejogai issued a letter on 4-5-2007 **(P.824)** on the basis of the letter of Mohd. Osman asking the Chief Officer, Municipal Council, Ambejogai to verify record and to make the report in respect of Sy.No.573.

e) The Dy.Collector, Land Reforms issued a letter on 12-4-2007 **(P.825)** to the S.D.O. Ambejogai to take the necessary action as per rules in respect of the construction of road in Sy. No.573.

f) The Divisional Commissioner, Aurangabad issued a letter to all Collectors on 24-4-2006 **(P.826)** asking the information in respect of the encroachment on the Wakf properties and trust properties.

g) The Section Officer, of the State Govt. Maharashtra issued a letter on 19-11-2005 **(P.827)** to the Collector, Beed on the basis of the application of Mohd. Osman Gulam Jilani, addressed to the Lokayukat, Mumbai asking him to take the necessary action.

h) The Divisional Commissioner, Aurangabad issued a letter on 8-9-2006 to the District Collector, Beed asking him to make the urgent inquiry and to give the reply to the complainant in respect of Sy.No.573. **(P.828).**

As such the responsible well wishers of the Wakf property had timely taken action to protect the property however, they did not get the valid response, besides a mere correspondence from the higher authorities.

**The allotment of some portion of this land to various institutions and societies under the document (P.764-767) is all together illegal and Govt. is bound to compensate the Wakf Board either by vacating the site or otherwise. The authority who made allotment of the said site to the instituitions and societies and the Addl. Circle Inspector who recorded the mutation entry on 31-8-1972 are responsible for this illegal act. The DWO, Beed is also equally responsible for taking action u/s 45 of MLR Code, instead of u/s 55 of the Wakf Act 1995 (770-771 & 775).**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 30**

**REPORT**

**COMPLAINT NO. 48/2008 and 68/2009**

**Filed by Abdul Khalekh Painter and Kasam Masud**

**Mujawar- Mutwalli and others r/o Beed.**

**DARGAH HAZARAT JANPEERBABA NALWANDI, DIST. BEED.**

**DETAILS OF THE PROPERTIES** :-

The land Sy.No.129 admeasuring 5 A. 11 G. situated at Nalwandi, Tq. Patoda Dist. Beed is a Wakf property of the Dargah Hazarat Janpeerbaba Nalwandi, having a monument of Dargah therein. It is alleged in the complaints that, the mischievous Talathi has taken of entry No.421 of Jalindarnath Deosthan in the record and gave rise to the dispute of communal nature. The complaint by Khalekh painter is **(P.829-831)**. The complaint by Kasam Masud and other is **(P.832-834)**. The copy of Gazette showing this lands to be a Wakf property, having a mention of Dargah Hazarat Janpeerbaba. **(P.835)**. The copy of 7/12 extract of this land showing the mutation entry No.421 in the name of Jalindarnath Deosthan **(P.836)**.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

There is no separate transaction either of the sale or otherwise of land or the Dargah except the mutation entry No.421 recorded in 7/12 extract **(P.836)** by the Talathi showing this land to be of Jalendarnath Deosthan, by deleting the name of Kasam Masud in Kabjedar Column. There is specific mention in the copy of the Gazette that Sy.No.129 admeasuring 5 A. 11 G. is wakf property of Hazarath Dargah Janpeerbaba vide the Muntakb No.18950 of 1300 Hizari. **(P.835).**

**NOTICES TO THE PARTIES:-**

The Summons/notice was sent by post to Sub-Divisional Officer Beed, Dist. Beed under O.W. No.302/7/1 dated 4-8-2009 calling him upon to appear before this Commission on 17-8-2009. The S.D.O. Mr. Bodkhe personally appeared before me some where after 17-8-2009 and had a detailed discussion, with assurance that, he would file the written statement together with xerox copies of the documents. **(P -837)**

The Summons/notice was sent by post to Tahsildar Beed, Dist. Beed under O.W. No.302/7/2 dated 4-8-2009 calling him upon to appear before this Commission on 17-8-2009 and he did not attend.

The Summons/notice was sent by post to Parmeshwar Kashinath Komatwar, the Talathi through the Tasildar Beed, Dist. Beed under O.W. No.302/7/3 dated 4-8-2009 calling him upon to appear before this Commission on 17-8-2009. He did not attend.

The Summons/notice was served on the C.E.O. Wakf Board under O.W.No.302/7/4 dated 4-8-2008 calling him upon to file the reply on 17-8-2008. Unfortunately he neither attended the office nor filed the reply, though the matter is sensitive involving the question of communal dispute.

The Summons/notice was served on the D.W.O.Beed under O.W.No.302/7/5 dated 4-8-2008 calling him upon to file the reply on 17-8-2008. Unfortunately he neither attended the office nor filed the reply , though the matter is sensitive involving the question of communal dispute.

Copy of this notice/summons was forwarded to the Collector, Beed under O.W.No.302/7/6 dated 4-8-2009 making a request to him to direct his subordinate under reference to file the necessary information alongwith reply in this office. There was no response, meaning thereby that, no directions were issued even by the Collector, Beed, to his subordinates.

**OBSERVATION OF COMMISSION**:-

There is a specific mention in the Gazette **(P.835)** that, Sy.No.129 adm. 5 A. 11 G. is a Wakf property of the Dargah Hazarat Janpeerbaba under Muntkab No.18950 of 1300 Hijari, together with other lands Sy.No.2 and 3.

The name of Kasam Masud, the Mutwalli was recorded in the 7/12 extract **(P 836)** however, that has been bracketed and the name of Jalendernath Deosthan is inserted under mutation No.421 or 345 .

The complainant produced the copy of his another complaint dated 24-4-2003 **(P.838-839)** addressed to the Collector, Beed wherein there is reference of the order dated 18-5-1998 passed by the Sub-Divisional Officer Beed, directing the Tahsildar, Patoda to delete and cancel the entry of Jalendranath Deosthan vide section 257 of the M.L.R.Code. The later, however did not abide such order.

The complainant further produced the copy of the order dated 10-11-1997 passed by the Sub-Divisional Officer, Beed in File No.93/ EST/Kavi/709 **(P.840-842)** wherein the mutation entry No.450 recorded by the Talathi Mr. Komatwar was directed to be cancelled and there is also mention in this order that one increment of Mr. Komatwar was withheld under order dated 31-3-1994. Despite such orders and penal orders against the incumbent Mr. Komatwar, no effective action was unfortunately taken.

It is however stated in the complaint No.68/2009 (**P.832-834**) that, this dispute is pending before the Wakf Tribunal, Aurangabad as case No.11/2003. When such is matter it would not be proper for this commission to record any findings. Mr. Khalekh Painter r/o Beed appeared before this Commission on 27-8-2009 and assured to produce the copy of plaint of the said proceeding, however he did not produce till this date.

I may mention that, though the Divisional Commissioner, Aurangabad issued directions under letter No.2000/Bhusudhar /Wakf/ dated 8-3-2001 to all the Collectors to take the entry of the Wakf in Kabjedar Column and to write as Pratibandhit Sattaprakar (प्रतिबंधित सत्ता प्रकार) that has not been followed. **(P.836 & P 5013)** This is example as to how the revenue authorities acted in high handed manner. The directions in the penal form are required to be issued in this connection.

Summons issued to:-

SDO Patoda-OW NO.389/3/1 Dt 15-10-2009 **No reply (P.843)**

SDO Beed-OW NO.389/3/2 Dt 15-10-2009 **No reply (P.843)**

Khalekh Painter OW NO.389/3/3 Dt 15-10-2009 **(P.843)**

Khalekh Painter OW NO.389/3/3 Dt 15-10-2009 **(P.844)** and there is no responce.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.31.**

**REPORT**

**COMPLAINT NO. 49/2008**

**Filed by Abdul Khalekh Painter .**

**DARGAH HAZARAT CHILLA JANPEER, MASJID AND GRAVEYARD, RAIMOH YAWALWADI TQ. PATODA PRESENTLY TALUKA SHIRUR, DIST.BEED.**

**DETAILS OF THE PROPERTIES** :-

The land Sy.No./Gut No.1042 admeasuring 4 A. 11 G. Prampoke is the Wakf of Dargah, Masque and Graveyard, having entry thereof in the Govt. Gazette dated 27-12-1973. Mr. Khalekh Painter filed a complaint **(P.842-A-844)** making a grievance that, mischievous elements of village have converted the Dargah into Jalendranath Mandir, installed Idol, photos of different Dieties and they are making every effort to register it as a Trust under the Public Trust Act. The copy of Govt. Gazette is **(P.845)**.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

There is no separate transaction either of sale or otherwise of this land, except the fact that, the Dargah is converted into the Temple and the efforts are being made to register it under Public Trust Act. There is however a specific mention in the copy of the Gazette that there is a Dargah of Chilla Janpeer and Masjid.**(P.845)**

**NOTICES TO THE PARTIES:-**

The Summons/notice was sent by post to Sub-Divisional Officer, Beed, Dist. Beed under O.W. No.297/6/3 dated 4-8-2009 calling him upon to appear before this Commission on 17-8-2009. The S.D.O. Mr. Bodkhe personally appeared before me some where after 17-8-2009 and had a detailed discussion, with assurance that, he would file the written statement together with zerox copies of the documents. **(P -846-847)**

The Summons/notice was sent by post to Tahsildar Beed, Dist. Beed under O.W. No.297/6/4 dated 4-8-2009 calling him upon to appear before this Commission on 17-8-2009 **(P -846-847)** and he did not attend.

The Summons/notice was sent by post to District Wakf Officer, Beed, Dist. Beed under O.W. No.297/6/2 dated 4-8-2009 calling him upon to appear before this Commission on 17-8-2009 and he did not attend. **(P -846-847)**

The Summons/notice was served on C.E.O. Wakf Board under O.W. No.297/6/1 dated 4-8-2009 calling him upon to appear before this Commission on 17-8-2009 **(P -846-847)** and he did not attend.

The notice was sent to the Collector Beed under O.W. No. 297/6/5 dated 4-8-2009 calling to issue directions to his aforesaid subordinates to attend this office with appropriate material, however non attendance before this office by them indicate the passive action of the Collector also, though the matter is sensational, the question of communal harmony being involved. **(P -846-847)**

**OBSERVATION OF COMMISSION**:-

As stated above there is specific mention in the copy of Gazette that, the alleged monument is of Janpeerbaba, (and not of Jalendranath Deosthan). It appears that, the mischievous elements are making constant efforts to register the said monument as temple. Their first effort was turned down by the the Asstt. Charity Commissioner Aurangabad in the order dated 1-2-1982 in Inquiry No.203/1981 **(P.848)**. The ACC categorically held that this property is a Muslim Trust and the provisions of B.P. T. Act are not applicable to it. They made the second effort by filing separate inquiry No.412/1990 **(P.849)** They again made an effort by filing complaint No.15/2003 **(P.850)**. Despite it they did not get success. I may express that so long as the order dated 1-2-1982 ( **P.848)** is standing they would not succeed in their such attempt.

The District Wakf Officer tried his best to inform the responsible authority and to record his protest against the mischievous elements. The D.W.O. Beed initially wrote to the Superintendent, Public Trust on 1-1-1991 (**P.851-852)**, to the P.S.I. on 19-12-2002 **(P.853-854)** to the Sub-Divisional Officer (Atiyat) on 1-1-2003 **(P.855-856)**.

The responsible persons of the Wakf also tried their best by writing to Collector Beed on 21-1-2003 is **(P.857-858)** again to the Collector Beed, on 5-2-2003 is **(P.859),** again on 10-2-2003 **(P.860-861)**, to the Asstt. Charity Commissioner, on 27-2-2003 **(P. 862-864)** and to the Collector, Beed on 20-2-2003 **(P.865)**. None of the authority looked in the matter, much less, the Collector, Beed who is responsible to maintain the public peace and communal harmony, although this fact was repeatedly brought to his notice.

The complaint disclosed that, a suit is filed in the Wakf Tribunal at Aurangabad and so this Commission may not record any finding. Mr.Khalekh Painter had been to this office on 27-7-2009 and assured to produce the copy of the plaint however he did not produce it. Mr Khalekh Painter has produced the copy of one application (**P 866-867)** to show that the matter is pending with the Tribunal. He has also produced the copy of the WP. S. NO.4339/08, however it is not necessary to place with this report being very bulky. The CEO Wakf sent a compliance report (**P.867-A**).

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 32**

**REPORT**

**COMPLAINT NO. 20/2007**

**Reply filed by Mr Aslamkhan Gulmohammadkhan(Report No.27 P.695), Abdul Khalekh Painter (Report No. 25, P. 676) and Reply by Mr. Maksud Ahmed the DWO (Report No. 27 P.722-724) . and Complaint No. 61/09 by Smt Khudrunnisa Bagum**

**and others. (Report No.76 P.)**

**MASJID BUNDELPURA BEED.**

**DETAILS OF THE PROPERTIES** :-

Two Plots in land Sy. No.102/2 admeasuring 8 A. 06 G. situated at Beed, Dist. Beed of Masjid Bundelpura, Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Two Plots in land Sy. No.102/2 admeasuring 8 A. 06 G. situated at Beed Dist. Beed are subject matter of this Complaint. Mr.Misbahulla the complainant is the Mutwalli of the Masjid situated in Bundelpura, Beed, having this land as Wakf. The complainant Mr. Misbahulla who made the present complaint No. 20/2007 against many people, is alleged to have indulged illegally with the Wakf Property. He leased one plot admeasuring 30' x 30' to Smt. Khatoonbee Abdul Razak and other admeasuring 30' x 30' to Mr. Ahmedbeen Mansoor Chaus. **(P.869-875)**

**NOTICES TO THE PARTIES:-**

Mr. Misbahulla was served with the notice O.W.No170/09 dated 8-5-2009 calling him upon 18-5-2009 to make the statement in this regard **(P.876).**

The CEO Wakf was served with the another notice O.W.No193/09 dated 10-6-2009 calling him upon to make the statement on 22-6-2009 **(P.877)** In this regard he filed a statement **(P.878-886)** and he denied the allegation made against him.

**OBSERVATION OF COMMISSION**:-

Mr. Misbahulla admitted to have leased two plots **(P.881)** and according to him the lease deed were subsequently cancelled. He however, did not produce the deeds of cancellation. He also did not make a statement whether the provision of section 32(2) (j), section 51 and section 56 of the Wakf Act were complied. The fact that, he admitted to have leased the plots to different two persons which is supported by the documents **(P.869-875)** and that, he did not produce any document to show that, the said transactions were cancelled is self speaking that, the said transactions were in contravention of section 32(2) (j) S.51 and S.56 of the Wakf, Act, 1995 and he in capacity of Mutwalli is responsible for the same.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 33**

**REPORT**

**COMPLAINT GENERAL**

**See Report NO. 20(31):- In Complaint No.20/2008**.

1) This is pertaining to the exercise of excess jurisdiction by the Revenue Authorities. Section 6 (1) of the Wakf Act, 1995 provided that

> *"If any question arises whether a particular property specified as Wakf property in the list of Wakfs is a wakf property or not or whether wakf specified in such list is Shia Wakf or Sunni Wakf, the Board or Mutwalli of the Board or any person interested therein may institute a suit in the Tribunal for the decision of the question and decision of the Tribunal in respect of such matter shall be final."*

2) As per aforesaid contemplation of law only Wakf Tribunal is the appropriate authority to decide whether or not a particular property is the Wakf property. As against this, the Deputy Collector, Beed in the following matters recorded findings and also gave "declaration" that the said properties are Madad Mash and granted occupancy rights in favour of the occupants. The following are the instances.

Sy. No.25 (Gut No.197) admesuring 10 H. 35 R. and Sy. 84 (Gut No.21) admeasuring 5 H. 90 R, of village Kurla Taluka and District Beed. This land was found to be in possession of Smt. Zaheda Begum on the basis of resolution No.63 dated 7-7-1996 **(P.887)** (Taken from the complaint No.20/2008 filed by Mr. Misbahaullah).

Notice outward No.247/08 dated 20-10-2008 was served on Zaheda Begum **(P.888)** She filed reply claming her title **(P.889)** over the property Sy.No.25 and 84 on the basis of declaration made by the Deputy Collector, Land Reforms Beed. She has produced the copy of the order passed by the said Deputy Collector ( Mr. N.T.Dhotre) **(P. 890-892)**. It appears that the matter was taken to the revenue Minister in Appeal. He upheld the judgment of the Deputy Collector and dismissed the Appeal under order dated 4-8-2006, **(P.893-895)**. Both of these order are obviously without jurisdiction. In the case of Syed Ali and others Vs. Andhra Pradesh **Wakf Board reported Din A.I.R. 1998 P. 912** the law is laid down in such lines **(P.896-901)**. Similar view is taken in writ petition **No.61A/1982 by the High Court of Bombay, Bench at Aurangabad (P.902-905)** (Taken from complaint No.65/08)

3) Similar is the case in respect of Sy. No.45, notice bearing outward No.258/08 dated 31-10-2008 was issued in the name of Nizamoddin **(P.906)**. He filed reply **(P.907)** dated nil and claimed title over the property by virtue of order assed by the Deputy Collector, Land Reforsm, (Mr. N.T.Dhotre). He has produced the copy of the said order **(P.908-910).** In the said order 50% of land was declared in the name of Sk. Kasim Sk. Ahmed. The observation recorded above in respect of Sy.No.25 and 84 would apply here also. This order also renders to be nullity.

It appears that R.C.S. No.41/04 is filed against Nizmoddin and two others **(P.911-913)** and R.C.S. No.42/04 is filed against Zainuddin and one another in the Court of the Wakf Tribunal by the Wakf Board. **(P.914-916)**. Similar suit R.C.S. No.44/04 is filed in respect of land Sy.No.46 against Mhasu Ballayya and others **(P.917-**

**919)** (Documents **P.912-916)** taken from the reply of Mr. Painter, in reply to notice O.W.No.281/2008). I found that the ground of jurisdiction vide section 6 of the Wakf Act, 1995 is not specifically raised by virtue of the authority of the Supreme Court and Bombay High Court. The Wakf Board may raise such grounds.

4) Not only this, but it is found that, similar orders are passed by the Deputy Collector, Land Reforms Beed as enlisted below.

| Sr. No. | Sy.No. | Details of orders | Name of the officers. |
|---|---|---|---|
| 1 | 25 & 84 | 2001-Inam –DESK -57 dt. 17-5-2001 | Mr. N.T.Dhotre |
| 2 | 125,127 | Of village Supewadi 2001/Inam/Lr/65 28-5-01, 2000/Inam/Desk/43 18-7-2001, 2000/Inam/WS/30,30-4-01, 2000/Inam/LR/121, 28-5-01 2000/Inam/WS/29, 28-5-01. | Mr. N.T.Dhotre |
| 3 | 46 | Jama Masjid Beed, 200/Inam/Desk/56, 27-6-01 | Mr. N.T.Dhotre |
| 4 | 13 & 17 | Jama Masjid, Kaij, 2001/Inam/209, 9-7-01 | Mr. N.T.Dhotre |
| 5 | 45 | Jama Masjid Beed, 2001/Inam/LR/100, 28-8-00. | Mr. N.T.Dhotre |
| 6 | 38 | Of village Shindod | |
| 7 | 148 | Of village Wasnwadi. | - |

The aforesaid orders also appear to be without jurisdiction and Wakf Board may take necessary action to protect these Wakf properties.

Mr. M.Y.Patel , the then CEO of Wakf Board stated in his reply dated 8-6-2009 (**P-426**) with respect of exchange matters of Jama Masjid Beed with Sunni Jawal lands. He added that 75% Wakf lands are declared as non Wakf lands or encroachment by several persons. The Wakf Board may direct all of the said lands and may take appropriate steps to protect the wakf properties. The action may be taken against Mr. M.Y.Patel the then CEO of Wakf, since although he was occupying the chair of CEO and though he was competent, he did not take the action then and there only. When he was aware of such high handed action of the Revenue or other Department it was his bounded duty to take the action.

It is seen from the order dt. 22-1-1998 (**P. 920-923**) passed by the Deputy Collector, Atiyat Beed that lands, Sy. 57,121,122, of village Taraf Gram, Sy.No.66/4120, 67/409 of village Sakhare Borgaon, Sy. No.233,235,236 of village Yelamb Ghat, Sy.No.30 and 34 of village Ahegaon and Sy.No.26/114 of village Georia Shajanpur are taken in Government custody. It is not known as to what happened of these properties thereafter. The Wakf Board may protect these properties, by placing in proper hands.

The Commission further noticed, may be called as a negligence or neglect either deliberate or otherwise on the part of the Sub-Divisional Magistrate to implement and to execute the orders passed by the CEO Wakf u/s 54-55 of the Wakf Act 1995. As per this provision if there is encroachment on Wakf property, after passing necessary order, the CEO Wakf files application in the office SDM for removal of encroachment vide section 55 of the Act. It is noticed that, the SDM does take action on such application for months or years. The Commission came a cross with instances during the course of inquiry as under:-

**Read the report No.35 of Jalna.**

The CEO Wakf filed an application in the office SDM Jalna on 19-4-2007 vide O.W.No.MSBW/Inquiry/8791/07 and till the expiry of two years or more the encroachment appears not to have been removed (**P.1469-1470**).

The CEO Wakf filed an application in the office SDM Ambejogai on 8-8-2006/11-8-2006 vide O.W.No.MSBW/Inquiry/4867/06 and till the expiry of three years or more the encroachment appears not to have been removed (**P.750-751**).

**Read the report No.51 –Osmanabad.**

The Dy. Collector (L.I.R.) Osmanabad had a similar high handed action of abolitation of Inam of the Wakf properties as under:-

| Page No. | Sy.No. | Area | Date of order | Name of the authority with designation | Remarks |
|---|---|---|---|---|---|
| 2342 | 104/4 | 4 A 19 G | 30-9-97 | Dy.Collector L.R. name not stated in the order | |
| 2457 | 104/8<br>118/1 | 2 A 10 G<br>2 A 12 G | 30-5-03 | Dy.Collector L.R. name not stated in the order | |
| 2458 | 228 | 1 H 21 R | 23-1-04 | Dy.Collector L.R. Mr. S.B.Mohite | |
| 2459 | 228 | 6 H. | 17-1-04 | Dy.Collector L.R. Mr. S.B.Mohite | |

All of the above properties were Inam Lands . As far as the property Sy.No.28 (**P.2458-2459**) is concern the Dy. Collector (L.I.R.) Mr. S.B.Mohite categorically state that, this land is Mashratual Khidmat. When such is the

matter the Inam thereof can not be abolished, there being a bar of section 1(2) (i) of the Hyderabad Inam Abolition Act 1954. Still the Dy. Collector granted permission to abolish the aforesaid Inam .

So far as the lands Sy.No.104 and 118 (**P.2342-2457**) , it appears that, these Inams were for Mojjani and Peshamami, as stated in the Muntakhab (**P 2319**) That means they were under obligation to render services to the public in the Mosque. I may say that the services of Moazan and Pesh-Imam, in the Mosque are indispensable. When such is the matter, how they can claim these properties to be personal, and how can they sale it ? The point arises as to whether the said Inam could be legally abolished and the Dy. Collector (L.R.) Osmanabad could pass the order of oblation of under the Act. In this connection I went through the case of **R.Doraswamy Reddy V/s The Board of Wakf (A.P.) reported in 1978 (2) A.P.L.J. 399** wherein it is held –

> "It is true that, the land was granted to an individual to perform service. But it does not mean that, he acquires title to that, property. Similarly, if the land can be resumed for non performance of service and can be re-granted to another person for rendering service, it does not mean that, the original granter continues to be owner of the property. When once Wakfs created it continues to be a wakf. When the Inam is resumed and re-granted it does not mean that, there is revocation of the service. It only means that, the Wakf property is entrusted to individual to perform service" (**P.923A-923E**) .
>
> (Note:- *I collected the copy of the aforesaid judgment from the Registrar (J) Andrapradesh High Court, who was kind enough to transmit it to me on fax).*

The aforesaid view was accepted by the Hon'ble Supreme Court in the case of Sayed Ali V/s Andrapradesh Wakf Board reported **AIR 1978 S.C.972 at page 975** (**P.896-901**). In other words, the Inamdaar of such property cannot be owner of the property, and he cannot transfer it. Either the Wakif or the Wakf Board can change such Inamdar-Mutwalli, and can re-grant such property to the new comer. The nature of the property as 'wakf' will be continued for ever. **The sale deeds referred to above of Naldurg as well as of Osmanabad are illegal, being in contravention of S. 32 (2) (j) r/w S 51 of the Wakf Act and Section 1 (2) (i) of Hyderabad Abolition of Inams and Cash Grant Act 1954.**

**Report No.44 Wajegaon (Nanded)**

The Collector Nanded passed the order No.69 E-H.I.A.WSI/572 dated 15-01-1969 ( P.-**1848)** and granted permission to alienate this property. The Wakf property can not be alienated either by sale, lease, exchange or mortgage without the prior permission of the Wakf Board. The permission to be granted by the board is also subject to the provisions under section 32 (2) (j) of the Wakf Act i.e. by passing a resolution of 2/3$^{rd}$ majority of the members of the board. The point is whether the aforesaid permission of alienation would be valid in legal sense?

**Report No.64: Harsool (Aurangabad**)

The copy of the order dated 20-4-1996 (**P.3304**) is produced by Mr. Bhagat the Clerk of the Dy. Collector (L.R.) Office Aurangabad which is marked as **(P.3326)** and it is identical with the above order. I found that the Dy. Collector simply stated that, this is a Madatmas Inam without making a reference of any document or any sort of evidence. I did not come across with any document in this file so as to support the view

of the Dy. Collector to hold that, this is a Madatmash Inam. This order therefore, would be regarded most arbitrary and whimsical. As against this, this land is shown to be the Wakf property in the Govt. Gazette (**P.3262**). When this land was displayed in the Govt. Gazette as a Wakf property, it was the boundend duty of the Dy. Collector Mr. G.K.Kalsakar to call the record of the Wakf Board and to make the observation in that regard. The Dy. Collector however avoided to make such inquiry and adopted a very shortcut method by simply saying that, this a Madatmash Inam. **I feel that, Mr. G.K.Kalskar Dy. Collector (L.R.) is responsible for passing such arbitrary order and creating the complication in the matter.**

**GENERAL INFORMATION :-**

It is observed that the CEO Wakf initiate action u/s 52 or 55 of the Wakf Act and he does not persue the matter with the S.D.O. concerned. At the same time it is observed that, the SDO many times even does not register the said proposal as a proceeding of his office. It would be appropriate to issue the directions to the C.E.O. Wakf to inform necessary details of the orders passed by him U/S-55 of the Wakf Act and the proceedings initiated in the office of the S.D.O. through out Maharashtra.

**READ REPORT NO.37**

Consequent up on the serious view taken by the Govt. vide **P.1673-1675,** the Board passed the separate resolution on 13-4-2007 directing to set aside and cancel all illegal transactions, which were passed without proper resolution, and the CEO was directed to take action u/s 52 of the Act. (**P.1676**). It is however not known whether the CEO had actually taken the action or not u/s 52 and if yes whether it is persuaded or it is lying unattended. This requires verification by the Board.

**READ REPORT 41,**

The Present C.E.O., took action u/s 52 of the Wakf Act 1995 and issued the order No. 8881 dated 26/4/2007 in pursuance to the order of the Government No. Wakf-10/207/CR-47/L-3 dated 15/3/2007. It is however not known whether the CEO had actually taken the action or not u/s 52 and if yes whether it is persuaded or it is lying unattended. This requires verification by the Board.

**READ REPORT 49**

The then CEO working on 26-4-2007 found that, the mandatory provision of the Wakf Act were violated and so he issued a notice as to why action should not be taken u/s 52 of the Act to obtain the possession **(P.2074)**. Despite such matter the present CEO Mr. S.S.Ali Quadari issued a letter to the DWO Osmanabad calling the proposal to regularize the lease (**P.2061**) . **The conduct the present CEO Mr. S.S.Ali Quadari, in view of such matter is also not free from suspicion.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 34**

**REPORT**

**COMPLAINT NO. 14/2008**

**Filed by Mr. Naziruddin Riyazuddin .**

**DETAILS OF THE PROPERTIES** :-

The site admeasuring 10' x 30' of Jama Masjid Beed

**NATURE OF TRANSACTION WITH OTHER DETAILS:**

The site admeasuring 10' x 30' of Jama Masjid Beed is leased to Sk. Karim Sk Yusofuddin. Mr. Naziruddin Riyazuddin filed a complaint making allegations of illegality (**P.924-930**). The copy of Gazette is (**P.931-932**).

**NOTICES TO THE PARTIES:-**

The D.W.O. Beed was served with the summons/notice O.No.283/08 dated 3-11-2008 (**P.933**) calling him upon to make a statement about this transaction. He appeared through Advocate on 20-11-2008 (**P.934**) and filed a reply (**P.935-936**, **936-A**) The D.W.O. stated that, this site was allotted to Mr.Shaikh Kareem Sk. Yusufuddin vide the order of the Secretary of the Wakf Board dated 23-9-1999 (**P.937**).

On perusing reply of the D.W.O. Beed a separate summons were issued to the CEO bearing O.W.No.342/3/1 dated 3-8-09, to the D.W.O. Beed bearing O.W.No.342/3/2 and to Shaikh Kareem Yusufuddin O.W.No.342/3/3 dated 3-8-09 (**P.938**), calling them upon to make a statement as to whether the provision of section 32 (2) (j) were followed. There is no response from any of them to it.

**OBSERVATION OF COMMISSION**:-

The D.W.O. Beed stated in his reply (**P.935**) that initially Mr. Naziruddin (the Complainant of the present complaint) leased this site to Mr. Shaikh Kareemuddin and also issued the receipts to that effect. (**P.939-940**). Perusal of these receipts indicate that, the complainant is also not very much fair in the matter. It appears that, because of grant of this site by the D.W.O. Beed or the Secretary to Mr. Shaikh Kareemuddin, the income of the complainant must have been stopped causing a hurt to him and that appears to be reason behind this complaint.

The D.W.O. Beed stated that, the Secretary of the Marathwada Wakf Board was on tour to Beed and he directed under his endorsement dated 23-9-1999 (**P.937**) to grant this site to Mr. Shaikh Kareemuddin and accordingly it was granted. Mr. Shaikh Kareemuddin executed document (**P.941**) to that, effect.

After perusal of this reply, a separate summons (**P.938**) was issued to the CEO Wakf Aurangabad, the D.W.O. Beed and Shaikh Kareemuddin asking them as to whether the provisions u/s 32 (2) (j) of the Wakf Act 1995 were followed and there has been no response from them.

The fact that, there is no response to the quarry of this office in respect of compliance section 32 (2) (j) and a specific statement of the D.W.O. Beed in his reply that, the Secretary of the Wakf Board passed the order dated 23-9-1999 while he was on tour clearly indicate that a Secretary abused his powers and issued such order. On making oral quarry I was told by Mr. Jafar the present Office Superintendent of the Wakf that, the order dated 23-9-1999 was issued by **Mr.Muzfar Siddiqui the Ex. Secretary** of the Marathwada Wakf Board. At present Mr. Muzfar Siddiqui is the Accounts Superintedent and is on long leave.

**In view of the above observation Mr. Muzfar Siddiqui the Ex. Secretary of Marathwada Wakf Board is responsible for this transaction**.

At the same time the D.W.O. Beed Mr. Maqsud Ahmed or who so ever may be working that day was under obligation to bring this fact to the notice of the Wakf Board that, the order was issued by the Secretary contrary to the provisions of law. **The D.W.O. Beed who was working on 23-9-1999 is also responsible for this illegal transaction.**

The summons bearing O.W.No.346/10 dated 27-7-2010 was issued to the Mr. Muzfar Siddiqui the Accountant Superintendent of Wakf and it was served on the office Superintendent. (**P.941-A**). The D.W.O. Beed sent a letter dated 4-6-2010 to this office (**P.941-B**) alongwith the copy of his reply dated 15-11-2008 which is already even number as p-935-936.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 35.**

**REPORT**

**COMPLAINT NO. 76/2009**

**Filed by Abdul Gaffar Mujahid R/0 Jalna**

**DARGAH NOORSHAH WALI, MASJID KHANKHA AND KABRISTAN OF JALNA**

**DETAILS OF THE PROPERTIES** :-

Sy.No.109 admeasuring 11 A 34 G and Sy. No.110 admeasuring 6 A 11 G situated at Jalna are the Wakf properties in the name of aforesaid Dargah Masjid etc.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

These properties are alleged to have been either illegally transferred, leased or encroached upon by various persons. The Complainant simply produced various documents before this commission without filling a written complaint as such. The copy of the Gazette is mark as **(P-1425-1426)**

**NOTICES TO THE PARTIES:-**

The Documents disclosed that many of the plots were transferred by Tribhuwandas Raoji who is now dead.

Summons was issued in the name of his widow Smt. Kashibai bearing O.No.-271-2 -1/2009 dated 20-07-2009 who is reported to be dead **(P.1427-1428)**

Summons was issued in the name of his Daughter bearing O.No.-271-2 -2/2009 dated 20-07-2009 who refused to accept the summonses **(P.1429-1430)**

Tribhuwandas appears to have transferred various plots to the following persons and the summonses were issued in their names

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Rajkishor | 272-5-1/09 | 20-07-2009 | Refused | 1431 |
| Baldev | 272-5-2/09 | 20-07-2009 | Refused | 1432 |
| Rameshwar | 272-5-3/09 | 20-07-2009 | Refused | 1433 |
| Jagdish | 272-5-4/09 | 20-07-2009 | Refused | 1434 |
| Dilip | 272-5-5/09 | 20-07-2009 | Refused | 1435 |

Entry was taken in the city survey record at S.No.1907 about the transfer to the aforesaid persons **(P-1436 & 1481)**

Tribhuwandas appears to have transferred the plots to the following person also and the summons was issued in his name.

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Bhagatsing | 273-09 | 20-07-2009 | Refused | 1437 |

Entry was taken in the city survey record at S.No.1874 about the transfer to the aforesaid person **(P-1438 & 1481)**

Tribhuwandas appears to have transferred the plots to the following persons also and the summonses were issued in their names.

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Laximiniwas | 274-5-1/09 | 20-07-2009 | Refused | 1439 |
| Madhusudan | 274-5-2/09 | 20-07-2009 | Refused | 1440 |
| Gautam | 274-5-3/09 | 20-07-2009 | Refused | 1441 |
| Rajesh | 274-5-4/09 | 20-07-2009 | Refused | 1442 |
| Paraskumar | 274-5-5/09 | 20-07-2009 | Refused | 1443 |

Entry was taken in the city servey record at S.No.1869 about the transfer to the aforesaid person **(P-1444 & 1480).**

Shakuntalabai W/O Ramdas appears to have transferred the plot to the following person also and the summonses was issued in his name.

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Satpal | 278-09 | 20-07-2009 | Served | 1445 |
| | | | | |

Entry was taken in the city survey record at S.No.4424 about the transfer to the aforesaid person **(P-1446)**

Tribhuwandas appears to have transferred the plot to the following person also and the summons was issued in his name

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Haridasl | 280-09 | 20-07-2009 | Refused | 1447 |

Entry was taken in the city survey record at S.No.2797 about the transfer to the aforesaid person **(P-1448)**

Jaising Baburao Solunkhe appears to have transferred the plots to the following persons also and the summonses were issued in their name.

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Jaising | 282-09 | 20-07-2009 | Dead | 1449 |
| Tukaram | 281-4-1/09 | 20-07-2009 | Refused | 1450 |
| Sopan | 281-4-2/09 | 20-07-2009 | Dead | 1451 |
| Sakharam | 281-4-2/09 | 20-07-2009 | Refused | 1452 |
| Bhanudas | 281/4/4/09 | 20-7-2009 | Refused | 1452A |

Entry was taken in the city survey record at S.No.3089 about the transfer to the aforesaid person **(P-1453).**

The following persons appear to have made partition of the plots and summonses were issued in their names

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Sopan | 277/6/2/09 | 20-07-2009 | Dead | 1454 |
| Sakharam | 277/6/1/09 | 20-07-2009 | Refused | 1455 |
| Namdeo | 277/6/3/09 | 20-07-2009 | Refused | 1456 |
| Bhanudas | 277/6/4/09 | 20-07-2009 | Refused | 1457 |
| CEO | 277/6/5/09 | 20-7-2009 | Served | 1457A |
| DWO Beed | 277/6/6/09 | 20-7-2009 | Served | 1457A |

Entry was taken in the city survey record at S.No.4045 about the transfer to the aforesaid person **(P-1458)**

Bhagatsing appears to have transferred the plots to five persons and he was summoned.

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Bhagatsing | 275-09 | 20-07-2009 | Refused | 1459 |

Entry was taken in the city servey record at S.No.2230 about the transfer by Bhagatsing **(P-1460 & 1481)**

The following persons appear to have made partition of the plots and summonses were issued in their names

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Khemfi | 279-4-1/09 | 20-07-2009 | Refused | 1461 |
| Deoji | 279-4-2/09 | 20-07-2009 | Refused | 1462 |
| C.E.O.Wakf | 279-4-3/09 | 20-07-2009 | Served | 1463 |
| D.W.O.Jalna | 279-4-4/09 | 20-07-2009 | Served | 1463 |
| | | | | |

Entry was taken in the City Survey record at S.No.2799 about the transfer to the aforesaid person **(P-1464)**

Mr.Muniraj Dhanraj Choudhary acted as General power of attorney for Smt.Shakuntalabai the daughter and Smt.Kashibai the widow of Tribhuwandas and so he was served with the summons calling him upon to make the statement and he did not appeared.

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| Muniraj | 276/09 | 20-07-2009 | Served | 1465-1466 |

The entries to that effect was recorded in the revenue record at Sr.No.3065 and 4349 **(P-1467-1468)**

The CEO Wakf was served with the summons calling him upon to make a statement as to what was result of the action taken by his office on 17-11-2004 (**P.1469-1470**)

| Name | O.No. | Date | Result | Page No. |
|---|---|---|---|---|
| CEO | 258/09 | 14-7-2009 | Served | 1471 |

The District Wakf Officer Jalna filed the reply on 1-9-2009 **(P-1472)**

**OBSERVATION OF COMMISSION**:-

The copy of the Gazette **(P-1425-1426) c**learly indicate that S.N. 109 &110 are Wakf properties . There can be no dealing of the Wakf property without following the provisions of the Wakf Act 1995. Here, the provisions of the Wakf Act appears not to have been followed. The DWO Jalna enclosed the copy of the order dated 17-04-2004 passed by the C.E.O.Wakf. directing to take action under S-55 of the Act against those who committed encroachment on Sy,No.109 & 110 belong to Dargha Hazrat Noorsha Wali **(P-1473-1476)** The D.W.O.Jalna stated in his reply (**P.1472**) that the proceedings are filed in the office of the Sub-Divisional Officer Jalna on 20-04-2007 U/S -55 of the Wakf Act. Unfortunately the Wakf Officer Jalna did not state the number of the proceeding filed in the office of S.D.O. The D.W.O. then stated to have persuaded the S.D.O. by issuing the letters as well as by personal visits and later did not pay attention and did not pass any order. Again unfortunately the D.W.O. did not give the details of his attempts nor produced copies of his correspondence with S.D.O.

It appears that, both of these lands were registered as Wakf property as mentioned in the order dated 16-6-2008 (**P.1477-1478**) The CEO Wakf issued order on 17-11-2004 making a mention of the persons who committed encroachment (**P.1473-1476**) and the letter forwarding such order to the all persons who committed encroachment (**P.1479**). The entry of these lands also was taken in the City Survey Office record vide C.T.S.No.10568 (**P.1480**). Though such were things, the names of private persons were recorded in the 7/12 extract in the kabjedar column (**P.1481-1482**). This is how the Revenue Sub-ordinate authorities acted beyond the law by taking entry of private persons in the 7/12 extract, though there were strict directions by the Govt. as well as by the Divisional Commissioner, Aurangabad that, the name of the religious institution shall be recorded in the kabjedar column of such property and not of any private persons. (**P. 809 & 5013**)

The summons were issued through the D.W.O. Jalna for service and he made the report to this office as referred to hereinabove. (**P.1482**)

**Still the fact remains that the proceedings are initiated in the office of the S.D.O. who is the Competent authority by virtue of S.55 of the Wakf Act 1995. He however has ignored the matter. I would suggest the State Government of Maharashtra should take serious action against the S.D.O. Jalna plus to direct him to expedite the proceedings, the property being the trust the Dargah Institution.**

I may Conclude the matter with the observation that the **D.W.O.Jalna is equally responsible for the encroachment committed by the people on the Wakf land, that too the land which is quite adjoining to the Jalna City** and that it is quite valuable piece and he did not voluntarily take action either by informing the CEO Wakf or otherwise.

**The CEO Wakf is also responsible for his negligence, that he passed initial order u/s 55 of the Wakf Act in the year 2004-17th-Nov (P 1473) and then made a reference to the SDO Jalna by passing regular order in 2007, 19th April (P1469) i.e. after a gap of about 3 years, and thereafter he did not peruse the matter.**

**There was a transaction of sale- purchase, and also court litigation for partition, knowing full well that the land does not belong to them such people should be prosecuted of the offence u/s 417 r.w 415, 420 r.w.415, 465 r.w. 463, 467 and 468 of Indian Penal Code.**

The summons bearing O.W.No.433/2/1 and 433/2/2 dated 21-11-2009 (**P.484**) was served on the CEO Mr. S.S. Ali Quadari and D.W. O. Jalna asking them as regards steps taken by them in the proceeding of election. The CEO filed reply (**P.1485**) and simply stated that, the proceeding is pending. He did not state as to what steps were taken to prosecutive the matter. It appears that even the register No. also is not given to the said proceeding and the CEO as well as DWO do not bother for it. The DWO did not file the reply to this summon.

The Dy.Collector (LR) directed (**P.1485-A**) the Tahsildar Jalna to make the compliance of procees (**P.1485-B and C**)of this office and thereafter they did not bother.

The complainant Abdul Gaffar produced the copy of the suit No.31/2010 filed in the Wakf Tribunal Aurangabad (**P-1485-D**)

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 36**

**REPORT**

**COMPLAINT NO.59/2009**

**DARGAH PEER IMAM BADESHAH SITUATED**

**AT PAROLA DIST. JALGAON**

**DETAILS OF THE PROPERTIES** :-

Sy.No.98 admeasuring 21 R. (1RPK) and Sy.101 admeasuring 1 H. 09 R ( 3RPK) of Peer Imam Badeshah situated at Parola Dist. Jalgaon is a Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Sy.No.98 was sold by public auction on 25-1-2005 to Shaikh Mohsin Shaikh Munaf and Shaikh Altaf Hazi Umer r/o Bhadgaon for consideration of Rs. 1,57,111/- and Sy.No.101 was sold by public auction on 25-1-2005 to Mr. Shaikh Haji Umer Haji Razzak and Shaikh Osman Haji Razzak r/o Bhadgaon for consideration of Rs. 5,87,511/- under resolution 18 dated 18-10-2004 ( P.No.**1501-1506** ) by five members out of nine.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.54/09 dated 25-3-2009 calling him upon to appear personally and to file a statement on 13-4-2009 (**P.No.1507-1508)**. He neither appeared nor filed a statement.

The District Wakf Officer, Nashik was served with notice, O. No.55/09 dated 25-3-2009 calling him upon to appear personally and to file a statement on 13-4-2009 (**P.No.1509-1510)**. He filed his reply on 15-4-2009 **(P.No.1511-1512)**.

The Chief Executive Officer, Maharashtra State Board of Wakf and The District Wakf Officer, Nashik were served with notice O.W. No.143/2/1/09 and 143/2/2 dated 17-4-2009 calling them upon to give more particular within 7 days (**P.No.1513-1514)**. The C.E.O. filed more particulars on 14-5-2009 **(P.No.1515-1516)** and the District Wakf Officer filed it on 28-4-2009 **(P.No.1517 )**.

Mr. M.A.Aziz the Chairman of the Board was served with notice, O. No.146/3/1/09 dated 20-4-2009 calling him upon to appears personally and to file a statement on 5-5-2009 **(P.No.1518-1519)**. He did not file a reply.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.146/3/2/09 dated 20-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 (P.No.**1520-1521)**. *He filed a consolidated single reply (**P.24-31**)* and he made vague statement as regards valuation of the property and following of the procedure.

**OBSERVATION OF COMMISSION**:-

**Non-compliance of S.32 (2) (j)** of the Wakf Act 1995. The District Wakf Officer Nashik stated in his reply **(P.1511-1512)** that, **the resolution was passed by five members including Chairman out of total nine** members of the Board. As per provisions u/s 32(2)(j) of the Wakf Act the resolution should be passed by 2/3rd of the members of the Wakf Board. Obviously the resolution ought to have been passed by six members. **Here there were only five members and so this resolution was in total non compliance of the statutory provision.**

The Board had passed aforesaid resolution No.18 on 18-10-2004 stating that,

> "Visit of Hon'ble Chairman and the Member Mr. Chand Pasha Inamdar, they will take decision" **(P1501-1506}**

As such no resolution was passed by the Board that day. The powers were delegated to the Chairman and one of the members. S.27 of the Wakf Act of course empowers the Board to delegate the powers either to the Chairman or member/s. However, this provision would not override the mandatory provision of S. 32 (2) (j) of the Act 1995 which says that the resolution should be by 2/3rd majority.

Even beside this neither the Chief Executive Officer nor the District Wakf Officer stated that, the final decision was taken by the Chairman and Mr. Chand Pasha. It will be therefore, presumed that, no final decision was taken. **Therefore, this is a case of no resolution and so it is in utter violation of S. 32(2) (j) of the Act.**

Even though there was no resolution the order was issued and the lands were auctioned on 25-1-2005. The Chairman confirmed the proposed auction under his order dated 31-3-2005 ( **P.1522**). The Chief Executive Officer, Mr. M.Y.Patel issued the order on 8-4-2005 in respect of confirmation of sale by the Chairman (**P.1523-1523A**).

As a matter of fact the Chief Executive Officer Mr. M.Y.Patel was empowered by S.26 of the Wakf Act to make grievance to the Board and then to the Govt. when the resolution was not confirmed by the majority of the members of the Board. Mr. M.Y. Patel did not make a such grievance and he issued the orders **(P -1523-1523A)** to implement illegal order of the Chairman **(P 1522**). **Mr. M.Y.Patel the C.E.O. was equally responsible for this illegal transaction along with the chairman.**

In reply to the notice of query (P.**1513-1514**) the District Wakf Officer stated that, this land possess a building potential (**P 1517)**. When such is the matter, this land would have fetched much more price. On the contrary the land measuring 21 R. was transferred for only Rs. 1,57,111/- and land measuring 1 H. 9 R. i.e. 2 acres 39 gunthas was transferred for only Rs. 5,87,511/-. The auction notice was published in **Daily Janshakti Newspaper** on 19-1-2005 (P. **1524-1527** ) and auction was held within 7 days i.e. on 25-1-2005. There was undue and unnecessary haste in making the auction of the land.

**VIOLATION OF RULES**

The application for exchange is to be moved by the Mutwalli in form No.W vide rule 16 and there is no statement to that effect.

It appears that, the notification was issued in form No.-X in compliance of Rules 17 of the rules on 30-12-2004 (**P.1525 & 1530**). The Board has to take the decision within the 15 days of the publication. There was no such decision after this notification. As against this the resolution was passed by the Board on 18-10-2004. As a matter of fact the resolution ought to have been after the notification. As such here the cart was put before the horses.

Similarly the publication of this sale by auction was issued on 15-1-2005 (**P.1527**) vide rule 18(1). As per sub- rule (2) of rule 18 the Board may either confirm or reject the public auction within 45 days of the auction and there is no such order either of confirmation or rejection, though this is a mandatory provision of law. The publication of the notice was issued in Daily Janshakti dated 19-1-2005 by the Wakf Board and not by the Mutwalli. Rule 18 provides that such publication of notice shall be made by the Mutwalli in Form Y.

The approval given by the Board to the Public auction shall then be published in the Daily Newspaper u/s 51(3) of the Wakf Act having a wide circulation and shall be communicated to the Mutwalli in Form AB. No statement is made by the aforesaid authorities about its compliance and it can be presumed that, there was no such compliance of the statutory provision.

Mr. M.Y.Patel the then C.E.O. has no answer to the aforesaid legal flaws, in his statement (**P.426-429**). He did not make any comment as regards following or non following of the aforesaid mandatory legal provision.

**The safe inference therefore, can be drawn that, the then Chairman Mr. M.A. Aziz and the then C.E.O. Mr. M.Y. Patel are responsible for this illegal transaction as well as non following the mandatory provisions of law.**

**Mr. M.Y.Patel also produced** *the documents (**P1524-1536**) pertaining to the present matter.*

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 37**

**REPORT**

**COMPLAINT NO. 59/2009**

**Complaint by Anees Ahmed by fax Mumbai**

**NANDED -EXCHANGE**

**DARGAH HAZARAT MACCASHAH**

**DETAILS OF THE PROPERTIES** :-

Mr. Anees Ahmed sent a complaint by fax **(P.1-4)** making the allegation of exchange Wakf land of Dargah Hazarat Maccashah Walli Nanded District Nanded is as under:-

| Place | Gut No. | Area | Remarks |
|---|---|---|---|
| Nanded | 120 | 9 H. 6 R. | |
| | **Total** | **9 H. 6 R.** | |

It was exchanged with the following lands of Kalamber Tq. Loha , Pimpranwadi Tq. Loha and Borgaon Tq. Hadgaon.

| Place | Gut No. | Area | Remarks |
|---|---|---|---|
| Kalamber | 437 | 2 H. 60 R. | |
| -do- | 438 | 2 H. 62 R. | |
| -do- | 439 | 0.18 R. | |
| -do- | 440 | 1 H.70 R. | |
| Pimranwadi | 264/A/1 | 3 H. 20 R. | |
| -do- | 265/1A | 1 H.62 R. | |
| Borgaon | 86 | 14 H. 30 R. | |
| | Total | 26 H. 22 R. | |

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Wakf land admeasuring 9 H. 6 R. of Nanded proper was exchanged with aforesaid lands of Kalamber, Pimranwadi and Borgaon totally admeasuring 26 H. 22 R. under the order of Chairman dated 21-6-2006 (**P. 1601-1602**)) and the order of the C.E.O. dated 26-6-2006.(**P.1603-1606**)

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.29/09 dated 4-3-2009 calling him upon to appear personally and to file a statement on 16-3-2009 (**P.1607-1608**). He filed a reply on 6-4-2009 (**P.1609-1613**) He also was served notice bearing O.No.123/09 dated13-4-2009 and he was called upon to give more particulars on 20-4-2009 (**P. 1614-1617**) He did not file the reply. He sought time for one month in his letter dated 20-4-2009 (**P.1618**) and DWO Nanded filed reply (P.**1619-1621**) dated 22-7-2009. He stated that, Borgaon is 45 -50 Km., Pimparwadi is 15 Km. and Kallamber is 20 Km. away from Nanded. As against this Sy.No.120 is part of Nanded Waghola Municipal Corporation area and just within 3 Km. from City. The lands of aforesaid villages are about 1-2 Km. away from the respective villages.

Mr. M.A.Aziz the then Chairman was served with notice bearing O.No.146/3/1/09 dated 20-4-2009 calling upon to personally attend and to file a reply on 5-5-2009. (**P.1622-1623**). He did not file the reply. He however sent a letter dated nil received by this office on 28-4-2009 stating that, four members out of nine viz. Shri Yusuf Khan, Madam Shabana Aazmi, Mr. Maulana Nooruddin and Ibrahim Izuddin never reported there presence to the Wakf Board, since after notification of their appointment and they are constantly absent for more than three consecutive meetings. They therefore, can not be considered as member of the Board. (**P.1624-1625 & 1627**) Mr. M.A.Aziz enclosed the copy of the letter of the Congress Committee stating that, he has been appointed as a Supervisor for Rajasthan State to supervise election (**P.1626**). Mr. Aziz was pacifically informed by this office that, through the separate letter that his matter was fixed on 20-5-2009 as a last change (**P.1628**). However, he neither attended the office, nor file the reply. As per the press report he died on 8-5-2009.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.146/3/2/09 dated 20-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 (**P.1629-1630**) *He filed* detail reply on 10-6-2009 (**P. 24-31**) alongwith the documents (**P.1631-1661**)

**OBSERVATION OF COMMISSION**:-

The C.E.O. stated in the reply (**P.1609-1613**) that, the resolution bearing No. 38 dated 26-8-2005 and No.11 dated 30-11-2005 (**P.1662-1664**) were passed by five members out of nine members of the Wakf Board. The C.E.O. stated that, the W.P.No.4258/07 (**P.1665-1672**) is pending in the Hon'ble High Court Bench at Aurangabad. I found that the question of legality and validity of the exchange of the land dated 26-6-2006 is involved in the Writ Petition. I would make only the factual statements and observation.

The Govt. of Maharashtra equally considered the aspect of illegal dealing of the Wakf properties and issued the necessary instructions from time to time. (**P.1674-1678**). There was also a paper publication in daily "Gavkari "

(**P.1679**) as to how the interested people are taking steps to grab this property with help of the Govt. machinery. Their such attempt however, was defeated by the cautious and alert people of the city.

Meanwhile this office received a copy of Judgment/order dated 10-11-2009 in W.P.No.3757/09 passed by the Hon'ble High Court Bench at Aurangbad in relation to the aforesaid property, alongwith the copy of the Petition (**P.1679-1 to 1679-8**). The petitioner who claimed the tenancy right was directed to avail the alternate remedy u/s 83 of the Wakf Act 1995 i.e. to approach to the Wakf Tribunal and petition was disposed off.

The CEO Wakf also filed an application (**P.1679-9**) and produced the copy of the reply of the Wakf Officer Nanded which is already number (**P.1619-1621**) and the documents (**P.1679-10 to 1679-23).** The CEO did not file the separate reply nor made comments as regard the reply of the D.W.O. Nanded. The CEO however produced some documents and it is necessary to make the reference thereof.

The then CEO Mr. M.Y.Patel made a submission to the Chairman on 29-5-2006 (**P.1679-10 to 1679-14**) in relation to this property and has tried to make the valuation of this property on his own. He suggested the hypothetical value of this property to Rs.50 lakhs. **He admitted that, this land property is adjoining to Nanded City and it surrounded by the house building activities.**

The Chairman accepted the proposal of the CEO in his order dated 21-6-2006 (**P.1679-20 to 1679-21)**, making a reference of the Board meeting dated 19-6-2006. The resolution of the said meeting however is not produced.

It appears that even after acceptance of the proposal of the then CEO, the matter was placed before the meeting of the Board on 29-11-2006 (**P.1679-17**) and it was directed that, the town planner who had previously refused to give the valuation may again be requested to give the valuation. It is not clear from the available record as to whether the town planner gave the valuation. Still the order dated 26-6-2006 (**P.1603 to 1606**) was issued under the signature of the CEO. This was as good as the order without resolution.

The CEO stated in his submission (**P.1679-10 to 1679-14**) that, the following Writ Petition are pending in the Hon'ble High Court Bench at Aurangabad.

| Sr. No. | W.P.No. | Name of parties | Remarks |
|---|---|---|---|
| 01. | 399/92 | Ahmed Hamidduddin | No stay |
| 02. | 5136/98 | Habi Mujtab | No stay |
| 03. | 1137/98 | Habi Mujtab | No stay |
| 04. | C.P.No.62/98 in W.P. No.2702/98 | Kalimullah Khan | No stay |
| 05. | 4774/97 | Habib Mujtab | No stay |

**MATERIAL OBSERVATIONS**

I tried my best to state and observe the events chronologically.

a) The resolution was passed by the Board on 26-8-2005 asking the CEO to submit the report in the next meeting. (**P.1662**) There is however no statement as to how many members attended the said meeting and how many favoured the resolution. There is also no statement as to who moved the proposal for exchange. As per rule 16 the Mutwalli has to make application in form No.W.

b) The matter was published in the Govt. Gazette dated 6-10-2005 calling the objections for exchange (**P.1631**).

c) The second resolution was passed on 30-11-2005 delegating the powers to the Chairman and Mr. Chand Pasha u/s 27 of the Act to decide the matter u/s 51 of the Wakf Act 1995 (**P-1634**)

d) The CEO Mr. M.Y.Patel submitted a report **(P.1679-10)** on 29-5-2006 (as per the direction in the resolution p.1662) and he sought the permission to execute the exchange deed. His uneasiness to execute the document, despite non-passing the required resolution speaks in volumes his maladies.

e) The Chairman passed the order on 21-6-2006 and accepted the proposal dated 29-5-2006 as discussed in the meeting dated 19-6-2006 vide point no.43 (**P.1638**).

f) The CEO Mr. M.Y.Patel passed the order on 26-6-2006 and granted permission for exchange (**P.1603**). As a matter of fact this order ought not to have been passed, the decision being not taken then, by the Chairman and Mr. Chand Pasha as directed in the order P.1634. The CEO Mr. M.Y.Patel also did not produce any document indicating that the separate decision was taken by them, after said resolution. **As such Mr. M.Y.Patel the CEO abused and misused his powers, may be for extraneous consideration and therefore, he is liable for the disciplinary as well as penal action.**

g) Despite such matter, the document of exchange was registered on 28-6-2006 as stated by the CEO in his reply (**P.1609**)

h) It appears that, this instance together with other instances came to the knowledge the Govt. that, the property of Wakf was being disposed off, without resolution and so the Govt. issued the communications dated 28-11-2006, 15-3-2007 and 3-7-2007 (**P.1673-1675**).

i) The Board again passed a resolution dated 29-11-2006 directing to obtain the valuation from the Town Planning Officer (**P 1679-17**). It is not clear – known, whether the valuation of the land was received from the Town Planner. Having regards to this view of the Board it is clear that, even the Board was not firm to finalize the transaction of the exchange till 29-11-2006. Still the CEO Mr. M.Y.Patel already issued the order for registration of the document (**P.1603**)

k) Looking to such events and that, the Govt. also took a serious view vide P. 1673-1675, the Board passed the separate resolution on 13-4-2007 directing to set aside and cancel all such transactions, which were passed without proper resolution, and the CEO was directed to take action u/s 52 of the Act. (**P.1676**)

As such the Board of Wakf also realized the illegality and passed the resolution to cancel and set aside the transaction of exchange. Though the direction was given to the CEO to take action u/s 52 of the Act, the CEO Mr.M.Y. Patel did not state in his reply that, such action was taken by him ; meaning thereby that he did not take any action, he disobeyed the order of the Board by way of displaying his adamancy, and arrogance and also displayed that, the transaction must be for extraneous consideration.

The then Chairman Mr. M.A.Aziz and the then CEO Mr. M.Y.Patel both are responsible for this illegalities.

The summons O.W.No.455/2/1 and 455/2/2 dated 4-12-2009 were issued to Mr. S.S.Ali Quadari and Mr. Ayubkhan the D.W.O. Nanded calling them upon to make the statement as to what was the final result of the resolution dated 29-11-2006 (P.1679-17) and there is no reply. (**P.1679-24**). The DWO sought time vide application (**P.1679-25**).

The summon O.W.No.454/2/1 and 454/2/2 dated 1-12-2009 were issued to the D.W.O. Nanded with copy to the Collector, Nanded (**P. 1679-26**) asking them about the news published in the newspaper "Gaonkari" about inauguration function in the disputed property and D.W.O. filed reply (**P.1679-27**) by keeping silence as regards aforesaid program.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 38**

**REPORT**

**COMPLAINT NO. 59/2009 BHOKAR -EXCHANGE**

**DARGAH HAZI BASHIRODDIN (KINY)**

**DETAILS OF THE PROPERTIES** :

Mr. Anees Ahmed filed a complaint (**P. 1-4**) alleging the exchange of Wakf land of Bhokar District Nanded.

| Place | Sy.No. | Area | Remarks |
|---|---|---|---|
| Bhokar | 196 | 3 A. 39 G. | |
| | **Total** | **3 A. 39 G.** | |

It was exchanged with the following land of Kinni Tq. Bhokar Dist. Nanded.

| Place | Sy.No./ Gut No. | Area | Remarks |
|---|---|---|---|
| Kinni | 202/220 | 1 H. 10 R. | |
| | **Total** | **1 H. 10 R.** | |

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Wakf land admeasuring 3 A. 39 Gunthas of Bhokar Dist. Nanded proper was exchanged with aforesaid land of Kinni Tq. Bhokar Dist. Nanded totally admeasuring 2 A. 30 G. under the notification /order of C.E.O. O.No.WAKF/SNT/ 1039 dated 23-2-2006 (**P.1680-1683**). The resolution No.33 was passed on 26-8-2005 for exchange of the land (**P.1684**). The District Wakf Officer, Nanded reported in his letter No.Wakf/Nanded/84/09 dated 25-3-09 that, the possession of the respective land is with the respective parties as per the exchange (**P. 1685**)

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.29/09 dated 4-3-2009 calling him upon to appear personally and to file a statement on 16-3-2009 (**P.1607-1608**). He filed a reply on 6-4-2009 (**P.1609-1613**) He also was served notice bearing O.No.123/09 dated13-4-2009 and he was called upon to give more particulars on 20-4-2009 (P. **1614-1617**) He did not file the reply. He sought time of one month for filing the reply in his letter dated 20-4-2009 (**P.1618**). The District Wakf Officer, Nanded filed the reply dated 22-7-2009 (**P.1619-1621**) stating that, **village Keny is 65 Km. away from Nanded City**. He further stated that, the land Sy.No.202/220 is one Km. away from village Keny.

Mr. M.A.Aziz the then Chairman was served with notice bearing O.No.146/3/1/09 dated 20-4-2009 calling upon to personally attend and to file a reply on 5-5-2009. (**1622-1623**). He did not file the reply. He however sent a letter dated nil received by this office on 28-4-2009 stating that, four members out of nine viz. Shri Yusuf Khan, Madam Shabana Aazmi, Mr. Maulana Nooruddin and Ibrahim Izuddin never reported their presence to the Wakf Board since after notification of their appointment and they are constantly absent for more than three consecutive meetings. They therefore, can not be considered as members of the Board. (**P.1624-1625**) Mr. M.A.Aziz enclosed the copy of the letter of the Congress Committee stating that, he has been appointed as a Supervisor for Rajasthan State to supervise election (**P.1626**). Mr. Aziz was pacifically informed by this office through the separate letter that his matter was fixed on 20-5-2009 as a last change (**P.1628**) . However, he neither attended the office , nor filed the reply. As per the press report he died on 8-5-2009. He enclosed a short argument (**P.1627**) alongwith his letter dated 28-4-2009.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.146/3/2/09 dated 20-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 (**P.1629-1630**) He filed reply on 10-6-2009 (**P.104-106**) alongwith the documents (P.**1631-1662**)

**OBSERVATION OF COMMISSION**:-

Mr.M.Y.Patel, the then C.E.O. stated (**P.104-106**) that, the land was exchanged as per resolution dated 28-4-2005 & 26-8-2005 after obtaining the valuation from the District Wakf Officer. He however, did not produce the copies of resolution and so called valuation given by the District Wakf Officer.

**Non-compliance of S.32 (2) (j)** of the Wakf Act 1995 The Chief Executive Officer, Wakf Board Aurangabad stated in his reply (**P.1609-1613**) that resolution No.33 dated 26-8-2005 was passed by five members out of total nine members of the Board.(**P.1684** ) **S.32 (2) (j) of the Wakf Act 1995 provides that, the resolution should be passed by 2/3rd of the members of Wakf Board. This provision dose not say that, 2/3rd majority should be of the present Coram.** As such the resolution should have been passed by 2/3rd of the total members for its validity. The resolution being passed only by five members out of nine, it was in total non compliance of this statutory provisions of law.

The Board has passed the aforesaid resolution No.33 dated 26-8-2005 stating that:-

**"It is decided that, powers are delegated to Mr. Chand Pasha Inamdar. Legal procedure u/s 56 should be started by the C.E.O., difference of amount should be taken from Lessee".**

As such no resolution was passed by the Board that day i.e. on 26-8-2005. The powers were delegated to Mr.Chand Pasha the Member. **S. 27 of Wakf Act of course empowers the Board to delegate the powers** either to the Chairman or member/s. **However, this provisions would not override the mandatory provisions of S.32(2) (j) of the Wakf Act 1995 which says that, the resolution should be by 2/3 rd majority.**

Even besides this the present C.E.O. did not state in his reply **(P.1609-1613**) that, Mr. Chand Pasha and he had taken the final decision. **Therefore, this is a case of no resolution and so it is in utter violation of section 32(2) (j) of the Act. The then Chairman and C.E.O. are liable for this illegality.**

Even thought there was no resolution the order bearing No. Wakf/ SNT/1039/06 dated 23-2-2006 was issued under the signature of the then C.E.O. and the land was exchanged. (**P.1682**)

As a matter of fact the then C.E.O. Mr. M.Y.Patel was empowered by S.26 of the Wakf Act to make a grievance to the Board and then to the Govt., when the resolution was not confirmed by the Majority of the members of the Board. Mr. M.Y.Patel did not make such grievance and issued the aforesaid order. **Mr. M.Y.Patel the then C.E.O. was equally responsible along with the Chairman.**

Mr M.A.Aziz the then chairman has attached his short argument to his letter dated Nil Which was received by this office on 28th of April 2009 **(P. 1627**) wherein he made reference of S 21 and 22 of the Wakf Act 1995 relating to absence of the members of Wakf, in the meetings of the Board from the beginning , and stated by way of argument that

> "*So while taking decision i.e. passing any resolution in the Board counting their head for 2/3rd majority is not at all proper*."

He also raised the similar point/plea in his letter/reply dated Nil in response to the notice O.W.No.85/09 (Deelip Chitlange) (**P.102-103**) From this he wanted to say that 4 member out of nine by name Mr. Yusuf Khan, Shabana Azami, Maulana Nuruddin And Ibrahim Izuddin never attended the meeting of the board, and so they should be excluded from the total strength of the Board. If his argument is accepted, in that case, the resolutions which was passed by 5 member, would be quite valid. In other words, the said resolutions would be by 100% majority. However such interpretation would not be permissible.

The reference will have to be made to S.20 of the Wakf Act 1995. It reads as under :-

> *" Removal of Chairman and Member:- (1) The State Government may, by notification in the official Gazette remove the Chair person of the Board or any member thereof if he –*
>
> *(a) is or becomes subject to any disqualifications specified in S.16 or ,*
>
> *(b) refuses to act or is incapable of acting or acts in a manner which the State Govt. after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Wakf or ,*
>
> *(c) fails in the opinion of the Board, to attend three consecutive meeting of the Board without sufficient excuse".*

As per this provisions if any member falls in the third category "C", he can be removed. In other words if any member fails to attend three consequently meeting in that case the State Govt. may remove him by issuing a notification in the official Gazette. Unless such notification is issued, a member who fails to attend three consequence meeting of the Board would continue to be the member of the Board. Here four members referred above appears to be absent since the inception of the Board

however, their mere absence would not disqualify them from the membership. The said four members will have to be treated as valid member of the Board to consider the majority u/s 32 (2) (j) of the Act. If such view is taken the written argument submitted by Mr. M.A.Aziz the then Chairman of the Board is not acceptable.

**DISTANCE OF THE LAND UNDER EXCHANGE**:- Even beside this the Wakf land is adjourning to Bhokar whereas Keny is 65 Km. away from Nanded. This is stated in the resolution No.33 itself saying:-

"*There are heavy chances of encroachment on*

*service inam land as the same had become*

***part of the City Bhokar**" (P.1684)*

The Wakf land certainly possess the non agricultural potentiality having its high value, as against the agricultural potentiality of Kinni land may be having comparatively very low value it being the land of village and away from city as well as Kinni village . The Wakf land being adjoining to the City area will possess building potentiality whereas the Kinni land will possess the agricultural potentiality.

**THE VALUATION OF THE LAND**

**AND IN ADEQUATE CONSIDERATION**:-

The Inam Land totally admeasuring 3 acres 39 gunthas was valued to Rs. 874500/-. Whereas the private land Gat No. 202 admeasuring 2 acres 30 gunthas was valued to Rs. 10,12,500/-. This valuation appears to be most malafide for the reason that the wakf land though was adjoining to the town much less, it was a part of town and more in area was valued to Rs. 8,74,500/-. Whereas the private land away from village and less in area was valued more to Rs. 10,12,500/-

*Mr. M.Y.Patel the then C.E.O. did not make a statement as regards the aforesaid aspects. His statement that, there was no financial loss to the Board does not appeal to mind in the facts and circumstances discussed above.*

**Mr. M.A. Aziz the then Chairman, and Mr M.Y.Patel the then C.E.O. were liable for this transaction and for the loss caused the Wakf Board.**

**A.T.A.K.SHAIKH**)

Commission

**Sr.No.39**

**REPORT**

**COMPLAINT NO. 59/2009**

**13/2008 AND 17/2008.**

**13/2008 IS BY THE LEASEE ABDUL SAMAD & 17/2008 IS BY**

**SHAIKH HAYAT SHAIKH MAHEBOOB AND SK. YASIN**

**ARDHAPUR DIST. NANDED -LEASE**

**DARGAH ASABERASOOL (ARDHAPUR**)

**DETAILS OF THE PROPERTY** :-

The complainant Mr. Anees Ahmed filed a complaint No.59/2009 by fax (**P.1-4)**. Equally Abdul Samad s/o Abdul Kareem filed the complaint No.13/2008 (**P.1686-1689**) and Mutwalli also filed a complaint No.17/2008 (**P.1690-1696**) in respect of lease of Wakf land of Dargah Asahab-e-Rasool at Ardhapur District Nanded.

| Place | Gut No. | Area | Remarks |
|---|---|---|---|
| Ardhapur | 611 | 11 H. 16 R. | |
| | **Total** | **11 H. 16 R.** | |

It was leased to Abdul Samad s/o Abdul Karim under the order No. MSBW/SNT/309/2037/2006 dated 12.4.2006 issued under the signature of Mr. M.Y. Patel, the then C.E.O. of the Wakf Board. (**P1697**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The land was leased to Abdul Samad s/o Abdul Karim under the order No. MSBW/SNT/309/2037/2006 dated 12.4.2006 issued under the signature of Mr. M.Y. Patel, the then C.E.O. of the Wakf Board. **(P-1697)**. The C.E.O. further stated in his separate letter No. Wakf/SNT/2006/4517/2006 dated 26.7.2006 that none of the Mutawalli of the Wakf is living as on that date and he has no objection to take mutation on the basis of lease. (**P 1698**) The C.E.O., however did not state specifically whether or not, he made the inquiry in respect of this fact i.e. whether the Mutawallies are living or not.

As against this, Mr Sk. Hayat s/o SK. Maheboob and Sk. Naim s/o Sk. Yasin claimed in complaint No. 17/2008 that they themselves are Inamdars of this land and as such have claimed their legal rights. The leasee Abdul Samad Abdul Karim also filed complaint No. 13/2008 and stated that the Wakf Officer, executed the deed of lease in his favour on 1.7.2006 and has claimed the lease hold right on this land.

The copy of the letter dated 25.3.2003 (**P 1699**) issued by the District Wakf Officer, Nanded is enclosed along with the reply (**P.1609-1613**) by the C.E.O., wherein the District Wakf Officer, stated that the Inam land Gut No. 611 is in possession of the Mutawallies.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.29/09 dated 4-3-2009 calling him upon to appear personally and to file a statement on 16-3-2009 (**P.1607-1608**). He filed a reply on 6-4-2009 (**P.1609-1613**) *He also was served notice bearing O.No.123/09 dated13-4-2009 and he was called upon to give more particulars on 20-4-2009 (P. **1614-1617**) He sought time for one month vide (**P.1618**)* and **he did not file the reply, though the information asked for was pertaining to his office.** The DWO, Nanded filed a reply dated 22-7-2009 (**P.1619-1621**)

Mr. M.A.Aziz the then Chairman was served with notice Bearing O.No.146/3/1/09 dated 20-4-2009 calling him upon to personally attend and to file a reply on 5-5-2009. (**P.1622-1623**). He did not file the reply. He however sent a letter dated nil received by this office on 28-4-2009 stating that, four members out of nine viz. Shri Yusuf Khan, Madam Shabana Aazmi, Mr. Maulana Nooruddin and Ibrahim Izuddin never reported their presence to the Wakf Board since after notification of their appointment and they are constantly absent for more than three consecutive meetings. They therefore, can not be considered as member of the Board. (**P.1624-1625 & 1627**) Mr. M.A.Aziz enclosed the copy of the letter of the Congress Committee stating that, he has been appointed as a Supervisor for Rajasthan State to supervise election (**P.1626**). Mr. Aziz was pacifically informed by this office through the separate letter that his matter was fixed on 20-5-2009 as a last change (**P.1628**). However, he neither attended the office and nor filed the reply. As per the press report he died on 8-5-2009.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.146/3/2/09 dated 20-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 (P.**1629-1630**) He filed detailed reply on 10-6-2009 (**P.24-31**) with documents. ***(P.1631-1662)***

**OBSERVATION OF COMMISSION**:-

The C.E.O. stated in his reply that resolution was not passed by the Board to lease this land. As a matter of fact not only a simple resolution but resolution by 2/3rd majority of the board was necessary to lease the land vide Section 32 (2) (j) of the Wakf Act, 1995. Though there was no resolution, the C.E.O. issued the order No. MSBW/SNT/309/2037 dated 12.4.2006. Mr. M.Y.Patel the then C.E.O. contended in his reply (**P. 1700**) that, this lease was only for one year and so the resolution was not necessary. It is true that, as per section 56 of the Wakf Act the Mutwalli is empowered to lease the land for year and below, in his own powers. Mr. Patel however, did not produce any document to display that this lease was only for one year. The present

C.E.O. also did not state in his reply any where (**P.1609-1613**) that this lease was only for one year. The contention of Mr. M.Y.Patel therefore, is misleading and liable to be disbelieved. The C.E.O. as such has abused his powers. Fortunately, this order was not implemented and the land is in possession of Mutawallies. Still the fact remains that the C.E.O. Mr M.Y. Patel, abused his powers, may be because of the fact that he was habitual and addicted to abuse the powers and may be for his ulterior motive. His such act, which was contrary to the statutory provisions of law, is required to be condemned. His argument that he has no voice and he was simply to abide the orders of the Chairman (**P 104-105)** has absolutely no meaning. **Mr M.Y. Patel , the then C.E.O. of the Maharashtra Board of Wakf was/is liable for such illegal orders and violation of the statutory provisions u/s 32 (2) (j) of the Wakf Act.**

As far as various contentions raised by the complainants in complaint No. 13 and 17 of 2008, that would be the matter under the jurisdiction either of C.E.O. and/or the Wakf Tribunal and they may take the recourse of available law.

The complainant Shaikh Hayat (17/2008) produced the copy of writ petition No.499/2007 (**P.1701-1717**) alongwith his complaint and he has challenged the resolution No.149 dated 25-3-2006 granting this land on lease. It is seen from this document that, the resolution no. 149 was passed on 25-3-2006. As against this the CEO of the Wakf stated in his reply (**P.1609-1613**) that, there was no resolution. Again a summon O.W.No.485/2009 dated 22-12-2009 was issued against the CEO (**P.1719-A**) and he did not reply. (See the note) As per the record of the WP copy of resolution was not produced by petitioner.

**The then CEO went to the extent saying in his letter dated 26-7-2006 (P.1698) that, none of the Mutwalli of the Dargah is leaving. In fact this is a most incorrect statement.**

The summons O.W.No.485/09 dt. 22-12-2009 (**P.1718**) was served on the CEO, Wakf calling him upon to produce the copy of Resolution No.149 dt. 25-3-2006 as stated in the W.P. NO. 499/07. The CEO, Wakf gave a reply on 5-6-2010 (**P.1719**) (**Almost after Six months**) stating that, the resolution is not available with the file.

**NOTE**:- After getting such reply I personally visited the Hon'ble Court today on 21-6-2010 and trased the file of the aforesaid W.P. in the Record Room. I found that, the said W.P. was filed on 17-1-2007 and was withdrawn on 9-2-2007 with permission to approach to the Tribunal. The complainant Sk. Hayat s/o Sk. Mahebub who happens to be the petitioner in the aforesaid writ petition, did not state in his complainant (**P.1690**) whether he approached the Tribunal and it may be presumed that, he might not have, the statement being not made by him in this complainant dated. 16-1-2008 (**P.1690**).

After going through the petition of the writ, I further found that the copy of resolution no.149 dt. 25-3-2006 alleged to have been passed by the Wakf Board, was not produced with w.p. The complainant simply stated to have submitted an application to the Wakf Board on 14-11-2006 to supply the copy of the aforesaid resolution

and that was not supplied, meaning thereby that, no resolution was passed by the Wakf Board as stated by the CEO in his reply (**P. 1719**).

**Despite such matter the order dated 12-4-2006 (P.1700) was issued by the CEO Mr. M.Y.Patel granting the lease of the land Gut No.611 to the extent of 8 H. This is how Mr. M.Y.Patel misused and abused his powers. Mr. M.Y.Patel is solely responsible for this illegality.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.40**

**REPORT**

**COMPLAINT NO. 59/2009**

**NANDED -LEASE**

**ASHURKHANA MAULA ALI, PANJA, DHARMABAD**

**DETAILS OF THE PROPERTY** :-

The complainant Mr. Anees Ahmed filed a complaint No.59/2009 by fax (**P.1-4)** alleging the lease of Wakf land of Ashurkhana Maula Ali, Panja, Dharmabad District Nanded.

The land bearing Sy.No. 160/B now 160/A admeasuring 7 Acres 20 Gunthas was leased to as many as 37 persons for 11 months under the order No. MSBW/SNT/4294 dated : 10/7/2006 issued by the C.E.O., Board of Wakf. **(P-1721-1722).**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The land bearing Sy.No. 160/B now 160/A admeasuring 7 Acres 20 Gunthas was leased to as many as 37 persons for 11 months under the order No. MSBW/SNT/4294 dated : 10/7/2006 issued by the C.E.O., Board of Wakf. (**P-1721-1722**). The C.E.O., Board of Wakf stated in his reply (**P-1609-1613**) that, the Resolution was not passed by the Board for this lease. He did not make a specific statement whether or not the aforesaid order dated 10/7/2006 was or was not implemented. The DWO stated in his submission dt. 18-3-2009 (**P 1723**) that the possession is not delivered to any party, and the site is lying vacant. The C.E.O., further stated that the separate order No. 9299-9335 dated 11/5/2007 was issued by the C.E.O., Wakf and the order No. Wakf-10/2007/CR-47/L-3 dated : 15/3/2007 was issued by the Government appears to be for cancellation of aforesaid transaction.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.29/09 dated 4-3-2009 calling him upon to appear personally and to file a statement on 16-3-2009 (**P.1607-1608**). He filed a reply on 6-4-2009 (**P.1609-1613**) He also was served notice bearing O.No.123/09 dated13-4-2009 and he was called upon to give more particulars on 20-4-2009 (P. **1614-1617**) He sought time for one month (**P.1618**) and **he did not file the reply, though the information sought was pertaining to his office.** The DWO, Nanded filed a reply dated 22-7-2009 (P.**1619-1621**) and he did not make the comments on material points.

Mr. M.A.Aziz the then Chairman was served with notice Bearing O.No.146/3/1/09 dated 20-4-2009 calling upon to personally attend and to file a reply on 5-5-2009. (**P.1622-1623**). He did not file the reply. He however sent a

letter dated nil received by this office on 28-4-2009 stating that, four members out of nine viz. Shri Yusuf Khan, Madam Shabana Aazmi, Mr. Maulana Nooruddin and Ibrahim Izuddin never reported their presence to the Wakf Board since after notification of their appointment and they are constantly absent for more than three consecutive meetings. They therefore, can not be considered as members of the Board. (**P.1624-1625 & 1627**) Mr. M.A.Aziz enclosed the copy of the letter of the Congress Committee stating that, he has been appointed as a Supervisor for Rajasthan State to supervise election (**P.1626**). Mr. Aziz was pacifically informed by this office through the separate letter that his matter was fixed on 20-5-2009 as a last change (**P.1628**) . However, he neither attended the office and nor filed the reply. As per the press report he died on 8-5-2009.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.146/3/2/09 dated 20-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 (**P.1629-1630**) He filed detailed reply on 10-6-2009 with documents (**P. 1631-1662**) and he did not produce any documents about this transaction.

**OBSERVATION OF COMMISSION**:-

The C.E.O., stated in his reply (P.**1609-1613**) that resolution was not passed by the Board to lease this land. As a matter of fact not only a simple resolution but the resolution by 2/3 rd majority of the board was necessary to lease the land vide Section 32 (2) (j) of the Wakf Act, 1995. Though there was no resolution, still the C.E.O. issued the order No. MSBW/SNT/4294 dated 10.7.2006.(**P-1721**)

> Mr. M.Y.Patel the then C.E.O. stated in his reply that, "This Institution was under control of Wakf Board, no Mutwalli was there, I visited at Dharmbad on several representation made to me I found that, third person was misusing as a Mutwalli and doing all illegal things their. So as per provision of S.25(c) of the Wakf Act, I decided to stop the mess. The persons were occupying the land at their sweet will. No income was derived from Wakf, all persons were from economically weaker section of Mutwalli society really they were living hand to mouth on daily basis. So I decided to give them some relief have, a lease rent of Rs.600/- p.a. was fixed with the condition that, they should not lease the property without the sanction of the Board and S.56 (2) allows the Mutwalli or in charge person to enter lease less than one year or year without the resolution of the Board" .(**P-1631**)

Mr.M.Y.Patel the then C.E.O. did not produce any documents to support his contentions that, this lease was for period of one year. The present C.E.O. also did nowhere state in his reply (**P.1609--1613**) that, this lease was only for one year or yearly basis. The contention of Mr. M.Y.Patel therefore, is misleading and is liable to be disbelieved. Mr. M.Y.Patel expressed his generosity, with intent to accommodate the poor people however, it was contrary to law, he had no powers as the one he exercised.

Mr. Patel then contended that he exercised the powers u/s 25(c) of the Wakf Act. On making the careful scrutiny of this provision, I feel that, Mr. Patel was incompetent to exercise the powers to lease the land under this provisions. S.25 (c) of the Wakf Act empowers the CEO to exercise the powers to "Control, Maintenance and Superintendence" the Wakff. Granting the land on lease would not come under the mischief of aforesaid law.

The argument of Mr. M.Y.Patel in his statement (**P.104-105**) that he has no voice and he was simply to abide the orders of the Chairman has absolutely no meaning, if it is read alongwith S.26 of the Wakf Act 1995. The CEO has got ample powers to agitate the matter firstly with the Board and then the Govt. if the things are contrary to the provision of law.

The C.E.O. Mr. M.Y.Patel as such has abused his powers. The fact remains that the C.E.O. Mr M.Y. Patel, abused his powers, may be because of the fact that he was habitual and addicted to abuse the powers and may be for his ulterior motive. His such act which was contrary to the statutory provisions of law is required to be condemned. His argument that he has no voice and he was simply to abide the orders of the Chairman (P 104-105 ) has absolutely no meaning. **Mr M.Y. Patel , the then C.E.O. of the Maharashtra Board of Wakf was/is liable for such illegal orders and violation of the statutory provisions u/s 32 (2) (j) of the Wakf Act.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.41**

**REPORT**

**COMPLAINT NO. 18/2008 and 59/2009**

**NANDED -LEASE**

**DARGAH HAZART FATEJANG**

**KHANNAWAB** (PETROL PUMP)

**DETAILS OF THE PROPERTY** :-

The complaint Mr. Anees Ahmed filed a complaint by fax No 59/2009 (**P.1-4** ) and the complainat No.18/2008 filed by Abdul Salam Chawalwala (**P.1723-A-1723B**) alleging the lease of . Wakf land measuring 70 x 140 feet out of C.T.S.No. 1048 of proper Nanded to Mr Naziruddin s/o Aminuddin and Wahiduddin s/o Aminuddin .

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Wakf land measuring 70 x 140 feet out of C.T.S.No. 1048 of proper Nanded was leased to Mr Naziruddin s/o Aminuddin and Wahiduddin s/o Aminuddin under the Order the C.E.O. Mr M.Y. Patel made a proposal to the Chairman, Board of Wakf on 26.7.2006

( **P.1724)** under order No. MSBW/SNT/238/4574 and it was approved by the Chairman (**P-1725**) as stated by the in his letter No.MSBW/ SNT/239/4578 dated 27-7-2006 which is termed as preamble. The DWO stated in his letter dt 25-3-2009 **(P.1726**) that Mr. Wahiduddin is in possession of the land.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.29/09 dated 4-3-2009 calling him upon to appear personally and to file a statement on 16-3-2009 (**P.1607-1608**). He filed a reply on 6-4-2009 (**P.1609-1613**) He also was served notice bearing O.No.123/09 dated13-4-2009 and he

was called upon to give more particulars on 20-4-2009 (P.**1614-1617**) **He did not file the reply though the information sought for was pertaining to his office.** The DWO Nanded filed the reply ***(P 1619-1621***. and he stated that the NOC was cancelled vide order No. MSBW/SNT/49/2007 dated 8-1-2008 vide order No. 4578.

Mr. M.A.Aziz the then Chairman was served with notice Bearing O.No.146/3/1/09 dated 20-4-2009 calling upon to personally attend and to file a reply on 5-5-2009. (P.**1622-1623**). He did not file the reply. He however sent a letter dated nil received by this office on 28-4-2009 stating that, four members out of nine viz. Shri Yusuf Khan, Madam Shabana Aazmi, Mr. Maulana Nooruddin and Ibrahim Izuddin never reported their presence to the Wakf Board since after notification of their appointment and they are constantly absent for more than three consecutive meeting. They therefore, can not be considered as member of the Board. (**P.1624-1625**) Mr. M.A.Aziz enclosed the copy of the letter of the Congress Committee stating that, he has been appointed as a Supervisor for Rajasthan State to supervise election (**P.1626**). Mr. Aziz was specifically informed by this office

through the separate letter that his matter was fixed on 20-5-2009 as a last change (**P.1628**) . However, he neither attended the office nor filed the reply. As per the press report he died on 8-5-2009.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.146/3/2/09 dated 20-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 (P.**1629-1630**) *He filed detailed reply on 10-6-2009 without documents (**P.24-31**)*

**OBSERVATION OF COMMISSION**:-

The C.E.O., stated in his reply (**P-1609-1613**) that resolution was not passed by the Board to lease this land. As a matter of fact not only a simple resolution but the resolution by 2/3 rd majority of the board was necessary to lease the land vide Section 32 (2) (j) of the Wakf Act, 1995. Though there was no resolution, the C.E.O. issued the order No. MSBW/SNT/239/4578 dated 28/7/2006

(**P-1725**).

Mr. M.Y.Patel stated in his reply that,

> "The company asks NOC initially from the person applying for RO. This persons has applied only for NOC and not any lease and so I have given NOC to apply to the company if the person is selected for grant of petrol pump. If this persons would have been selected for the petroleum pump a regular lease could have been signed with the company itself as it is done in Railway station, Petrol pump Aurangabad. A regular lease would have sanctioned with the sanction of the Board"

Mr.M.Y.Patel wanted to say that he simply granted the NOC to the person to apply to the Company and not the actual lease. Such contention of Mr. Patel is rather misleading. Once NOC is granted by the authority of the Wakf Board, tomorrow the Wakf Board would be unable and incompetent to say "NO" to the said proposal. The doctrine of "Estoppel" as defined u/s 115 of the Indian Evidence Act would come in operation and the Wakf Board would have no other alternative than to grant the site on lease. In other words granting and issuing NOC in favour of a person to lease the land would amount to actual lease of the land by the implication of law.

Mr. Patel then contended that he exercised the powers u/s 25(c) of the Wakf Act. On making the careful scrutiny of this provision, I feel that, Mr. Patel was incompetent to exercise the powers to grant NOC under this provisions. S.25 (c) of the Wakf Act empowers the CEO to exercise the powers to "Control, maintenance and Superintendence" of the Wakf. Issuing the NOC to lease the land would not come under the aforesaid criteria's of law. As a matter of fact of the NOC could not be issued without the resolution of the Board. Still Mr. M.Y.Patel issued it and now is taking a misleading defence just to save his skin.

**The C.E.O. Mr M.Y. Patel, abused his powers, may be because of the fact that he was habitual and addicted to abuse the powers and may be for his ulterior motive.** His such act which was contrary to the statutory provisions of law is required to be condemned. His argument that he has no voice and he was simply to

abide the orders of the Chairman (**P-104-106**) has absolutely no meaning. **Mr M.Y. Patel , the then C.E.O.of the Maharashtra Board of Wakf was/is liable for such illegal orders and violation of the statutory provisions u/s 32 (2) (j) of the Wakf Act.**

The Present C.E.O., took action u/s 52 of the Wakf Act 1995 and issued the order No. 8881 dated 26/4/2007 in pursuance to the order of the Government No. Wakf-10/207/CR-47/L-3 dated 15/3/2007. The present C.E.O. has further stated in his reply that as per report of the D.W.O., Nanded no objection Certificate given by the office of the C.E.O. has been cancelled under the office order No. MSBW/SNT-63/49/2007 dated 8/1/2008.

The complainant Mr. Abdul Salam Chawalwala (No.18/2008) stated in his complaint as well as in his letter dated 17-1-2006 (P.**1727-1728**) that, Mr. Wahiduddin and Mr. Aminuddin are not Inamdar of this Dargah and they have no concern whatsoever with the properties of Dargah. They filed W.P.No.382/2000 and that was dismissed.

**(A.T.A.K.SHAIKH**)

Commission

**Sr.No. 42**

**REPORT**

**COMPLAINT NO. 59/2009**

**DHANEGAON NANDED -LEASE**

**DARGAH HAZRAT PEER SAHAB**

(DHANEGAON)

**DETAILS OF THE PROPERTY** :-

Mr. Anees Ahmed sent a complaint by fax (Complaint No.59/2009) alleging the lease of the land Sy.No. 129 admeasuring 3 A. 6 G. of Dargah Hazrat Peer Sahab, Dhanegaon District Nanded and this lease was regularized.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The lease of the land Sy.No. 129 measuring 3 A 6 G of Dargah Hazrat Peer Sahab, Dhanegaon District Nanded was regularized under the order (**P 1729**) of the Chairman No. MSWB/CH/244 dated 22.6.2006. The C.E.O., Wakf stated in his reply (**P1609-1613**) that the resolution was passed by 7 members out of 7. The property was leased to Mohd Farook s/o Mohd Sadeq, on 24.12.1995 i.e. prior to 1.1.96 and the lease was regularized under the present order dated 22.6.2006. The resolution was passed by full majority i.e. 7 members out of 7. The C.E.O. issued a letter dated 5-10-2006 to Collector asking for some corrections (**P- 1729A**)

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No.29/09 dated 4-3-2009 calling him upon to appear personally and to file a statement on 16-3-2009 (P**.1607-1608**). He filed a reply on 6-4-2009 (P**.1609-1613**) He also was served notice bearing O.No.123/09 dated13-4-2009 and he was called upon to give more particulars on 20-4-2009 (**P. 1614-1617**) He did not file the reply though the information sought for was pertaining to his office. The DWO Nanded filed the reply **(P1619-1621)** and he did not make any comments. .

Mr. M.A.Aziz the then Chairman was served with notice Bearing O.No.146/3/1/09 dated 20-4-2009 calling upon to personally attend and to file a reply on 5-5-2009. (**P.1622-1623**). He did not file the reply. He however sent a letter dated nil received by this office on 28-4-2009 stating that, four members out of nine viz. Shri Yusuf Khan, Madam Shabana Aazmi, Mr. Maulana Nooruddin and Ibrahim Izuddin never reported their presence to the Wakf Board since after notification of their appointment and they are constantly absent for more than three consecutive meetings. They therefore, can not be considered as member of the Board. (P.**1624-1625 & 1627**) Mr. M.A.Aziz enclosed the copy of the letter of the Congress Committee stating that, he has been appointed as a Supervisor for Rajasthan State to supervise election (**P.1626**). Mr. Aziz was specifically informed by this office

through the separate letter that his matter was fixed on 20-5-2009 as a last change (**P.1628**) . However, he neither attended the office nor filed the reply. As per the press report he died on 8-5-2009.

Mr. M.Y.Patel the then C.E.O. of the Board was served with notice, O. No.146/3/2/09 dated 20-4-2009 calling him upon to appear personally and to file a statement on 5-5-2009 (P**.1629-1630**) *He filed reply on 10-6-2006 (**P. 24-31**) without producing any documents*.

**OBSERVATION OF COMMISSION**:-

Observations on the point whether there was a compliance of S 32 (2) (j) and/or Rule 25 of the Wakf Act 1995 or not would not be proper, since the DWO stated in his letter dt. 25-3-2009 (**P 1730**) that Md. Farook has filed the suit No. 7/2008 in the wakf Tribunal and obtained the stay. *Mr. M.Y. Patel also supported this fact in his reply*. Moreover the transaction appears to be prior to 1-1-1996 i.e. before enforcement of the Wakf Act 1995.

**Hence no observation.**

**( A.T.A.K.SHAIKH**.)

Commission.

**Sr.No.43**

***Note :- The D.W.O. Nanded and the member of the Wakf Board ( Mr. Asif Patel) are having the identical name as well as father's names such as " Asifuddin Mohd. Ainoddin "***

**REPORT**

**COMPLAINT NO. 46/2008**

**Filed by Shri Mahebu Ali r/o Itwara Nanded.**

**ASHURKHANA MAULLA ALI RATNALI**

**DETAILS OF THE PROPERTY** :-.

The land Sy.No.195 admeasuring 2 A.32 Gunthas, the subject matter of this complaint, out of totally admeasuring 9 A. 17 G. is a Wakf property belonging to, Ashurkhana Maulla Ali Ratnali Tq. Biloli Dist. Nanded.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr. Maheboob Ali Shah r/o Nanded filed the complaint **(P.1731)** stating that, the land Sy.No.195 adm. 2 A. 22 G. has been **leased** to Agriculture Produce Market Committee Dharmabad Tq. Biloli Dist. Nanded **for 99 years (P.1732-1733)**. The complaint alleged that, Mr. Asif Patel r/o Deglur Dist. Nanded a member of the Wakf Board accepted the bribe Rs. 10,00,000/- for this transaction. The complainant also produced the paper cutting **(P 1734-1741)** and the copy of the complaint dated 22-9-2000 addressed to the Chairman Joint Parliament Committee **(P.1742)**

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 371/08 dated 2-12-2008 **(P.1743-1744)** calling him upon to appear personally and to file a statement on 22-12-2008 The CEO also was served with the summons O.W.No.330/09 dated 27-8-2009 to file the reply on 5-9-2009 **(P 1745 A)** He filed reply **(P. 1745),** alongwith documents **(P.1746-1755)**

The District Wakf officer Nanded was served with notice, O. W. No. 372/08 dated 2-12-2008(**P.1756-1757)** calling him upon to appear personally and to file a statement on 22-12-2008. He did not file a reply to this notice. However, he filed reply to the summons of more particulars (**P.1614**), on 22-7-2009 (**P.1619-1621**) and stated land was leased for 11 months and rest of land is open.

The notice was issued to the Chairman of Agriculture Produce Market Committee Dharmabad Tq. Bilolo Dist. Nanded bearing O.No.373/2008 dated 2-12-2008 calling him upon to file the reply on 22-12-2008 **(P.1758).** He did not attend.

**OBSERVATION OF COMMISSION**:-

The Chief Executive Officer stated in his reply **(P.1745)** that, Dharmabad Agriculture Market Committee filed w.p. No.701/93 in the Hon'ble High Court at Aurangabad and it was dismissed on 16-3-08. It appears that the Market Committee challenged the orders dt. 20-6-1974 and 15-301991 passed by the Dy Collector (Atiyat) and it was dismissed on the ground that Market committee has no title to the property. **(P 1750-1751).**

During pendency of the writ petition the Secretary of the Wakf Board Mr. Maheboob Ali passed the order on 10-1-1996 **(P.1753)** in reference to the resolution no.175 dated 2-12-1975 stating the Market Committee is holding the illegal possession on the land and also erected the building thereon. Mr. Asifuddin who appears to be the member of the Board proposed that the Market Committee was ready to take the land on lease. **There was a discussion and unanimity of opinion and the land was decided to be leased on rent and donation to be obtained from the Market Committee. It is however not stated in this document as to in between whom there was discussion and unanimity of opinion. It was necessary to state the names of all who participated in the meeting and who had agreed with the proposal to lease the land. More over this order is signed only by Mr. Maheboob Ali the then Secretary of the Board. This document therefore, appears to be suspicions.**

It appears that, the report of the D.W.O. Nanded was called may be for grant of the land on lease. The report was accordingly submitted by the D.W.O. **(P.1755)** The significant fact however is that, this report was prepared by the D.W.O. on 18-1-1996, forwarded to the Aurangabad office on next day i.e. 19-1-1996 under O.No.2/96 and it was received by the Aurangabad office on 20-1-1996 under inward no.219/96. **The report of the D.W.O. Nanded therefore was subsequent to the order dated 10-1-96 (P-1753). It appears that, this report was called just to complete the formality.**

The deed of lease **(P.1732-1733)** was executed under the signature of Mr. Asifuddin, the District Wakf Officer. As a matter of fact the Mutwalli of the Wakf ought to have executed the document vide R. 25-26 of the Wakf Rules 2003. This is also a very suspicious circumstance against Mr. Asifuddin the member of the board.

**The Wakf Act 1995 came into force w.e.f. 1-1-1996. The document of lease was executed on 12-2-1996 i.e. when the Act was in force . The grant of land on lease therefore would be governed by the Wakf Act 1995. There is specific bar to lease the land for more than 3 years vide section 56 of the Act and if the grant of lease is more than 3 years it is void. Here the property was leased for 99 years. Section 32(2) (j) of the Act provides that, the transfer of immovable property by way of lease shall not be made unless 2 /3rd of the member of the Board vote in faovur of such transaction. The document which are enclosed by the Board alongwith reply (P.1745) no where mention, as to whether the Board had passed the valid resolution strictly in compliance with section 32(2) (j) and section 56 of the Act.**

**Non compliance of Rules** :- Rule 25 provides that 1) the person interested in obtaining lease shall make application to Mutwalli in Form AL. 2) The Mutwalli shall examine the same and shall place before the Committee of the Wakf for a decision 3)The Mutwalli shall forward the application alongwith the decision to

the Board through the District Advisory Committee 4) The Board shall then take the decision. **It appears that, these mandatory provisions were not followed**.

The Board of Wakf though stated in the reply the grant of lease was vide resolution no.175 dated 2-12-1995, the copy thereof is not produced. It would be better to issue a fresh summons to the Board of Wakf, to produce the copy of resolution no.175 dated 2-12-95 or 22-1-1996 as the case may be.

The copy of the resolution No. 175 dated 2-12-1995 has been produced before me to-day i.e. on 7-9-2009 by Mr. Zafar the office Superintendent of the Wakf Board. **(P No. 1759)** This document display that the secretary of the board Mr.Maheboob Ali and the member of the board Mr Asif Patel were authorized to settle the lease amount and the donation to be paid to the Board, by the Market committee, and they were directed to submit the report for approval. However neither such report was submitted, nor there was approval by the Board, nor the board passed the final resolution. Still the land was leased under the document 12-2-1996.The documents Page 1753, 1755,& 1759 are the documents in Urdu script which are referred to hereinabove, wherein there is mention of the name of Mr. Asif Patel the member of the Board. Every time Mr. Asif Patel the member proposed before the Board to lease the land to the Market Committee. The formalities as required in rule 25 were not followed and the deed of lease was directly executed though there was no resolution to that effect. **Mr. Asif Patel the member the Board appears to be interested person and he abused his powers in this transaction. At the same time Mr. Asifuddin the District Wakf Officer and Mr. Mohd. Ali the Secretary were the responsible officer of the Board and they were expected to bring this illegality to the notice of the Board or to the notice of the Govt. as provided u/s 26 of the Wakf Act. However, they observed silence, nay, they participated in the illegality and so they are equally responsible for the transaction of the lease.**

Mr. Asif Patel the member of Board was served with ths summons O.W.No.364/09 dated 24-9-2009 calling him to appear before the Commission on 1-10-09 to file the statement (**P.1760**). Mr.Patel appeared on 19-11-2009 and sought time till 25-11-2009 and he did not attend thereafter.

Mr. Mohd. Asifuddnin the D.W.O.Nanded was served with this summons O.W.No.364/3/09 dated 24-9-2009 calling him to appear before the Commission on 5-10-09 to file the statement (**P.1761**). He did not file reply.

Mr. Mohd. Ali the Secretary of Board was served with the summons O.W.No.364/3/2/09 dated 24-9-2009 calling him to appear before the Commission on 5-10-09 to file the statement (**P.1762**). He did not file reply.

The CEO Wakf Board was served with the summons O.W.No.363/2/1/09 dated 23-9-2009 calling him to serve the aforesaid summons on the addressee **(P.1763**)

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.44**

**REPORT**

**COMPLAINT NO. 04/2007**

Mr. Altaf Ahmed the Social Worker
MASJID AND ASHURKHANA OF WAJEGAON DIST. NANDED

**DETAILS OF THE PROPERTIES** :-

**The land Sy.No.8 adm.22 A.02 G. is a wakf property of** Masjid and Ashurkhana of Wajegaon Dist. Nanded.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

**The land Sy.No.8 adm.22 A.02 G. is a wakf property of** Masjid and Ashurkhana of Wajegaon Dist. Nanded. The Complainant Mr.Altaf Ahmed filed a complaint(**P.1775-1776**) stating that, the aforesaid land is transferred by Jagannath s/o Kisanlal r/o Wajegaon to Mr. Bhaskarrao s/o Baburao Patil Khatgaonkar and also delivered the possession. He prayed to make the necessary inquiry. He has produced the copy of the Govt. Gazette dated 21-10-1974 showing this land to be the wakf property.(**P.1777-1778**). He also produced the publication given by the Wakf Board in daily Newspaper namely "Daink Prajawani" dated 23-3-2007 and 15-12-2007 making a publication that, this land is a Wakf property and nobody should make any dealing about it. (**P.1779-1780**) He also produced the copy of the sale deed dated 20-11-2001(**P.1781-1787**) about this transaction. The mutation entries were recorded in the 7/12 extract (**P.1788**) recording the names of Mr. Bhaskarrao Bapurao Patil etc.

**NOTICES TO THE PARTIES:-**

The CEO Board of Wakf was served with the notice O.W.No.260/2/1 dated 15-7-2009 calling him upon to make a statement in this connection on 28-7-2009. (**P.1789-1790**)

The D.W.O.Nanded was served with the notice O.W.No.260/2/2 dated 15-7-2009 calling him upon to make a statement in this connection on 28-7-2009. (**P.1789-1790**).

There being no response from the CEO, the proclamation bearing O.W.No.299/2009 dt. 4-8-2009 was served on the CEO calling him upon to make the statement on 17-8-2009 (**P.1791**).

The CEO Board of Wakf was again served with the personal notice O.W.No.321/09 dated 20-8-2009 calling him upon to make a statement in this connection on 27-8-2009. (**P.1792-1793**).

There being no response from the CEO, the proclamation bearing O.W.No.358/2009 dt. 18-9-2009 was served on the CEO calling him upon to make the statement on 25-9-2009 (**P.1794**).

The D.W.O. Nanded sought time to file reply under his application dated 15-1-2010 and matter was fixed on 27-1-2010. (**P.1795**)

There upon The CEO and D.W.O. filed two separate identical replies (**P.1796-1797**).

The CEO and D.W.O. Nanded were again served with the Summons O.W.No.17/2/1 and 17/2/2 dt. 8-1-2010 calling them upon to give more particulars and they did not file reply (**P.1798**)

The vendees are served with summons bearing O.W. No.39/4/1 dated 20-1-2010 calling them upon to make the statement on 2-2-2010 .(**1799).** They refused to except the summons vide the report of the DWO Nanded (P**1800-1801**)

The vendors are served with summons bearings O.W. No.40/8/1 to 40/8/8 dt. 20-1-2010 {**P.1802**) calling them upon to make the statement on2-2-2010 and they refused to accept the summons vide the report (**P.1803**). These summons were sent through the CEO Wakf and DWO Nanded (**P.1804-1805JKL** ).

**OBSERVATION OF COMMISSION**:-

The CEO and D.W.O. stated that, this land is a Inam- Wakf land . They further stated that, they were not party to the sale deed in between the aforesaid parties. They further stated that, the writ petition bearing 1719/06 was filed in the Hon'ble High Court and it is withdrawn in the month of August 2009. The copy of W.P. is (**P.1806-1816**). The copy of the order withdrawing it however is not produced. They further stated that, Shri Bhaskarrao and others filed a suit No.84/08 before the Wakf Tribunal Aurangabad and it is pending. The copy of suit is (**P.1817-1821**). Since the suit is pending the factual observations would be made. In responses to the summons (P.1799) the vendees Mr. Bhaskarrao Khadgaonkar and others filed a reply cum argument (**P.1822-1836**) with several annexures. They admitted the purchase of the property together with the fact that, this land was notified as Wakf in the Gazette (**P.1778).** They further admitted that, as per section 5 and 6 of Atiyat Act there is prohibition for alienation of the property in violation of conditions of the Muntakba/Vasika and that, such property is exempted from application of Hyderabad abolition of Inams and cash grant Act vide section 1 (2) (i). They further admitted that, this land is Inam but it is without any service conditions. According to them as per the Muntkhab (**P.1837**) it is Madatmash (Community service Inam) and not Mashrutul Khidamat (Service Inam). The only point is whether this property is a community service Inam or Mashrutul Khidmat Inam.

I have already observed that, the suit being pending before the Wakf Tribunal (**P.1817**) **I may make the expression as regards the factual aspect of the matter.** Significantly enough, the vendees Mr. Bhaskarrao Khadgaonkar etc. have made a mention in para No.2 of the suit No.84/2008 (**P. 1817**) that,

> *"that, the then Hyderabad Govt has granted Muntkhab in respect of suit land in favour of one Mohd. Moinuddin and granted Madamash* ***for service of Masjid*** *in the year 1296 Fasli, bearing No.36 -------"*

The point is whether the aforesaid statement would mean that, the grant of land was connected with the religious institution? . The plaintiffs clearly stated that, grant was in lieu of services to be rendered to the Mosque. The answer to the aforesaid question lies in itself.

There is no dispute that, the Wakf property is exempted from application of Hyderabad abolition of Inams and cash grant Act 1954 vide section 1(2) (i). It is also undisputed that, the alienation of this property is prohibited vide section 5 and 6 of Atiyat Inquires Act as well as section 32 (2) (j) r/w S 51 of the Wakf Act 1995.

The first question would be as to whether this land is Wakf or community service Inam. The vendees Mr. Bhaskarrao Khadgaonkar and others stated in the reply/ argument at p. 8 that, the Dy. Collector (Inam) Nanded decided that, Sy.No.8 which is Madatmash is not a service Inam land. Significantly they did not produce any document in support of such contention. I may mention here that when the Inamdars were consistently saying by preferring application after applications, in case No.82/MAG/ATI/36 decided on 7-7-1986 ( **P.1838-1840**) and other case no. 1986/RB-Desk-(I)-Appeal/Atiyat/CR-32 decided on 23-10-1990 **(P1841-1845)** and No. 95/GB/Desk-3/Charity/Wakf/KR-3/95 **(P 1846-1847)** that, this is a service Inam and not Madatmash, the point arises as to whether the Revenue Authorities had jurisdiction to decide the matter. In this connection I may make a reference of the **judgment in WP No.61 A of 1982 decided on 7-2-1989 (P 902)** wherein it is held that, when the question arises as regards the nature of the Inam, such as, either service Inam or community services Inam, the jurisdiction lies only with the Civil Court or Wakf Tribunal vide S. 6 of the Act. In view of such matter the Revenue authorities were not at all competent to record any findings. They were under obligation to observe that, the matter rest beyond the per view of their jurisdiction.

As admitted by the vendees in the suit ( **P.1817**) that, this grant was in lieu of services to be rendered to the Mosque, the principle laid down in the case of **Doraiswami Reddy V/s the Board of Wakf (AP)** report in **1978 (2) APLJ -399**, which was upheld by Hon'ble Supreme Court in **AIR 1998 S.C.P.712, (P 896)** will come in operation, wherein it was held that,

> "It is true that, the land was granted to an individual to perform service. But it does not mean that, he acquire title to that property. Similarly, if the land can be resumed for non performance of service and can be re-granted to another person for rendering service, it does not mean that, the original granter continues to be owner of the property. When once Wakf is created it continues to be the Wakf. When the Inam is resumed and re-granted it does not mean that, there is revocation of the service. It only means that, the Wakf is entrusted to individual to perform service"

The aforesaid principle is a answer to the question whether or not the property is a Wakf, in special circumstances that, the vendees categorically admitted in the suit filed by them that, this grant was in lieu of rendering services to the mosque and the circumstance that the legal heirs of the original Inamdar are consistently saying that, this is services Inam.

The Collector Nanded passed the order No.69 E-H.I.A.WSI/572 dated 15-01-1969 ( **P-1848)** and granted permission to alienate this property. The Wakf property can not be alienated either by sell, lease, exchange or mortgage without the prior permission of the Wakf Board. The permission to be granted by the board is also subject to the provisions under section 32 (2) (j) of the Wakf Act i.e. by passing a resolution of 2/3$^{rd}$ majority of the members of the board. The point is whether the aforesaid permission of alienation would be valid in legal sense? The answer further lies in itself.

**MUNTAKHAB**

I tried my best to find the character and the nature of Inam of this land Sy.No.8 of Wajegaon. **The D.W.O. Nanded submitted the letter dated 19-7-2010 (P.1849) enclosed with the documents** (**P.1850-1858**). The document page 1850 is Muntkhab in Urdu and page 1854 is translation in English. On making a close scrutiny thereof I found that, they do not tally with each other. The Urdu document pertain to 1303 Fasli whereas the translation pertain to 1302 Hajri, 22 Zilhalljj. The Urdu document says that, the Inam is Madatmash, whereas the English translation described the Inam at about four places as Mashrutul Khidmat. The translation was carried by Mr. M.Aqmal of Hyderabad. My observation in this regard are as under.

Now the point arises whether the copy of Muntkhab supplied by DWO page 1851 pertains to this land. The answer would be in negative, from the various circumstances, and the admission given by the Inamdars, for the following reasons.

a) the copy of muntkhab in Urdu does have no mention of the charector of Inam as Mashrutul Khidmat. As against this the true translation of Muntkhan dated 22nd Zilhaza 1302 Hijri (P.1854) got a mention of the word Mashrutul Khidmat at, as many as, four places.

b) The copy of plaint as well as amended plaint (P.1861) and (P. 1866) have also got a specific mention that, this Inam is a Inam for Masjid – Mashrutul Khidmat and the original Muntkhab traced by the Inamdars has also got specific mention about it. I may mention here that, the plaint as well as amended plaint have got statements on oath by way of verification of the plaintiffs-Inamdars.

c) The proceedings filed in the Revenue court page 1838, 1841,and 1846, by Mr. Mahinuddin and Masiuddin also has got a specific mention that, this land is Inam for Masjid – Mashrutul Khidmat.

d) The DWO Nanded issued a letter on 28-2-2008 to the CEO Wakf Aurangabad giving all the details of this land together with the fact that, the Muntkhab of this land is of 22 Zilhajja 1302 Hijri, which relates to English translation. (**P.1881A-1881B**)

e) The Addl. Collector Nanded issued a letter dated 16-9-2009 to the CEO Wakf (**P. 1881C**), in reference to this land about its illegal transfer and directed to take the necessary action against the offender.

If the copy of Muntkhab in Urdu page 1850 is read in the light of the aforesaid admissions given by the Inamdars together with the true translation of the Muntkhan page 1954, and the letter of DWO as well as of the Addl. Collector Nanded, no other inference can be drawn than that the urdu copy of Muntkhab page 1850 pertain to some different Inam.

**Civil suit & Revenue proceedings**

I gave visit on 19-7-2010 to Collector office and District Court at Nanded. I also verified the record of R.C.S. No.216/1995 in the Record Room of the District Court. After my return I issued a letter to the District Judge Nanded on 31-7-2010 (**P.1859**) requesting to him to furnish the copies of particular documents. He in response to it, issued a letter dated 19-8-2010 (**P. 1860**) enclosed with the documents (**P.1861-1881**). The document page no.1861 is a copy of plaint wherein the plaintiffs Modh. Masiuddin and others claimed

declaration that, the suit property Sy. No.8 belong to Masjid (Mosque) and defendant no.2 to 5 i.e. heirs of tenant have no right thereon. Page No.1866 is the amended plaint wherein the plaintiffs called this land to be Mashrutul Khidmat for several time. They then stated in para no.5 thereof that, the original Muntkhab was traced by them after vigorous efforts and that was having a mention of this Inam as Mashrutul Khidmat (P-1867 reveres ).

The Inamdars though categorically stated in the plaint of the suit, as well as in the proceeding filed in revenue courts that, this Inam is Mashrutul Khidmat, they turned from their **Iman** and they submitted purshish and application Exh. 33 and 34 on 11-12-2001 (**P.1875-1876**) for unconditional withdrawal of the suit . They then submitted application for compromise Exh. 53 (**P.1877**) under their signatures and that of defendants, alongwith the copy of the map in terms of compromise, specifying as to, which of the particular portion of the land would go, to which of the particular party. The plaintiff who claimed declaration in the claim clause that, this is a service Inam –Mashrutul Khidmat, they turned down from it, and attempted to compromise the matter. They again submitted application as well as purshish Exh. 104 and 105 (**P.1880-1881**) for unconditional withdrawal of the suit, categorically stating therein that the statement made by them in the compromise deed Exh. 53 that, the defendants Jagannath Kisan etc. are owners of the land is wrong and they did not derieve any title over the land. Still they wanted the withdrawal of the suit. The court endorsed on page 1880 to pass the order on Ex. 1 and accordingly passed it on page 1864. The court disposed off the suit. In other words the Inamdars who were firm on their **Iman** while filing the declaration suit, turned down from it, and compromised the matter by retaining only 7 A. 20 G. and allotting 15 A. 26 G. to the defendant and one Mr. Toshiniwal.

**PAPER PUBLICATIONS**

There are again several documents indicating that this is service Inam. The complainant produced several copies of paper publication, one of it appears to be under the signature of Mr. M.Z. Siddiqui Advocate and others are either by the Inamdars or DWO stating therein that this land is service Inam. (**P.1882-1888**).

**Revenue Record**

The Addl. Collector Nanded supplied with his letter dated 19-7-2010 (**P.1889**) the Khasraptrak wherein this lands is described as “Inam” (**P.1890**). The copies of form no.9 are also supplied of the year 1951-1961 (**P.1891-1898**) wherein there is mention of this land as “Inam”. **I may state here that form no.9 is maintained by the Revenue Department of the lands which are service Inam. Once entry is taken in this register, that may possess the presumptive value that the land is service Inam.**

I also obtained the coloured copies of two form No.9 register wherein the words Madadmash stated at two different places is in different handwriting as well as in different ink, together with the freshness of the writing, compared to the other contents (**P.1899-1900**). The documents page 1899 pertain to year 1956. As against this, such type of entries are not their in the year 1959 (P. 1897). As matter of fact such entries should have been carried in the year 1959 also when it was in 1956. The existence of the entry in year 1956 alone, that too, in different hand, different ink, clearly indicate that, the some mischievous element made attempt to support the opponents, to have a wrongful gain.

The Inamdar Mr. Masiuddin was served with the summons OW No.361/10 dt. 9-8-2010 (**P. 1901**) calling him upon to make the statement in respect of the revene proceeding filed by him and others P.1838, 1841, & 1846, wherein they stated that this land is service Inam and they did not respond.

The DWO was served with the summons O.W.No.362/10 dated 9-8-2010 (**P.1902**) calling him upon to make the statement whether the publication of newspaper (P.1886) was under the signature of the Mr. M.Z.Siddiqui Advocate and he also was asked to produce the copy of daily Prjawani dated 5-9-1996 having the said publication, he however did not attend.

The summons bearing O.W. No.360/10 dt. 9-8-2010 was served (**P.1903**) on Editor of Daink Prajawani Nanded calling him upon to make the statement whether the said publication (P. 1886) was under the signature of Mr. M.Z. Siddiqui advocate with other details and he also did not attend till this date.

Mr. M.Z.Siddiqui was served with the Summons O.W.No.347 dated 22-7-2010 **(P.1904**) calling him upon to make statement whether the translation (P.1854) was made by him. He filed reply (**P.1905**) stating that, the translation was by Mr. M. Akmal of Hyderabad.

The another summons bearing O.W No.348/10 dated 22-7-2010 also was served to Mr. M.Z. Sidddiqu Adv. (**P.1906**) calling him upon to make statement as regards the publication in the news paper (P. 1886) under his signature and he did not reply. Non giving of the reply by Mr. Siddiqui adv. despite the supply of the Xerox copy of the publication to him, would mean that, the said publication was under his signature. As such at one point of time Mr. M.Z. Siddiqui appeared on behalf of Mutwalli and gave a publication under his signature that this land is "service Inam" and at other point of time, in the proceeding before this commission, he filed reply (P.1822) under his signature on behalf of purchasers. In other words at one point of time he acted as an Advocate on instruction that, this is Wakf land, whereas at the other point of time he acted as an advocate on instructions that, this is not a Wakf land. As per the Advocate Act the, advocate is incompetent to appear for the parties having rival interest as regards the same cause action. This is therefore a fit case to be reported to the Bar Council of Maharashtra for taking necessary action against Mr. M.Z. Sidddiqui Advocate.

The complainant Mr. Altaf Ahmed sought (**P-1906-A**) the copy of the suit pending in the Wakf Tribunal and that has been provided to him. The complainant again sought the relief of taking action against Mr. Zulphikar Advocate of misconduct, that at one point of time he appeared on behalf of the Wakf through the paper publication that Sy.No.8 is a Wakf property and nobody should purchase it, whereas at the other point of time he appeared on behalf of purchasers and defendant them by filing the reply. (**P-1906B**). The commission has already made the observation about it in the report.

**( A.T.A.K.SHAIKH)**

Commission

**Sr.No.45**

**REPORT**

**Complaint No.30/08.**

**Complaint by Sayed Masud**

**Sabir Ali Peerjazada r/o Nashik.**

**MOTHI DARGAH SAYED SADIQ SHAH**

**HUSAINI, MASJID AT NASHIK**

**DETAILS OF THE PROPERTY :-**

Wakf property C.S.No.3297 pertaining to Mothi Dargha Masjid situated at Nasik is a subject matter of this complaint.

**Nature of transaction with other details :-**

The complaint **(P-1914)** shows that there is no source of income to above Masjid other than the income earned from the rent of shops erected in C.S. No.3297. Since two years one Masood Sabir Ali started to collect the rent of those shop and also misappropriated the same, and caused irreparable loss.

**NOTICES TO PARTIES :-**

The Commission issued notices to the Chief Executive Officer Maharashtra State Board of Wakfs Aurangabad and District Wakf Officer Nasik vide Notice No.266 /2/1, 266/2/2 dated 18-07-2009 **(P-1915)** respectively, and called upon them to appear before Commission on 27-07-2009 and to submit statement in respect of query made in the notice. However none of them appeared, nor made any statement.

The C.E.O. has been further servered with the proclamation No.300/09 dated 4-8-09 **(P-1916)**requiring his attendance U/O 16 R.10 at the office of the Commission on 17-08-2009. However C.E.O. did not attend nor submit any statement.

The Commission also issued notice No.268/09 dated 18-07-2009 to Shri.Masood Sabir Ali **(P-1917)** and called upon him to appear before Commission on 27-07-2009 and to make a statement. The incumbent appeared on 27-07-09 and applied for adjournment **(P-1918)** for filing reply. It was granted. Accordingly Shri.Masood Sabir Ali submitted his reply **(P-1919-1920)** on adjourned date 17-08-2009. He also produced certain documents under list of documents. **(P-1921).** He produced several documents. **(P-1922-1949)**

**OBSERVATION OF COMMISSION**:-

The non co-operation of Shri.S.S.Ali Quadri, the C.E.O. as well as the District Wakf Officer Nasik is apparent as they choose not to appear and not to file a statement before Commission. Shri.S.S. Ali Quadari even did not respond the proclamation issued against him. The same is highly unappreciable and objectionable.

Shri Masood Saber Ali the non applicant has denied the capacity of the applicant as Mutwalli. According to him the property C.T.S.No.3297 situated at Nashik was declared as Wakf by the owner Mr. Vikar Hussain and after going through the legal process it was registered under No.11/05( **1924-1925**) as Wakf property.

The complainant as well the non applicant both have no dispute that, C.T.S.No.3297 is Wakf property and the Commission can record its conclusive finding to this extent.

On going through the complaint alongwith the reply and the documents produced on record it appears that, there is fight for the chair viz. who should be Mutwalli? And who should manage the Wakf property?

The complainant says that, he is holding as Mutwalli from his forefather. As against this the property C.T.S.No.3297 was declared as Wakf some where in 2005. This fact, to some extent, has falsified the contention of the complainant that, he is holding as Mutwalli from his forefather.

It appears that, the complainant had taken the recourse of the court proceeding. He filed an application u/s 19 and 20 of Bombay Public Trust Act in the office Asstt. Charity Commissioner and then he approached to the Joint Charity Commissioner and he could not succeed. He then filed an application u/s 72 of the B.P.T.Act in the Court of Asstt. Judge Nashik and it turned with the same result i.e. he was unsuccessful. He then approached before the Hon'ble High Court Bombay in F.A. 2633/83 against the Judgment of the Asstt. Judge Nashik and he was again unsuccessful vide the Judgment pronounced on 11-3-2005 (**P.1939**).As such this round of litigation was decided against him.

The complaint again made efforts by filing Regular Civil Suit No.201/06 ( **P.1926**) in the Maharashtra Wakf Tribunal for perpetual injunction against the present non-applicants and other. He moved an application for interim injunction Again he was unsuccessful in his such attempt vide the order dated 16-6-2007 passed by the Presiding Officer Wakf Tribunal Aurangabad **(P 1930-1938)**.

In view of such matter I feel that, the complainant has no case for taking cognizance by this Commission and so the complaint is hereby disposed off.

Today i.e. 25th March 2010 the Regional Wakf Officer, Nashik Mr. Jameenuddin filed the copy of the order dated 4-1-2010 (**P.1949A -1949N**) passed by the CEO Wakf Board, Aurangabad wherein, so as to settle the matter finally, he directed to take one Trustee from each of the three Branchs viz.

a) Mr.Aleemuddin – From Sher Mohammad Branch.

b) Mr.Faimuddin- From Neyamtulla Branch.

c) Mr. Khalil Ahmed –From Abdul Kareem Branch and as

such approved the change report of Mr.Faimuddin Nasimuddin Pirjade and rejected the change report of Mr.Masud Mustahasan Pirjade. The matter being finally settled by the competent authority, of course subject to right of the aggrieved party, this Commission may not record any more finding.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.45.**

**Chapter-II**

**REPORT**

**COMPLAINT NO. 31/2008**

**Complainant By Syed Wasim Shujauddin**

**Pirjada 1345 GPO Road Nasik.**

**DETAILS OF THE PROPERTIES** :-

Dispute in respect of Calibration of Urs-fair

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Complainant stated /alleged in the Complainant (**P-1949-O**) that he is the Mutwalli from the time of his four fathers of Dargha Syyed Sadik Ali Shah Hussaini Nasik and the urs (Fair) is celebrated under their management. However according to him Mr. Masood Sabir Ali Managed the Chairman of the wakf board Mr. Aziz and the hereditary Mutwalliship and management of Urs has been obstructed, resulting into giving him the mental disturbance.

**NOTICES TO THE PARTIES:-**

The complainant was served the summons O.No. 267/2/1 dated 18-07-2009 (**P.1949 P**) calling him upon to produce the documents on 27-07-2009 in support of his complainant and he sought adjournment by telegram (**P.1949-Q**) and thereafter he did not attend.

The opponent Mr. Masud Saber Ali was served with summon O.W. No.264/09 dt. 18-7-2009 (**P. 1949-R**). He appeared and sought time vide his application (**P.1949-S**) He thereafter filed a reply (**P.1949-T-U**)

The CEO Wakf and D.W.O. Nashik were served with the summons O.W. No.265/2/1 and 265/2/2 dt. 18-7-2009 (**P.1949-V**). calling them upon to make the statement on 27-7-2009. The D.W.O. Nashik vide application dated 28-7-2009 for adjournment claimed time (**P-1949-W**) and thereafter no response from both of them .

The CEO Wakf was served with the proclamation O.W. No.30/099 dated 4-8-2009 (**P.1949-X**). calling him upon to make the statement on 17-8—2009 and he did not attend.

**OBSERVATION OF COMMISSION**:-

The opponent Mr. Masud Saber Ali stated that, the complaint is all together false. According to him, his family and not the family of the complainant is Mutwalli from the forefathers. He produced several documents in support of his claim. As against this the complainant did not produce a single document, nor appeared before the Commission in response to the summon (**P.1949-P**).

The opponent Mr. Masub Saber Ali stated that, the complainant obtained the order dated 6-5-2006 (**P.1949-Y**) of the Chairman to Celebrate Urs. In response to it the opponent also submitted application and by passing the separate order dated 8-5-2006 (**P. 1949-Z**), the Chairman quashed the aforesaid order dated 6-5-2006 and granted fresh permission to opponent to Celebrate Urs. I may not repeat in detail the previous litigation. I may only repeat that, the litigation of the parties went up to the Hon'ble High Court and that was finally decided under the order dated 11-3-2005 which is already referred in the order Chapter No.I (**P.1939).** The present complainant therefore has absolutely no case and his complaint is filed.

(**A.T.A.K.SHAIKH**)

Commission

**At Sr. No. 45.**

**Chapter-III**

**REPORT**

**COMPLAINT NO. 91/2010**

**Complaint By Haji Hasib Habib**

**Pirjade 2448, Mothi Dargah Nashik-1.**

**OBSERVATION OF COMMISSION**:-

Instead of attaching the present complaint/application **(P.1920 A-C)** dated 8-4-2010 to complaint No.30/08, this has been wrongly given the separate number.

This Commission has already held that the Hon'ble High Court has decided First Appeal No.2633/83 on 11-3-2005 by dismissing his claim in the appeal. (**P.1939**). Subsequently the complainant approached to the Wakf Tribunal in Regular Civil Suit No.201/06 and the application for interim relief submitted by him is rejected on 16-6-2007 (**P.1926**). Thereafter the CEO Wakf Mr. S.S. Ali Quadari has registered the Committee by accepting the trustees as per review application and issued the order on 4-1-2010 (**P.1949B**). This Commission has already expressed its views and finding in the matter. Presently the Regular Civil Suit No.201/2006 is pending in the Wakf Tribunal and it will not be proper to make any more observations. Hence this complaint/applicataion is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.46**

**REPORT**

**COMPLAINT NO. 22/2008 (P.134)**

**Filed by Daily Insaf Newspaper, Aurangabad**

**DARGAH PEER KARMALISHAH TRUST PANWEL (MUMBAI)**

**DETAILS OF THE PROPERTIES** :-

The site out of Sy.No.513/A adm. 1200 Sq. Yard is a Wakf property of this Trust.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The property mentioned hereinabove appears to have been leased by the trust for the period of 3 years under the rent deed dated 18-9-2006 on rent of Rs.1020.00 p.m. + donation of Rs. 5,00,000/- (lacs) (**P.1950-1955**) and legality of this transaction is to be verified.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer was served with the summons/notice O.No.IWB/78/09 dated 2-4-2009 (**P.1956**) calling him upon to make a statement about this transaction on 29-4-2009. He did not appear.

The Chief Executive Officer Mr. Sayed Sadeq Ali (by name) was served with the summons/notice O.No.IWB/322/09 dated 21-8-2009 (**P.1957**) calling him upon to make a statement about this transaction on 27-8-2009. He did not appear.

The Chief Executive Officer was served with the proclamation u/o 16 R. 10 of C.P.C. O.No.IWB/340/09 dated 29-8-2009 (**P.1958**) calling him upon to make a statement about this transaction on 1-9-2009. He did not appear.

The bailable warrant was issued in the name of the Chief Executive Officer Mr. Sayed Sadeq Ali (by name) O.No.IWB/387/09 dated 14-10-2009 (**P.1959**) calling the bailiff to return the warrant after service on 20-10-2009. It could not be served for want of his availability.

The commission imposed the fine of Rs. 500/- against the CEO and sent a warrant of fine Mr. S.S.Ali Quadari O.W.No.418/09 dated 10-11-2009 (**P.1960**) asking him to deposit Rs. 500/- to the State Govt. of Maharashtra and to produce the challan before this office. This was sufficiently served against him vide the report of the bailiff. The CEO however, did not personally endorse it, to have received, and again **he displayed his adamancy by directing Bailiff to obtain the acknowledgment from his office**, which was accordingly obtained by the Bailiff. The later still neither paid the fine nor filed the reply. This displayed a adamant and most objectionable behivaour indicating how thick skin he has.

Lastly the CEO filed the reply on 8-12-2009 (**P.1961**) stating that, there was no resolution for this transaction. He produced the deed of lease (**P.1950**), the letter dated 21-7-2006 (**P.1962-1963**) issued under the signature of Asstt. Chief Executive Officer, the copy of resolution dated 22-4-2006 passed by the trust (P.**1964-1972**).

**OBSERVATION OF COMMISSION**:-

The CEO Wakf categorically state din his reply **(P.1961)** dated 8-12-2009 that, there was no resolution for this transaction. As per the provision u/s 32 (2) (j) r/w section 56 of the Wakf Act 1995 the resolution passed by 2/3rd majority of the members of the Board is necessary for the validity of the transaction. If there is no such resolution there can be no transaction of lease and if at all any transaction is entered into, it is void, - vide section 51 of the Wakf Act 1995.

The transaction was of course entered into with a private party and at the same time there is no resolution in support of it. The order authorizing the trust to lease the property was issued under the signature of the Asst. Chief Executive Officer (Mr. Shri Aziz Ahmed Siraj Ahmed, who then was). This letter is endorsed saying that, "approved by Chairman. **(P 1962)** Shri Aziz Ahmed Siraj Ahmed will have to be asked by issuing summons to produce the Xerox copy alongwith original before this office under which the proposal was approved by the Chairman as per the aforesaid endorsement.

It is also seen from the resolution of the trust (**P.1964**) that some different portions of the Wakf property were leased to different person. The summons also will have to be issued to the trust, as well as, all the concern.

a) summons/notice (**P.1956**) b) (**P.1957**) c) the proclamation (**P.1958** at the bailable warrant were issued in the name of the Chief Executive Officer Mr. Sayed Sadeq Ali (by name) O.No.IWB/387/09 dated 14-10-2008 (**P.1959**) **was issued for the property** No. A/3621 & 3622 (New CS No. 768) Majgaon Division Bearing Municipal House No. E Ward MP/ 7479, 7480, 7480(2), 7481, 7482(1) 7480(3), 7482(4) Sheet No. 349 Admeasuring 1853 Sq Yards (1549.29 Sq Mtrs)) **As against this** the reply **(P 1961)** is filed for the property S.No. 593 admeasuring 1200 Sq Yard. That too, without making the reference of the O.W.No of the summon.This also displayed the most carelessness, negligence, and arrogance of the CEO Mr S.S.Ali Qudri and has displayed again his tough skin. I do not understand how such type of officers are tolerated by the Government in the administration.

Note:- Summons O.W.No. issued to

1).468/09 dt. 14-12-2009 Shri Aziz Ahmed Siraj Ahmed(**P.1973**)

2) 467/2/1 dt.10-12-2009 Shri Azgar Hussain Mukadam (**P.1975-A**)

3) 467/2/2 dt.10-12-2009 Shri S.S.Ali Quadari.(**P.1975-A**)

In response to the summons O.W.No.468/09 dated 14-12-2009 (**P.1973**) Mr. Aziz Ahmed filed reply dated 24-12-2009 (**P.1974**) alongwith a documents (**P.1975**). Mr. Aziz Ahmed stated that he acted as per directions issued by the Chairman in his order (P.1975) . This order was issued from Bombay office by giving permission to lease by acting on the resolution passed by the Trust (and not by the Board). The Chairman forgot that, the

resolution of the Board is necessary vide section 32(2)(j) of the Wakf Act 1995. The Chairman as such abuse and misused his position and so **the Chairman is liable for this illegal transaction.**

As stated above this order was issued from Bombay office where Mr. Aziz Ahmed was working as a Asstt. CEO. As per provision u/s 26 of the Wakf Act 1995 he was legally duty bound to bring the illegality to the notice of the Wakf Board and then to the Govt. However he did not took such step. **Mr. Aziz Ahmed is equally responsible for this illegal transaction.**

The summon O.W.No.467/2/1 and 467/2/2 dated 10-12-2009 were issued in the name of Mr.Azgar Hussain Mukadam the Chief Trustee of the aforesaid trust and Mr. S.S.Ali Quadari the CEO Wakf asking the details of the other lease transaction of the properties of trust, however they did not respond (**P-1975-A**). The CEO Wakf simply issued a letter by way of direction to the Regional Wakf Officer Aurangabad to make the compliance and still there is no response (**P. 1975-B**). The CEO also forgot that, he was asked to make the compliance of the summon. His job was not finished by simply directing the Regional Officer.

(**A.T.A.K.SHAIKH**)

Commission

**Sr. No. 47**

**REPORT**

**COMPLAINT NO. 59/2009**

**Received by fax.**

**HAZART TURABUL HAQ PARBHANI**

**DETAILS OF THE PROPERTY** :-

The office of commission received a complaint by fax from Mr. Anis Ahemad **(P 1-4)** A portion admeasuring 104x12 Mtr. out of the land Sy.No.593 and 594 was allotted for construction of road on the application of One Mr.Gaffar Master of Parbhani.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

A portion admeasuring 104x12 Mtr. out of the land Sy.No.593 and 594 was allotted for construction of road on the application of One Mr.Gaffar Master **(P.2001)**. The office Superintendent passed the order on 21-4-2005, which was issued from Majestic M.L.A. (Hostel) 309/310 Mumbai allotting the aforesaid portion for construction of Road on the basis of the application of private person.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 168/09 dated 8-5--2009 **(P.2002)** calling him upon to appear personally and to file a statement on 18-5-2009. He filed reply **(P.2003-2004),** alongwith documents **(P.2001 & 2005-2007)**

The District Wakf Officer, Parbhani was served with notice, O. No. 172/09 dated 8-5-2009 **(P.2008)** calling him upon to appear personally and to file a statement on 2-5-2009 He did not file a reply.

Mr. M.Y.Patel the then CEO of Wakf Board was served summons bearing O.No.248/2/1/09 dated 7-7-2009(**P.2009)** He filed reply (**P.2010)** alongwith the documents **(P.2011-2016)**

Mr.Shaikh Jafar Sk.Ibrahim the then Superintendent of Wakf Board at Bombay office and present working as Superintendent Hingoli office was the served bearing O.No.248/09 **(P.2009)** and did not file a reply.

The notice was not issued to Mr. M.A.Aziz on 7-7-2009 he being already dead.

**OBSERVATION OF COMMISSION**:-

The present CEO stated in his reply **(P.2003)** that, the **Board did not pass any resolution** for allotment of this land for construction of road. He further stated that, the order of no objection to construct the road was issued under the signature of the Office Superintendent with the endorsement that, the O.C. was signed by the Chairman. Since 'no objection' was issued for construction of road without passing resolution there was a clear violation of section 32 (2) (j) of the Wakf Act 1995.

The order of no objection **(P.2001**) states that, the O.C. was signed by the Chairman. However, the copy of the said O.C. is not produced. **The letter will have to issue to the CEO calling the original record for perusal.**

Mr.M.Y.Patel the then CEO stated in his reply **(P.2010)** that, Mr.Jafar the then the Office Superintendent submitted the note directly at the Bombay office, obtained the report of the D.W.O. Parbhani and then the Chairman passed order on 21-4-2005. According to Mr. M.Y.Patel the then CEO, (he himself) had absolutely no concern with the said order. He alleged that, the office Superintendent at Mumbai Mr. Jafar and the D.W.O. Parbhani Mr. Atiq Ahmed are solely responsible for this transaction. I found the substance in the contentions of Mr. M.Y.Patel.

**The office order was issued under the signature of Mr. Shaikh Jafar the then Superintendent that too, without there, being a resolution passed by the Wakf Board. Mr. Jafar therefore appears to be responsible for this transaction.**

Looking to such illegality the CEO of the Wakf working as on 8-1-2008 issued the order bearing No.MSBW/SNT/431/56 / 2007 cancelling this transaction and asking for vacant possession of the site. The Boarad of Wakf passed the resolution on 12-12-2007and cancelled this transaction, as displayed in the order dt. 8-1-2008 **(P No. 2005).**

It is rather surprising that, the big portion of wakf land was allotted on the application of private person, that too, free of cost. Not only this but such private person was to construct the road at his own cost. I feel that, the said private person must be having a vested interest, and that was the reason as to why he made such efforts and got the Wakf land allotted for road. The concerned Wakf authorities must have joined hands with such private person, may be for some consideration and so this is matter of a serious nature.

The D.W.O. Parbhani appeared in the matter and filed the application on 18-5-2009 for adjournment **(P.No.2017).** The matter was adjourned to 8-6-2009. But he did not take care to file the reply.

**In view of such matter I feel that, Sk. Jafar Sk. Ibrhaim the office Superintendent is responsible for this illegal transaction.**

This office issued a notice O.No.353/09 dated 9-9-2009 to the **CEO Wakf (P2018)** calling him upon to produce the O.C. signed by the chairman on 10-9-2009 as stated at **(P. 2001)** and he **did not respond.**

This office again issued a notice O.No.355/09 dated 10-9-2009 to the CEO Wakf and the DWO Parbhani **(P2019)** calling them upon to state whether Mr. Gaffar Master has got either a house or land beyond the proposed road **.** The DWO Parbhani filed the reply dated 9-11-2009 **(P 2020)** along with the documents **(P2021-2028)** (The documents p 2001,2005 and 2006 being repetition are not separately numbered) The copy of the application of Mr Gaffar Master (**P 2021**) **clearly disclose that he has got 32 acres of land that too plots beyond S. No. 593-594.**

Mr Gaffar Master appears to have been benefited by sacrifice of the Wakf Board, and I feel, this sacrifice may be for the extraneous considerations.

**The Chairman and Mr. Shaikh Zafar are responsible for this illegality. Mr. Gaffar Master will have to compensate to the Wakf Board for the land used for the Road, at the prevailing market rates of the land, since Mr. Gaffar Master was the beneficiary and not the Wakf Board.**

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.48**

**REPORT**

**COMPLAINT NO. 33/2008**

Complaint by Mr.M.A.Rasheed r/o Parbhani

**MASJID –A – MEMARALLAN GUJRI BAZAR**

**PARNBAHI, DIST. PARBHANI.**

**DETAILS OF THE PROPERTY** :-

Sy. No.17/2 admeasuring 5 A. 20 G. situated at Village Kardgaon Dist. Parbhani is a Wakf property

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The office of commission received a complaint from Mr.M.A.Rasheed, B.E. r/o Parbhani (**P.2029-2030**) stating that, the land Sy. No.17/2 admeasuring 5 A. 20 G. situated at Village Kardgaon Dist. Parbhani is a Wakf property of the aforesaid Masjid, having an entry at Sr.No.21-Part-C dated 2-5-1974 of the Govt. Gazette. The complainant stated that his father Mr. M.A.Razak was the Mutwalli of the Institution and after him the complainant is performing the duty.

The complainant alleged that, this land was being leased by the Tahsildar Parbhani on yearly basis and the Lawani Amount was being paid by the Tahsildar Parbhani to the Wakf. However, the Tahsildar Parbhani stopped giving the land on lease and so Wakf Institution is being sufferer.

Mr. M.A.Rasheed stated that, he is appointed as a temporary Mutwalliy by the Wakf Board u/o dated 6-2-1981 (**P. 2031**) and his appointment was continued under the order dated 5-8-1985 (**P.2032**) and the order dated 2-7-1987 (**P.2033**). He then submitted an application to the Tahsildar on 18-12-1984 to refund the Lawani amount to the Wakf Institution, however the Tahsildar did not take any action (**P.2034**). The District Wakf Officer Parbhani also wrote a letter to the Tahsildar Parbhani on 16-4-2007, asking him to handover the possession of land to the Mutwalli (**P.2035**), however, that, also went on the deaf ears of the Tahsildar.

The complainant Mr. Rashed therefore filed a complaint asking for restoration of possession of land to him as a Mutwalli.

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 224/09 dated 22-6-2009 **(P. 2036)** calling him upon to appear personally and to file a statement on 6-7-2009. He did not file reply.

The District Wakf Officer, Parbhani was served with notice, O. No. 223/09 dated 22-6-2009 **(P. 2036)**calling him upon to appear personally and to file a statement on 6-7-2009. He did not file reply, though he sought adjournment by submitting application

(**P.2043-A**)

The Tahsildar Parbhani was served with notice, O. No. 222/09 dated 22-6-2009 **(P. 2036)** calling him upon to appear personally and to file a statement on 6-7-2009. He did not file reply.

The C.E.O. was again served with the summons O.W.No.254/4/3 dated 7-7-2009 (**P.2037**) by way of **reminder** calling him upon to make the statement and he did not reply.

The District Wakf Officer Parbhani was again served with the summons O.W.No.254/4/2 dated 7-7-2009 (**P.2037**) by way of **reminder** calling him upon to make the statement and he filed reply (**P.2038**) alongwith the documents (**P.2039-2043**).

The Tahsildar Parbhani was again served with the summons O.W.No.254/4/2 dated 7-7-2009 (**P.2037**) by way of **reminder** calling him upon to make the statement and he did not file reply .

**OBSERVATION OF COMMISSION**:-

The documents page No.**2031- 2033** clearly indicate that, the complainant the Mr. M.A.Rasheed is appointed as a Mutawalli, may be on temporary basis, of the Wakf Insitution. Mr. Rasheed as well as the D.W.O. moved the Tahsildar to refund the Lawani amount and to hand over the possession of land (**P.2034-2035**). Not only this but the State Govt. of Maharashtra Revenue and Forest Department also issued a letter No. Wakf/1098/4228/Pr.Kr.29/L-3 dated 16-7-1998 (**P.2042**) to the Divisional Commissioner, Aurangbad stating that, the practice of giving Wakf land on lease on Lawani basis be stayed and such lands shall be restored to the Wakf Board. Desipte such matter the Tahsildar Parbhani (and consequently the Collector Parbhani as a head of Department ) failed to deliver the possession of land to the Wakf Board.

It is alleged by the D.W.O. Parbhani in his reply (**P. 2038**) that, the land is fallow since last 3 years, consequently the Wakf institution is deprived to get the income for it's maintenance. **The Tahsildar Parbhani is responsible for such serious laps and state Govt. may take serious action against him. At the same time the Collector Parbhani who is the Administrative and Supervising head of the District is also equally responsible for such laps.**

I may mention here that, the Asstt. Collector Parbhani issued a letter No.09/Atiyat/Inam/Kavi-496 dt. 22-10-2009 (**P.2043**) aksing the unnecessary and unwanted details. As a matter of fact, when the land belongs to the Wakf, when the Mutwalli as well as the D.W.O. Parbhani are asking the restoration of possession and when the State Govt. is also of the view to restore the possession to the wakf, I do not understand as to why the Revenue Department and the particularly Tahsildar is withholding the possession of the land. The reason is obvious i.e. the malafides on the part of Tahsildar Parbhani. The Tahsildar does not want the benefit of the Wakf Institution. The Govt. may take action against him for his such malafide and mischievous attitude.

**In short the Tahsildar is responsible for with holding possession of the land and he deserves to be punished by the Govt. At the same time the Wakf Institution through Mutwalli Mr. M.A. Rasheed is entitled to get the possession of the land.**

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.49**

**REPORT**

**COMPLAINT NO. 59/2009**

**Received by fax.**

**DARGA HAZART YAKUB SAHEB TERKHEDA DIST. OSMANABAD**

**DETAILS OF THE PROPERTY** :-

One Acre out of the land Gat.No.482 which is totally admeasuring 8 H. 43 R of Terkheda is the Wakf Property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The office of commission received a complaint by fax from Mr Anis Ahemad **(P 1-4)** A portion admeasuring one Acre out of the land Gat.No.482 which is totally admeasuring 8 H. 43 R was allotted for construction of Hospital to Dr Rajesh Bhagwat Bhalekar R/O Terkheda. Smt. Sarojbai Jagdale the legal heir of the original Mutawalli by name Tatya Santu Nagarchi, submitted an application to the CEO Wakf on 6-1-2004 ( **P No2051 )** to allot this site for the hospital purpose. The DWO Osmanabad submitted proposal to the CEO Wakf to that effect. **(P No 2052-2053)** The resolution **(No. 2054 -2056)** was passed by the Board. The order was issued by the CEO Wakf on 6-3-2005 **(P No2057)** The land was leased for 3 years by executing the agreement on simple stamp paper. **(P No.2058)**

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 169/09 dated 8-5--2009 **(P.2059)** calling him upon to appear personally and to file a statement on 18-5-2009. He filed reply **(P.2060-2061),** alongwith documents **(P.2054-2058)**

The District Wakf Officer, Osmanabad was served with notice, O. No. 173/09 dated 8-5-2009 **(P.2062)** calling him upon to appear personally and to file a statement on 18-5-2009 He filed reply **(2063-2065)** with documents..

Mr. M.Y.Patel the then CEO of Wakf Board was served summons bearing O.No.249/2/1/09 dated 7-7-2009 (**P.2066)** He filed reply which is not signed by Mr. Patel though it bears his present designation but it is signed by his Advocate Madam B.N.Jamal (**P.2067)** alongwith the documents **(P.2068-2073)** The copy of the lease deed is not numbered being repetition. This transaction is void as per the provision of section 56 r/w section 32 (2) (j) of the Wakf Act.

The notice was not issued to Mr. M.A.Aziz on 7-7-2009 he being already dead.

**OBSERVATION OF COMMISSION**:-

The CEO stated in his reply **(P.2060)** that, the resolution was passed by five members out of nine. As per the provision u/s 32(2)(j) of the Wakf Act resolution is required to be passed by 2/3rd of the member of the Board. **Five out of nine was obviously not 2/3rd and so this statutory provision was grossly violated**.

**The statement of the CEO** that, five members passed the **resolution** is clearly **incorrect** and false, if it is read alongwith the resolution **(P.2054-2056).** The resolution clearly display that, it **was passed by only four members including the Chairman**. This is how the present CEO has tried to indulge adverse to the interest of the Wakf. He is liable to be taken to task.

Mr. M.Y.Patel the then CEO stated and justified this transaction in his reply (**P.2067**) As a matter of fact, **the resolution being not valid, he (Mr.M.Y.Patel) ought to have taken action** and **should have reported the matter to the Board and then to the Govt**. that, the resolution is not valid Section 26. **Instated** of taking such action **he issued the order dated 6-3-2005 (P.2057) to lease the land**. In view of the such matter the Chairman **Mr. M.A.Aziz (now deceased ) and the CEO Mr. M.Y.Patel are responsible for this illegal transaction.**

The then CEO working on 26-4-2007 found that, the mandatory provision of the Wakf Act were violated and so he issued a notice as to why action should not be taken u/s 52 of the Act to obtain the possession **(P.2074)**. Despite such matter the present CEO Mr. S.S.Ali Quadari issued a letter to the DWO Osmanabad calling the proposal to regularize the lease (**P.2061**) . **The conduct the present CEO Mr. S.S.Ali Quadari, in view of such matter is also not free from suspicion.**

(**A.T.A.K.SHAIKH**)

Commission.

**Sr. No. 50**

**REPORT**

**COMPLAINT NO. 59/2009**

**Received by fax.**

**HAZRAT RAJE BAXUR PEERWADI TQ. AND DIST. SATARA**

**DETAILS OF THE PROPERTY** :-

The land Sy.No.16 (110 old) admeasuring 4 A. 29 Gunthas is a Wakf propertiy

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The office of commission received a complaint by fax from Mr Anis Ahemad **(P 1-4)** The land Sy.No.16 (110 old) admeasuring 4 A. 29 Gunthas, is ordered to be transferred to Ashok Govindrao Naik which is Wakf property. The order dated 19-5-2005 **(P.2101-2102)** was issued under the signature of Mr. M.Y.Patel the then CEO of the Wakf Board to transfer this land to Mr. Ashok Govindrao Naik @ 90,000/- per guntha. The copy of resolution no.20 dated 28-4-2005 is produced on record **(P.2104)** .

**NOTICES TO THE PARTIES:-**

The Chief Executive Officer, Maharashtra State Board of Wakf was served with notice, O. No. 83/09 dated 4-4-2009 **(P.2105)** calling him upon to appear personally and to file a statement on 2-5-2009 He filed reply **(P. 2106-2107),** alongwith documents **(P.2101-2103)**

The District Wakf Officer, District Wakf office at Pune was served with notice, O. No. 83/09 dated 4-4-2009 **(P.2105)** calling him upon to appear personally and to file a statement on 2-5-2009. He did not file a reply.

Mr. M.Y.Patel the then CEO of Wakf Board was served summons bearing O.No.250/2/1/09 dated 7-7-2009(**P.2108)** He filed reply which is not signed by him though it bears his designation but it is signed his advocate Madam D.H.Jalmal (**P.2109-2110)** alongwith the documents **(P.2111-2131).** The summons O.W. No.250/2/2 dated 7-7-2009 was also served on D.W.O. Satara (**P-2108**) and he did not respond.

The notice was not issued to Mr. M.A.Aziz on 7-7-2009 he being already dead.

**OBSERVATION OF COMMISSION**:-

The present CEO stated in his reply **(P.2106-2107)** that, the resolution (**P.2104)** to transfer the property was passed by five members out of 9. Obviously this resolution was in violation to section 32(2)(j) of the Wakf Act 1995. The CEO also stated about non-compliance of this legal provision in his reply (**P.2107**) The said provision requires 2/3$^{rd}$ majority. As such the resolution was to be passed by six members out of 9 for its validity as provided. Here only five members including the Chairman had passed the resolution and so the order of transfer dated 19-5-2005 issued by Mr. M.Y.Patel was in gross violation of the statutory provision of law.

Mr. M.Y. Patel, the then CEO was expected to bring this legal lacuna to the notice of the Wakf Board, as well as to the notice of Govt. as provided u/s 26 of the Act. However Mr. Patel did not take such action. On the contrary he tried to justify this transaction in his say **(P.2109-2110) Mr. M.Y.Patel the then CEO together with Mr. M.A.Aziz (Now dead) were responsible for this illegality.**

It appears that, the **reference was made to the Govt.** to transfer this land from Inam Class –III to Inam Class-II. It appears from the copy of the order dated 9-7-2008 **(P.2111-2113)** that,Mr.Dr. Rajendra Singne the then **Revenue Minister allowed the said reference** and directed to delete this land from Inam Class-III with further direction to the necessary entry in the revenue record. I did not come a cross with the provision of law under which the Revenue Minister was authorized to indulge in the matter and to convert the Inam land from one class to other class. On the contrary as per the settled rule of law as far as the Inam land is concerned " **Once Inam is always Inam"**. **Nobody can change the character of the Inam property. The order dated 9-7-2008 passed by Revenue Minister was without any jurisdiction** and so it renders to be void. The contention of Mr. M.Y.Patel that, the State Government accepted his stand therefore carries no meaning. This was because the CEW was not the law knowing person.

Fortunately this transaction was not materialize as it is seen from reply of the CEO **(P.2106-2107).** Still I may make a short reference of non-compliance of the rules. Rules 16 provides that, Mutwalli shall make a application in form "W" for transfer and this appears not to have been complied. Rule 17 provides that, the CEO shall publish notice in form "X" and call upon the objections, the Board shall take the decision thereon within 30 days, Rule 18 provides that, the Mutwalli shall issue public notice in form "Y" giving the details of auction and all of these provisions also were not complied.

The office of commission issued a letter O. W. No. 352-2009 dt. 9-9-2009 to the CEO Wakf calling him upon to produce the original record in the matter and to make the statement on 10-9-2009 **(P 2132)** and he did not respond. Mr. S.S.Ali Quadri again displayed, his non-cooperative and negligent approach to the work of commission.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr. No. 51**

**REPORT**

**COMPLAINT NO. 73/2009,**

**Complainant by Shri Shaikh Baba**

**Faizuddin r/o Osmanabad**

**JAMA MASJID NALDURG AND**

**JAMA MASJID OSMANABAD.**

**DETAILS OF THE PROPERTIES** :-

The lands which are various in number are stated in the tables hereinbelow.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint (**P.2309-2316**) that, the Wakf Board has illegally leased the plots to difference persons out of Sy.No.104 and 164 of Osmanabad as under:-

| Sr.No. | Name of Leasee | Sy.No. | Size of plot |
|---|---|---|---|
| 1. | Mahebub Masihuddin Quadari | 104/4 | 100x200 |
| 2. | Mainuddin Magbul Mujawar | 104/8 | 100x150 |
| 3. | Sk.Yousuf Nizamoddin | 104/8 | 50x80 |
| 4. | Sk.Ayyub Tajuddin | 104/8 | 50x30 |
| 5. | Sk.Ayyub Magbul | 164/8 | 50x100 |

The complainant further alleged the transfer of the lands to difference persons as under:-

| Sr.No. | Sy.No. | Area | Date | Remarks |
|---|---|---|---|---|
| 1 | 104/8 | 0.H. 91 R. | 17-2-2002 | Osmanabad |
| 2 | 104/4 | 1 H.18 R. | 24-4-2002 | |
| 3 | 104/4 | 0. H. 76 R. | 12-12-2002 | |
| 4 | 118/9 | 1 H. 41 R. | 29-6-2001 | |
| 5 | 118/1 | 0 H. 93 R. | 17-2-2002 | |
| 6 | 164/4 (8) | 0 H. 7 R | 29-6-2001 | |
| 7 | 164/5 * | 0 H. 19 R. | 9-7-1997 | |
| 8 | 228 | 0 H. 81 R. | 29-6-2001 | Naldurg |
| 9 | 228 | 1 H. 21.41 R. | 26-7-1999 | Naldurg |

The copy of Muntkab of Naldurg and Osmanabad are produced on record (**P 2317-2319**). The copy of the Gazette showing the aforesaid lands alongwith other lands to be Inam are also produced (**P.2320-2321**).

**NOTICES TO THE PARTIES:-**

The CEO Board of Wakf was served with the notice O.W.No.230/09 dated 29-6-2009 calling him upon to make the statement on 14-7-2009 (**P-2322**) and he did not file reply.

The CEO Board of Wakf was served with the notice O.W.No.452/09, 453/09 dated 1-12-2009 calling him upon to make the statement on 9-12-2009 (**P-2323-2324**) and he did not file reply.

The CEO Wakf and D.W.O. Osmanabad were also served with summons O.W.O. No.438/09 dated 26-11-2009 (**P.2362**), O.W.No.439/09 dated 26-11-2009 (P.2376), 440/09 (P.2384), 441/09 (P.2397), 442/09 (P-2408) 443/09 (P.2421), 444/09 (P.2428), 445/09 (P. 2438), 446/09 (P.2446), 68/10 dt. 2-2-2010 (**P.2324-A**) and they did not file reply.

The D.W.O.Osmanabad was served with the notice O.W.No.231/09 dated 29-6-2009 calling him upon to make the statement on 14-7-2009 (**P-2322**) He filed reply dated 5-9-2009 (**P. 2325-2326)** and dated 14-9-2009 (**P.2327-2331**). He categorically stated to have brought the factum of sale to the notice the head office i.e. CEO Wakf Aurangabad under his letter No.Wakf/SNT/797/03 dated 10-11-2003. He further made a detailed statement that, the Inamdar and Mutwalli got the Inams abolished and then transferred the lands. The proceedings to challenge the said abolition of Inam are pending before the District Collector, Osmanabad. As far as the lease of the land by the Wakf Board is concerned it is stated that, the Wakf Board leased it @ Rs.0.25/- per Sq. ft. Vide order No.MSWB/ SNT/912/08 dated 3-3-2008.

The D.W.O. produced the copy of the order dated 15-5-2004 and 21-2-2005 passed by the CEO Wakf Mr. M.Y.Patel raising an objection for the sale without permission and taking action u/s 51 and 52 of the Wakf Act (**P.2332-2336**). He also produced the copies of the notices issued to the seller and purchaser dated 9-1-2009 (**P.2337-2341).**

It appears that, the Wakf Board challenged the orders of abolition of Inam in the court of Dy.Collector LR, and collector Osmanabad and the copies are produced on record (**P.2342-2359**)

The complainant Shaikh Baba was served with the notice O.W.No.238/09 dated 30-6-2009 calling him upon to give the details on 14-7-2009 (**P-2360**) He did not file a reply.

The complainant Shaikh Baba was again served with the notice O.W.No.69/10 dated 3-2-2010 calling him upon to give the details on 16-2-2010 (**P-2361**) He did not file a reply.

Shri Subhas Vishnupanth Ghone the purchaser and Shri Sayed Abdul Mabood s/o Sayed Abdul Rashid Kazi and 9 others served with summons O.W.No.438/09 dated 26-11-2009 (**P-2362**). The land Sy.No.104/8 adm. 91 R. of Osmanabad was transferred to Shri Subhash by Sayed Mabood etc. under the sale deed dated 17-2-2002 (**P.2363-2372**). The mutation entries were recorded in the Revenue Record very promptly. ( **P.2373-2374**). The purchasers sought adjournment (**P.2375**) to file reply.

Shri Goruba Vishnupant, Shri Subhash Vishnupant, the purchasers and Shri Sayed Khairat Hussain and 5 other the seller were served with the summons O.W.No.439/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2376**). The land Sy.No.104/4 adm. 1 H. 18 R.of Osmanabad was transferred by Sayed Khairat and others to Shri Goruba and another under the sale deed dated 24-4-2004 (**P.2377-2382**). The purchasers sought adjournment to file reply (**P.2383**).

Shri Goruba Vishnupant, Shri Subhash Vishnupant, the purchasers and Shri Abdul Rashid Abdul Kadeer and 8 others the seller were served with the summons O.W.No.440/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2384**). The land Sy.No.104/4 adm. 76 R.of Osmanabad was transferred by Mohd. Abdul Rashid and others to Shri Goruba and another under the sale deed dated 2-12-2004 (**P.2385-2394**). The mutation entry was promptly effected by the Revenue Department. (**P.2395**) The purchasers sought adjournment to file reply (**P.2396**).

Shri Goruba Vishnupant, Shri Subhash Vishnupant, the purchasers and Shri Abdul Aleem Abdul Kadir and 8 others the seller were served with the summons O.W.No.441/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2397**). The land Sy.No.118/9 adm. 1 H.41 R of Osmanabad was transferred by Abdul Aleem Adbul Kadir and others to Shri Goruba and another under the sale deed dated 29-6-2001 (**P.2398-2404**). The mutation entries were promptly effected by the Revenue Department. (**P.2405-2406**) The purchasers sought adjournment to file reply (**P.2407**).

Shri Goruba Vishnupant Ghone the purchaser and Shri Abdul Mabood and 9 others the seller were served with the summons O.W.No.442/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2408**). The land Sy.No.118/1 adm. 0 H. 93 R of Osmanabad was transferred by Abdul Mabood and others to Shri Goruba under the sale deed dated 17-2-2002 (**P.2409-2418**). The mutation entries were promptly effected by the Revenue Department. (**P.2419-2420**).

Shri Subhash Vishnupant, the purchasers and Shri Shamshuddin s/o Mohd. Kazi and 2 others the seller were served with the summons O.W.No.443/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2421**). The land Sy.No.164/8 adm. 7 R of Osmanabad was transferred by Shamshuddin and others to Shri Subhash under the sale deed dated 29-6-2001 (**P.2422-2426**). Mr. Shamshuddin has filed the power of his adv. (**P.2427**) and he did not attend thereafter.

Shri Vasant Baduba Yadhav and two others , the purchasers and Smt. Bismillabee w/o Vadud Ahmed the seller were served with the summons O.W.No.444/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2428**). The land Sy.No.164/5 adm. 19 R of Osmanabad was transferred by Smt. Bismillabee w/o Vadud Ahmed under the sale deed dated 9-7-1997 (**P.2429-2433**). The mutation entries were promptly effected by the Revenue Department. (**P.2434-2435**). Shri Vasant and others filed application for adjournment with power of their advocate (**P.2436-2437**)

Shri Subhash Vishnupant and Santosh Goruba the purchasers and Mainuddin s/o Shamshuddin and 2 others the seller were served with the summons O.W.No.445/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2438**). The land Sy.No.228 adm. 81 R of Osmanabad was transferred by Mainuddin

and others to Shri Shubhas and another under the sale deed dated 29-6-2001 (**P.2439-2442**). The mutation entry was promptly effected by the Revenue Department. (**P.2443-2445**).

Shri Vilas Ramchandra Kulkarni the purchaser and Shri Mainuddin s/o Shamshuddin and 2 others the seller were served with the summons O.W.No.446/09 dated 26-11-2009 calling them upon to make statement on 9-12-2009 (**P.2446**). The land Sy.No.228 adm. 1 H. 21.41 R of Osmanabad was transferred by Mainuddin and others to Shri Vilas under the sale deed 26-7-1999 (**P.2447-2454**).

The Dy. Collector, L.R. Osmanabad was served with the summons O.W.No.448/09 dated 30-11-2009 (**P.2455**) calling him upon to make the statement as regards abolition of Inam of Land Sy.No.104/8, 118/1, 228. Mr. S.V.Deshpande the Senior Clerk appeared before this office on 9-12-2009 and filed a statement (**P.2456**) admitting therein the abolition of Inam of the aforesaid land He also produced the copies of order of abolition of Inam (**P.2457-2459**). The adjournment is sought under application (**P.2460**)

The fresh summons again was issued to Dy. Collector L.R. Osmanabad O.W.No.462/09 dated 9-12-2009 (**P.2461**)calling him upon to make the statement in reference to the aforesaid O.W.No.448/09, on 22-12-2009 as to whether the Inam of Mashrutul Khidmat can be abolished and Mr. Prakash Ahirrao the Dy.Collector personally appeared and filed the reply (**P.2462**) categorically admitting that, **Mashartul Khidmat Inam can not be abolished.**

The Tahsildar was served with the summons O.W.No.67/10 dated 1-2-2010 calling him upon to make the statement on 10-2-2009 (**P. 2463**) and he did not file reply.

**OBSERVATION OF COMMISSION**:-

The copies of the Muntakhab of Jama Masjid Naldurg as well as Osmanabad are at (**P.2317-2319**). There is specific mention as far as Naldurg is concerned that, the Inam is for service of Mosque. However, as regards the Muntakhab of Osmanabad is concerned it is a grant for Moazzn, Peshimami etc. are the copies of Gazette **Page.2320-2321** wherein there is mention of all of these properties meaning thereby that, the properties are recognized as Wakf.

Though these properties clearly appear to be wakf, the Inam was abolished under the provision of Hyderabad Abolition of Inam and Cash grant Act 1954 as under:-

| Page No. | Sy.No. | Area | Date of order | Name of the authority with designation | Remarks |
|---|---|---|---|---|---|
| 2342 | 104/4 | 4 A 19 G | 30-9-97 | Dy.Collector L.R. name not stated in the order | |
| 2457 | 104/8<br>118/1 | 2 A 10 G<br>2 A 12 G | 30-5-03 | Dy.Collector L.R. name not stated in the order | |

| | | | | | |
|---|---|---|---|---|---|
| 2458 | 228 | 1 H 21 R | 23-1-04 | Dy.Collector L.R. Mr. S.B.Mohite | |
| 2459 | 228 | 6 H. | 17-1-04 | Dy.Collector L.R. Mr. S.B.Mohite | |

All of the aforesaid lands were the Wakf, there being specific entry in the Govt. Gazette dated 13-3-1980 and 27-3-1980 (**P 2320-2321**). When these were the wakf lands having the entry in the Gazette, naturally there must be entries in the Revenue Record to that effect. The concern Dy. Collector who passed the aforesaid orders, together with the other officers, who passed similar other orders, were under obligation to see that, the wakf Board and the CEO were impleaded as party in the proceedings. However it appears that, no such precaution was taken by the said officers, resulting into the embezzlement and misappropriation of the wakf properties, which were the properties of the great God. As per the settled rule of law, the Wakf properties are not transferable. However, the aforesaid order resulted in serious consequence as referred to herein below.

The Wakf lands stated herein were transferred as under:-

| Page No. | Sy.No. | Area | Date | Remarks |
|---|---|---|---|---|
| 2363 | 104/8 | 0.H. 91 R. | 17-2-2002 | Osmanabad |
| 2377 | 104/4 | 1 H.18 R. | 24-4-2002 | |
| 2385 | 104/4 | 0. H. 76 R. | 12-12-2002 | |
| 2398 | 118/9 | 1 H. 41 R. | 29-6-2001 | |
| 2409 | 118/1 | 0 H. 93 R. | 17-2-2002 | |
| 2422 | 164/8 | 0 H. 7 R | 29-6-2001 | |
| 2429 | 164/5 | 0 H. 19 R. | 9-7-1997 | |
| 2439 | 228 | 0 H. 81 R. | 29-6-2001 | Naldurg |
| 2447 | 228 | 1 H. 21.41 R. | 26-7-1999 | Naldurg |

Had the orders of abolition of Inam not been passed by the aforesaid authorities, the Inamdars would not have dared to transfer the lands. It is true that, **the Mutwallies and Inamdars are initially responsible for the transfer of lands. At the same time the aforesaid authorities, who were care taker of law and were supposed to take care of the law, were also equally responsible for the transfer of the Wakf Lands.**

I may state here that, there is clear mention in the Muntakb (**P.2317**) and the Gazette (**P.2320**) of Naldurg that, the Inam of the lands was for service of Jama Masjid. Not only this but the Dy. Collector L.R. Osmanabad (Mr. S.B.Mohite) made as specific mention in his orders dated 23-1-2004 and 17-1-2004 (**P 2458-2459**) that the land

Sy.No.228 is Mashrutual Khidmat. When the Dy. Collector made such specific mention and impliedly admitted that, the land Sy.No.228 is Mashrutual Khidmat, its Inam could not be abolished as per the provision of Section 1 (2) (i) of the Hyderabad Abolition of Inam and Cash Grant Act 1954. Despite it, he dared to pass the orders to abolish the Inam. I would not be wrong to say that, there must be extraneous consideration for passing such illegal orders by the responsible authority/ies. **I therefore hold that, Mr. S.B.Mohite the then Dy. Collector L.R. Osmanabad is responsible for passing such illegal orders. At the same time the other Dy. Collectors, whose names are not stated below the orders, are also responsible for the aforesaid illegal orders.**

This office had asked in the summons (**P.2455**) as well as (**P.2461**) as to whether the Inam of Mashrtul Khidmat land could be abolished and **the present Dy. Collector L.R. Osmanabad (Mr. Prakash Ahirrao ) was fair enough to admit and to make statement in writing (P.2462) that, such Inam can not be abolished.**

This office again asked the Dy. Collector L.R. in the summons (**P. 2461**) as to in

> "how many other matters the orders of abolition of Inam of Mashrutul Khidmat lands were passed by the authorities".

and the reply is received by fax dt. 2-2-2010 stating that the information is called (**P 2464** ), and that has yet not been received.

As far as the compliance by the CEO Wakf is concerned as usual, he has a very pessimistic approach. He did not give reply to any of the notice. As against this the DWO Osmanabad brought to the notice of the CEO on 10-11-2003 only about these illegal transactions, as stated in his reply **(P.2326)**. It appears that, the then CEO of Wakf Mr. M.Y.Patel took the cognizance of the matter and passed the orders on 15-5-2004 and 21-2-2005 in respect of Sy.No.228 and 164/5 holding that, (**P 2332-2336**)these properties are the Wakf properties and directed to take action u/s 52 of the Wakf Act. **Though these orders were passed in the year 2004 and 2005 the actual action u/s 52 was taken in 2009** (**P.2337-2341**), relating to Sy.No.104/4,104/9 and 118/1. **There is no explanation as to why there is such gross delay in taking action.** There can be only inference that, not only the CEO but his entire office is liable for such inordinate delay in taking action. God knows whether or not the aforesaid action is being persuaded by Wakf Office at present. There is only one matter of Sy.No.164/5 in which prompt action was taken on 18-5-2004 by the then CEO. Even as regards this matter God knows whether or not it is being persuaded by the CEO office or not? **Whosoever were/are enjoying the Chair of CEO Wakf from 2001-02 and 2003 are responsible for inaction and gross negligence as regards the transfer of these lands.**

All of the above properties were Inam Lands . As far as the property Sy.No.28 (**P.2458-2459**) is concerned the Dy. Collector (L.I.R.) Mr. S.B.Mohite categorically stated that, this land is Mashrutual Khidmat. When such is the matter the Inam thereof can not be abolished, there being a bar of section 1 (2( (i) of the Hyderabad Inam Abolition and Cash Grant Act 1954. Still the Dy. Collector granted permission to abolish the aforesaid Inam.

So far as the lands Sy.No.104 and 118 (**P.2342-2457**), it appears that, these Inams were for **Mojjani and Peshamami**, as stated in the Muntakhab (**P 2319**) Rhat means they were under obligation to render services to

the public in the Mosque. I may say that the services of Mojjan and Peshimam, in the mosqe are indispensable. Here the grant was made for Mojjani and Peshamani. In other words this grant was to the post who announce Azan and who lead Namaz and was not to a person. Such property therefore, would be carried with the post "Mojjan and Peshamam" and not with a person. When such is the matter, how they can claim these properties as personal grant and how can they sale it ? The point arises as to whether the said Inam could be legally abolished and the Dy. Collector (LR) Osmanabad could pass the order of obolition of Inam of under the Act. In this connection I went through the case of **R.Doraswamy Reddy V/s The Board of Wakf (A.P.) reported in 1978 (2) A.P.L.J. 399** wherein it is held –

> "It is true that, the land was granted to an indivual to perform service. But it does not mean that, he acquier title to that, property. Similarly, if the land can be resumed for non performance of service and can be re-granted to another person for rendering service, it does not mean that, the original granter continues to be owner of the property. When once Wakfs created it continues to be a wakf. When the Inam is resumed and re-granted it does not mean that, there is revocation of the service. It only means that, the Wakf property is entrusted to individual to performance of service" (**P.923A-923E**) .
>
> (Note:- *I collected the copy of the aforesaid judgment from the Registrar (J) Andhrapradesh High Court, who was kind enough to transmit it to me on fax).*

The aforesaid view was accepted by the Hon'ble Supreme Court in the case of Sayed Ali V/s Andrapradesh Wakf Board reported AIR 1978 S.C.972 at page 975 (**P.896-901**). In other words, the Inamdar of such property cannot be owner of the property, and he cannot transfer it. Either the Wakif or the Wakf Board can change such Inamdar-Mutwalli, and can re-grant such property to the new comer. The nature of the property as 'wakf' will continue for ever. **The sale deeds referred to above of Naldurg as well as of Osmanabad are illegal, being in contravation of S. 32 (2) (j) r/w S 51 of the Wakf Act.**

Having regard to the above observations, it would be necessary for the Wakf Board and particularly the office to pursue the action taken u/s 52 of the Wakf Act 1995 to recover the possession.

Mr. Prsad M.Joshi adv. appeared on behalf of Subhas Vishnupant Ghone (**P.2464-A**) and filed applications(P-2464-B-D) claiming time and he did not file it for one or other reason. The Dy. Collector issued a letter to the Tahsildar Osmanabad on 23-2-2010 asking him to make the compliance in respect of land Sy.No.164/8 and the later did not comply (**P.2464-E**). The Telegram received from the Osmanabad for adjournment on 17-2-2010 and thereafter he did not attend.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.52**

**REPORT**

**COMPLAINT NO. 69/2009 & 72/2009,**

**Complaint by Shri Shaikh Nazeer Mohd.**

**Iliyas r/o Osmanpeth- Bhokardan Dist. Jalna.**

**BHOKARDAN DIST. JALNA IS**

**WAKF OF KABARSTHAN.**

**DETAILS OF THE PROPERTIES** :-

Gut no.184 adm.1 h. 41 r. is a Wakf for Kabarstan at Bhokardan Dist. Jalna.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint (**P.2550-2553**) that, the respondents Shabbir Ahmed Qureshi and Abdul Khalekh Abdul Quadar r/o Bhokardan, by joining hands with the Education Officer & Block Development Officer, committed encroachment on one acre land and are running the school thereon by making Pakka construction, that too, without permission of the Wakf Board. They got Rs. 7 thousand to 10 thousand as a rent from the Govt. and as such are robbing the wakf property by keeping people in dark. The 7/12 extract of the land is produced by the respondent on record (**P.2554).**

**NOTICES TO THE PARTIES:-**

The CEO Board of Wakf was served with the summons O.W.No382/4/1 dated 9-10-2009 calling him upon to make the statement on 26-10-2009 (**P-2555**). He did not file reply.

The CEO Board of Wakf was served with the **personal summons** O.W.No470/09 dated 15-12-2009 calling him upon to make the statement on 24-12-2009 (**P-2556**) and he did not file reply.

The D.W.O. Jalna was served with the Summons O.W.No 382/4/2 dated 9-10-2009 calling him upon to make the statement on 26-10-2009 (**P-2555**) and he did not file reply.

Respondents Shabbir Ahmed Qureshi the President and Abudl Khalekh the Secretary of the society were served with the summons O.W. No.382/4/3 and 382/4/4 respectively dt. 9-10-2009 (**P.2555**) and they filed reply (**P.2557-2558**) stating that, they have obtained the site adm. 60x180 feet out of Gut no.184 on rent from the Wakf Board and again made a proposal – demand- of more 10 G. of land. As many as 1500 students are taking education in the School. The complainants were making efforts to make the encroachment on the site. They also were trying to become member of the society or to get employed the boys in the school and on their failure in such efforts, they are harassing the respondents They prayed to dismiss the complaint.

**OBSERVATIONS OF THE COMMISSION:-**

It appears that, the respondents Education Society is registered as Alfalah Education Welfare Society. After getting the land from the Wakf Board, they submitted the change report (**P 2559**) to the Charity Commissioner and that, has been accepted by the later The copy of the order is (**P.2560-2561**). They paid the rent upto 31-3-2009 to the Wakf Board of Rs. 3000/-. The receipt is (**P.2562**). It appears that, they submitted an application to the Municipality Bhokardan for permission to make the construction and that was granted. (**P.2563**) It further appears that the remarks of the D.W.O. Jalna were called and were accordingly given to the Municipal Council Jalna (**P.2564**). The President of Alflah Education Society gave a report to the S.P. Jalna alleging that, some adversely interested persons are making efforts to commit encroachment (**P.2565**). The Society also obtained the necessary permission to run the School from the Govt. of Maharashtra (**P.2566**). Having regards all of such documents I feel that, the contention of commission of encroachment by respondents is all together false and incorrect. The respondent Education Society is running the School for the boys of town and by their such act, the purpose of Wakf is sufficiently fulfilled. The respondent Education Society, as such, is doing the work which is religious, pious and charitable, which is completely in forcorners of the Wakf. The complaint deserves to be filed.

It is true that, 7/12 extract (**P.2554**) display that, this land was donated for Kabarstran and on the same land the School of respondent is being run, however it would be a lookout of the Wakf Board as well Govt. to provide any other site either for School or for the Kabarsthan, when remaining site of the Kabarsthan would fall short.

The complaint deserves to be filed and hence it is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 53**

**REPORT**

**COMPLAINT NO. 85/2010**

**Complaint Ashok Laxman Bankar r/o Aurangabad.**

**MASJID DHOLDARWAJA AT DHANEGAON TQ. PAITHAN**

**DETAILS OF THE PROPERTIES** :-

Gut No.27 adm. 39 A.10 G. (15 H. 90 R) at Dhanegaon Tq. Paithan Dist. Aurangabad of Masjid Dholdarwaza. The complaint is (**P.2574**). The 7/12 extract showing this land to be Wakf of Masjid (**P.2575-2576**) .

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The land Gut No.27 is a Wakf property of Masjid Dholdarwaza Dhanegaon Tq. Paithan. The heirs of the Managers (i.e. Shaikh Ameer and etc.7) of the property transferred it to Babubhai Bhuralal Patel for the valuable consideration of Rs.32,60,000/- under the sale deed dated 26-6-2009 ( **P.2577-2586**). Prior to this the agreement of sale deed was executed on 27-10-2008 (**P.2587-2592**). On the same day i.e. 27-10-2008 the heirs of Managers executed the consent deed to execute the sale deed (**P.2593-2604**). **Shaikh Amir and others the transferee obtained no objection certificate dated 29-7-2007 from the CEO Wakf Board Aurangabad (P.2605) and also from the District Land Reform Officer and Dy. Collector (General Administration) Aurangabad dated 18-6-2009 (P.2606)** Sk Amir and others sworn the affidavit, narrating these details **on 8-6-2009** (**P 2607-2618**).

**NOTICES TO THE PARTIES:-**

The summons O.W.No.104/2/1 dated 10-3-2010 was served on the CEO Mr. S.S.Ali Quadari of Wakf calling him upon to make the statement on 20-3-2010 and he did not attend.(**P.2619**)

The summons O.W.No.104/2/2 dated 10-3-2010 was served on the D.W.O. Mr. Muneerkhan Pathan calling him upon to make the statement on 20-3-2010 and he did not attend (**P.2619**).

The Dy. Collector (Land Reform) Aurangabad was served with the summons O.W.No.103/10 dt. 10-3-2010 calling him upon to make the statement whether the consent letter dated 18-6-2006 was issued by his office in favour of the transaction of sale (**P.2620**). He filed reply on 20-3-2010 (**P.2621**) through the messenger Mr. Waghchaure the Clerk of his office. He enclosed the copy of the letter dated 11-12-2009 issued by CEO Wakf and addressed to the Dy. Registrar at Paithan (**P.2622**). **Both of these authorities denied to have issued the letter of consent for the transaction of sale**.

The summons bearing O.W.No.100/9/1 was served on the employee of Babubhai Bhuralal Patel the vendee calling him upon to file the reply on 20-3-2010 . He did not attended (**P.2623**).

The summons bearing O.W. No.100/9/2, 100/9/4,100/9/5, 100/9/6, 100/9/7 and 100/9/8 were sent to Shaikh Ammeer Shaikh Abdul Raheman, Shaikh Raj Mohammad s/o Sk. Jan Mohammad, Sk. Shabbir s/o Sk. Abdul Razak, Sk. Alluddin s/o Sk. Hussain , Sk. Shamshuddin s/o Sk. Gaiyazuddin and Sk. Buran s/o Sk. Latif by post. (**P-2623**) .

The summons O.W. No.100/9/3, 100/9/9 dated 5-3-2010 were sent for service against Shaikh Rahemuddin Sk. Noor Mohammad and Dhondiram Ganpat Pawar, calling them upon to file the reply on 20-3-2010. For want of address they were not served. The complainant appeared on 20-3-2010 and he was directed to furnished the full addresses and he did not furnish it.

Mr.K. Ziuddin Adv. Appared for Sk. Ameer Sk Raheman

through the power (**P 2624**) and filed application for adjournment. (**P 2625**).

**OBSERVATION OF COMMISSION**:-

The copies of 7/12 extract (**P.2575**) and (**P.2576**) clearly indicate that, this property is Wakf of Masjid Dholdarwaza. Not only this but the sale deed and the agreement to sale (**P.2577)** and (**P.2587**) also have got a specific mention that, this property is a Inam of Dholdarwaza Masjid of Dhangaon Tq. Paithan. The CEO Wakf also stated in his letter dated 11-12-2009 (**P.2622**) that, it is Wakf property.

When the property is admittedly a Wakf, the vendors were under obligation to follow the legal provision of section 32 (2) (j) i.e. to obtain the resolution from the Wakf Board to have been passed by 2/3$^{rd}$ Majority. They are not having such resolution. The provision u/s 32(2) (j) as well section 51 of the Wakf Act 1995 were violated.

Non-compliance of the aforesaid legal position is apart or rather immaterial, since the Vendors and Vendees committed a serious blunder. They produced the letters dated 29-7-2007 to have been issued by the CEO Wakf Aurangabad and dated 18-6-2009 to have been issued by the Dy. Collector (Land Reforms ) (**P.2605**) (**P.2606**) purported to have given the consent for this transaction. Both of these authorities were specifically asked through the summons (**P.2619-2620**) as to whether they issued the letter of consent for the transaction. The Dy. Collector gave a reply **(P.2621**) stating that, no such consent letter was issued. **As usual the CEO did not reply the summons of this office**. But the Dy. Collector enclosed the copy of the letter of the CEO. It is with the reply (P.2622) which indicate that, no such consent was given even by the CEO to this transaction. When such is the matter it is obvious that, **the Vendors as well Vendees forged documents and committed offence u/s 467, 468, 471 and 420 r/w 415 of I.P.C as well as under the Oath Act.** They are **liable for prosecution of these offences in the competent court of law**.

**I therefore, have come to conclusion that, the sale deed dated 26-6-2009 executed by Shaikh Ameer s/o Sk. Abdul Raheman etc. 7, the consent given by Dhondiram Ganpat Pawar and heirs of Manager dated 27-10-2008 as well as the agreement to sale dated 27-10-2008 are illegal and not binding of the Wakf Board.**

The Vendors and Vendees are liable for prosecution u/s 467, 468, 471 and 420 r/w 415 of I.P.C.

The Board may initiate the prosecution under I.P.C. as well as the proceeding u/s 52 and 54 of the Wakf Act.

**A.T.A.K.SHAIKH** )

Commission

**Sr. No-54**

**REPORT**

**COMPLAINT NO. 10/2008**

**By Syyed Mohsin Syyed Kurban R/O Satona**

**Tq.Partur Dist. Jalna.**

**DETAILS OF THE PROPERTIES** :-

Sy. No. 74 equal to G.No.129,130 ,131 Adm.16 A. 39 G. & Sy. No.75 G.No.134,135,137,138,139 Adm. 24 A.33 G. of Satona Tq. Partur Dist. Jalna is the subject matter, as it appear from the reply filed the District Wakf Officer. The Complaint is filed by Mr. Syyed Mohsin Syyed Kurban **(P-2640- 2641)** alleging that the properties stated in the complaint are self acquired and not the Inam lands. The complaint is the very vague in narrating the description of the properties. He stated that Sy. No.256 1 H.60 R, Sy. No.246 = G. No.476 Adm. 5 H. 75 R., Sy. No. 269,270,274.275 are the properties in dispute and they are his self owned.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant stated, in support his claim that these lands are his self owned. He stated that there was a decision of the court to that effect. According to him , these lands are not public / Wakf properties.

**NOTICES TO THE PARTIES:-**

There being the only question as to whether these lands are Wakf or not, the notices were issued only to C.E.O. and the D.W.O.

The C.E.O. Wakf was served with the summons O. No. 236/9 dated 30-6-2009 calling him upon to make the statement on 20-07-2009, **(P-2642-2643).** He also was served with the personal summons O. No. 432/2009 dated 23-11-2009 **(P-2644-2645)** and the proclamation O. No. 472/2009 dated 16-12-2009 **(P-2646)** and he did not attend, besides a direction dt 17-12-09 to the D.W.O. Jalna **(P-2647)**

The District Wakf Officer Jalna was served with the summons O. No. 237/09 dated 30-6-2009 calling him upon to make the statement on 20-07-2009 **(P-2642)** and he filed the reply **(P-2648-2650)** and he claimed that the land Sy. No.74 and 75 are the wakf properties. He however did not make any statements as regard Sy. No.256,246,G.No.476. Sy. No.269 and 270 as stated in the summons **(P-2642)** Mr, Sk. Muneer the D.W.O. Jalna had been to this office on 12th of March -2010 and this fact was brought to his notice. He assured to make a clarification, and he did not respond till this date. This is how the wakf department has a pessimistic – negative approach to this office .

**OBSERVATIONS OF THE COMMISSION:-**

The only issue which is involved is whether these properties are wakf or, are private of the complainant. The district Wakf Officer categorically stated in his reply ( **P-2648**) that Sy. No.74 & 75 are the Wakf Properties having a mention thereof in the Govt. Gazette Part –c Sr. No.33 on page No-38-39 dated 17-10-1973. The

District Wakf Officer has produced the copy of the Gazette (**P-2651**) wherein there is a specific mention of Sy. No.74 Adm. 16 A. 39 G. and Sy. No, 75 adm. 24 A. 33 G. at Sr. No.33. This document has got a presumptive value vide section 6 of the wakf Act-1995. The District Wakf Officer has also produced the 7-12 extracts of G. No. 129,130,131, 134,135, 136,137, 138 and 139 (**P-2652-2660**) wherein these lands are shown to be of Dargha-Masjid in the title clause. The D.W.O. has produced the copy of writ petition No.5337/1998 filed by Syyed Quaban Syyed jamal, appears to be a father of a complainant (**P 2661-2665**). On its perusal I found to have been admitted by him that lands are service inam. Of course he did not specifically state the numbers of lands however he made a mention of suit No.172/1/1342 Fasli, the copy thereof is produced by the complainant on record (**P-2666-2674**) wherein Sy. No.269 Adm. 17 A. 9 G. and Sy. No.270 Adm. 24 A. 10 G. was a subject matter. To some extend the area of the lands stated in the aforesaid suit and stated by the D.W.O. tallies i.e. 41 A. 39 G.- 41 A.32 G. respectively. The writ petition has got a clear admission/mention about the nature/character of the properties, (**P-2661-2665**) and it pertains to lands in disputes only.

The aforesaid W.P. No. 5337/1998 has got a mention that the Wakf Board has appointed the managing committee to look after the Wakf properties. If it is so, the properties appears to be in right hand.

Any way, the complaint has no substance, and it deserves to be filed. It is therefore, filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No. 55**

**REPORT**

**COMPLAINT NO. 8/2008**

Filed by Mr. Dadamiya s/o Hashambhai Choudhari r/o

Sipora (Bazar) Tq. Bhokardan Dist. Jalna.

**MASJID DARGAH AND KABRASTHAN AT SIPORA (BAZAR)**

**TQ. BHOKARDAN DIST. JALNA ADM. 4 H. 13 R.**

**DETAILS OF THE PROPERTIES** :-

Land Sy.No.46 Gut No.367 is a land of Dargah and Kabarsthan of Village Siporabazar as per the complainant.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint dated 2-1-2008 (**P.2701**) that, land Sy.No.46 Gut No.367 is a land of Dargah and Kabarsthan of Village Siporabazar. The complainant thereafter again filed the complaint (**P.2702-2703**) dated 4-6-2009 making allegation that, Mr. Mahamad Sharif Tajmahammad is making plots in this land and selling it. He further filed a separate complaint dated 29-12-2008 (**P2704-2706)** making the similar contention and further asking this Commission that action is yet not taken in the matter. He has produced several documents indicating the transfer of the plots out of this land.

The complainant alleged that Mr. Mahammad Sharif made plots in this land and he is disposing it . The complainant has produced several document and also the copies of sale deeds in support of such claim. I am not burdening the record because on the face, it appears that, Gut No.367 is not wakf property.

**NOTICES TO THE PARTIES:-**

The summons O.W. No.343/08 dt. 18-11-2008 was served against the complainant Dadamiya calling him upon to produce the relevant documents (**P.2707**) and he produced documents.

The summons O.W.No.24/2009 dated 18-2-2009 was issued against Mahammad Sharif Tajmamahad and Shaikh Hakim Mahamad Sharif r/o Sipora Bazar and Sk. Noor Sk. Sarvar r/o Borud Wagh Tq. Bhokardan Dist. Jalna (**P.2708**), through the Grampanchayat with a separate letter O.W.No.23/09 dt. 18-2-2009 (**P.2709**). This summons was carried by the complainant himself.

Mahammad Sharif filed a reply (**P.2710-2714)** alongwith several documents contending that, Sy.No.46 and Gut No.367 is not a Wakf property but it is a private property .

**OBSERVATIONS OF THE COMMISSION:-**

The complainant has produced the copy of Gazette (**P. 2715**) dated 20-8-1973 in support that, Gut No.367 is a Wakf property. He has referrered entry no.260 in this document which is pertaining to Dargha Shah Dawal adm. 25x25 feets. The four boundaries of the Dargah are shown in the remarks column as under:-

**EAST** : Agriculture land of Mr. Mahipat Mahadhu

**WEST** : Agriculture land of Dadamiya

**NORTH** : Public way

**SOUTH** : **Inam land of Dargah situated in Sy.No.46**

This is only the document with the complainant to show that, Sy.No.46 i.e. Gut No.367 is a Inam land. The significant fact is that, the four boundaries of Dargha are shown in this document and not of Sy.No.46. The land Sy.No.46 is shown to South of the Dargah and it is called to be Inam. The area of Sy. No.46 is not given therein. When such is the matter how entire Sy.No.46 can be said to be the Inam Land. This document therefore is insufficient to prove that, Sy.No.46 i.e. Gut No.367 is a Inam land.

The respondent Mohammad Sharif s/o Tajuddin has produced the copy of the letter bearing No.MSBW/ Misc.No.17-2000/ 2396 dt.5-6-2009 issued by the CEO Wakf (**P.2716**) stating therein Gut No.367 is not a Wakf property. If this fact is read alongwith the fact that the complainant did not produce a authentic document exclusive in nature showing this land to be the Wakf property, it is difficult to accept the contentions that, this property is a Wakf property.

The respondent Mahamad Sharif has produced the certificate issued by the Grampanchayat stating that, the land adm. 4 Gunthas only is reserved for Kabarsthan (**P.2717**) in Gut no.367. This means that, a reference of Gut No.367 in the four boundaries of Dargah in the Gazette (**P.2715**) is relating to this four gunthas land only and not to entire land. Mahamad Shari further produced the copy of certicicate dated 2-1-2009 (**P.2718**) issued by Committee of Dargah Shahadawal, Masjid Iddgah and Kabarsthan stating that, only four gunthas of lands is reserved for Kabarsthan in Gut No.367 and rest of the land belong to Mahammad Sharif. This document further states that, the land of Kabarsthan is fenced by the thorn wire fencing and there is no encroachment thereon. These documents are adverse to the allegation of the complainant.

Mahammad Sharif has filed reply dated 15-6-2009 (**P.2719-2725**) to the notice dated 4-6-2009 and has reiterated his contention in the earlier reply (**P.2710**).

I do not burden the record by given nos. to the copies of the documents showing that, either Dadamiya prosecuted others and vice versa. I may only give the details of said litigation.

a) RCS No. 65/1999 by Chandbee w/o Dadamiya V/s Saidabee w/o Shaikh Ahmed. Chandbee claimed 73 R of land out of Gut No.367 as it appears from this documents .This suit was subsequently withdrawn.

b) Dadamiya filed a suit against his son for perpetual injunction in respect of 3 R of land out of Gut No.367.

c) Dadamiya filed a petition in the Court of Tahsildar against Sk. Noor s/o Sk. Sarvar and Mahammad Sharif Tajmohammd praying not to confirm the mutation entry No.937.

d) One Shaikh Majeed s/o Sk. Ahmed filed RCS No.12/2000 against the Dadamiya and his wife for injunction in respect of Gut No.367 ..

e) Shaikh Shakur s/o Dadamiya filed RCS no.198/2007 against the Sk. Kareem Sk. Budan for injunction in respect of 18.25 R. out of Gut No.367.

f) Sk. Noor s/o Sk. Sarvar filed RCS No.140/2008 against Dadamiya and his son in respect of 2 R of land out of Gut No.367 and he obtained order of injunction.

This is how Dadamiya the complainant appears to be habitual in the court litigation.

Any way there is no substance in the complaint and it is therefore filed.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No. 56**

**REPORT**

**COMPLAINT NO. 7/2007**

**Complaint Bhagwan s/o Bawarlal Dayama r/o Jalna.**

**SHOP WAKF PROPERTY.**

**DETAILS OF THE PROPERTIES** :-

The shop bearing Municipal H. No.2-4-19 and 2-4-20 of Jalna Dist. Jalna.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant made allegation that, the District Wakf Officer Mr. Shaikh Muneer and one Mr. Shaikh Hanif in collusion, prepared a false document stating that, Hanumandas Agrawal (Now deceased) handed over the possession of the Wakf property to the Wakf Board and both of them are harassing Sitabai w/o Hanumandas and the present complainant (**P.2740-2743**)

**NOTICES TO THE PARTIES:-**

The notice O.W.No.264/2008 dated 31-10-2008 was sent by post to Mr. Shaikh Muneer the District Wakf Officer calling him upon to make the statement on 14-11-2008 (**P 2744**). He however did not file the statement. The D.W.O. was personally called before this Commission, who in turn appeared on 12-3-2010. The non-filing of reply in this matter together with other several matters of Jalna were brought to his notice, in presence of Mr. Zafar the Superintendent Board of Wakf. Mr. Muneer assured that day that, he would file reply on 25th of March 2010, however, he did not abide his words. This is how the employees of the Wakf Board are not sincere to the Wakf department as well as the Wakf properties.

**OBSERVATION OF COMMISSION**:-

The complainant, in support of his claim, has produced the copy of order dated 19-7-2007 passed below Exh. 5 by the Wakf Tribunal at Aurangabad (**P.2745- 2751**),without filing the copy of the plaint, putting the commission in difficulty, as to who were parties to the said litigation. It appears that, the Wakf Tribunal granted the injunction in favour of plaintiff against the Defendant no.3.

The complainant then has produced the copy of order 23-8-2007 passed by the Hon'ble High Court in Civil Revision Application No.112/2007 (**P2752-2753)** which was of course dismissed by maintaining the order dated 19-7-2007 i.e. the aforesaid order. This copy has in lighted the names of the parties. Shaikh Hanif approached to H. C. against Smt. Sitabai, meaning thereby that the order of the trial court was in favour of Smt. Sitabai.

The documents reveal that, presently Smt. Sitabai is a tenant of the suit premises and the efforts are being made to evict her. The dispute is in between Smt. Sitabai at one side and the Wakf Board at other side in respect of her right over the suit property. The jurisdiction of Commission therefore would be hardly attracted. The reply being not filed by the D.W.O. the commission is placed in the difficult position to make any statement. Still the matter being pending before the Wakf Tribunal at Aurangabad and order of injunction being in favour of Smt. Sitabai, she is likely to be continued in possession till disposal of the suit. This is only observation.

(**A.T.A.K.SHAIKH** )

Commission

**Sr.No. 57**

**REPORT**

**COMPLAINT NO. 37/2008**

**FILED BY MR. SHAIKH ABDULLAH S/O SHAIKH OSMAN**

**R/O AURANGABAD.**

**BADATKIYA NUTAN COLONY, AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

The plot bearing CTS No. 17474 adm. 159.5 mtrs. situated in Bada-Takiya behind Nutan Colony, Aurangabad is a Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant in the complaint (**P.2775-2778**) alleged that, the aforesaid plot is a Wakf property (**P.2779**) and is leased by the Mutwalli namely Sayed Nadimullah Hussain Jahagirdar for 99 years, to Shaikh Abdul Latif s/o Shaikh Munir under registered lease deed No. 162/1959 dated 5-3-1960 which is illegal. Shaikh Latif then transferred the plot No. CTS 17494 to Shri Shaikh Abbas s/o Shaikh Ahmed under registered sale deed dated 6-5-1978 also is illegal (**P.2780-2782**). The complainant pray that, the Wakf Board should take the possession of this plot from Shaikh Abbas.

It appears that after execution of the sale deed the parties noticed that there was some mistake and so the corrigendum was executed on 14-12-2008**(P-2783-2784**). The CTS plot No. 17474 was stated in the corrigendum to have been transferred instead of CTS No.17494. In fact 17494 was standing in the name of Abdul Latif Shaikh Munir as stated in the City Survey record ,(**P.2785**) whereas CTS No.17474 standing in the name of the Wakf Board.

**NOTICES TO THE PARTIES:-**

The summons O.W. No.125/08 dt. 1-9-2008 was served on the complainant Sk Abdullah (**P. 2786**) calling him upon to make a statement on 25-9-2008.

The summons O.W.No.123/08 dated 1-9-2008 was issued against Shaikh Abbas s/o Shaikh Ahmed calling him upon to file a statement on 25-8-2008 (**P.2787**) and he filed reply (**P.2788- 2793**)

The summons O.W.No.124/08 dated 1-9-2008 was issued against Sayed Nadimullah s/o Hussain Jahagirdar the Mutwalli calling him upon to file a statement on 25-8-2008 (**P.2794**) and he did not file statement.

The summons O.W.No.304/08 dated 14-11-2008 was served against City Survey Officer Aurangabad calling him upon as to how the statement in the corrigendum (**P.2783**) was accepted when the property CTS 17474 was not owned by the Vendor (**P. 2795**) The City Survey Officer did not respond.

**OBSERVATIONS OF THE COMMISSION:-**

It appears from the copy of Wakf Suit No.55/2007 filed by Shaikh Abuddula s/o Osman against Shaikh Abbas s/o Shaikh Ahmed in Maharashtra Wakf Tribunal Aurangabad (**P.2796-2806**) that, the dispute is pending before the Wakf Tribunal and so this Commission may not make any more observation. It is however recorded as a fact that, the Wakf Board regularized the possession of Shaikh Abbas on this plot and accepted him as a tenant on yearly rent of Rs. 600/- vide the order dated 1-11-1995 (**P.2807**).

This Commission however may make a observation as regards the acceptance and registration of the corrigendum dated 14-12-1978 by the Sub-Registrar, Aurangabad and the action taken thereon by the City Survey Officer. As a matter of fact City Survey No.17494 was owned by Abdul Latif Sk. Munir (**P.2785**) and this plot was transferred under the sale deed dated 6-5-1978 (**P.2780**). In other words the property which was owned by the Vendor was transferred by him and there can be /could be no objection for the same. This transaction was complete as on that date itself. However subsequently the corrigendum (**P 2783)** dated 14-12-1978 was executed in between the same parties showing the plot under transfer as CTS No.17474. The plot CTS no.17474 (**P.2779**) was owned by the Wakf Board. How the plot owned by different persons i.e. the Wakf Board- could be shown in the corrigendum behind the back of the Wakf Board. Unfortunately the Wakf Board did not notice this fact and blindly regularized the transaction under the document of regularization (**P.2807**). This is seriously objectionable. The then CEO and/or the secretary of the Wakf Board is/are responsible for the negligence and he/they deserves to be taken the action of, by the Wakf Board.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No. 58**

**REPORT**

**COMPLAINT NO. 44/2008**

Filed by Shaikh Raheman Badu Pinjairi President Iddgah

**MAIDAN AND KABARSTHAN TRUST,**

**AT NEWASA DIST. AHMEDNAGAR.**

**DETAILS OF THE PROPERTIES** :-

Mr. Shaikh Raheman Badu Pinjairi President Iddgah

Maidan and Kabarsthan Trust, at Newasa Dist. Ahmednagar filed a complaint stating that, the Sy.No.441-A adm. **9 H. 86 R.** situated at Newasa Dist. Ahmednagar is granted for the Muslim Kabarsthan and Iddagah under mutation No. 2328, by the State Government and the area is reduced 2 H. 70 R. by the SDO Shrirampur under his order dated 19-6-2006.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr. Shaikh Raheman Badu Pinjairi President Iddgah

Maidan and Kabarsthan Trust, at Newasa Dist. Ahmednagar filed a complaint (**P.2820-2823**) stating that, the Sy.No.441-A adm. **9 H. 86 R.** situated at Newasa Dist. Ahmednagar is granted for the Muslim Kabarsthan and Iddagah under mutation No. 2328, by the State Government. It appears that, previously this land was meant for grazing the cattle (**P.2824-2825**). Subsequently the land adm. 11G. 10 annas out of this land was allotted for construction of the bridge for Iddgah (**P.2826**). Again some portion was allotted to one Maheboob Chandbhai for plantings the mangos trees (**P.2827**). This land was converted to Gut No.356 (**P.2828**) . The SDO Shrirampur passed the order on 29-6-2006 (**P.2829**) reducing the area to **2 H. 70 R** for burial ground and Iddagah. The complainant alleged that, the notice was not served on the complainant committee nor on the Wakf Board, before passing this order. The area was reduced arbitrarily.

**NOTICES TO THE PARTIES:-**

The summons O.W. No.132/08 dt. 19-9-2008 was served on Taluka Inspector of Land Records at Newasa (**P.2830**). He filed reply dated 13-10-2008 (**P.2831**) admitting therein that Sy.No.441-A = Gut No.356 was allotted for the Muslim Burial Ground. He again filed the reply (**P.2832-2833**) bearing O.W.No.125/2010 dated 21-1-2010 further making a specific statement that, Gut No.356 is totally adm. 9 H. 86 R. and there is mutation in respect of allotment of this land for Muslim Burial Ground. He further advised that, the petition can be submitted u/s 32, 33 of the land consolidate Act to settle the dispute.

The summons O.W. No.132/08 dt. 19-9-2008 was served on Tahsildar at Newasa (**P.2834**) and he filed reply (**P.2835**) admitting therein the allotment Sy.No.441-A adm. 9 H.86 R for Muslim Burial ground in the year 1950. He then stated that, in 1984-85 the land adm. 7 H. is shown for burial ground and 1 H. for Iddgah, in the record. He then made a reference of the order passed by the SDM Shrirampur (**P. 2829**), that only the portion of land adm. 2 H. 70 R is granted for Burial ground and Iddagah and the trust is holding possession on only this much area of the land. The summons O.W. No.381/08 dt. 10-12-2008 was served on Tahsildar at Newasa **(P 2835 A)** asking him whether he authorized Mr. Y B Pathan Adv. to file the reply, and he did not reply.

The summons O.W. No.132/08 dt. 19-9-2008 was served on Collector Ahmednagar (**P.2835 B**) and he did not file reply.

**OBSERVATIONS OF THE COMMISSION:-**

The revenue record (P.2824-2925) reveals that, the entire Sy.No.441-A which admeasures 9 H. 86 R was allotted to the Muslim Burial ground and the Iddagah. The reply filed by the Taluka Inspector of Land Record (**P.2831-2833**)and the Tahsildar (**P.2835**) specifically reveal to be showing the land Sy.No441-A adm. 9 H. 86 R, allotted to Muslim Kabarsthan and Iddagh.

However, significantly the SDO Suo-Moto passed the order dated 19-6-2006 (**P.2829**) reducing the area to 2 H. 70 R (from 9 H. 86 R.). This order to my mind was most arbitrary, the notices being not served on Iddagah Committee of the complainant and also on the Wakf Board. **In my opinion the SDO Shrirampur who was holding the chair on 19-6-2006 is responsible for creating this complication. The Collector Ahmedngar can be asked to look into the matter and to see that, the order dated 19-6-2006, if permissible, is reviewed and the dispute is settled by allotting the land adm. 9 H. 86 R.for burial ground and Iddgah by excluding 11 G. 10 annas acquired for construction of the Bridge.**

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No. 59**

**REPORT**

**COMPLAINT NO. 3/2007**

Filed by Roshanshah Husainshah r/o Paithan Dist. Aurangabad.

**MASJID SHAHJANPURA**

**DETAILS OF THE PROPERTIES** :-

The complainant stated in the complainant (**P.2851-2852**) supported with the affidavit (**P.2853**) stating that, Sy.No.324adm. 4 A 5 G of Paithan is a Wakf property of Mosque Shanjahanpura vide the Muntkhab No.14048/1299 Hijri 7th Rajab 1291 Hijari, (some mistake in stating year of Hijari) and also supported by the 7x12 extract that it is Wakf property.**(P-2853 –A-2853 B).**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged that, the Mr. Yakub Abdul Shah s/o Abdul Razak Shah, Gulam Hasan Shah and Smt. Zubedabi transferred plots to different persons unauthorizedly and he prayed to remove the encroachment.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.201/2009 dt. 20-6-2009 was sent by post against the Shri Eknath Bhivsan Kade (**P.2854-2855**) asking him as to whether the provision of Wakf Act were followed while taking land on lease. The summons was returned back un-served (**P.2856**)

The summons O.W.No.204/2009 dt. 20-6-2009 was sent by post against the Shri Ramsharan Jaidyal Dhavan (**P.2857-2858**) asking him as to whether the provision of Wakf Act were followed while taking land on lease. The summons was returned back un-served (**P.2859**)

The summons O.W.No.207/2009 dt. 20-6-2009 was sent by post against the Shri Udya Pursuuttam Shatriya (**P.2860-2861**) asking him as to whether the provision of Wakf Act were followed while taking land on lease. The summons was returned back un served (**P.2862**).

The summons O.W.No.210/2009 dt. 20-6-2009 was sent by post against the Shri Arunkumar Somnath Mundada (**P.2863-2864**) asking him as to whether the provision of Wakf Act were followed while taking land on lease. He did not file reply.

The summons O.W.No.198/2009 dt. 20-6-2009 was sent by post against the Shri Laxman Purushuttam Kade (**P.2865-2866**) asking him as to whether the provision of Wakf Act were followed while taking land on lease. The summons was returned back un served (**P.2867**).

The summons O.W.No.213/2009 dt. 20-6-2009 was sent by post against the Shri Amarsingh Jaisingh (**P.2868-2869**) asking him as to whether the provision of Wakf Act were followed while taking land on lease. He did not file a reply.

The summons O.W.No.216/2009 dt. 20-6-2009 was sent by post against the Shri Asaram Kachru (**P.2869-2870**) asking him as to whether the provision of Wakf Act were followed while taking land on lease. He did not filed a reply.

The summons O.W.Nos. 202/2009 , 205/09, 208/09, 211/09, 214/09, 217/09 and 199/09 dt. 20-6-2009 was sent by post against the Shri Yakub Abdullah (**P.2854,2857,2860,2863, 2865,2868,2869)** asking him as to whether the provision of Wakf Act were followed while giving the land on lease. He filed a reply with the power of his advocate (**P.2870-2872-2872 A) .**

The summons O.W.Nos. 203/2009 , 206/09, 209/09, 212/09, 215/09, 218/09 and 200/09 dt. 20-6-2009 were served against the CEO Wakf (**P.2854, 2857,2860,2863,2865,2868,2869)** asking him as to whether the provision of Wakf Act were followed while giving the land on lease. He did not file reply.

Lastly the CEO Wakf was served with proclamation u/o 16 rule 10 of CPC O.W.No.55/2010 dt. 27-1-2010 (**P 2873**) making a reference of the aforesaid summons and still his hard skin did not have any effect. He did not file a reply.

**OBSERVATIONS OF THE COMMISSION:-**

Mr. Yakub Abdul Shah is a only person who filed reply (**P.2870**) and he did not deny the fact that, this land is Wakf property of the Mosque. The complainant has produced the copies of the complaints made by the then CEO Board of Wakf dated 28-6-2007 and 23-7-2007 addressed to the Police Inspector Police Station Paithan and Superintendent of Police (Rural) Aurangabad (**P.2874- 2877**) wherein he stated that, the aforesaid land is a Wakf property having a mention thereof in Govt. Gazette dated 4-10-1973 at page 68-69 at. Sr. No.51. He made grievance that, the particular people are making construction in the land and they are not abiding the stay order passed by the Dy. Collector (Administration) Aurangabad. (**P. 2878-2879**). Having regards to these unchallenged documents, together with the fact that, one of the successor of the Mutawalli namely Mr. Yakub Abdul Shah did not deny in his reply (**P-2870**) about the nature of the property as a Wakf, I have no difficulty to conclude that, this is a wakf property. I also have no difficulty to conclude that, Mr. Eknath Bhivsan Kade, Ram Shran Jaidyal, Dhavan, Udyal Purushuuttam Shatriya, Mr. Arumkumar Somnath Mundada, Mr. Amrsingh Jaising, Mr. Asaram Kachru and Mr. Laxaman Purushuttam committed encroachment on the plots of this Wakf land vide the statement in the 7/12 extract (**P.2853-A**).

Mr. Yakub Abdul Shah stated is in reply that, he has a share of only 35 G. in this land. He had leased it to Shri Ramsharan Jaidyal Dhavan under the document dated 7-4-1981 (**P.2880-2881)** and subsequently the said leased was cancelled (**P.2882-2883**) under the document dated 28-2-2003. Still fact the remains that, Mr. Yakub Abdul Shah violated the legal provision section 36 of the Act 1954 and section 32(2((j) r/w section 51 of the Act 1995 by giving land on lease without prior permission of Wakf Board.

It appears that rest of aforesaid persons are still in possession of the plots of this Wakf land and of course their possession is illegal. The successor of the Mutawalli are responsible for granting land on lease by violating the legal provision. The CEO Wakf Mr. S.S.Ali Quadari is also responsible for not taking action u/s 52 of the Wakf Act 1995. **As a matter of fact when the matter was reported to the Police on 28-6-2007 (P.2874) and 23-7-2007 (P.2876), it was must of Mr. Quadari to take the action. Non taking action by him leads to infer malafide on his part.**

The summons of this office being not responded by Mr. S.S. Ali Quadari he was sentenced to pay fine of Rs. 500/- vide O.W.No.180/2010 dated 5-4-2010 (**P.2883-A**) and still it went with no effect, nor he the paid the fine.

The Board may action u/s 52 and 54 of the Wakf Act.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No. 60**

**REPORT**

**COMPLAINT NO. 15/2008**

Filed by Sayed Gafoor s/o Sayed Lal Mutwalli r/o

Thergaon Tq.Paithan Dist. Aurangabad.

**JAMA MASJID THERGAON.**

**DETAILS OF THE PROPERTY** :-

Gut No.199 adm. 15 A. 18 G.(6H 4R) of Thergaon Tq. Paithan Dist. Aurangabad is a Wakf of Jama Masjid Thergaon.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complaint is filed by Sayed Gafoor s/o Sayed Lal Mutwalli (**P.2901**) stating that the aforesaid land is a Wakf of Masjid Thergaon. He alleged that, Mr. M.A. Aziz (now deceased) gave possession of this land to Shaikh Saleem and Committee on 3-8-2005 and subsequently, the Committee was cancelled. Still Sayed Raheman Abdul Amein, Sayed Hussain Sayed Amin, Sayed Munir Sayed Abdul, Sayed Ismail Sayed Abdul and Sayed Kareem s/o Sayed Rahim did not surrender the possession of the land and they are holding the illegal possession.

The 7/12 extract of the land is produced on record showing this land to be a Wakf (**P.2902).**

**NOTICES TO THE PARTIES:-**

The summons O.W.No.357/2008 dt. 20-11-2008 was served on the CEO Wakf calling him upon to make the statement on 25-11-2008 and he did not attended (**P.2903**).

The summons O.W.No.358, 359,360,361,362 of 2008 dt. 21-11-2008 was served on Sayed Raheman Abdul Amin, Sayed Hussain Sayed Amin, Sayed Munir Sayed Abdul, Sayed Ismail Sayed Abdul and Sayed Kareem s/o Sayed Rahim calling them to make the statement on 15-12--2008 and they did not attend (**P.2904**). They appeared through Advocate Mr. Shaikh Shamsuddin (**P.2905**) and the application for adjournment was filed (**P.2906**). They however did not file any reply except Sayed Kreem.

Sayed Kareem s/o Sayed Rahim filed a reply January 2009 (**P.2907-2909**). The complainant was served with the notice dated 6-1-2009 informing him the next date of hearing as 20-1-2001 (**P.2910**) and did not attend.

**OBSERVATIONS OF THE COMMISSION:-**

One Mr. Shaikh Saleem s/o Kasam Patel r/o Thergaon Tq. Paithan who call himself to be the Chairman of the Masjid Committee voluntarily appeared before this Commission and filed the statement (**P.2911-2912**) alleging that, the complainant Sayed Gafoor and his brother Sayed Bashir with the assistance of their relatives are making attempts to transfer the Wakf land. He contended that, the Wakf Board has established a Masjid

Committee on 5-7-2005 and gave the entire property in possession of Sk Salim as a Chairman. He has produced the copy of order dated 3-8-2005 passed by the Wakf Board (**P.2913**) constituting the committee, showing Shaikh Saleem as a Chairman.

Shaikh Saleem has further alleged in his statement that, Sayed Gafoor Sayed Lal has relinquished his rights over the wakf property vide the affidavit filed in the office of the Tahslidar, Paithan (**P.2914**). Sayed Gafoor stated in the affidavit to have relinquished his rights and prayed to remove his name from the revenue record. Sayed Gafoor also executed another document on stamp papers dated 31-1-2001 relinquishing his right over this property, in favour of the Masjid Committee (**P.2915-2920**).

Sayed Kareem Sayed Rahim stated in his reply that, Sayed Gafoor Sayed Lal has filed a petition for succession in the Atiyat Court and to some extent he supported the claim of the complainant that, the complainant is holding rights over the property. He however, did not utter a single word in respect of the appointment of Committee by the Wakf Board.

The record reveals that, the people of the village also complained against Sayed Gafoor s/o Sayed Lal dated nil of 2001 and dated 30-9-2004 (**P-2921-2928**) making allegation that, the family of Mutwalli i.e. complainant and his forefathers did not look after the maintenance of the Mosque. The complainant also did not look after the Mosque after death of his father, because he is residing at Aurangabad since last 30-35 years. The complainant did not attend this office to explain the allegation in all of these documents, though he was served separately with the summon (**P.2910**) meaning thereby that, he must have relinquished his rights over the property, and now he is making un-successful attempt to either take back the possession or to create the complication.

Any way, I did not find any substance in the complaint, and it deserve to be filed. I may however observe that, the presently the property is in the hands of the Committee appointed by the Wakf Board and such being the matter, nothing more is required to be expressed by this Commission.

( **A.T.A.K.SHAIKH**)

Commission

**Sr.No.61**

**Complaint No.26/2008 and 29/2008**

**Filed by Mohd. Ahmedulla Siddiqui and**

**Mohd. Yasin s/o Mohd. Osman**

**DARGAH OF DHOBI COMMUNITY**

**DETAILS OF THE PROPERTIES** :-

Sy. No.98 adm. 10 A. 29 G. of Aurangabad is a Wakf Property of Dargah and Graveyard of Dhobi Community.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Sy.No.98 adm. 10 A. 29 G. is a Wakf Property of Dargah and Graveyard of Dhobi Community. The revenue department has mutated only 1 A. 20 G. of land in 7/12 Extract. **The complaint states that, the land adm. 10 A. 29 be mutated in Revenue Record as well in the record maintained by the Wakf Board.** The complainant of Mr. Ahmedulla (**P.2929)** and the Complainant Mr. Mohd. Yasin (**P.2930**) filed complaints. The Gazette is (**P 2930-A).**

**NOTICES TO THE PARTIES:-**

The C.E.O. Wakf was served with the summons O. No. 354/08 dated 19-11-08 calling him upon to make the statement on 25-11-2008 **(P-2931-2932)**.

Mr. S.S.Ali Quadari C.E.O. Wakf was served with the summons O. No. 487/09 dated 30-12-09 calling him upon to make the statement on 6-1-2010 **(P-2933)**

Mr. S.S.Ali Quadari C.E.O. Wakf was served with the proclamation O. No. 181/10 dated 6-4-10 calling him upon to make the statement on 6-1-2010 **(P-2934)**

The C.E.O. Wakf was served with the summons O.W. No. 245/09 dated 6-7-09 calling him upon to make the statement on 20-7-09 **(P-2935)**

Mr. S.S.Ali Quadari C.E.O. Wakf was served with the summons O.W. No. 488/2/1 dated 22-12-09 calling him upon to make the statement on 30-12-09 **(P-2936) He did not file reply to any of the aforesaid summons.**

The D.W.O. Aurangabad Wakf was served with the summons O. No. 355/08 dated 19-11-08 calling him upon to make the statement on 25-11-2008 **(P-2931)**

Mr. D.W.O. Aurangabad Wakf was served with the summons O.W. No. 245/09 dated 6-7-09 calling him upon to make the statement on 20-7-09 **(P-2935) .**He filed reply **(P.2951)**

Mr.Mohd. Yasin Moh. Osman the Chairman of the Committee was served to the summons O.W.No.488/2/2 dt. 22-12-09 calling him upon to make the statement on 30-12-2009 (**P.2936**) He filed a reply (**P.2937**). He also produced the copy of the report made by the Revenue Inspector dated 6-4-2010 (**P.2938-2939**) and the copy of the map (**P.2940)**

**OBSERVATIONS OF THE COMMISSION:-**

It appears that, the CEO passed a detailed order on 21-11-2009 and 10-12-2009(**P.2941-2942-2942-A**) and appointed a committee to organize and regulate the affairs of the Wakf (**P.2943-44**) and also the certificate was issued to that effect (**P.2945**).

It appears that, the Committee submitted an application to the Tahsildar **(P 2946)** and S.D.O. Aurangabad and thereafter the S.D.O. passed the order dated 4-12-2009 (**P.2947**) directing to issue the publication in the Newspaper calling objection for mutating 1 A. 20 G. of land out of Sy.No.98 for Kabarsthan. Accordingly the publication was issued in the news paper (**P.2948**). It appears that, the application was granted and the property was mutated in the Revenue Record (**P.2949-2950**). **Still the name of Mosque was/is stated in otherwise column, instead of the Kabjedar colum (P 2950) This was in total noncompliance of, and inconsistent to, the direction issued by the Divisional commissioner Aurangabad Dt. 15-10-1975 ( P 809-5013 )** The D.W.O. also supported this fact in his reply dated 20-8-2009 (**P.2951**) that, the land adm. 400x350x150 is a Wakf property and it was registered vide entry No.20/86 dated 6-11-1986 . Subsequently the necessary mutation entry also was taken in the City Survey Record (**P.2952**).

Now after having a discussion with the Chairman of the Wakf Committee Mr. Mohd. Yasin and the member Mr. Mohd. Gaffar Jan Mohammad the real dispute appears to be in respect of the area of the land which was donated for Masjid and Dargah and subsequently donated by the Govt. for Kabarsthan. It appears that, the total area of the land Sy.No.98 is 20 A. 29 G. The **Revenue Inspector made a reference thereof in his report (P.2938**) He then stated that, out of this, **the land Adm. 18 A. 27 G. has been mutated in the name of different persons on the basis sale- purchase transactions**. The land adm. 1 A. 20 G. is meant for Kabarsthand and then remains 22 G. without any title. The R.I. then stated to have measured this land and he found that, the land adm. 43 R. is meant for the Mosque and land 1 H. 97 R. is meant for the Kabarsthan having total of 2 H. 40 R. i.e. 5 A. 38 G. As against this the only land adm. 1 A. 20 G. is mutated in the 7/12 extract. Revenue Inspector proposed to mutate the land adm. 5 A. 38 A. in the revenue record for the Mosque and the Kabarsthan. **It is therefore necessary to issue the direction to the Collector Aurangabad and his subordinate to act upon the report dated 6-4-2010 submitted by Revenue Inspector to the Tasildar Aurangabad (P.2938) and to record the mutation entry accordingly.**

It is seen from the report of the R.I. that out of this land, 3 A. is standing in the name of one Rangabai w/o Bapuji, 17 A. 29 G. is standing in the name of Rambhabai w/o Bapuji as a heirs of Rambhabai.

It is seen that, 4 A. of land is transferred by Kalabai

w/o Eknathrao to Laxman Gandhari Kale, Vijaykumar Tulisram Pawar, and Vitthal Gangadhar Salgre .

It is further seen that, Kalabai w/o Ekantnathrao transferred 1 A. 10 G. of land to Sanjay Chhaganrao Patil, Sow Ranjna w/o Ashok Bavkar and Netaji Narsingh.

It is further seen that, Suresh Dayaram, Ganpat Shankar Ujala Kishor and Mr. Lalasaheb Madhavrao transferred 4 A. of land to Mr. D.S. Gaikwad, Mr. S.R. Dhumal and Mr. S.R. Choudhari.

It is further seen that, Kalabai w/o Eknathrao transferred 1 A. 4 G of land to Muslim Dhobi Kabarsthan.

The land adm. 6 A. 39 G. came by way of sucession to Mr. Vasant Eknathrao, Aurun Eknathrao and Rajendra Eknathat and subsequently transferred 1 H. 43 R. i.e. 3 A. 27 G. to **Mrs. Saroj Prdeed Jaiswal, Raju Lekhraj Tanwani,** Travindrasingh Mahindrasingh Dhillan and Premchand Fakir.

It was therefore necessary to issue a notices to all of these persons. However it could not be issued for want of address and the required information.

The summons O.W. No.364/10 dated 10-8-2010 was issued to the Tahsildar Aurangabad calling him upon to produce the copies of Khasrapartak and form no.9 of Sy. No.98 (**P.2956-A**). He produced the documents his letter (**P.2956-B**). The documents are (**P-2956-C-2956-H**). I found the entry of graveyard of Muslim people in Khasrapatrak (**P.2956-D**). I therefore could not conclude the exact area of the Inam land.

**Note :** the question is whether S. No. 89 or 99 is the wakf property. There are different entries in the following documents.**(P 2953-54)**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.62**

**REPORT**

**COMPLAINT NO. 25/2008**

**By Mr. Meer Habib Ali s/o Inayat Ali r/o Beed, Dist. Beed.**

**DARGAH SAYED MANSUR**

**SHAHWALLI, BEED.**

**DETAILS OF THE PROPERTIES** :-

The land Sy. No.46 – Gut no.193 , 29 A. 6 Gunthas,

Sy. No.63 – Gut No.264 , 32 A. 22 G.

Sy.No.26- Gut No. , 9 A. 24 G.

Are the Inam lands of the aforesaid Dargah.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr. Meer Habib Ali filed a complaint (**P.2975-2977)** making allegation of encroachment; and illegal allotment of the land by the Wakf Board. The complainant also filed the copies of 7/12 extract to shows that these lands are Wakf of the aforesaid Dargah (**P.2978-2980**)

**NOTICES TO THE PARTIES:-**

The CEO Board of Wakf was served with the notice O.W.No.287/8/9 dated 22-7-2009 calling him upon to make the statement on 3-8-2009 (**P.2981-2982**) He did not file reply.

The CEO Board of Wakf was served with the notice O.W.No.314/2/1 dated 17-8-2009 calling him upon to make the statement on 31-8-2009 (**P.2983**) He did not file reply.

The CEO Board of Wakf was served with the notice O.W.No.379/2/1 dated 8-10-2009 calling him upon to make the statement on 26-10-2009 (**P.2984-85**) He did not file reply.

The D.W.O. Beed of Wakf was served with the notice O.W.No.287/8/9 dated 22-7-2009 calling him upon to make the statement on 4-8-2009 (**P.2981-2982**) He did not file reply.

The D.W.O. of Wakf was served with the notice O.W.No.314/2/1 dated 17-8-2009 calling him upon to make the statement on 31-8-2009 (**P.2983**) He did not file reply.

The D.W.O. Beed of Wakf was served with the notice O.W.No.379/2/2 dated 8-10-2009 calling him upon to make the statement on 26-10-2009 (**P.2984-85**) He filed reply (**P.2986-2987**).

The CEO of Wakf was served with the letter O.W.No. 286/09 dated 22-7-2009 calling him upon to serve 9 notices on different persons (**P. 2988**)

The CEO of Wakf was served with the letter O.W.No. 378/09 dated 8-10-2009 calling him upon to served 9 notices on difference persons (**P. 2989**).

The notice was sent through the CEO to Mr.Meer Habib Ali, Mr. Meer Shaukat Ali(dead) , Mr. Sayed Nazib Sayed Masum, Mr. Naimuddin Nizamuddin, Mr. Jabbarkhan Yarkhan, Mr. Ferozkhan Azizkhan Pathan, and Mr. Naveedu-zama Sayed Faruqu vide O.W.No. 287/9/1 to 9/7 dated 22-7-2009.(**P.2981-2982**).

Mr. Naveedu-zama s/o Fakhrud Jama filed the reply dated Nil (**P.2990**).The DWO Produced the agreement dt 8-7-2005 **( P 2991-2992)** The deed under which transaction was regularized is dated 26-12-1977 ( **P 2993-2994**) The letter authorizing the lease by Urban Development & Public Health Department Mumbai dated 8-12-1977 is **(P 2995)** The order regularizing the allotment is (**P 2996)**

The D.W.O. Beed submitted report in respect of service / non-service of the notices (**P.2997**) Mr. Meer Habi Ali was served the notice (**P 2998-2999)**. Mr. Meer Shaukt Ali being dead was not served (**P 3000-3001)**. Nazim Masum and Jabbarkhan refused the accept the notices **(P 3002-3005)** Mr. Ferozkhan and Naimuddin were not found on the given address.**(P 3006-3009)**

**OBSERVATION OF COMMISSION**:-

Mr. Naveeduzma stated in his reply (**P.2990)** that, the site adm. 60x80 was possessed by him out of Sy.No.26 on the basis of agreement (**P 2991-2992)** and his possession has been regularized vide No.MSBW-CH/485-05 dated 24-11-2005 by the Wakf Board. (**P.2996**). **There is however no statement by the D.W.O. Beed as to whether the resolution was passed by the Board to regularize this lease. It is stated in the deed of lease that the Board decided to lease of the land, however mere such statement or such decision would not be sufficient, since this transaction was governed by the Wakf Act 1995. The resolution passed u/s 32 (2) (j) of the Act was must. This statutory provision therefore was violated.** This document further state that, one Saheb-Bee w/o Bismillakhan leased the said plot for 99 years to Jabbarkhan on rent of Rs. 10,000/- and thereafter Jabbarkhan transferred it by sale to Naveeduzma for Rs.75,000/-. In short the property had gone in wrong hands earlier and now it has come under the supervision of the Wakf Board, since Naveeduzama is holding the possession through the Wakf Board on this plot.

The copy of the lease deed dated 26-12-1977 with letter dated 8-12-1977 of the Urban Development and Public Health Department are produced by the D.W.O. with reply. These documents are (**P.2993-2994-2995**).

The D.W.O. stated in his reply that, Sy.No.46 and 63 are the service Inam and both of these lands are having no concern with Meer Shaukat Ali who is the brother of the complainant Mr. Meer Habib Ali. Still Meer Shaukat Ali leased the site adm. 135x250 out of Sy. No.26 for 99 years to Sayed Nazim Sayed Masum **(P.3010),** who

subsequently transferred this plot for Rs.75,000/- to Mr. Naveeduzma (**P.3011**). Subsequently the transaction of this property was regularized by Wakf Board vide the document (**P.2996**).

Significantly the D.W.O. simply made a reference of illegal lease and illegal transfer vide the documents dated 7-3-1991 and 19-3-1991 respectively (**P.3010-3011**), however, **he did not utter a single word as to whether any step was taken by him to protect the Wakf property. He simply worked as watch dog without any action.** I feel that, his silence as regards the illegal transaction of the valuable property can not be free from suspicious. **The then D.W.O. who was working as on 7-3-1991 and 19-3-1991 and all the D.W.O. working thereafter till the present D.W.O. Mr. Maqsood are responsible for this illegal transaction. I may observe that, their silence may be with under hand dealings and they are liable to be taken with the action by the Wakf Board and/or by the State Govt. of Maharashtra. The CEO Wakf also is vicariously liable, being the administrative head of the Department.**

The complainant, as observed hereinabove, did not produce single document of having concern with the aforesaid property. It appears that, he had moved the office of Collector, Beed, who in turn issued a letter dated 17-10-2007 to the complainant asking him to prosecute the matter with the CEO of Wakf. (**P3012**). It however appears that, the complainant did not take any step in compliance of this suggestion(**P 3013-3014)**.

**The order of regularization dated 24-11-2005 (P.2996) was issued under the signature of the office Superintendent. The office Superintendent together with the then CEO are responsible for this illegality.**

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.63**

**REPORT**

**COMPLAINT NO. 74/2009**

**By Ali Ahmed Habib Ahmed r/o Nageshwarwadi**

**as a Mutwalli, at Aurangabad.**

**MASJID TAKIYA BARUDGAD NALLA, AND CHILLA SHAHA NASIRUDDIN AND SHAIKH CHAND SAHAB SUBHANI,NAGESHWARWADI, AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

The complainant alleged in the complaint (**P. 3051-3054**) that Sy.No. 86 adm. 11 A 34 G. of Aurangabad consisting of C.T.S. no. 2928 and 4672 and other various C.T.S Nos. are the wakf property alleged to have been either illegally transferred or encroached upon by the people.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint (**P. 3051-3054**) that Sy. No. 86 adm. 11 A 34 G. is a wakf of Masjid, consisting of C.T.S. No. 2928 and 4672 along with several other C.T.S., and are alleged to have been either **illegally transferred by sale or encroached** upon by the people. The copy of the Gazette showing this land to be a Wakf is also produced (**P.3055**) . According to the complainant this entire land is Wakf of Dargah Masjid Takiya Barudgad Nalla, Nageshwarwadi, Aurangabad.

The list of the persons who committed encroachment on **C.T.S. No.2928** is produced (**P.3056-3058**). The copy of City Survey office of CTS No.2928 is also produced, which is obtained from the City Survey office (**P.3059-A-H**)

**NOTICES TO THE PARTIES:-**

The notices were sent to the parties for personal service, as under, who are alleged to have committed the encroachment and who are in possession of a particular plot. The list **P 3056** contains the particulars of the plot held by the particular incumbent.

| Sr. No. | O.W.No. and dated | Name of party. | Page No. | Remarks. |
|---|---|---|---|---|
| 1 | 351/16/1 dt. 8-9-09 | Shri Chandrakant Kanoji Nazan | 3060 | Avoided to accept |
| 2 | 351/16/2 dt. 8-9-09 | Shri Deepak Pari Pally | 3061 | Avoided to accept |

| | | | | |
|---|---|---|---|---|
| 3 | 351/16/3 dt. 8-9-09 | Shri Agaiya Laxmaya Paklu | 3062 | Avoided to accept |
| 4 | 351/16/4 dt. 8-9-09 | Shri Gadappa Kondiya Rajanna | 3063 | Avoided to accept |
| 5 | 351/16/5 dt. 8-9-09 | Shri Durgaya Namapalli Sandri | 3064 | Avoided to accept |
| 6 | 351/16/6 dt. 8-9-09 | Shri Shridhar Narsiya Sarmward | 3065 | Avoided to accept |
| 7 | 351/16/7 dt. 8-9-09 | Shri Lingaiya Minyya Pare | 3066 | Avoided to accept |
| 8 | 351/16/8 dt. 8-9-09 | Shri Ramswami Narsiya Kannam | 3067 | Refused |
| 9 | 351/16/9 dt. 8-9-09 | Shri Ramyya Nampalli Sandri | 3068 | Refused |
| 10 | 351/16/10 dt. 8-9-09 | Shri Rajeswhar Maliya Doli | 3069 | Avoided to accept |
| 11 | 351/16/11 dt. 8-9-09 | Sow Laxmibai Narsiyya Gadappa | 3070 | Refused |
| 12 | 351/16/12 dt. 8-9-09 | Savitribai Rajnarsu Pari Pille | 3071 | Refused |
| 13 | 351/16/13 dt. 8-9-09 | Shri Kumar Satnaryan Kankriya | 3072 | Avoided to accept |
| 16 | 351/16/14 dt. 8-9-09 | Shri Swmi Rajana Kura | 3073 | Avoided to accept |
| 17 | 351/16/15 dt. 8-9-09 | Shri Anjaya Kochanna Makollu | 3074 | Avoided to accept |
| 18 | 351/16/16 dt. 8-9-09 | Shri Rajendra Mutha | 3075 | Avoided to accept |
| 19 | 405/09 dt. 5-11-09 | Dr.Smt.Kalpna Zavar | 3076 | Served-3079 |
| 20 | 406/09 dt. 5-11-09 | Dr. Ujawal Shubhas Zavar | 3077 | Served -3081 |
| 21 | 416/09 dt. 7-11-09 | Dr.Smt.Kalpna Zavar | 3076-A | Served |
| 22 | 415/09 dt. 7-11-09 | Dr. Ujawal Shubhas Zavar | 3077-A | Served |

The report of the Bailiff is in respect of service or non services of summons **(P.3078).** One Mr. Deelip Sarada appeared on behalf of Dr. Kalpna Zavar and Dr. Ujwala Zavar and submitted applications dated 16-11-2009 for adjournment (**P.3079-3080**). The matter was adjourned and was fixed to 26-11-2009. The reply/statement however is not filed.

After refusal of the services by the aforesaid persons, process was sent through registered post (AD) against them and result is as under:-

| Sr. No. | O.W.No. and dated | Name of party | Page No. | Remarks. |
|---|---|---|---|---|
| 1 | 354/16/1 dt. 10-9-09 | Shri Chandrakant Kanoji Nazan (1) | 3081 | Served |
| 2 | 354/16/2 dt.10-9-2009 | Shri Deepak Pari Pally (50) | 3082 | Refused |
| 3 | 354/16/3dt.10-9-2009 | Shri Agaiya Laxmaya Paklu (13) | 3083 | Refused |
| 4 | 354/16/4dt.10-9-2009 | Shri Gadappa Kondiya Rajanna (19) | 3084 | Served |
| 5 | 354/16/5dt.10-9-2009 | Shri Durgaya Namapalli Sandri (21) | 3085 | Refused |
| 6 | 354/16/6dt.10-9-2009 | Shri Shridhar Narsiya Sarmward (23) | 3086 | Served |
| 7 | 354/16/7dt.10-9-2009 | Shri Lingaiya Minyya Pare (27) | 3087 | Refused |
| 8 | 354/16/8dt.10-9-2009 | Shri Ramswami Narsiya Kannam (28) | 3088 | Refused |
| 9 | 354/16/9dt.10-9-2009 | Shri Ramyya Nampalli Sandri (34) | 3089 | Not served |
| 10 | 354/16/10dt.10-9-2009 | Shri Rajeswhar Maliya Doli (38) | 3090 | Not served |
| 11 | 354/16/11dt.10-9-2009 | Sow Laxmibai Narsiyya Gadappa (40) | 3091 | Refused |
| 12 | 354/16/12dt.10-9-2009 | Savitribai Rajnarsu Pari Pille (50) | 3092 | Refused |
| 13 | 354/16/13dt.10-9-2009 | Shri Kumar Satnaryan Kankriya (51) | 3093 | Refused |
| 16 | 354/16/14dt.10-9-2009 | Shri Swmi Rajana Kura (54) | 3094 | Died |
| 17 | 354/16/15dt.10-9-2009 | Shri Anjaya Kochanna Makollu (55) | 3095 | Not served |
| 18 | 354/16/16dt.10-9-2009 | Shri Rajendra Mutha | 3096 | Served |

The postal receipts are (P.**3097-3099**)

| Sr. No. | O.W.No. and dated | Name of party | Page No. | Remarks. |
|---|---|---|---|---|
| 1 | 393/24 dt. 20-10-09 | Shri Kachru Bhika Paitl (7) | 3100 | Avoided service |
| 2 | 393/24 dt. 20-10-09 | Shri Rangnath Madhavrao Joshi (9) | 3101 | Refused |
| 3 | 393/24 dt. 20-10-09 | Smt.Parvatibai Shankarrao (12) | 3102 | Un served |
| 4 | 393/24 dt. 20-10-09 | Shri Nandkishor Narayanrao Aherkar (15) | 3103 | Avoided service |
| 5 | 393/24 dt. 20-10-09 | Shri Narayanrao Shankarrao Ingle (16) | 3104 | Refused |
| 6 | 393/24 dt. 20-10-09 | Shri Prbha Pandurangrao Bhandekar (18) | 3105 | Refused |
| 7 | 393/24 dt. 20-10-09 | Shri Ambadas Madhavrao Joshi (31) | 3106 | Refused |
| 8 | 393/24 dt. 20-10-09 | Shri Suresh Pandrinath Bhavar (33) | 3107 | Avoided service |
| 9 | 393/24 dt. 20-10-09 | Shri Surekant Aasaram Deokar (35) | 3108 | Avoided service |
| 10 | 393/24 dt. 20-10-09 | Shri Aasaram Narsingrao Deokar (36) | 3109 | Avoided service |
| 11 | 393/24 dt. 20-10-09 | Shri Uttam Tukaram Aherkar (43) | 3110 | Refused |
| 12 | 393/24 dt. 20-10-09 | Shri Narayan Kondiram Pund (49) | 3111 | Avoided service |
| 13 | 393/24 dt. 20-10-09 | Shri Deepak Pari Pille (50) | 3112 | Avoided service |
| 16 | 393/24 dt. 20-10-09 | Smt. Bharti Bhaskarrao More (53) | 3113 | Refused |
| 17 | 393/24 dt. 20-10-09 | Shri Suresh Pandrinath Bhavar (58) | 3114 | Avoided service |
| 18 | 393/24 dt. 20-10-09 | Parbhakar Ramoji Josh (72) | 3115 | Refused |
| 19 | 393/24 dt. 20-10-09 | Smt. Kamlabai Rangnath Bairagi (75) | 3116 | Avoided service |
| 20 | 393/24 dt. 20-10-09 | Shri Sanjay Kachru Patil (96) | 3117 | Avoided service. |

| | | | | |
|---|---|---|---|---|
| 21 | 393/24 dt. 20-10-09 | Smt. Mangala Prbhakarrao Naik ( ) | 3118 | Avoided service. |
| 22 | Acknowledgment | Shri Deepak Champalal Munuwat | 3119 | Served |
| 23 | Acknowledgment | Shri Baburao Nivrity Ponde | 3120 | Served |
| 24 | Acknowledgment | Smt. Pramila Dnynoba Munde | 3121 | Served |
| 25 | Acknowledgment | Shri Naryan Nivruti Munde | 3122 | Served |
| 26 | Acknowledgment | Smt. Pushpabai Naryan Gomte | 3123 | Served |

The postal receipts (**P.3124-3127**)

The names of owner as Mr. Rangnath Patil and Mr. Vijandra Kabara are shown in the CTS No.2928 (**P.3059**). They also were served with the summons as under:-

| Sr. No. | O.W.No. and dated | Name of party | Page No. | Remarks. |
|---|---|---|---|---|
| 1 | 401/1/09 dt. 3-11-09 | Shri Shivaji Rangnath Patil Borde (3059) | 3128 | Served |
| 2 | 401/2/09 dt. 3-11-09 | Tulsabai Tanaji Board (3059) | 3129 | Served |
| 3 | 401/3/09 dt. 4-11-09 | Shri Pandurang Rangnath Patil Boarde (3059) | 3130 | Served |
| 4 | 404/09 dt. 4-11-09 | Shri Sambhaji Ranganath Patil (3059) | 3131 | Refused |

The summons O.W.No.206/2/1 and 206/2/2 dated 22-4-2010 (**P.3191-A**) was served on the CEO Mr. S.S. Ali Quadari and the D.W.O. Mr. Minirkhan Pathan and they did not respond.

The summons O.W. No.193/10 dated 19-4-2010 (**P. 3191-B**) was served on Maratha Seva Mandal who appears to be in possession of some portion of this land. It sought time by submitting application dated 26-4-2010) (**P.3191-C**) and dated 3-5-2010 (**P.3191-D**) together with the power of advocate (**P.3191-E**) and he did not respond.

**OBSERVATION OF COMMISSION:-**

The complainant alleged in the complainant (P.3051) the illegal sale and encroachment on the land Sy. No.86 consisting of various CT S.Nos, including the aforesaid. The aforesaid persons

except Dr. Smt. Kalpna Zavar **(P.3076)** and Dr. Ujawal Shubhas Zavar **(P.3077**), did not appear before this Commission and did not open their sources of possession and title over the property. Dr. Kalpna and Dr. Ujwal appeared on 16-11-2009 Before this Commission through their representative Shri Deelip R Sarda (**P. 3079 and 3080)** and sought the adjournment upto 26-11-2009. However they also did not file their reply before the commission.

The commission therefore will have to appreciate the matter on the basis of documents on record. Having a close scrutiny of the P.R. Card of CTS No. 2928, it is seen that, the aforesaid various persons had purchased the property from Mr. Rangnath Patil and/or Mr. Rajendra Kabara. As a matter of fact this property being Wakf (P.3055) a could not transferred by way of sale or by way lease. The transfer of the various plots as stated in P.R.Card (P. 3059) violate the mandatory provision of section 32(2) (j) r/w 51 of theWakf Act 1995 and all the transaction renders to be illegal.

It appears that, the complainant filed a complaint (**P.3132-3133**) in the office of C.T. Survey making a reference of the Circular dated 15-10-1975 (**P. 3134**) directing that, the name of the religious institution shall be stated in the Kabjedar column and name of the Mutwalli and the person possessing shall be in otherwise column. However, such directives were not followed by the subordinates. Ultimately the persons possessing the property had misused the situation. They started transferring the plots and they succeeded in their such attempt. Unfortunately neither the Mutwalli nor the Wakf Board raised any objection for such illegal activities of the transferors.

The CT Survey Officer passed the order No.NB/PB-2/BN/1297/08 (Marathi) dt. 30-12-2008 (**P.3135-3136)** Categorically stating that, Sy.No.86 is wakf property. The said authority then observed that, the inquiry was conducted by the inquiry officer as per provision of the Maharashtra Land Revenue Code, the rights were determined and P.R. Card were prepared. The C.T. S. Officer then expressed, it was necessary for the Mutwalli of the Institution to participate in the inquiry and to get the rights of the Institution decided. The C.T. Survey Officer then observed that after such rights determined the roll of the C.T. S. Office begin in respect of maintenance of the record and accordingly the record was prepared. The C.T. Survey Officer observed that, correction of the record is not in his jurisdiction, it being based on the report of the inquiry. The C.T.S. Officer then proposed to the complainant that, the matter being of judicial nature, he may take the appropriate action in the office of Superintendent Land Record Aurangabad under the provision of M.L.R. Code 1966 . **It would be necessary not only for the Mutwalli but for the Wakf Board to take the appropriate action not only before the Superintendent Land Record but also in the competent Civil Court (Tribunal) to set right the situation to see that, the record of this land is mutated in the name of the aforesaid religious institution.**

**LEASE BY WAKF BOARD**

The complainant has produced the copies of lease deed purporting to have been made by the Wakf Board with private parties.

| Sr. No. | Name of the Lessee | Plot No. | Area | Date | Rent | Remarks |
|---|---|---|---|---|---|---|
| 01. | Shri Kisan Narharrao Joshi | 36 | 9.14x12.19 Mtrs. | 2-7-73 | Rs. 15 P.A. | 3137 |
| 02. | Sow Manglabai Bhagwat Wavare | 4 | 30x40 fts | 17-3-73 | Rs. 20 P.A. | 3138 |
| 03 | Shri Bhaurao Balaji Sakalkar | 49 | 60x40 ft. | 5-7-73 | Rs.15 P.A. | 3139 |
| 04. | Shri Chandrakant Baburao Chhatre | 2 | 14x40 ft. | 17-3-73 | Rs.10 p.a. | 3140 |
| 05. | Shri Motiram Asaram | 6 | 30x35 ft. | 17-3-73 | 20 p.a. | 3141 |
| 06. | Shri Dinkar Trimbakrao Burse | 7/2 | 15x40 ft. | 17-3-73 | Rs. 10 p.a. | 3142 |
| 07. | Shri Dattraya Narharrao Khairnar | 43 | 40x30 ft. | 30-6-73 | Rs.15 p.m. | 3143 |
| 08. | Sow Mandakini Chandrakant Sonwane | 34 | 40x30 ft | 30-6-73 | Rs. 15 p.m. | 3144 |
| 09 | Shri Panduran Patilba Kale | 9 | 40x30 ft | 2-5-73 | Rs. 15 p.m. | 3145 |
| 10. | Shri Baburao Rakhmaji Baraskar | 8 | 15x40 ft. | 17-3-73 | Rs.10 p.a. | 3146 |
| 11. | Sow Soluchnabai Divakar Jagtap | 53 | 30x40 ft. | 2-7-73 | Rs. 15 p.a. | 3147 |
| 12. | Shri Chiranjilal Papalal Jaiswal | 22 | 40x30 ft. | 3-8-73 | Rs.15 p.a. | 3148 |
| 13. | Shri Chiranjilal Papalal Jaiswal | 24 | 40x20 ft. | 8-11-73 | Rs.10 p.a. | 3149 |
| 14. | Shri Pandrinath Devrao Neel | 12 | 40x30 ft. | 25-9-73 | Rs.15 p.a. | 3150 |
| 15. | Shri Chandrabhan Asurba Thorat | 6 | 40x30 ft. | 2-5-73 | Rs.15 p.a. | 3151 |
| 16. | Shri Kashinath Wanraj | 12 | 35x37 ft. | 17-3-73 | Rs.20 p.a. | 3152 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | Devre | | | | | |
| 17. | Shri Jagannath Karbhai Korahle | 31 | 50x35 | 31-7-79 | Rs.15 p.a. | 3153 |
| 18. | Shri Shirdhar Bandu Late | 38 | 31x40 ft. | 21-5-73 | Rs.20 p.a. | 3154 |
| 19. | Shri Moreshwar Parsuram Nagane | | 8x99 ft. | 17-10-73 | Rs. 5 p.a. | 3155 |
| 20. | Shri Gopinath Baburao Jadhav | 8 | 40x30 ft. | 2-5-73 | Rs.15 p.a. | 3156 |
| 21 | Annasahed Gajananrao Khambat | 4 | 40X30 ft. | 2-5-73 | Rs.15 p.a. | 3157 |
| 22 | Rammappa Ganpatappa Zunjarker | 13 | 50X40 ft. | 5-7-79 | Rs.15 p.a. | 3158 |
| 23 | Smt. Kasabai Baburao | 35/1 | 20X60 ft | 3-5-73 | Rs.10 p.a. | 3159 |
| 24 | Narayandas Laxmandas Bairagi | 30 | 40X30 ft. | 5-7-73 | Rs.15 p.a. | 3160 |
| 25 | Narsayya Hanmayya | 20 | 40X30 ft. | 3-8-73 | Rs.15 p.a. | 3161 |
| 26 | Annasahed Gajananrao Khabat | 16 | 240X25 ft | 25-9-73 | Rs.15 p.a. | 3162 |
| 27 | Raosahed Honaji Satbhai | 15 | 30X40 ft. | 17-3-73 | Rs.20 p.a. | 3163 |
| 28 | Sau. Sumanbai Annasahed Khambat | 15 | 50X40 ft. | 17-3-73 | Rs.20 p.a. | 3164 |
| 29 | Baburao Tribakrao Shinde | 47 | 40X30 ft. | 2-7-73 | Rs.15 p.a. | 3165 |
| 30 | Kondiram Ramchandra Joshi | 55 | 30X40 ft. | 3-8-73 | Rs.15 p.a. | 3166 |
| 31 | Ambadas Manaji Shinde | 1 | 40X25 ft. | 2-5-73 | Rs.20 p.a. | 3167 |
| 32 | Laxmanrao Narharrao Khairnar | 42 | 40X30 ft. | 30-6-73 | Rs.15 p.a. | 3168 |
| 33 | Asaram Ganpatrao | 35/2 | 20X60 ft. | 3-5-73 | Rs.10 p.a. | 3169 |
| 34 | Uttamrao Keshavrao Khambat | 14 | 30X40 ft. | 17-3-73 | Rs.20 p.a. | 3170 |
| 35 | Gulmersing Kachrusing Rajput | 46 | 40X30 ft. | 5-7-73 | Rs.15 p.a. | 3171 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 36 | Ganpat Ramchandra Sonar | 51 | 40X40 ft. | 5-7-73 | Rs.15 p.a. | 3172 |
| 37 | Dattatrya Tribakrao Kamode | 31 | 40X30 ft. | 30-6-73 | Rs.15 p.a. | 3173 |
| 38 | Asaram Balaji Adhat | 29 | 40X30 ft. | 5-7- 73 | Rs.13 p.a. | 3174 |
| 39 | Sakharam Kishanrao Solunkhe | 7 | 40X30 ft. | 2-5-73 | Rs.15 p.a. | 3175 |
| 40 | Ramdas Tribakrao Kombde | 32 | 40X30 ft. | 30-6-73 | Rs.15 p.a. | 3176 |
| 41 | Dattu Shivram Yadav | 60 | 20X30 ft. | 4-8-73 | Rs.10 p.a. | 3177 |
| 42 | Rajaram Eknath Dhatrak | 58 | 40X60 ft. | 5-7-73 | Rs.15 p.a. | 3178 |
| 43 | Sau. Dagdabai Tulshiram Shelke | 8/2 | 15X40 ft. | 17-3-73 | Rs.10 p.a. | 3179 |
| 44 | Madhukar Kashiram | 54 | 30X40 ft. | 25-9-73 | Rs.10 p.a. | 3180 |
| 45 | Narayan Ganpatrao Bavne | 7/1 | 15X40 ft. | 17-3-73 | Rs.10 p.a. | 3181 |
| 46 | Ramrao Gopinath Somde | 48 | 30X40 ft. | 2-7-73 | Rs.15 p.a. | 3182 |
| 47 | Namdev Maroti Huse | 44 | 40X30 ft. | 5-7-73 | Rs.15 p.a. | 3183 |
| 48 | Dattatrya Tribakrao Kombde | 31 | 40X30 ft. | 30-6-73 | Rs.15 p.a. | 3184 |
| 49 | Chandkhan Metabkhan | | 2 Acers- 16 plots | 21-3-70 | Rs.192 p.a. | 3185-87 |
| 50 | Narayandas Laxmandas Bairagi | 30 | 40X30 ft. | 5-7-73 | Rs. 15 p.a. | 3188 |

It appears that two plots were leased by Mutwalli also and the details as under:

| | | | | | | |
|---|---|---|---|---|---|---|
| 51 | Abdul Jabbar Vaziroddin | | | 1-10-62 | Rs. 200 p.a. | 3189 |
| 52 | Kaveribai Sudram Ajaywadikar | 41 | 40x30 ft. | 3-3-87 | Rs.30 p.a. | 3190 |
| 53 | Dadarao Gangaram Joshi | 58/1 | 40x30 ft. | 13-11-78 | Rs.20 p.a. | 3191 |

**OBSERVATIONS:-**

The aforesaid plots were leased by the Wakf Board. The quantum of rent or between Rs. 10 to 20 p.a. was quite meager, compared to the size of the plots. The size of the plots was quite big and quantum of rent of was totally nominal. Significant fact is that, as far as lease deed no.1 to 53 are concerned there are no condition of renewal of the lease after expiry of a particular period. As a matter of fact, when the Wakf Board granted permission to lessee to make the construction of the house, it was incumbent for the lessee and more particularly for the lesser-Wakf Board to get the lease renewed after expiry of a particulars period. Had there been such condition the lease would have been renewed after expiry the particular period, say 3 years or 5 years, and quantum of lease money would have been increased. It would have always in the interest of the Wakf and the Wakf Board. However, it is commonly said that, what belongs to all belongs to non. The Wakf property belongs to the public in general having no owner in particular, of course except Allah. The then Secretary, the Chairman and the Members of the Wakf Board however forgot that, the Wakf property was not to be freely distributed, but it should be allotted so as to procure the interest of the Wakf, the Wakf Board and public in general. **I feel, that this aspects of the complaint is very serious and the Wakf Board as well the State Govt. of Maharashtra may look into it, so as to have the appropriate benefit to the Wakf, Wakf Board and general public, specially looking to the high prices of the properties now a days. The Wakf Board may even initiate the proceedings to get the vacant possession of the plots or may procure the price of the plots which is prevailing as on the day.**

The lease deed page No.3190 and 3191 which are in Urdu script were for a terms of 11 months only. According to the complainant this lease was not renewed after expiry of this period. There is specific condition that if the lessee does not pay for 3 years or 2 years respectively, the Board will have absolute power to cancel the transaction of lease. If the lessee violated this term of the lease, the Wakf Board will have a right to cancel the transaction and to ask for the vacant possession from the lessee. **It is not known as to whether or not the leasee failed to pay the rent and if yes what action was taken. This needs verification from the record and then the necessary action needs to be taken.**

What I feel from the aforesaid transactions is that, the then Chairman, the Members and the Secretary were liable for such liberal construction of the transaction of lease deeds and the quantum of lease and they are responsible for their such liberal and so to say, negligent approach towards the wakf properties.

**The Officers who were/are holding the chair of CEO Wakf since after establishment of the Board i.e. 4-1-2002 are responsible for negligence in the matter.**

**I may say that, this property is situated in the heart of the City having several Kilo miters of housing development to all the sides and so the property is having high potentiality.**

What has been considered by me hereinabove in respect of C.T. Survey No.2928 only. As against this there are so many parts such as C.T.S. No.4672, 4674, 4673, 4676 etc. of this Wakf property and the consideration of the same also is required. The complainant co-operated as regards the aforesaid one property and the summons were issued therein. As regard other properties the summons could not be issued for want of address and other

details of the holder of the properties and so the summons could not be issued. This aspects therefore is kept open for subsequent consideration.

The summons bearing O.W. No.335/3/1 and 335/3/2 dated 3-5-2010 (**P.3191-G**) were served on Mr. S.S.Ali Quadari and Mr. Munirkhan Pathan D.W.O. calling them upon to make the statement whether CTS No.4677, Sheet No.71 adm. 980.90 Sq. Mtrs. out of Sy. No.86 of Aurangabad was leased to the Municipal Corporation, as per the statement in the letter dated 17-7-2009 (**P.3191-H**) and what was the progress of the spot inspection as stated therein. The summons has not been responded by them. The same summons bearing O.W. No.235/3/3 was served on the Commissioner of Municipal Corporation Aurangabad and he also did not respond.

The summons were sent to various person under certicate of posting (**P.3191-I-3191-M**) and there is no response.

The summons were sent to various person under certificate of posting (**P.3191-N-3191-O)** and there is no response.

The postal acknowledgement of services of summons against Smt. Bharti Bhaskarrao More (**P.3191-P**).

The envelops of summons returned unserved for want of

address of Baban Rambhau Gavali and Prbhakar Vishawanath Pawar are (**P.3191-Q-R**).

The Complainant produced on 4-11-2010 the zerox copy of the sale deed executed by Rangnath Ganpat Borde to Smt. Kamlabai Ramchndar Tingote of sheet No.73, CTS No.2928 adm. 45 x33 ft.(**P.3191-S**), alongwith the copy of City Survey (**P.3191-T**). This transaction being of the Wakf property appears to be altogether illegal being without prior permission of the Wakf Board. The officer of the Wakf Board are responsible for negligence that, though there has been a illegal transaction, they did not take any action, much less they were not alart to keep watch on the wakf property and to take the notice of such transaction. The Board of Wakf may take the necessary action against the responsible officers i.e. the Secretary/ CEO, and the DWO who were occupying chairs since after 1978.

**NOTE:-** It appears that suit No.46/2007 is pending before the Wakf Tribunal Aurangabad about this matter.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.64**

**REPORT**

**COMPLAINT NO. 27/2008**

**By Mohd. Ahmedullah Siddiqui r/o House No.1-15-63**

**Rauf Colony, Buddi Lane, Aurangabad.**

**MASJID NAZIR ROZBA MOHALLA (KILAARK)**

**HARSOOL -AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

The land Sy.No.42 adm. 16 A. 36 G., Sy.No.43 adm. 20 A. 37 G. , Sy.No.47 adm. 25 A. 27 G., Sy.No.48 adm. 13 A. 27 G., Sy.No.174 Adm. 12 A. 32 G. and Sy.No.175 10 A. 1 G. situated at Harsul Dist. Aurangabad are the wakf properties of the aforesaid Masjid. In some documents (**P 3264**). Sy.No. 173 10 A 01 G is also shown as Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Complainant Mohd. Ahmedullaha filed a complaint (**P.3250-3252**) stating that, these properties are the Wakf of the Masjid Nazir Rozba Mohalla Kile-ark. He alongwith others are the Sikmidars (Share holders) thereof. The complainant was served with the summons bearing O.W.No.119/08 dt.28-8-2008 (**P.3253**) calling upon him to give the more particulars and specially in respect of Regular Civil Suit No.56/68,(**P.3254-3259**), which was subsequently withdrawn with permission to file the fresh suit. He filed reply (**P.3260-3261**) without making a mention of the aforesaid suit. The copy of Gazette is produced (**P.3262-3263**). The copy of the mutation of the share holders by way of succession is also produced (**P. 3264**). Copy of Form No.1 – Records of right is also produced showing Mohd. Faizullah as a Mutwalli of Masjid Kileark (**P.3265**).

The complainant had been to this office on 5-5-2010 and he stated that the possession of Sy No. 173 and 174 was delivered to his real sister Khairunnisa, and so these lands are not the part of this complaint. **(P 3265 A)**

The complainant further stated that his cousin sister who also was named as Khairunnisa, migrated to Pakistan, and all of the aforesaid lands except Sy No. 173 and 174 was declared as evaque and were taken in custody by Government, and were allotted to migrants from Pakistan.

The complaint is drafted in such a way which is very vague in itself. The overall meaning of the complaint appears that, these lands either have been encroached or have been illegally dealt with.

**NOTICES TO THE PARTIES:-**

The names of so many person are seen in the 7/12 extract of Gut No.42 (**P.3266**) and so the summons were issued against them as under:-

| Sr. No. | Name of parties | O.W.No. | Gut No. | Area | Page no. | Remarks |
|---|---|---|---|---|---|---|
| 1. | Daurkadas Fakirchand Harne | 341/08 | 42 | 2 A. 6 G. | 3267-3268 | Served on brother |
| 2. | Arun Asaram Kadam | 328/08` | 42 | 1 H. 42 R | 3269 | Not |
| 3. | Thanabai Eknath Bhavar | 329/08 | 42 | 1 H. 60 R. | 3270 | Not |
| 4 | Prayagbai Bhaulal Dandge | 330/08 | 42 | 1 H. 60 R. | 3271 | Not |
| 5 | Mathurabai Yeduba Bhidhe | 331/08 | 42 | 1 H. 60 R | 3272 | Not |
| 6 | Sumanbai Moham Bhavar | 332/08 | 42 | 1 H. 60 R. | 3273 | Not |
| 7 | Kamlabai Murlidhar Jamdhane | 333/08 | 42 | 1 H.60 R. | 3274 | Not |
| 8 | Manglabai Bhivaji Jadhav | 334/08 | 42 | 1 H.60 R. | 3275 | Not |
| 9. | Sindhubai Ganpat Kadam | 335/08 | 42 | 1 H.60 R. | 3276 | Not |
| 10. | Santosh Ganpat Kadam | 336/08 | 42 | 1 H.60 R. | 3277 | Not |
| 11. | Sunil Ganpat Kadam | 337/08 | 42 | 1 H.60 R. | 3278 | Not |
| 12. | Laxman Pundlik Dahihande | 320/08 | 42 | 0 A 35 G | 3278 -A | No |
| 13 | Vilas Pundlik Dahihande | 321/08 | 42 | 0 A 35 G | 3278- B | No |

Dwarkadas filed the reply **(P 3303)** with the documents **(P 3304-3318).**

The names of following persons are seen in the 7/12 extract of Gut No.43 (**P.3279**) and so the summons were issued against them as under:-

| Sr. No. | Name of parties | O.W.No. | Gut No. | Area | Page no. | Remarks |
|---|---|---|---|---|---|---|
| 1. | Ramrao Raghunath | 322/08 | 43 | 2 A. 1 G. | 3280 | Not |
| 2. | Ambadas Raghunath | 323/08 | 43 | 2 A. 1 G. | 3281 | Not |
| 3. | Laxmibai Pundlik | 324/08 | 43 | 2 A. 1 G. | 3282 | Not |

The names of following persons are seen in the 7/12 extract of Gut No.43 (**P.3283**) and so the summons were issued against them as under:-

| Sr. No. | Name of parties | O.W.No. | Sy. No. | Area | Page no. | Remarks |
|---|---|---|---|---|---|---|
| 1. | Reshmaji Chintaman | 339/08 | 43 | 1 A. 28 G. | 3284 | Not |
| 2. | Sandu Chintaman | 340/08 | 43 | 1 A. 28 G | 3285 | Not |

The names of following persons are seen in the 7/12 extract of Gut No.47 (**P.3286-3287**) and so the summons were issued against them as under:-

| Sr. No. | Name of parties | O.W.No. | Gut No. | Area | Page no. | Remarks |
|---|---|---|---|---|---|---|
| 1. | Kalabai Vishawnath | 312/08 | 47 | 2 A. 39 G. | 3288 | Not |
| 2. | Chandrakant Tukalram | 313/08 | 47 | 2 A. 37 G | 3289 | Not |
| 3. | Kalayan Tukaram Aautadhe | 314/08 | 47 | 2 A. 40 G. | 3290 | Not |
| 4. | Raju Tukaram Aauthadhe | 315/08 | 47 | 2 A. 39 G | 3291 | Not |
| 5. | Keshavrao Vishawnath Aautadhe | 316/08 | 47 | 2 A. 39 G. | 3292 | Not |

The names of following persons are seen in the 7/12 extract of Gut No.43 (**P.3293**) and so the summons were issued against them as under:

| Sr. No. | Name of parties | O.W.No. | Gut No. | Area | Page no. | Remarks |
|---|---|---|---|---|---|---|
| 1. | Manik Baburao Bodhakhe | 325/08 | 43 | 1 A. 20 G. | 3294 | Not |
| 2. | Kadhuba Baburao Bodhkhe | 326/08 | 43 | 1 A. 20 G | 3295 | Not |
| 3. | Suryabhan Baburao Bodhkhe | 327/08 | 43 | 1 A. 20 G. | 3296 | Not |

The names of following persons are seen in the 7/12 extract of Gut No.43 (**P.3297**) and so the summons were issued against them as under:-

| Sr. No. | Name of parties | O.W.No. | Gut No. | Area | Page no. | Remarks |
|---|---|---|---|---|---|---|
| 1. | Ambadas Raghunath | 338/08 | 43 | 2 A. 11 G. | 3298 | Not |

The name of following person is seen in the 7/12 extract of Gut No.48 (**P.3299-3300**) and so the summons was issued against him as under:-

| Sr. No. | Name of parties | O.W.No. | Gut No. | Area | Page no. | Remarks |
|---|---|---|---|---|---|---|
| 1. | Sanjay Tukaram Autadhe | 319/08 | 48 | 5 H 53 R . | 3301 | Not |

The summons bearing O.W.No.317/08 dated 18-11-2008 was served on CEO Wakf calling him upon to appears before this Commission on 26-11-2008 (**P.3302**) and he did not file the reply.

The summons bearing O.W.No.318/08 dated 18-11-2008 was served on D.W.O. Aurangabad Wakf calling him upon to appears before this Commission on 26-11-2008 (**P.3302**) and he did not file the reply.

**OBSERVATION OF COMMISSION:-**

The complainant had been to this office on 5-5-2010 and he stated that the possession of Sy No. 173 and 174 was delivered to his real sister Khairunnisa, and so these lands are not the part of this complaint. (P 3265 A) He fairly admitted, that his sister Khiarunnisa also lost possession of these lands, either by allotting it on lease personally, or by the Wakf board**.** The inamdar Khairunnisa is therefore liable for loss of the wakf property. The notice will have to be issued to her, or her heirs.

The complainant further stated that his cousin sister who also was named as Khairunnisa, migrated to Pakistan, and all of the aforesaid lands except Sy No. 173 and 174 were declared as evaque and were taken in custody by Government, and were allotted to migrants from Pakistan.

Dwarkadas claimed in his reply (**P 3303**) to have obtained the permission of the Dy. Collector (LR) dated 20-4-1996 vide order O.No 96/ LR Desk 2/VP/CR/14. under the Inam Abolition Act **(P 3304)** and got the sale deed executed from Ramrao Raghunath Dahihande, and Ambadas Raghunath Dahihande dated 13-6-1996. After having the perusal of the order dt. 20-4-1996 (**P 3304**) I found that the Dy. Collector regarded this property as community service Inam. As against this, the Gazette (**P 3262)** display that this is a service Inam land. In the circumstances, it will be necessary to call the file of proceeding , O.W.No.96/LRDESK-2/ VP/CR/14 dated 20-4-1996.

(**A.T.A.K.SHAIKH**)

Commission.

**Note** : Obtain the addresses of the heirs of Khairunnisa from the complainant and issue notice/s to them.

O W No.213/10 dt. 26-4-2010 Shri Md.Ahemadula Siddique(**3349)**

O W No.214/10 dt. 27-4-2010 Dy Collector (LR) Aurangabad

O W No.215/10 dt. 27-4-2010 Vilas Pundlik Dahihande **(3352)**

O W No.216/10 dt. 27-4-2010 Smt Lasmi Pundlik Dahihande(**3355)**

O W No.217/1/10 dt. 27-4-2010 Ramrao Raghunath Dahihande **(3357)**

O W No.217/2/10 dt. 27-4-2010 Ambadas Raghunath Dahihande **(3357)**

O W No.218/1/10 dt. 27-4-2010 S S Ali Quadri CEO **(3359)**

O W No.218/210 dt. 27-4-2010 Munirkhan Pathan DWO Abd **(3359)** The CEO and DWO did not respond, despite service.

The summons O.W.No.219/3/2 and 219/3/3 dated 28-4-2010 (**P.3358**) also were served on the CEO Mr. S.S. Ali Quadari and D.W.O. Mr. Munirkhan Pathan in respect of Sy No.173 and they did not respond.

The summons O.W.No.222/2/1 and 222/2/2 dated 28-4-2010 (**P.3360**) also were served on the CEO Mr. S.S. Ali Quadari and D.W.O. Mr. Munirkhan Pathan in respect of Sy No.173 and they did not respond, though the DWO sought time through application (**P.3361**).

The summons O.W.No.220/5/4 and 220/5/5 dated 28-4-2010 (**P.3362**) also were served on the CEO Mr. S.S. Ali Quadari and D.W.O. Mr. Munirkhan Pathan in respect of Sy No.42 and 43 and suit No.56/1968 and they did not respond.

In response to the summons O.W.No.214/2010 (**P.3319**), Mr. A.K. Bhagat the Clerk of office of Dy. Collector (LR) – Adm. Produced the original file of case No.96/ALR-Desk-2/VP/CR/ 14 dated 20-6-1996 alongwith the reply (**P.3320**) and Xerox of entire documents (**P. 3321-3348**).

The copy of the order dated 20-4-1996 (**P.3304**) is produced by Mr. Bhagat the Clerk of the Dy. Collector (L.R.) Office Aurangabad which is marked as (P.3326) and it is identical with the above order. I found that the Dy. Collector simply stated that, this is a Madatmas Inam without making a reference of any document or any sort of evidence. I did not come across with any document in this file so as to support the view of the Dy. Collector to hold that, this is a Madatmash Inam. This order therefore, would be regarded most arbitrary. As against this, this land is shown to be the Wakf property in the Govt. Gazette (**P.3262**). When this land is displayed in the Govt. Gazette as a Wakf property, it was the bounded duty of the Dy. Collector Mr. G.K.Kalsakar to call the record of the Wakf Board and to make the observation in that, regard. The Dy. Collector however avoided to make such inquiry and adopted a very shortcut method by simply saying that, this a Madatmash Inam. **I feel**

**that, Mr. G.K.Kalaskar Dy. Collector (L.R.) is responsible for passing such arbitrary order and creating the complication in the matter.**

The inquiry is also necessary as regard Sy.No.173 and 174 of which possession was delivered to Khairnunnisa and it appears that, she her heirs are presently not in possession of it. It being the Wakf property, it can not be disposed without the prior permission of Wakf Board. The similar inquiry is necessary as regards other Sy. Nos. If the CEO Wakf would have co-operated with this office, the picture would have become clear and this Commission would have been able to reach to some conclusion. The Complainant being a quite old person and having a poor financial position as it was seen from his standard of living, he did not collect the documents which were required by the Commission.

The summons bearing O.W. No.221/10 dated 28-4-2010 (**P-3374-A**) was issued to the Dy. Collector (LR) Aurangabad calling him upon to make the statement whether the lands Sy.No.42,43,47, 48 which are Wakf properties could be declared as evaque

properties and there has been no response.

The summons O.W.No.328 dated 2-7-2010 was served on Dy. Collector (LR) Aurangabad (**P-3374-B**) by way of reminder. The Dy. Collector directed the Revenue Assistant of his office to make the compliance and forwarded the copy to this office. (**P.3374-C**) still there has been no response. The Commission therefore could not record its observation and finding as to **whether the Wakf property could be declared evacuee property,** although prima faice the Wakf property could not be declared as evacuee, it been vested in the Great God. Had the revenue officer complied the process of this office, the findings could have been recorded and if the mistake was committed by the Revnue Department that could be corrected. The Commission therefore rendered helpeless.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.65.**

**REPORT**

**COMPLAINT NO. 6/2007**

**By Mr. Iqbalahemad Wasifuddin R/o Khuldabad**

**DARGA HADDEKHURD**

**(BAWIS KHAJA) KHULDABAD.**

**DETAILS OF THE PROPERTIES** :-

Sy.No.144 is totally admeasuring 140 H 16 R and out of it 30 A is a Wakf property of **Darga Hadekhurd (Bawis Khaja) Khuldabad.**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Iqbal Ahmed Wasifuddin R/o Khuldabad filed a complaint **(P-3450-3452)** supported by the affidavit **(P-3453-3454)** alleging that the chairman and the secretary of the Dargha Committee sold 4 plots and allotted 16 plots out of this land to their nearest relatives. The copy of Gazette dated 15-9-1973 (**P-3455**) and copy of mutation entry (**P.3456**). There is clear mention that, Sy.No.144 adm. 14 H. 69 R. is a Wakf property alongwith Sy.No.2 adm. 29 H. 23 R. (**P.3456**). The report of Surveyor dated 7-7-2006 is (**P.3457-3458**)

**NOTICES TO THE PARTIES:-**

The CEO Board of Wakf was served with the summons O.W.No.79/09 dated 2-4-2009 calling him upon to make the statement in respect of Sy.No.144 of Khultabad (**P.3459**).

The CEO Board of Wakf was served with the summons O.W.No.397/09 dated 28-10-2009 calling him upon to make the statement on 7-11-2009 in respect Dargah land of Khultabad (**P.3460**). The CEO simply forwarded the copy of the letter O.W. No. MSBW/ESTT/5744/09 dt. 13-11-2009 (**P.3461**) addressed to D.W.O. and Record Keeper (Siyanam) calling upon to them to furnish the information. However, till this date the reply is not filed by the CEO.

The CEO Board of Wakf was served with Proclamation O.W.No.419/09 dated 11-11-2009 calling him upon to make the statement on 17-11-2009 (**P.3462**) and did not comply till this date.

The CEO by name Mr. S.S.Ali Quadari Board of Wakf was served with summons O.W.No.433/3/1 dated 23-11-2009 calling him upon to make the statement on 4-12-2009 (**P.3463**) and did not comply till this date.

The CEO by name Mr. S.S.Ali Quadari Board of Wakf was served with the order fine of Rs. 500/- (**P.3463A**) O.W.No.51/2010 dated 22-01-2010 and he neither paid the fine nor attended the matter.

Mr. Sharfuddin s/o Ramzan, the President of Dargah Committee and Mr. Masiuddin s/o Faqruddin the Secretary of Dargah Committee were served with summon O.W.No.433/3/2 and 3/3/09 dt. 23-11-2009 calling them upon to make the statement in respect of transfer of plot to various person (**P.3463**).

The summons was sent to Mr. Abdul Samad s/o Abdul Rasheed, Sk. Isaq s/o Sk. Gulam, Smt. Farzana Praveen Sk. Yousuf, Smt. Hurbano Abdul Rahim, Mr. Sk. Mahemudd Sk. Inayat with O.W.No.434/5/1/ to 5 (**P. 3464**) and it was not served vide the report of peon of the Wakf Board (**P.3465**). It was alleged by the Complainant that, the properties stated in the extracts (**P-3466-3467**) were transferred to them by the President and the Secretary.

The summons O.W.No. 65/2/1 dt. 1-2-2010 (**P.3468**) was sent by post to Mr.Iqbal Ahmed Wasifuddin calling upon him to make statement on 10-2-2010 in respect of the allegation of the President and Secretary of Dargah Committee that, the complainant also transferred a plot of Dargah to a third person. The complainant however did not appear and did not file a statement.

The CEO Board of Wakf was served with the summons O.W.No.65/2/2 dated 1-2-2010 calling him upon to make the statement in respect of Sy.No.144 of Khultabad (**P.3468**) and he did not respond

Mr. Masiuddin s/o Fakhruddin sought time file reply vide his application dated 4-12-2009 (**P.3469**) and dated 19-12-2009 (**P.3470**) and lastly he filed reply dt. 6-1-2010 (**P.3471-3473**)

**OBSERVATION OF COMMISSION**:-

Mr.Masiuddin the Secretary of Dargah Committee admitted in his reply (**P.3471**) that, the land Sy.No.144 adm. 30 A. is Wakf property of Dargah and he himself is a Secretary of Dargah Committee.

The Secretary further admitted in his aforesaid reply that the land being fallow was leased to different educated unemployed boys for the period of 11 months with the object to protect and secure the possession of the property and save it from encroachment, however he added that all of the said transaction of lease were not in term of this Committee but they were in the term of the earlier committee.

The Secretary was asked in the summon O.W. No.433 /09 that one plot bearing House No.163 was alleged to have been transferred by him to Abdul Samad s/o Abdul Rahseed under sale deed (**P.3474-3476**). The Secretary made categorically statement in his reply that, this property has nothing to do with the Wakf and it is his personal property. Since the Complainant did not turn up to this office even after service of summons (**P.3468**), no explanation and additional information came on record as regard the aforesaid reply.

The complainant produced extract of Municipal record (**P-3466-3467**) alleging that, the plots were transferred to Sk. Isaq s/o Sk. Gulam, Smt. Farzana Praveen Sk. Yousuf, Smt. Hurbano Abdul Rahim, Mr. Sk. Mahemudd Sk. Inayat. The summons **(P.3464)** was sent to these person and it was not served vide the report (**P.3465**). Mr. Masiuddin the Secretary of the Dargah Committed stated in his reply that, plots transferred to these persons have nothing to do with Wakf and they are the part of his ancestral property. The complainant did not explain this fact also though he was separately served with summons (**P.3468**).

The Secretary then stated that, the four boundary of 30 A. out of Sy.No.144 is much behind Verul-Dhule State Highway and the Municipal Committee leased 30 plots to different 30 person in the said area and said people are running their business by erecting the shops.

Similarly, the Secretary stated, that behind the said shops, 40 to 50 plots are allotted for residential purposes and the said people have constructed Pakka houses thereon and they are residing therein.

According to Secretary the land Sy.No.144 which is totally adm. 250 to 300 acres, was measured and that time, the officials deliberately gave wrong information to the measurer and mislead him. The map prepared by the Measurer contents such note on his report. If such are the things it is necessary to re-measure the land Sy.no.144 and specially the land adm. 30 A. which is wakf property, to find as to whether the aforesaid 30 shops and 40 to 50 residential houses are the part of 30 Acres of Wakf land.

The Secretary alleged in his reply that, the complainant Iqbal Ahmed Wasifuddin also obtained a site of Dargah committee on lease and subsequently he transferred it by sale to different 3 persons. The copy of un registered sale deed dated 24-3-2003 is produced on record (**P.3477**). The summons (**P.3468**) was sent by post to the complainant to explain this allegation and he did not turn up to this office. **The adverse inference therefore can be drawn that the complainant Iqbal Ahmed must have transfered the Wakf property and he is responsible for the same, the sale being without compliance of the provision u/s 32 (2) (j) r/w 56 of the Wakf Act 1995.** The CEO Wakf is also equally liable for not being vigilant to protect the Wakf property. **As a matter of fact the CEO shall keep watch on all Wakf properties and shall see that, they are under the control and supervision of the Board. However I found that, no such efforts are being made by the CEO and other employees of the office.**

The Overseer Mr. Mohd. Maroof inspected this site and submitted the report dated 7-7-2006 ( **P-3457**) to the CEO Wakf, wherein he stated that 19 persons have occupied this land out of which 10 are nearest relatives of the present Managing Committee,

(i.e.Committee working on or before 7-7-2006). He further stated that 11 person were allotted the plots from the previous body and 8 persons have got the plots from the present body. If this aspect is considered through the reply of the present body **(P.3471)** it appears that the body which is working as on today may be different then the one which was working on or before 7-7-2006. The fact remains that, about 19 plots are allotted to different persons. As per statement in reply (P.3471) the plots were allotted for a term of 11 months. As per the provision of section 56 of the Wakf Act the Managing Committee can make allotment for a term less than one year, and so there appears no violation of law.

**It is necessary to measure the Wakf land adm. 30 A. out of Sy.No.144 and to verify as to whether, 30 plots allotted to the Shopkeepers by the Municipal Council and 40 to 50 plots allotted for the residential purposes are part of the wakf land or otherwise. If it is part of Wakf land the Municipal Council together with the Chief Officer would be responsible for illegal dealing of the Wakf property.**

**The significant fact that, the CEO of Wakf turned of thick skin since he did not reply various summons, the proclamation and order fine were issued and still there was no compliance. This is how there is total non co-operation, which must be deliberate from the side of Wakf Board. I may say that, the highest Administrative Officer of the Wakf Board (Mr. S.S.Ali Quadari) has turned enemy and poisons to the wakf properties and so the State Govt. of Maharashtra may take this aspects very seriously and to imposed appropriate punishment, by taking a disciplinary action against him.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.66**

**REPORT**

**COMPLAINT NO. 75/2009**

**By Mr. Naimkhan s/o Gaffarkhan of Jalna.**

**ABBASIYA MASJID, JALNA**

**DETAILS OF THE PROPERTIES** :-

Sy.No.233 10 A 00 G. (Area taken from Pathak committee report) is a Wakf property of Abbasiya Masjid Jalna.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint (**P.3501**) about the illegal construction. He also gave a complaint to S.P.Jalna on 5-5-2009 (**P.3502**). The complainant alleged that, Mr. Jasraj Mangilal and Rajesh Indrachand Runwal etc. are illegally making construction on the site. He also informed the Municipal Council Jalna on 4-3-2009 (**P.3503**)

**NOTICES TO THE PARTIES:-**

The CEO Board of Wakf was served with the notice O.W.No.244/9/1 dated 4-7-2009 calling him upon to make the statement on 27-7-2009 and he did not file reply .(**P.3504**)

The D.W.O. Jalna was served with the notice O.W.No.244/9/2 dated 4-7-2009 calling him upon to make the statement on 27-8-2009 and he did not file reply .(**P.3504**)

The Taluka Inspector Land Record Jalna was served with the notice O.W.No.244/9/3 dated 4-7-2009 calling him upon to make the statement on 27-7-2009 (**P.3505**) and he filed reply dated 1-8-2009 **(P.3506**), stating that, CTS No.10599 and 10600 are part of Sy.No.233 and that has been mentioned in the inquiry register. The names of Indrachand and others are mutated on the basis of sale deed dated 2-11-2009.

The Chief Officer, Jalna Municipal Council Jalna was served with summons O.W.No.244/9/4 dated 4-7-2009 calling him upon to make the statement on 27-7-2009 (**P.3507**) and he filed reply dated 23/24/July, 2009 (**P.3508-A-B**). He made a statement that, the permission for construction is granted as per the contents of the P.R. Card and Touch Map, in favour Rajkumar Indrachand etc. He further stated that, there is mention of Sy.No.233 on the P.R.Card.

Smt. Kamladevi Mangilal Runwal, Rajkumar Runwal, Gynchand Runwal and Ajay Runwal were served with the summons O.W.No.244/9/5 to 244/9/9 dated 4-7-2009 (**P.3509**) calling them upon make to statement on 27-7-2009 they appeared through Advocates Mr. Roshan H.Golechha (**P.3510**) on 27-7-2009 and submitted application for adjournment (**P.3511**). They then filed reply (**P.3512-3517)** stating that, CTS No.10599 was purchased by Indrachand from the Municipal Council Jalna through public auction. They

produced the copy of sale deed (**P.3518-3525)** stating therein that, CTS NO 10600 was purchased by them from Mr. Shriram Govardhandas Agrwal and Mr. Mahendra Rameshwar Agrwal.

The CEO and D.W.O. were again served with notices /summons OW. No.482/2/1 and 2/2/ **(P.3526)** and he did not file reply.

The CEO was again served with the personal notice /summons OW. No.489 dt. 23-12-2009 (**P.3527**) calling him upon to make the statement on 30-12-2009 and he did not file the reply.

**OBSERVATION OF COMMISSION**:-

The point is whether CTS No.10599 and 10600 are the part of Sy.No.233 or otherwise. In this connection the T.L.R. Jalna gave a reply (**P.3506**) stating therein categorically that, both of these CTS are from Sy.No.233 which is mentioned in the inquiry register. He has produced the copy of inquiry register wherein Sy.No.233 is stated against these plots (P**. 3528)**. The Chief Officer Municipal Council Jalna filed a reply (**P.3508**) and firstly stated that, Mr. A.P.Bokan Survey Officer, submitted a report stating that, the construction being carried on these plots was illegal and accordingly the notice was served against the concern. The spot panchnama and the report Officer Bokan are **(P.3508 A-B).** The Chief Officer further stated that the complainant Naimkhan informed that, the permission is granted to Mr. Runwal Brothers vide O.W.No.3150 dated 26-5-2009 **(P.3508)**. The Chief Officer then stated that, the permission was granted to concern for making the construction however subsequently the said work was stayed vide O.W.No.5012 dated 24-7-2009. From this it appears that, the Municipal Council Jalna is also not firm and shure as regards the title on these plots. Still the Municipal Council was not afraid of giving permission for construction. As a matter of fact the Municipal Council is expected to verify the title deeds and other relevant record while granting permission for construction. An act of Municipal Council in giving permission to Mr. Runwal was rather high handed or was involving some malafides, having interest of some mischievous elements. **The independent authority appointed by Government in view of such matter may conduct necessary inquiry in the matter with notice to the CEO & DWO Wakf and Municipal Council. The CEO & DWO shall keep close watch on such enquiry, and shall take the immediate action as and when necessary/required.**

Smt.Kamlabai and other filed the reply (**P-3512**) and stated that, the plot CTS No.10599 was purchased by Indarchand from Municipal Council Jalna through the public auction. The sale deed of this transaction is not produced on record. They then stated that, CTS No.10600 was purchased by them from Shri Shriram Gowardandas Agrawal under the sale deed dated 17-10-2001 (**P. 3518**). The mutation entry was recorded by City Survey Jalna in his record (**P.3525**). On making the perusal of this document I found that, Mr.Sriram Govardandas purchased this plot in the public auction conducted by the Municipal Council Jalna.

Point arises as to how the Municipal Council Jalna could auction it when these plots were the Wakf of Abbasiya Masjid Jalna.

I may mention that, there is a clear entry of this land in Govt. Gazette maintained for the Wakf properties (**P 3530).** Not only this but the Pathak committee also made a mention in its report that this land is notified as Inam land, and also there is a entry in 7 x 12 extract to that effect. The Pathak Committee also made a categorical statement that though the Municipal Council Jalna was specifically called to produce the title deeds of these plots/land, it did not produce it. Still as per the Pathak Committee report, the Municipal Council Jalna transferred the plots out of this land by public auction. From this I have come to the conclusion that S.No. 233 is a Wakf property of Abbasiya Masjid Jalna, and neither Municipal Council Jalna nor anybody else, except the Wakf Board can make any dealing of it. The Pathak committee Report has also got a mention that Municipal council Jalna sold the plots out of this land by holding auction. **The Municipal Council Jalna appears to be responsible for the illegal sale of the plots.** Still it is necessary to issue fresh summons to Municipal Council Jalna asking as to in what capacity the plots were sold by public auction, out of Sy.No.233.

The summons O.W.No. 59-60/2010 was served on Chief Officer, Jalna Municipal Jalna **(P 3531).**

The CEO Municipal Council Jalna ignored the aforesaid summonses altogether, and this indicate the malafides committed by it.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.67.**

**REPORT**

**COMPLAINT NO. 2/2007**

**By Mr. Nisar Ahmed s/o Mohd. Noor r/o Jalna.**

**KABARSTHAN GARIBSHAH**

**BAZAR,JALNA.**

**DETAILS OF THE PROPERTIES** :-

C.T.S. No.6861, Sheet No.51 of Jalna is a Wakf of Kabarsthan.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant (**P.3650-3651**) stated that, the aforesaid site is burial ground wherein his father as well uncle were buried in 2003-2006. He alleged that, some miscreants encroached on the site of Kabarsthan and they are erecting the sheds thereon. So also they have put the waste material thereon. Because of this his feeling are hurted. The copy of the certificate issued by the D.I.L.R. Aurangabad (**P.3652**), the copy of Gazette (Produced by the D.W.O Jalna)(**P.3653**) are produced.

**NOTICES TO THE PARTIES:-**

The complainant was called upon to furnish the names and address who committed enrochment on Kabarsthan vide this office notice O.W.No.270/2008 dt. 31-10-2008 (**P.3654**) and though he appeared in this office severally he did not their to give the names.

The summons O.W.No.246/2/1 dt. 10-6-2009 was served on CEO (**P.3655**) calling him upon to make statement on 30-6-2009 and he did not respond.

The summons O.W.No.253/2/1 dt. 7-7-2009 was served on CEO (**P.3656**) calling him upon to make statement on 27-7-2009 and he did not respond.

The personal summons O.W.No.361/09 dt. 19-9-2009 was served on CEO Mr. S.S.Ali Quadari (**P.3657**) calling him upon to make statement on 29-9-2009 and he did not respond.

The proclamation O.W.No.190/10 dt. 17-4-2010 was served on CEO Mr. S.S.Ali Quadari (**P.3658**) calling him upon to make statement on 26-4-2010 and he did not respond.

The summons O.W.No.246/2/2 dt. 10-6-2009 was served on the D.W.O. Jalna (**P.3655**) calling him upon to make statement on 30-6-2009 and he did not response.

The summons O.W.No.253/2/2 dt. 7-7-2009 was served on the D.W.O. Jalna (**P.3656**) calling him upon to make statement on 27-7-2009 and he did not response.

The summons O.W.No.191/2/1 dt. 17-4-2010 was served on Mr. Shaikh Munir the then D.W.O. Jalna (**P.3659**) calling him upon to make statement on 26-4-2010 and he filed reply on 14-5-2010 (**P.3660-3661**)

The summons O.W.No.191/2/2 dt. 17-4-2010 was served on Mr. Safique Ahmed the D.W.O. Jalna (**P.3659**) calling him upon to make statement on 26-4-2010 and he forwarded the aforesaid reply (**P-3660**) with his letter nil (**P.3662**).

**OBSERVATION OF COMMISSION**:-

The D.W.O stated that, the site of Kabarsthan measures 2000x1500 Sq. feets and as many as 93 tenants are there since prior to 1975 and they are paying the rent to the Wakf Board. He further stated that, the site adm. 15x20 is allotted to one Tausiqu Ahmed under the order of the CEO dated 10-11-2008 (**P.3663**) and the permission is given to him to make the construction thereon. The Board is getting the rent of Rs. 9000/- p.a. i.e. Rs.750/- p.m. The contention the D.W.O. is supported by the documents. The agreement of lease appears to be for 11 months and point is whether this transaction would be legal. The agreement of lease appears to be for 11 months. Here the agreement of lease was entered into and executed by the Wakf Board. As against this if rule 25 of Maharashtra Wakf rules 2003 is read in the proper spirt it appears that, (1) the application for lease is to be moved by the Mutwalli in Form AL. (2) The Mutwalli shall examine it and shall place it before the Committee of Wakf for decision (3) The Mutwalli shall forward the application to the Board of Wakf for decision and (4) the Board shall take the decision thereon. Rule 26 then provides that after getting the sanction from the Wakf Board under rule 25, the Mutwalli is to enter a lease agreement in form No.AM and it shall be registered. It is true that, the resolution of Board is not necessary for lease below 11 months, however the aforesaid legal formalities are mandatory and lastly the agreement of lease is to be entered into by the Mutwalli and not by the Wakf Board. Here it appears that, the agreement of lease was entered into by the Wakf Board and that was against the statutory provision of law and this smells the dealing in the matter by the CEO of the Wakf.

The summons O.W. No.334/2/1 and 334/2/2 dated 8-7-2010 (**P-3663-A**) was served on the CEO Mr. S.S.Ali Quadari and D.W.O. Jalna Mr. Shafiq Ahmed calling them upon as to whether the **Function Hall** was being constructed on this site and whether the provisions of Section 32 (2) (j) were followed by the Board. The D.W.O. Jalna submitted application (**P.3663-B**) and sought adjournment. Lastly he filed **cryptic reply** dated 7-8-2010 (**P.3663-C**) admitting therein the progress in construction on this site that too without any permission of the Wakf Board. He did not give the detailed particulars as were sought in the summon. As a matter of fact the copy of the invitation letter (**P.3663-D**) indicate that, the Function Hall is being constructed by the Assistance of M.L.A. fund. When such is the matter the Wakf Board and specially CEO and DWO should have raised objection against the construction of function hall, the legal procedure being not followed. It is true that, the Wakf property is being developed without any financial implications against the Wakf Board. However tomorrow either the M.L.A. or some other person on his behalf may claim rights on the property and may create the legal complication. The CEO and DWO therefore were required to be alert and were required to take the

precaution to protect the rights of the Wakf as well as rights of the Mutwalli. However it appears that, the CEO and DWO have shut their eyes may be deliberate and also may be for consideration at the cost of the rights of the Wakf are being Jeopardized. **The CEO Wakf Mr. S.S.Ali Quadari and D.W.O. Jalna Mr. Shafiq Ahmed as well the then Mr. Shaikh Munir are responsible for this illegalities.**

The complainant again filed a separate application on 18-6-2010 (**P.3663-E-F**) reiterating his allegation and further stating that he was called in Sadar Bazar Police Station Jalna on 24-1-2010 at 8 O'clock and his signature were obtained on blank papers. If it may be true this was obviously the highhanded action of the police department against a poor person, that too a person who is interested to protect of Wakf property. As a matter of fact such person deserves a Police Protection. However here the things are going all together contrast.

The Board may take the suitable action in the matter so that the property of the Wakf is protected and the claim is not made by any third person.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.68.**

**REPORT**

**COMPLAINT NO. 82/2010.**

Mr.Sayed Kareem s/o Sayed Ahmed Saudagar r/o Aurangabad.

**MOTIKARANJA MASJID AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

C.T.S. No.8276 adm. 319.4 Sq.Mtrs. is the Wakf property of Masjid Moti-karanja Aurangabad.

**NATURE OF TRANSACTION** :-

Allotment of the plot to Mr. Raza Ali Shah by superseding the claim of the complainant is the grievance in this complaint. According to complainant he submitted application for allotment of this plot on 12-9-2008 (**P.3701**) ,for running the Madarsa of Dini Talim. As against this Raza Ali Shah submitted an application on 30-3-2009 (**P.3702**) i.e. much later. Despite the fact that, the complainant has got a priority of claim, the plot has been allotted to Mr. Raza Ali Shah under the order dated 4-6-2009 (**P.3703**). The complainant therefore filed a complaint before this Commission on 30-1-2010 (**P.3704-3707**) praying to make the inquiry in the matter.

**NOTICES TO THE PARTIES:-**

The CEO was served with the summons O.W.No.72/2/1 dated 10-2-2010 (**P.3708**) calling him upon to make statement on 18-2-2010.

The D.W.O. Aurangabad was served with the summons O.W.No.72/2/2 dated 10-2-2010 (**P.3708**) calling him upon to make statement on 18-2-2010. The DWO Aurangabad submitted application for adjournment on 18-2-2010 to file reply (**P.3708-A**) and thereafter he did not attend.

There being no response to the aforesaid summons the CEO Mr. S.S.Ali Quadari was served personally in his name with the Summon O.W. No.192/2/1 dated 17-4-2010 (**P.3709**) calling him upon to make the statement on 26-4-2010.

There being no response to the aforesaid summons the D.W.O. Aurangabad Mr. Munirkhan Pathan was served personally in his name with the Summon O.W. No.192/2/2 dated 17-4-2010 (**P.3709**) calling him upon to make the statement on 26-4-2010. The CEO filed reply on 31-5-2010 (**P.3710**).

**OBSERVATION OF COMMISSION**:-

The CEO admitted in his reply (**P-3710**) the allotment of the plot No.8276 to Mr Raza Ali Shah under the agreement (**P-3711-3713**) on rent of Rs. 1600/- p.m. plus Rs. 150000/- as donation to the wakf Board. Originally the plot was in possession of one Mr. Nandram Bhagwandas Kaushalye. Mr Raza obtained possession from him under the agreement dt 30-3-2009(**P-3713-A**). On the same day he submitted application to the Wakf Board (**P 3702**) The CEO Wakf passed the order 8-4-2009 and directed the DWO to verify the

possession, (**P-3714**). In turn the DWO submitted the report **very promptly** on 16-4-2009 (**P -3715**) stating that, Mr. Raza Ali is in possession of the property.

Thereupon the CEO passed the order on 4-6-2009 (**P-3703** ) and allotted the plot to Mr. Raza Ali, who in turn executed the agreement on 3-6- 2009 (**P.3711-3713**) for a period of 11 months on payment of Rs. 1600 p.m. and the donation of Rs. 150000/-.

Significant fact is that the complainant filed application for this plot to CEO Wakf on 12-9-2008 (**P-3701**) and made complaints on 6-12-2008 (**P-3716**) and thereafter on18-12-2008 (**P-3717**), when he learnt that, the plot was going to be allotted to some other person. Mr. Raza Ali filed an application on 30-3-2009 (P.**3702**) i.e., much latter. Significantly the CEO did not consider the priority of the claim .The principle of **"Might is Right"** was applied. The **money power** played a major role. That appears to be the reason for passing the arbitrary order. The CEO was specially asked by the commission in the summons (**P 3708**)

> Whether reasoned order was passed by you for issuing the order dated 4-6-2009 of allotment of this plot to Mr. Raza Ali Shah and what were the grounds which weighed more infavour of Mr. Raza Ali ?

and the CEO did not answer this question. Significantly the DWO did not file any reply to the summons though he claimed timed (**P.3718**).

It appears that, Mr. Raza Ali was capable to get vacant possession from the earlier tenant and also was capable to make a forcible possession and he succeeded in such attempt, by superseding the claim of the complainant, which was much prior in time. **The CEO stated that the purpose to allot the plot to Mr. Raza was to make sound financial position of the Wakf. This will be against the principle of the Wakf. The main purpose of the donors in creating the Wakf is to uplift the poor, by giving the assistance.**

The CEO then stated that the complainant applied on 6-12-2008, but the plot could not be allotted to him, he being not in possession of the plot. That will mean, that the CEO wanted to say that first one should commit encroachment on the Wakf property, and get himself qualified for allotment of the plot. This also will be unacceptable to the Wakf. The allotment of the plot to Mr. Raza Ali by the CEO appears to be most suspicious. The D.W.O. Mr. Munirkhan Pathan who is ordinarily noticed by the Commission to be negligent person, acted very promptly in this matter. The CEO passed the order on 8- 4-2009 calling report of the DWO and the DWO submitted report very promptly on 16-4-2009. **Such prompt action by the CEO within period of 3 months i.e. from 30-9-2009 (P.3702) (date of application by Raza Ali ) to 4-6-2009 (P.3703) (date of order of CEO ) as well the D.W.O. within 8 days is very suspicious and it smells some dealing in the transaction. Mr.S.S.Ali Quadari the CEO and Mr. Munirkhan Pathan the D.W.O appears to be responsible in this transaction.**

The agreement of lease appears to be for 11 months. The CEO stated in his reply (**P-3710**) that the transaction being for 11 months, compliance of section 32(2) (j) of the Wakf Act was not necessary. The point is whether this transaction would be legal. Here the agreement of lease was entered into and executed by the Wakf Board. As against this if rule 25 of Maharashtra Wakf rules 2003 is read in the proper spirt it appears that, (1) the application for lease is to be moved by the Mutwalli in Form AL. (2) The Mutwalli shall examine it and shall place it before the Committee of Wakf for decision (3) The Mutwalli shall forward the application to the Board of Wakf for decision and (4) the Board shall take the decision thereon. Rule 26 then provides that after getting the sanction from the Wakf Board under rule 25, the Mutwalli is to enter into a lease agreement in form No.AM and it shall be registered. It is true that, the resolution of Board is not necessary for lease below 11 months, however the aforesaid legal formalities are mandatory and lastly the agreement of lease is to be entered into by the Mutwalli and not by the Wakf Board. Here it appears that, the agreement of lease was entered into by the Wakf Board and that was against the statutory provision of law and this smells the dealing in the matter by the CEO of the Wakf.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.69**

**REPORT**

**COMPLAINT NO. 94/2010**

Complaint by Mr. Hameed Khan s/o Ameen Khan

R/o Kadegaon Ahmednagar.

**DARGAH MADARSHA PEER.**

**DETAILS OF THE PROPERTIES** :-

Sy.No.289-Pratibandi No.905 adm. 33 A. 34 G. situated at Village Aadgaon Tq. & Dist. Nashik appears a Wakf for Dargah Madarsha Peer.

**NATURE OF TRANSACTION** :-

The complainant Mr. Hameedkhan filed complaint (**P.3775**) with documents (**P.3776- 3796**) alleging that, the land Pratibandi No.905 adm. 33 A. 34 G. of village Aadgaon Tq. & Dist. Nashik is a Wakf land in the name of Yekalsha s/o Imamsha Fakir (For Dargah Madarsha Peer) and presently the construction is going on by one Motiyan Builders on this site.

**NOTICES TO THE PARTIES:-**

The CEO was served with the summons O.W.No.296/7/6 dated 1-6-2010 (**P.3797**) calling him upon to make statement on 15-6-2010 and he did not file reply.

The D.W.O. Nashik was served with the summons O.W.No.296/7/7 dated 1-6-2010 (**P.3797**) calling him upon to make statement on 15-6-2010 and he did not file reply.

Mr. Vinod Surana, Mr. Santosh N. Motiyan, Mr. Rajkumar G. Ladniya, Mr. Vinya P.Surana and Mr. Suyog Jain r/o Goldren Dreams Plot No.D-5, M.I.D.C. Chikalthana, Aurangabad were served with summons O.W.No.296/7/1 to 296/7/5 dt. 1-6-2010 and Mr. Ishwar K. Jadhav Advocate filed reply signed by incumbent no.2 Mr. Santosh Shantilal Muthiyan dt. 15-6-2010 (**P.3798-3810**) alongwith the list of documents (**P.3811-3812**) and another list (**P.3813-3814**).

**NOTE**:-(1) The documents being large in number, only relevant would be referred while making the observation.

(2) The complainant had been to this office 19th June 2010. He perused the reply as well the documents and he made Submissions by way of arguments.

**OBSERVATION OF COMMISSION**:-

The respondent Santosh stated that, **Pratibandi No.905 is equal to Sy.No.289 and it adm. 33 A. 34 G.** This tallies with the complaint of the Complainant about the **Inam Property.**

As against this the respondent Santosh added that, **Sy.No.905 is Pratibandi No.318 and it adm. 31 A. 36 G.** which is **owned and possess by him (Santosh).**

The figures 905 in both of these properties is common and that is a matter of confusion.

After having a overall consideration of the matter I found that, the Inam land Sy.No.289 (Pratibandi No.905) is altogether different from Sy.No.905 (Pratibandi No.318). The respondent Santosh has produced the documents from Revenue Record to enlighten this controversy.

Firstly I will consider the matter in respect of the Inam property, that is, Pratibandi No.905 (in short P.B.) Sy.No.289. According to respondent Santosh, the Inam property P.B.No.905 adm. 33 A. 34 G. and it is situated at Jangli Bagh Aadgaon Tq. & Dist. Nashik (M.S.) As avered in the reply, as per the communication of the Secretary of Revenue and Forest Department Mantralaya Mumbai dated 29-10-2005, addressed to the Chairman Wakf Board, the Inam of this land was abolished, (Khalsa) and this has been supported by the Mutation Entry No. 438 (P.3815-**3824**-3726) . The respondent produced extract of register from a Director Land Records Mumbai wherein there is specific mention that Sy.No.289 is Inam standing in the name of Yeklashah Imamshah Fakir (**P. 3827-3828**). The extract of Prtibook has also got a mention of Sy.No.289, Chalta No.905 (**P.3828-3830**). The copy of Prtibook further has got a specific mention of Sy.No.289 Maji No.905 standing in the name of Yeklalsha Imamshah Fakir as a Inamdar. (**P.3831**). Four boundaries of this land are also given (**P.3832**). The 7/12 extract of Sy.No.289 for 1942-43 to upto 1975-76 (**P.3833-3845**) display that Sy.No.289 went to Rajendra family and was subsequent transferred to several other persons.

It appears that, Yeklalshah Imamshah mortgaged P.B.No.905 to Vinyak Morobhau Rajendra under Mortgage deed dated 1st May 1873 and this is supported by the document (**P.3846-3847**). The land as such went in the family of Rajendra which is further supported by the 7/12 extract referred to above.

It appears that Morobhau Vinayak, Govind Vinayak and others, of Rajendra family filed a suit No.4/1889 and subsequently Darkhast No.266/1890 and this land was declared in the name of Rajendra family as purchaser. The sale certificate was accordingly issued Registered on 17-11-1890 by the Court (**P-3847 AB**) and it was registered.

The respondent has also produced the copy of Inam Patrak of entire Inam Lands of Nashik District. First two pages and intervening one page only are numbered, which disclosed that, Sy.No.289 is a Inam Land (**P.3847C-3847E**)

**These documents sufficiently established that, pratiband No.905 equal to Sy.No.289 adm. 33 A. 34 G. was the Inam land.**

Now I consider the record in respect of Sy.No.905 Pratibandi No.318. This land adm. 31 A. 36 G. This land was initially in the name of Ghuge Family. There are several documents to support this fact (**P.3848-3857**). This land then was transferred to Mr. S.S. Sikhand, then to Gangadhar Pandurang Mahajan, Chothamal Batija, Aba Sonawane etc. and lastly it came to Santosh incumbent no.2 and this has been supported by (**P.3858-3883**). The land was given to M/s Nakshtra Infracture Pvt. Ltd., through the Director Santosh Muthiyan (**P. 3883**). These documents amply support the contention that, the land Sy.No.905 is private land having no concern with Inam. I did no where come across with a mention of "Inam" in the record of this land.

It appears that, subsequently there was a dispute in between Santosh Mothiyan and others at one side and the Inamdars at the other side and lastly the Inamdar consented and executed the document in favour of the other party saying that, they have no right over Sy.No.905. (**P.3884-3893**).

In substance, the land Sy.No.905 is not Inam and it is all together different than, Pratibandi no.905. The complaint contents no substance and so it is filed.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.70**

**REPORT**

**COMPLAINT NO. 43/2008 and 59/2009**

**Currimbhoy Ebrahimbboy Kohja Orphanage**

**CURRIMBHOY EBRAHIMBBOY KOHJA ORPHANAGE,**

**DETAILS OF THE PROPERTIES** :-

The property of Malbar Hill Mumbai was given to the trust as stated in the order dated 27-8-2002. **(P3554)**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The property admeasuring 4532.39 Sq. mtr. = 48768.51 Sq.feet situated at Malbar Hill Mumbai is a subject matter of this Complaint. Mr. Anees Ahmed filed a complaint (**P.1 to 4**). The State Government of Maharashtra (L&J.D.) also forwarded a letter No.CAH 2203/(101)/ka-1 dated 14-8-2008 (**P.3900**) enclosed with paper cuttings and copies of correspondence (**P.3901-3907**) alleging therein that, the aforesaid property was transferred at very low price (कवडीमोल दराने विकल्याबद्दल ). It appears from the record that, it was transferred for Rs. 21,05,00,000/- ( Rupees twenty one crores five lacs only). This transaction was criticized by the media by giving publicity in the newspaper.

**NOTICES TO THE PARTIES:-**

The CEO Board of Wakf was served with the notice/letter O.W.No.148/2008 dated 10-10-2008 calling him upon to make the statement .(**P 3908**) He did not file reply.

The CEO Board of Wakf was further served with the summons O.W.No.64/2009 dated 1-4-2009 calling him upon to make the statement on 24-4-2009. (**P.3909-3910**)

There being no response the CEO Board of Wakf was further served with the proclamation O.W.No.164/2009 dated 29-4-2009 calling him upon to make the statement on 7-5-2009. (**P.3911**). **He filed cryptic reply** dated 12-5-2009 (**P.3912-3913**) admitting the transaction. He further added that, the permission to transfer was granted on 27-8-2002 by the Joint Charity Commissioner and the Board of Wakf ratified it in the resolution no.21 dated 9-3-2005.

The D.W.O. Mumbai was served with the summons O.W.No.67/2009 dated 1-4-2009 calling him upon to make the statement on 24-4-2009. (**P.3914**). He did not file reply.

Mr. M.Y.Patel the then CEO of Wakf was served with the notice O.W.No.370/2009 dated 30-9-2009 calling him upon to make the statement on 12-10-2009 (**P.3915**). His advocate Madam B.A. Jamal filed application dated 7-10-2009 (**P.3916**), 20-10-2009 (**P.3917**) and 14-11-2009 (**P.3918**). The matter was lastly fixed on 18-11-2009. The reply however is not filed.

The copy of the summons bearing O.W. No.276/3/3 dated 29-5-2010 was served on the CEO Wakf calling him upon to produce the resolution dated 9-3-2005 together with the other documents and information (**P.3944-A**)

**OBSERVATION OF COMMISSION**:-

The CEO Wakf has produced the copy of the order dated 27-8-2002 (**P.3920-3931)** passed by the Joint Charity Commissioner Mumbai granting the permission to transfer the land for Rs. 21,05,00,000/-. The sale deed thereafter was executed on 21-11-2002 by the Trustee of Currimbhoy Ebrahimbboy Khoja Orphanage (**P.3932-3942).**

In response to the summons O.W. No.276/3/3 dated 29-5-2010 (**P-3944-A**) the CEO Wakf has produced the copy of the **resolution no.21 dated 9-3-2005** alongwith the earlier **resolution dated 8-10-2004** (**P.3943-3944**). **Both of it were in violation S 32 (2) (j) of the Wakf Act, since they were passed by only 5 members including Chairman, out of total 9 members, whereas the resolutions were expected to be passed by 2/3rd majority**. On making perusal I found that, Mr. Haroon Adam Solkar the member and Mr.M.Y.Patel the then CEO of Wakf were satisfied with the fact, that the said transaction was beneficial to the Orphanage. The resolution further state that as per resolution no.20 dated 18-10-2004 Mr. Haroon Solkar was asked to mention the matter in the meeting and he persuaded the matter (**P 3946**). I have mentioned this fact just to emphasize that, these two person had taken active part in passing the resolution.

I am told that, the question of validity of this transaction was involved before the Hon'ble High Court and after its disposal, it went to Hon'ble Supreme Court at Delhi, and presently pending before Hon'ble High Court in **WP No 3022/2005**. As a matter of fact the **CEO Wakf Mr. S.S.Ali Quadari was under obligation to make the categorical statement giving details of the intervening period. However, he did not make any statement about it which is very *cryptic* ( P 3912-3913).**

**The major papers were made available to me by the Wakf Board on 13th may 2010 and so I have been able to follow the things, though the enetial summons was issued on 10-10-2008 (P. 3908)**

The Trustee filed **WP No 3022/2005** in the High Court Bombay and claimed to quash the Circular dt 24th July 2003 issued by the Charity Commissioner where in the Charity commissioner issued directions that the Wakf registered as public trusts should not be tried under the Public Trust Act. The trustee further claimed for the prohibitory orders to be issued against State Govt., CEO Wakf, and the Charity commissioner from taking any steps under the wakf Act. **The petitioner claimed that the property is not a Wakf but it is purely–simply a trust.**

**Since the WP is pending, instead of expressing the opinion I will simply make the factual statement.**

Consequent upon such events this office issued summons bearing O.W.No.276/3/1 dt. 29-5-2010 to the Trust Karimbhoi Ibrahim Khoja and O.W.No.276/3/2 to Antilia Commercial pvt. Ltd. Calling them upon to

file statement on 15-6-2010 on particular points referred to therein (**3944-A**). Mr. Mukesh S. Advocate appeared on 11-6-2010 and filed application for adjournment as well as the power (**3944 B-C**). The matter was adjourned 22-6-2010 when **Mr. Milind Sathe Adv.** appeared and filed the **reply** with documents (**P 3945-4107**) and he advanced arguments on behalf of Karimbhai Trust. **Mr. A.S. Dayal Advocate** appeared and filed **reply** with documents (**P 4108-4229**) and advanced arguments on behalf of Anatolia Commercial Pvt. Ltd.

**ARGUMENTS:-(Dt. 22-6-2010)**

Mr. Sathe Adv. advanced argument on the following points :-

1) The Trust came in existence in the year 1896 and it was registered on 5-11-1952 under the Bombay Public Trust Act 1952 and the Wakf Board did not raise any objection till the year 2003 when the list of Wakf was published and the property of this Trust was inlisted therein.

2) The property of the trust, as per the constitution of the trust, was vested in the trustees who were empowered to sale and repurchase for the trust.

3) The Wakf Board had taken the action by issuing the notice dated 22-4-2004 (**P 4057**) (and thereafter on 3-5-2007) for the first time and that was challenged by filing Suit No. 60/2004(**P 4074**) before the Wakf Tribunal at Aurangabad wherein the decision was specifically sought on the point whether this is Wakf or Trust.

4) On the basis of the proposal by the trust, which was without prejudice to the legal rights the parties, the matter came to the amicable settlement. The Wakf Board passed resolution No.21 dated 9-3-2005 (**P 3943 & 4088**) specifically stating that, the sale of the property was necessary to achieve the object of the trust, and the consideration received by the trust was reasonable . It was then resolved that, the trust shall pay of Rs. 16 lakhs in lum sum and shall withdraw the suit.

5) Consequent upon such resolution of the Board, an amount of Rs. 16 lakhs was paid to the Board on 22-3-2005 (**P 4090**) and the suit was disposed as withdrawn, on the basis of joint pursis (**P 4091-4092**).

6) According to Mr. Sathe, had the Wakf Board not passed the resolution in the aforesaid terms and had not accepted Rs. 16 lakhs, the suit bearing 60/2004 would have been decided on merits and the crucial issue as to whether this is trust or wakf would have been finally settled.

7) Mr. Sathe then submitted that, and amount of Rs. 16 lakhs was paid by reserving rights by stating "without prejudice to the rights". The trust did not accept the jurisdiction and implication of the Wakf Act 1995 even impliedly by making a payment of Rs. 16 lakhs.

8) Despite it the Wakf Board again issued a notice dated 3-5-2007 which is verbatim to the notice dated 22-4-2004 and if at all the question of application of estoppel arises that, would be applicable against the Wakf Board and not against the trust.

9) Mr. Dayal the learned Counsel for Anatolia Commercial Pvt. Ltd. argued that, the notice dated 22-4-2004 was withdrawn by the Wakf Board and by issuing the communication dated 23-3-2005 (**P 4090**) under the signature of the CEO Mr. M.Y.Patel the suit was also withdrawn under the joint pursis (**P 4091**)impliedly admiting the fact that, this is trust and not Wakf. Mr. Dayal then invited my attention to the provision of section 26 which direct that if any decision of the Board is illegal the CEO of Wakf is empowered, to place the matter before the Board for reconsideration and thereafter to the State Govt. Here the CEO did not take such action meaning thereby, the status of the Karimbhai Institution as a "Trust" and not as "Wakf", was accepted by the Board.

I proceed to appreciate the controversial points in such light.

The trust/Wakf came in existence on 27-6-1896 under the written constitution. for "**providing maintenance and education to the orphan/destitute boys of Khoja community"**. The constitution also made a detailed statement as regards the dedication of property to the trust, the availability of the funds and its expense. The rules were framed to regulate the constitution, and clause 5 thereof provided that – **"the managing committee shall appoint a Religious Instructor, who shall teach the Koran and the general and fundamental principles of the Mohammadan religion to the pupils of the Orphanage".** However **there is no specific mention therein in express words that the wakf was created as it is about trust**. I will consider, the legal sense behind 'wakf'.

The term 'Wakf' is defined as :

"Wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Muslim Law as pious, religious or Charitable and includes----x".

I minutely went through the constitution of this 'trust' and I found that, the property was permanently dedicated to the Wakf/ Trust having no reservation for self utility, of course with powers to sale and repurchase the property for the benefit of the trust.

It is to be mentioned that, initially in 1896 the document was registered indicating in express terms to register the 'trust' under the Bombay Public Trust Act in 1952 and it was enlisted as a Wakf in 2003 for the first time. Since the Wakf Act was not existing in the year 1952, the parties registered it as a Trust. Despite such facts the point is whether the nature of the dedication would be any way changed, if really the wakf was to be registered. ? S. 2 of the Wakf Act 1995 makes it clear that the dedication of the property even before commencement of this Act shall be governed by this Act, meaning thereby that registration or non registration of the property as Wakf under the Wakf Act, would not make any effect.

This property was transferred to Anatolia under the sale deed dated 21-11-2002 without obtaining permission of the Wakf Board. Section 32(2) (j) of the Wakf Act 1995 provides that, for transfer of any Wakf property the resolution of the Wakf Board passed by 2/3$^{rd}$ Majority is must, to render validity to such transaction. Here neither permission of the Wakf Board was sought nor resolution passed and so the point is

whether this transaction would be valid? This would the point to be considered, if the dedication is held to be a 'wakf'.

Since the Charity Commissioner did not possess any powers to deal with the Wakf property vide section 112 (3) of the Wakf Act, the point is whether the order dated 27-8-2002 passed by the Asstt. Charity Commissioner Mumbai to permit the sale of the property would possess any validity?

The action taken by the Wakf Board was challenged in suit No.60/2004 before the Wakf Tribunal, (**P 4074** ) and later on it came to the terms of amicable settlement by paying Rs.16,00,000/- to the Wakf Board (**P 4089, 4090, 4091**) on the strength of the resolution dt 9-3-2005 (**P 4088**). The point is whether the transaction of sale would be validly regularized by such subsequent act of the Wakf Board?. Section 51 of the Wakf Act provide in clear terms that, the sale, gift, exchange or mortgage is void if it is effected without the **prior sanction** of the Wakf Board. Obviously there was no sanction to this transaction before it was entered. This point also would arise, **if the dedication is held to be a 'wakf'.**

It appears that, the vendor and vendee raised objection that, the registration of this institution was a **"Trust"** under the public trust act and not a **"Wakf"** under the Wakf Act 1995. The answer to this question would dependent on the interpretation of the deed of constitution of the institution. If the constitution is considered minutely and in its appropriate spirit, what it would mean whether, the said party had intention to create the Wakf or a public Trust? Here the property was permanently donated for the Charitable institution. Of course with powers to transfer the property which was against the concept of Wakf,. The orphan children of the community were to be maintained and to be educated that too, the religious education i.e. the knowledge of holy Quran was to be departed to such children-boys. Still the point is there is no mention of the word 'wakf' in the deed of constitution whereas there is express terms as 'trust.

The sale deed dated 21-11-2002 executed by the trustees of the Trust in favour of Anatolia Group was ratified by the Board of Wakf under the resolution dated 9-3-2005 (**P.4088**) and subsequently this resolution was confirmed under the separate resolution dated 28-4-2005. This fact has got two fold relevance firstly that, the Regular Civil Suit No. 60/2004 filed before the Wakf Tribunal was compromised by paying Rs. 16,00,000/- by Trustees to the Wakf Board. The point is whether the vendors and vendees surrendered themselves to the jurisdiction of the Wakf Act and now can they retract from their such words and act? Further point arises whether, the Wakf Board would be estopped from rechallanging the transaction of sale. Now whether both parties would be estopped from reverting back? and to say that, the institution was a trust and not a Wakf ?.

The second aspect of the matter is that, even if the Board of Wakf passed a resolution dated 9-3-2005 and confirmed it under the separate resolution dated 28-4-2005, whether such resolution would be rendered invalid and will they be competent to ratify the transaction of sale?. The reason for same is that, as per the provision of section 51 of the Wakf Act, the prior sanction of the Wakf Board is imperative and necessary for transfer of the Wakf property. The word "prior" is used in the statue with a particular significance and spirit. The property being not of a private person but being of public at large, the word prior is used in a particular perspective. Meaning thereby that, there shall be a resolution of the Wakf Board as provide u/s 32(2) (j) of the Wakf Act

1995 before entering into the transaction of transfer of the wakf property. In other words the transaction should be in broad day light and not in the dark. Here whether the cart was put before the horse/s? Whether this would be permissible by the law and so the aforesaid resolution would be

rendered without any effect and without any validity? Still whether the surrender of the vendors and vendees to the Wakf Act as result of the aforesaid resolution would carry it's effect, since the vendors acted by paying Rs. 16,00,000/- to the Wakf Board?

It is true that, the proposal dated 18-8-2007 was made by Anthelia Commercial Pvt. Ltd. for compromise by prefixing the words **"Without Prejudice**". (**P.4120**) The Currimbhoy Orphanage sent by post two communications firstly dated 15-10-2010 (**P 3944 D**)and secondly dated 1-11-2010 (**P 3944 E**) and emphasized that the payment of Rs. 16,00,000/- was without prejudice to his claim, that the Orphanance was simply a trust, and not a Wakf. The subsequent communication is enclosed alongwith the Xerox copies of HALSBURY'S Laws of England and the cases of **Superintendent V/s Pratap Rai reported in (1978)3 S.C.C.113** and the case of **Chairman V/s Reshmi reported in 2004 (2) S.C.C.663** wherein the phrase "without prejudice" has been elaborately discussed. I may reproduce here the material conclusions in the said authorities. It is concluded in the case of Superintendent V/s Pratap Rai that,

> *" The expression means (i) that the matter had not been decided on merits, and (ii) that fresh proceedings according to law were not barred".*
>
> *"The fact that no consequential order was passed by the appellate authority shows that he never intended to bar fresh adjudicatory proceedings according to principles of natural justice. It is true that the appellate authority did not expressly remand the matter, but the tenor and spirit of the order clearly shows that he intended that fresh proceedings should be started against the respondent after complying with the principles of natural justice".*
>
> *"The words import an understanding that if the negotiation fails, nothing that has passed shall be taken advantage of thereafter; so, if a defendant offers,*
>
> *'without prejudice', to pay half the claim, the plaintiff must not only rely on the offer as an admission of his having a right to some payment".*

The case of Chairman V/s Reshmi laid down rule that,

> *"What is the meaning of the words 'without prejudice'? I think they mean without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted a complete contract is established, and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one".*
>
> *"As a general principle, one who knowingly accepts the benefits of a contract or conveyance is stopped to deny the validity or binding effect*

*on him of such contract or conveyance".*

The meaning of the aforesaid phrase, in the light of the above principles would be that the matter is not finally decided and the issue is still open for the adjudication; the fresh proceedings would not be barred; it would further mean that the use of such phrase would operate to alter the old state of things and to establish the new one and such party would be stopped to deny the validity or the binding effect of the proposition made by him.

On perusing the papers I found that, the Trustee filed WP No 3022/2005 (**P 4203**) in the High Court Bombay and claimed to quash the Circular dt 24th July 2003 issued by the Charity Commissioner wherein the Charity commissioner issued directions that the Wakf registered as public trusts should not be tried under the Public Trust Act. The trustee further claimed for the prohibitory orders to be issued against State Govt., CEO Wakf, and the Charity commissioner from taking any steps under the wakf Act. The petitioner claimed that the property is not a Wakf but it is purely –simply a trust.

As far as submission of Mr. Sathe that, the property was vested in the trustees is concerned I minutely went through the constitution of the Trust and I did no where find that, the property was vested in the trustees. But as per Shedule B the management was to be vested in the managing committee the trustees were empowered to sell it, which was against the concept of Wakf. I may add that though the trustees were empowered to sell the property they were under obligation to repurchase in lieu of it.. The meaning would be that there was permanent dedication of the property for running the orphanage, the school and residential accommodation for them.Had it been the fact that, both the Acts i.e. B.P.Act and Wakf Act were promulgated simultaneously on one date, or the Wakf Act promulgated earlier to the B.P.T. Act and still the Institution was registered as a Trust, then there was no case for interpretation. But here the B.P.T. Act was enforced in 1952 and Wakf Act in 1954. The institution being attached with some of the statutory law either one or other, the point arises whether parties might have ignored to register it as a Wakf? though the Wakif was Muslim person and though the dedication was for religions, pious and charitable purpose? Still this would be a mere circumstance to support the wakf.

In view of the above factual observation, the point is whether though the institution was registered as Trust, that would mean that, it was simply a trust under the provision of Indian trust Act and not the Wakf under the provision Wakf Act 1995? The point is whether it was certainly a Wakf, being established with the object, to depart the religious education specially of Quran to the children, and secondly, some of the money , towards funds was raised by contribution from the general public? As stated above an amount of about Rs. 35,000/- was collected by contribution and then the property was purchased to create the institution. The point is whether, since the institution had a object to depart the education of holy Quaran and since the funds were raised also from contribution, the inference may be that it is a Wakf. ?

As it is reveled from the record, the deed of trust came into existence on 27-6-1896 (**P.3958.**) Trust was registered under B.P.T.Act on 5-11-1952. The property in question was acquired on 2-4-1957 (**P.3920**). In

this connection the contents of the trust deed may be taken into consideration so as to decide and appreciate the nature of the institution, either trust or Wakf. It is stated on first and second page of the trust deed dated 27-6-1896 that,

> "And whereas donations to the said charitable institutions aggregating to **the sum of Rs.35,951/- were made by and received from various gentleman belonging to the Khoja Mohammedan community which said amount was added to the said sum of Rs.55,000/- so as** aforesaid originally set apart by the said Currimbhoy and whereas investment were from time to time made out of the said money and whereas there are now in the hands of the trustees the money and securities specified in part –II of the said schedule A hereto annexed and whereas the said charitable institution has since date of its establishment being carried on in accordance with the rules and regulations framed in that, behalf --- and of the moneys and securities specified in part-I of the said schedule A **together with all donations and contributions which may hereafter from time to time be made** for the use and benefit of the said charitable institution (all which said moneys securities donations and contributions are hereinafter for the sake of brevity referred to as the trust money) and of the rents income and interest to be drive from the trust premises---."

In other words the trust had got the funds from pocket of the trustees as it appears, and also from the donors i.e. the general public of Khoja community. In this connection I went through the case of U.P.Sunni Central Board of Wakfs, appellant V/s Mazar Hassan and others respondents reported in **AIR 2001 S.C.3359** wherein it is held that,

> "One of the requirements for creation of the Wakf is that, property should be dedicated permanently by one professing Musalman faith and the purpose of dedication must be religious, pious, and charitable. However, it is not proper to take the view that, the dedication carries with it an idea of voluntary self-donation without any demand or appeal for the same and the subscription or donation made on appeal being made by people at large can not be taken to be the donation of property of permanent character which is essential ingredient of the donation of 'Wakf' under the Act. If a property is set apart for a definite purpose such property would become dedicated for a purpose. If out of the monies given by the general public a property is purchased for public purpose which is religious or charitable in character, it can not be said such property will lose the character of a Wakf"

If the contents of the trust deed referred to hereinabove are read and analyzed through the principle laid down hereinabove and through the circumstance that, the property was purchased from the money obtained through the donations of Khoza community i.e. Muslim people, the point is whether the nature of institution/property will constitute a Wakf? Still this would be a mere circumstance to support the wakf, as gainst the registration of 'trust' in clear terms.

**Mr.M.A. Aziz (Now deceased) the then Chairman of the Wakf, and Mr.M.Y.Patel the then CEO** appears to be responsible for the aforesaid illegality. Mr MY patel did not exercise powers u/s 26 of the Act **Equally Mr. S.S.Ali Quadri the then CEO Wakf is also responsible** for his cryptic reply (**P 3912**). He did not utter a single word therein, as regards the stand of the Board in the matter. On the contrary, in reply to the question " ***Whether the provisions u/s 32 (2) (j) S 51 & S 56 of the Wakf Act were followed as were required while entering in to the transaction of the aforesaid property/ies*** ?" he stated that "***the provisions of S. 32 (2) (j) of***

***the Wakf Act 1995 were not attracted in this matter***", meaning thereby that the property was/is not wakf. This is how, Mr. S.S.Ali Quadri the then CEO appears to have a ulterior motive, may be for his wrongful gain. His conduct, by making such statement, was exposed to be hostile to the wakf, specially when the Board of Wakf is consistently taking stand, that it is Wakf property.

Both the parties are having plus and minus points. The institution was registered as 'trust' in express terms in 1896 -and the Wakf Board had taken action in2003 for the first time,- where as there are mere circumstances having a remote implied meaning of Wakf. The trust was created by Khoja people, to some extent they are governed by Hindu Law, as against the Holy Quran was to be taught in orphans.The management of the trust was vested in the managing committee, which is against Wakf, prima-facie indicate it as a trust. The board also added as the notice dt. 22-4-2004 (**P 4057**) was withdrawn by it under the letter dt 23-3-2005 (**P 4090**) by passing a resolution dt 9- 3-2005 (**P 4088**) by accepting Rs. 1600000/- and the Regular Civil Suit No.60/2004 filed by the Trust in the Wakf Tribunal was withdrawn (**P 4091-4092**) at the suggestion of the Wakf Board, otherwise the suit would have been finally decided on merits, and the controvertial point would have been finally adjudicated. I may simply propose that both the parties are having plus and minus points and so they may come to the terms of amicable settlement, and may settle it, otherwise, the judicial process, which is now undertaken, may take long time for final adjudication, resulting the unnecessary lingering of the matter, for such long years. It appears that both the parties are having plus and minus points, and so such would be the proper solution.

**NOTE**: The representative of Antiliya Commercial Pvt LTD appeared before me personally 6-1-2011(**P 3944 F**) and filed additional statement in order to prove that Currimbhoy trust is not a Wakf, but it is a trust. I have already recorded my observations on this point. He produced the zerox copies of 2006 (13) S.C.C. 497, wherein there was a specific direction to give immovable property worth Rs.8000/- to Fatemabee and Maimunabee. AIR 1064 Mad. P.18, wherein benefits of school was available to the boys of muslim communities as well boys of other communities, 1963 (1) S.C.R. 469 wherein benefits of institution were available without distinction of religion caste or creed. Such being the facts of the cases, it was held the institution were secular trust and not a Wakf. There is no such term in the constitution of Currimbhoy trust. AIR 1944 Mad. 504, was pertaining to Kachimeman people. 1972 (2) S.C.C. 350 is also relating to the institution pertaining to Kachimeman having observetions and findings of Khoja community, and it was held that, the custmory rule of Hindu Law in respect of inherentence and succession are applicable to them. The consept of Wakf is the dedication by a person professing Islam as provided under S. 3(r)ofthe Wakf Act.

NOTE: Issued a summons bearing O.W.No.4/2/1 and 4/2/2 dated 7-1-2011, against the CEO and DWO Wakf Aurangabad calling them upon on 11-1-2011 to make statement in reply the Addl. Statement dated 15-10-2010 and 1-11-2010 sent by Mrs. Antiliya to this office. Non of them however appeared before this office (**P.4229**).

NOTE:- The representative of Antiliya Commercial Pvt LTD appeared before me 15-2-2011 and filed additional documents with statement **(P.4230-4245)** stating that, there were several transactions of the property/ies of Currimbhay Trust right from 1957 till the instant transaction of 2002 and the objection was never raised by the Wakf Board. In the light of it together with the points discussed above, there appears substance in the contension prima faice supporting my aforesaid conclusion that, there was a tust.

(**A.T.A.K.SHAIKH**)

*Commission*

**Sr.No.71.**

**REPORT**

**COMPLAINT NO. 89/2010**

**Complainant Mr. Hameedkhan**

**s/o Ameenkhan R/o Ahmednagar**

**PAREL MUMBAI**

**DETAILS OF THE PROPERTIES** :-

Sy.No.1/1814, Cadastral Sy.No.1299 and final plot no.1021 of Lower Parel Division, presently **Mahim**. (**P 4339**) is said to be Wakf Property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant filed a complaint (**P.4301**) along with the documents (**P.4302-4337**) alleging that, the aforesaid is a Wakf property and that, the concern land-record authorities be directed not take further mutation entries in respect of it. He also produced the documents in respect of details of the property (**P.4338-4340**). He gave addresses of the occupants of some portion of this site. (**P.4341-4344**)

**NOTICES TO THE PARTIES:-**

The CEO Mr. S.S.Ali Quadari, Board of Wakf was served with the notice O.W.No.297/8/7 dated 1-6-2010 calling him upon to make the statement on 15-6-2010 (**P. 4345**) He did not file reply.

The D.W.O. Mumbai Mr. Atique was served with the notice O.W.No.297/8/8 dated 1-6-2010 calling him upon to make the statement on 15-6-2010 (**P. 4345**) He did not file reply.

The CEO Mr. S.S.Ali Quadari , Board of Wakf was served with the notice O.W.No.306/5/1 dated 10-6-2010 calling him upon to make the statement on 24-6-2010 (**P 4346**) He did not file reply.

The D.W.O. Mumbai Mr. Atiqu was served with the notice O.W.No.306/5/5 dated 10-6-2010 calling him upon to make the statement on 24-6-2010 (**P 4346**) He did not file reply.

The CEO Mr. S.S.Ali Quadari , Board of Wakf was served with the notice O.W.No.307/7/6 dated 10-6-2010 calling him upon to make the statement on 24-6-2010 (**P 4347**) He did not file reply.

The D.W.O. Mumbai Mr. Atiqu was served with the notice O.W.No.307/7/7 dated 10-6-2010 calling him upon to make the statement on 24-6-2010 (**P 4347**) He did not file reply.

The CEO Mr. S.S.Ali Quadari , Board of Wakf was served with the notice O.W.No.308/8/7 dated 10-6-2010 calling him upon to make the statement on 24-6-2010 (**P 4348**) He did not file reply.

The D.W.O. Mumbai Mr. Atiqu was served with the notice O.W.No.308/8/8 dated 10-6-2010 calling him upon to make the statement on 24-6-2010 (**P4348**) He did not file reply.

The CEO Mr. S.S.Ali Quadari , Board of Wakf was served with the notice O.W.No.176/7/5 dated 31-3-2010 calling him upon to make the statement on 15-4-2010 (**P 4349**) He did not file reply.

The D.W.O. Mumbai Mr. Abdul Atiqu was served with the notice O.W.No.176/7/6 dated 31-3-2010 calling him upon to make the statement on 15-4-2010 (**P 4349**) He did not file reply.

The CEO Mr. S.S.Ali Quadari , Board of Wakf was served with the **Proclamation** O.W.No.205/10 dated 21-4-2010 calling him upon to make the statement on 28-4-2010 (**P 4350**) He did not file reply.

The CEO Mr. **S.S.Ali Quadari**, Board of Wakf was served with the order of **fine Rs.500/-** O.W.No.241/10 dated 4-5-2010 calling him upon to make the statement on 28-4-2010 (**P 4351**) He did not file reply.

Summons was sent by ordinary post to Mr.Jankiramdas Kiny, Wasudeo Kiny, Chhaganlal Mistri, Yogesh Chhaganlalg Mistri, Milind Shantabai, Shantaram Kadam bearing O.W.No.297/8/1 to 297/8/6 dt. 1-6-2010 (**P. 4345)** and they did not attend.

Summons was sent by ordinary post to M/s Sai Nirmla Developers, Vijay Dattaram Kadam, and R.T.Vijay Kadam all r/o Mumbai-1 bearing O.W.No. 306/5/1 to 306/5/3 dt. 10-6-2010 (**P.4346)** and they appeared on 24-6-2010 with power of Advocate (**P.4352**) and the application of adjournment (**P.4353-4354**) the matter was adjourned to 7-7-2010. Even that, day the application came to be filed for adjournment (**P.4355**). Lastly the reply was filed (**P.4356-4364**) with the documents (**P4365-4399**).

Summons was sent by ordinary post to Mr. Kuwar Shivram Narayan, Mr. Shuklaji Harinath Patel, Mr. Pramod Namdeo Gurav, Mr. Gokul Rachal Kalwar, Mr.Mahesh K. bearing O.W.No.307/7/1 to 307/7/5 dated 10-6-2010 calling them upon to file the statement 24-6-2010 and they did not attend (**P.4347**)

Summons was sent by ordinary post to Mr.Jankiramdas Kiny, Wasudeo Kiny, Chhaganlal Mistri, Yogesh Chhaganlalg Mistri, Milind Shantabai, Shantaram Kadam bearing O.W.No.308/8/1 to 308/8/6 dt. 10-6-2010 (**P.4348)** and they did not attend.

Summons was sent by ordinary post to Mr. Shaikh Guljar Muslim, Mr. Shaikh Hakeem Sk. Gujar, Mr. Shaikh Islam Sk. Guljar, and Mr. Shaikh Noor Ahmed s/o Sk.Jabbar bearing O.W. No.176/7/1 to 176/7/4 dated 31-3-2010 (**P.4349**) calling them upon to make the statement on 15-4-2010 and they did not attend.

**OBSERVATION OF COMMISSION**:-

Mr. A.R.Shaikh Advocate appeared on behalf of M/s. Nirmla Developers, Mr.Vijay Dattaram and Arti Vijay, on 2-8-2010 and advanced arguments on their behalf on the line that the complaint is totally false,

frivolous, the complainant has no locus standi and the property in dispute is not a Wakf. He referred several documents in his arguments.

The initial document which is referred by Mr. Shaikh is the registration of trust dated 29-2-1940 (**P 4304)**. This document display that, one Rabiyabee w/o Haji Mohammad Haji Hussain having trustees Haji Mohammad, Haji Sidick and Nownowji created the trusst. Mr. Shaikh Adv. invited my attention to para 2 (b) of this document which stipulated that, 5% of income coming from rents, profits, interest, dividends etc. shall be utilized for the maintenance of the Trust property and as per para 2 (c) the entire remaining amount shall be paid to the settler Rabiyabee during her life. After her death, the income shall go to her husband and thereafter to her heirs in the line of succession. Mr. Shaikh then referred para 2 (h) (ii) which provides that,

> " On the death of last serving issue howsoever remote of the said Haji Mohammad Haji Hussain the Mutwalli shall hold and stand possessed of the net income upon trust to utilize the same for all or any one or more of the following charitable purposes in such shares and proportions and in such manner in all respect as a Mutwalli shall in their absolute discretion deem proper, i.e. to say…. generally in giving relief against distress or, bodily aliment to poor or needy members of Khandwani Jamat"

Mr. Shaikh advocate made statement before me that, this document no where connect this trust property with any religious institution. Not only this but in case there would be no last surviving heir of the family, the benefits of the property shall go to Khandwani Jamat in particular and not to muslim people in general. On making perusal of this documents I found sufficient substance in the contention of Mr. Shaikh Advocate.

The Second document was executed on 30-4-1941 i.e. after death of Rabiyabee. Her husband Haji Mohammad appears to have predeceased her. The trustees namely Zubedabee, Amenabee and others were accepted as tresses in the trust.

The third document came in existence on 7-9-2008 wherein again there was change of the trustees. It is true that, in this document dated 7-9-2008 in para 1 (a) the word "Wakf" is used however as argued by Mr. Shaikh mere mention of such word will not make the property as a Wakf under the provisions of the Wakf Act 1995 so long as such property is not attached with any religious institution or for pious or charitable purpose or for the benefits to be utilized by the Muslim people in general. Having regard to this document I may be justified to observe that, this was not a Wakf but was merely a trust.

The reference may be made to the allegations of M/s Nirmal and others in the reply (**P.4356-4364/49-57**) para 6 wherein it is stated

> "issuance of the summons to the public amounts to a harassment at the instance of scrupulous person, which after lodging the complaint, the very complainant every now and then phoning to the opponent no.2 i.e. Vijay Dattaram Kadam and this complainant himself is offering to this opponent that, he will settle the matter with the Govt. authorities since he is having strong roots in Delhi and Wakf Board and he can arrange meeting with the Chief Minister to see that, these opponent's property is taken away from the Wakf property".

If these allegation are read with the fact that the property is situated at Mumbai and complainant is resident of Ahmednagar, the possibility can not be ruled out that, the complainant may be misusing the processes of this office, and if such may be the things, it is required to be strongly condemned by this office . It is true that so far as Wakf property is concerned, every Muslim person is interested to protect it, as proved under u/s 3(k) of the Wakf Act 1995. However though as per legal provision, the complainant may be interested, the circumstances of the present case display that, there may be a malafide and adverse interest of the complainant in the matter. Any way the complaint deserves to be filed and hence it is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.72.**

**REPORT**

**COMPLAINT NO. 96/2010**

**Complainant Mr.Rafat Baig r/o Aurangabad.**

**ORDERS OF DEVELOPMENT**

**DETAILS OF THE PROPERTIES** :-

Various properties of different places in which no objection for **development, redevelopment,** extension of lease period etc. are granted by the CEO Wakf.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mr. Rafat Baig filed a complaint (**P.4450**) alleging that, the CEO Wakf issued no objection certificates of Bombay properties though there is no Chairman of the Wakf Board or there is no resolution with majority and such action is involved a corruption. He filed as many as, copies of 12 orders issued by the CEO Wakf granting the permission.

**NOTICES TO THE PARTIES:-**

The CEO Mr. S.S.Ali Quadari, Board of Wakf was served with the notice O.W.No.335/10 dated 8-7-2010 calling him upon to make the statement on 15-7-2010 (**P. 4451-4453**) He did not file reply.

**OBSERVATION OF COMMISSION**:-

| Sr No | Particulars of property | Place | Area | Nature of order | Page | Whether resolution |
|---|---|---|---|---|---|---|
| 01. | Sy.No.1A/3621 and 3622, CTS No.768 | Parel | 1532 Sq.Mtrs. | Redevelopment | 4454 To 4457 | Yes |
| 02. | Sy.52/1A, to 1/D, 54/1,153/6,170/7,250/3, | Chanje (Raigad) | 48216 Sq.Mtrs. | Development | 4458 To 4459 | Yes |

| | | | | | | |
|---|---|---|---|---|---|---|
| 03. | C.S.No.589 | Majgaon | 1634.62 Sq.Mtrs. | Redevelopment | 4460 To 4462 | Yes |
| 04. | C.S.No.1784 | Byculla | 700 Sq.Mtrs. | Redevelopment | 4463 To 4464 | Yes |
| 05. | C.S.No.3/1764 | Byculla | 508.36 Sq.Mtrs. | Redevelopment | 4465 To 4466 | Yes |
| 06. | C.S.No.88,89 | Lower Parel | 3442 Sq.Mtrs. | Redevelopment | 4467 To 4470 | Yes |
| 07. | Sy.No.56 to 60 | Davlegaon, Kausa Mumbra, Thane | 222 Gunthas | Development | 4471 To 4472 | Yes |
| 08. | CTS No.1249, 1249/ 1 to 5, 1250,1250/1 to 3 and 1258/1A | Panvel Mumbai | 1832.18 Sq. Mtrs. | Development | 4473 | No |
| 09. | Sr.No.95/4/A-2 | Manjri-Pune | | Development | 4474 | No |

The Board was constituted on 4-1-2002. All of the aforesaid transactions appears to have been entered into after the term of the Board was elapsed on 14-8-2007. After 16-8-2007 the Board consisted of only two members namely Mr. A.U. Pathan and Mr. Shah Tariqu Anwar. (*taken from the Judgment dated 29-7-2009 in W.P.No.7071/08)*

The Wakf Board thereafter was reconstituted under the notification dated 4-9-2008 and that notification appears to have been quashed by the Hon'ble High Court. In other words after 16-8-2007 the Board is being run by only two members, having no Chairman as such, appointed by the Board. The question is as to how far taking the policy decisions of permanent nature in respect of Wakf properties, in the circumstances that, the full fledge Wakf Board is not existing and the Board is being run by only two members, would be appropriate. I am of the

view that in such circumstances, the Board of Wakf shall not take the decision of permanent nature in respect of Wakf properties. The result of the aforesaid decisions will be in house building of the wakf property of permanent nature and after constitution of the full fledge Board, the Board would be unable to vary or change or modify the said decisions. **In such circumstance the State Government shall make the amendment in the law that, whenever such contingency arises, the Board shall not take the decision of permanent nature**.

In several of the aforesaid orders the CEO Wakf quoted section 25 (1) (c) of the Wakf Act 1995 which run as under:-

> *"Section 25:- Duties and Powers of the Chief Executive Officer:- (1) Subject to the provision of this Act and rules made thereunder and the directions of the Board, function of the CEO shall include –*
>
> *a) Investigating the nature and extent of the wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time, for accounts, returns and information from mutwallies;*
>
> *b) inspecting or causing inspection of wakf properties and account, records, deeds or documents relating thereto;*
>
> *c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of the wakfs.*
>
> *2) In exercising the powers of giving directions under sub-section (1) in respect of any wakf the Wakf Board shall act in conformity with the direction by the Wakf in the deed of wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the school of Muslim law to which the Wakf belongs.*
>
> *3) Save as otherwise expressly provided in this Act, the CEO shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this act".*

This provision if read minutely it is seen that, it has laid a rider to the powers of the CEO by stating that, *Duties and Powers of the Chief Executive Officer:-" (1) Subject to the provision of this Act and rules made there under and the directions of the Board, function of the CEO shall include",* meaning thereby that, exercise of the powers by the CEO would be subject to the legal provision of the Act and the direction given by the Board. Sub-section 3 has further laid down the second rider as :- "*Save as otherwise expressly provided in this Act, the CEO shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act"* I went through the entire provisions of law and I did not come across with any express provision to empower the CEO to exercise these powers.

In this connection section 32 will have to be read which says

> 1) *Subject to any rules that may be made under this Act, the general Superintendence of all Wakfs in the state shall vest in the Board established or the state ; and it shall be duty of the Board so as to exercise its power under this act as to ensure that the wakfs under its superintendence are properly*

*maintained controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:*

This provisions has further laid a rider on the powers

of the CEO in respect of maintenance , control, administration and superintendent of the wakf properties. These powers, as per this speaking provision are vested in the wakf board and not the CEO. Section 25 is in confirmation with section 32 of the act in this connection. In other word the maintenance, superintendent etc. of the wakf properties is a power of the wakf Board and not of the CEO unless the CEO is expressly authorized in that behalf. The CEO therefore is incompetent to exercise the powers u/s 25 of the act. The aforesaid orders issued by the CEO u/s 25 of the Wakf Act therefore, would be rendered to be illegal firstly of the ground that, the CEO was not expressly empowered and secondly on the ground that, there was no full fledge Wakf Board constituted by the State Govt. u/s 14 of the Wakf Act.

The CEO did not state much less even did not whisper in the aforesaid orders as to whether, while exercising the powers by the Board, the resolution if any was passed in conformity with the directions by the Wakf in the deed of wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the school of muslim law to which the wakf belongs, as provided u/s 25 (2) of the Wakf Act 1995.

As per section 14 of the Wakf Act the chair person is necessary of the Board constituted by the Govt. As on 16-8-2007 and onwards there are only two members of the Board having no chairman. When there is no Chairman, there can be no valid constitution of the Board. I found in the aforesaid order to have not been stated as to who presided as a Chairman of the Board in the meetings referred to in the aforesaid orders. As per section 17 of the Wakf Act 1995 the Chairman shall preside the Board meeting and in his absence any member chosen by the members amongst them shall preside the meeting. The Board being not existing, there was no chairman and so the meetings in the aforesaid orders would be rendered illegal. Assuming that there was a chairman and he was absent in that contingency, he could be replaced by any other member of the Board. There is no such statement in the aforesaid order and so all of the aforesaid orders would be rendered illegal.

Now I shall deal with the aforesaid orders of no objections one by one

1) **Parel property**:- (P.4454) the order of no objection has simply mention that, the members of the Board have considered and approved the proposal in the meeting dated. 3-4-2008, 27-5-2008, and 21-11-2008 and the resolution no.26/2008 dt. 3-4-2008 was confirmed and the sanction was granted vide resolution no.84/08 dt. 21-11-08. The order however does not have mention of the names of the members who passed the said resolution.

2) **Chanje (Raigad)** :- (P.4458) the order of no objection has simply mention that, the members of the Board have considered and approved the proposal in the meeting dated 3-4-2008, 27-5-2008, and 21-11-2008 and the resolution No.23.1/2008 dt. 3-4-2008 was confirmed and the sanction was granted vide resolution no.84/08 dt. 21-11-08. The order however does not have mention of the names of the members who passed the said resolution.

3) **Majgaon** :- (P.4460) the order of no objection has simply mention that, the members of the Board have considered and approved the proposal in the meeting dated. 3-4-2008, 27-5-2008, and 21-11-2008 and the resolution no.26/2008 dt. 3-4-2008 was confirmed and the sanction was granted vide resolution no.84/08 dt. 21-11-08. The order however does not have mention of the names of the members who passed the said resolution.

4) **Bycula** :- (P.4463) the order of no objection has simply mention that, the members of the Board have considered and approved the proposal in the meeting dated. 26-7-2009 vide resolution No.25/2009. The order however does not have mention of the names of the members who passed the said resolution.

5) **Bycula**:- (P.4465) the order of no objection has simply mention that, the members of the Board have considered and approved the proposal in the meeting dated. 21-11-2008, 26-7-2009 vide resolution No.30/09. The order however does not have mention of the names of the members who passed the said resolution.

6) **Lower Parel**:- (P.4467) the order of no objection has simply mention that, the members of the Board have considered and approved the proposal in the meeting dated 3-4-2008, 27-5-2008, and 21-11-2008 and the resolution no.26/2008 dt. 3-4-2008 was confirmed and the sanction was granted vide resolution no.84/08 dt. 21-11-08. The order however does not have mention of the names of the members who passed the said resolution.

7) **Davelgaon** :-(P.4471) the order of no objection has simply mention that, the members of the Board have considered and approved the proposal in the meeting dated. 3-4-2008, 27-5-2008, and 21-11-2008 and the resolution no.26/2008 dt. 3-4-2008 was confirmed and the sanction was granted vide resolution no.84/08 dt. 21-11-08 and the Wakf Board resolution (amendment) No.22/2009 dt. 26-7-2009. The order however does not have mention of the names of the members who passed the said resolution.

8) **Panvel:**- (P.4473) the order of no objection does not have a mention whether or not resolution was passed by the Board. If this fact is considered alongwith the fact that the CEO Wakf did not reply to the summons (P-4451) this will lead to draw the adverse inference that, the Board might not have passed the resolution to accord such no objection. If such may be things, the CEO Wakf has obviously misused his powers and it is not free from the suspicion of extraneous consideration for issuing the orders. **The CEO Wakf Mr. S.S. Ali Quadari must have involved in some dealing in the matter and he deserve to be taken with the action by the Department as well as the by Govt.**

9) **Manjri:**- (P.4474) the order of no objection does not have a mention whether or not resolution was passed by the Board. If this fact is considered alongwith the fact the CEO Wakf did not reply to the notice (P-4451) this will lead to draw the adverse inference that, the Board might not have passed the resolution to accord such no objection. If such may be things the CEO Wakf has abused, misused his powers and it is not free from the suspicion of extraneous consideration for using the order. **The CEO Wakf Mr. S.S. Ali Quadari must have involved in some dealing in the matter and he deserve to be taken with the action by the Department as well as the by Govt.**

In the following matters the lease hold rights were renewed.

| Sr. No. | Particulars of property | Place | Area | Nature of order and date | Page | Whether resolution |
|---|---|---|---|---|---|---|
| 1. | C.S. No.110 | Majgaon | 3596.18 Sq.Mtrs. | Renewal of lease hold right 1-8-2009 | 4475 to 4476 | Yes |
| 2. | C.T.S.No.12503 | Aurangabad | 4593 Sq.Mtr. | Renewal of lease hold right 18-11-2008 | 4477 to 4478 | Yes |

1) **Majgaon** :- (P.4475) the order of Renewal has simply mention that, the matter was discussed in the meeting 21-11-2008 vide resolution No.91/2008 and the meeting dated 26-7-2009 vide resolution no.21/2009. The order however does not have a mention of the names of the members who passed the said resolution. The no objection was issued for renewal vide section 32 of the Wakf Act 1995. This order again suffers for the aforesaid legal lacunas that, there was no Chairman of the Board as well as there was no full fledge Board and that, the decision might have been taken by only two members at the most. My aforesaid observation would apply here also. As per section 56(3) of the Wakf Act 1995, the Wakf Board can only grant sanction for lease or sub- lease of the property and can not execute the documents of lease. Rule 25 of Maharashtra Wakf Rules further lay down a exhaustive procedure for lease of the property. The said provision also was not followed.

2) **Aurangabad**:- (P.4477) the order of Renewal has simply mention that, the matter was discussed in the meeting 27-10-2008 and the lease was renewed for three years w.e.f. 1-8-2005. The order has got a mention of the meeting to have been held in presence Mr. A.U.Pathan and Chief Executive Officer alongwith the lessee. This order further suffers on several counts, firstly there was only one member of the Board and how this resolution can be said to be validly passed by the Board, secondly how the CEO of the Board could of the member of the meeting when he was/is not a member of the Wakf Board and how the lessee could participate in the meeting. This meeting therefore was altogether illegal. That time there were two members of the Board. The aforesaid resolution if at all is taken to be procedurally valid, how it could be legal in the eye of section 32 (2) (j) of the Wakf Act 1995 because presence of one member in the meeting would amount only 50% and not 2/3rd majority.

The order then stated that,

> "Hon'ble High Court stayed the notice till disposal of petition and also given direction to the Wakf Board that if lease period is expired then Wakf Board can decide the matter on expiry of the lease and further continuation of lease".

What I found from the order of the Hon'ble High Court is that, the said order runs not in such terms but it is altogether otherwise. It runs as

> "This does not preclude the respondent Wakf Board for initiate any proceeding in case lease of the petitioner has been expired as that would be a different cause of action and is not a subject matter of this petition"(P.118).

What is directed by the Hon'ble High Court is to initiate the proceeding and not directly to decide the matter. The aforesaid order of renewal therefore is not in conformity with the order of the Hon'ble High Court.

This order again suffers for the aforesaid legal lacunas that, there was no Chairman of the Board as well as there was no full fledge Board and that, the decision was taken by only one member. My aforesaid observation would apply here also.

Aforesaid all the orders serious suffer from the infirmity and lacuna of the statutory law. The said orders appears to be seriously suspicious having a concrete roll of the CEO Wakf Mr. S.S.Ali Quadari. The order No.8 and 9 in the aforesaid first table were issued without resolution and that was clearly abuse and misuse of powers by Mr. S.S. Ali Quadari and that also involved serious suspicious about his integrity.

As a matter of fact, as far as possible, the proposal for transaction of Wakf property shall be initiated by the Mutwalli of the Wakf. The Board shall publish in the Gazette, a notice of the proposed transaction. The notice shall contain sufficient details etc and shall be duly considered vide Rule 17 of Mah Wakf Rules 2003. **AIR 1996 S.C. 2763.** Hon'ble SC says

> "These provisions are designed to ensure that a property belonging to the wakf is used in the best interest of the Wakf and any disposal of the property by the Mutawalli is required to be sanctioned by the Wakf Board after following the procedure under Rule 12 thus ensuring that there is a proper examination of the proposal in the light of the objections, claims or suggestions received."

> Such mandatory provision of law was ignored by the CEO Wakf while issuing the aforesaid orders. The CEO was served with the summon O.W. No.467/10 dated 23-9-2010 calling him upon to make the statement and he did not attend. (**P.4478-A**) The service report (**P.4478-B**) and acknowledgement (**P.4478-C**).

The Board of Wakf may take the appropriate action against the aforesaid all of the transactions and if the construction work is not started yet, the Board may see that the said orders are stayed and the Board may pass the necessary orders in such matters as regards development of the properties or otherwise. As far the order in which the work of development is started, the Board may take the necessary steps to get the appropriate rent/revenue for the Wakf as well as for the Board itself.

In response to summons O.W. No.467/10 dated 23-9-2010, the relevant papers are supplied by the Board of Wakf on 27-1-2011 (**P.4478-D-1**)that to after the messenger of this office was deputed to Board. The no objection, in additional to the above where issued also in the following cases.

| Sr No | Particulars of property | Place | Area | Nature of order | Page | Whether resolution |
|---|---|---|---|---|---|---|
| 01. | Dargah, | Mumbai, Dadar | | Development | 4478-D-2 | Yes |
| 02. | C.S.No.1/1902 | Agripada, Mumbai | 841.98 Sqmtr. | Transfer, development etc. | 4478-D-3 | Yes |
| 03. | C.T.S. No.148 (1) to (8), 149 (1 to 24), 150 (1 to 12 ) | Malad Mumbai | 7881.40 Sqmtr. | Redevelopment | 4478-D-4 to 5 | Yes |
| 04. | Plot No.28 New 52 Sy. No. 120 and 94 | Andheri Mumbai | 3416.70 Sqmtr. | Development | 4478-D-6 to 7 | Yes |
| 05. | F.P.99, T.P. 2 & C.S. 9693 | Solapur | 13900 & 169645.10 Sqmtr. | Development | 4478-D-8-9 | Yes |
| 06. | Gut No.2510 | Ala-Pune | 40 A. | Lease | 4478-D-10-11 | Yes |
| 07. | Plot No.478 | Mahim | 345.32 Sqmtr | Re-development | 4478-D-12 | Yes |
| 08. | C.S.No.2/1, | Warli Division | 2318.58 Sqmtr | Re-development | 4478-D-13-14 | Yes |
| 09. | Sy.No.302 | Chiplun | 6475 Sqmtr. | Development | 4478-D-15 | Yes |

These orders also suffer for violation of law for the reasons stated in property no. 1 to 9 in the first table.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.73.**

**REPORT**

**COMPLAINT NO. 24/2008**

**Complaint Sayed Massod Quadri r/o Plot No.3,**

**Amitnagar, Nandawan Colony, Aurangabad.**

**DARGAH SAMARTHNAGAR, AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

Plot No.246 situated Samarthnagar, Aurangabad.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the Complaint (**P.4501**) that, there is open space adjacent to Dargah adjoining to Plot No.246, in Samarthnagar, Aurangabad and that is being encroached by the people. He requested to inspect the site and to take the possession of the Wakf property. He has attached the photograph of the site in dispute. (**P.4502**)

**NOTICES TO THE PARTIES:-**

The CEO Wakf was served with the notice O.W.No.115/08 dated 20-8-2008, (**P.4503**) calling him upon to make statement on 30-11-2008 and he did not attend.

The CEO Wakf was served with the notice O.W. No.311/08 dated 15-11-2008 (**P.4504**) making a reference of the aforesaid notice O.W.No.115/08 dated 20-8-2008, calling him upon to make statement on 30-11-2008 and he did not attend.

The CEO Mr. S.S.Ali Quadari, Board of Wakf was served with the summons O.W.No.362/09 dated 19-9-2009 calling him upon to make the statement on 29-9-2009 (**P. 4505**) He did not file reply.

The CEO Mr. S.S.Ali Quadari, Board of Wakf was served with the proclamation O.W.No.456/09 dated 4-12-2009 calling him upon to make the statement on 10-12-2009 (**P. 4506**) He did not attend.

The CEO Mr. S.S.Ali Quadari, Board of Wakf was sentenced to pay fine of Rs. 500/- u/o 16 R 12 of C.P.C. and still he did not attend. (**P.4507**)

**OBSERVATION OF COMMISSION**:-

There being no response from the CEO Wakf, the Commission talked on phone with complainant on 25-5-2009 and 23-12-2009 and asked him to attend this office and to cooperative to identify the property at the site

and he also did not cooperate. As stated above the CEO Wakf who is a responsible officer acted and behaved in most irresponsible manner, such as, he has nothing to do and no business with the Wakf property. (**P. 4508-4510**) The Commission therefore rendered to be helpless. Hence no observation and finding.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.74.**

**REPORT**

**COMPLAINT NO. 97/2010**

**Complaint Smut action on the basis News paper.**

**JAMA MASJID KAWADGAON.**

**DETAILS OF THE PROPERTIES** :-

Gut No.32 adm. 10 A. 1 G. (4 H 1 R) of Village Kawadgaon Tq. Paithan Dist. Aurangabad is a Wakf Property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

A news was published in daily Aurangabad Times dated 10-6-2010 (**P.4550**) stating that, the Wakf Land of Masjid Kawadgaon was being disposed off, by some mischievous elements. The Commission had taken su-mooto cognizance and issued the summons to Mrs. Asiya Pathan and Mr. Feroz Pathan who were named to be the author of the news. Mr. Ferozkhan Pathan appeared before me and filed a complainant (**P.4551-4554**) along with the copy of resolution by the villagers (**P.4555**), the 7/12 extract (**P.4556**) and the copy of receipt issued by the Wakf Board (**P.4557**)

**NOTICES TO THE PARTIES:-**

The **CEO Mr. S.S.Ali Quadari,** Board of Wakf was served with the summon O.W.No.311/3/3 dated 17-6-2010 calling him upon to make the statement on 29-6-2010 (**P. 4558**). He submitted application for adjournment (**P.4559**) on 2-7-2010 and **as usual he did not file reply** thereafter.

Mrs. Asiya Pathan and Mr. Feroz Pathan were served with the summon O.W.No.311/3/1 and 311/3/2 dated 17-6-2010 calling them upon to make the statement on 29-6-2010 (**P. 4558**) and Mr. Feroz Pathan filed a complainant (**P.4551**).

Asiya Pathan and Feroz Pathan were again served with the summon O.W.No.316 dated 19-6-2010 calling them upon to make the statement on 29-6-2010 (**P. 4560**).

**The D.W.O**. Board of Wakf Aurangabad was served with the copy of summon O.W.No.316 dated 19-6-2010 calling him upon to make the statement on 29-6-2010 (**P. 4560**) and he submitted application for adjournment (**P.4561**) on 28-6-2010 and **as usual he did not file reply thereafter**.

The summons bearing O.W. No.322/8/1 to 8/6 dated 30-6-2010 was issued against Mr. Gulab Baig, Mr. Siraj Baig, Mr. Liyakat Baig, Mr. Faiyaz Baig, Mr. Saher Baig, and Mr. Yousuf Ali All r/o Kawadgaon calling them upon to make the statement on 8-7-2010 (**P.4562**), through the Sarpanch Kawadgaon O.W. No.321/2010 dt. 30-6-2010 (**P.4563**).

**The CEO Mr. S.S.Ali Quadari, Board of Wakf and D.W.O. Mr. Munirkhan Pathan** were served with the summon O.W.No.322/8/7 and 322/8/8 dated 30-6-2010 calling them upon to make the statement on 8-7-2010 (**P. 4562**) and **they did not respond**.

In response to summons Shri Babu Baig and others appeared and submitted application dated 8-7-2010 and 15-7-2010 (**P. 4564-4565**) and lastly they submitted reply on 20-7-2010 (**P.4566**) along with documents (**P-4567-4590**).

**OBSERVATION OF COMMISSION**:-

Babu Baig and others categorically admitted in the reply (**P.4566**) that, the land in dispute is a Wakf property of the Mosque (Deosthan) and they further added that, they would not sale this property. They produced the copy of Muntkhab (**P.4577**) alongwith several documents stating that, one Gulab Baig who is now deceased, was the Mutawalli of this land. Having regard to such categorical statement of the opponents, the fear of danger in the mind of the complainant that, the opponents are going to sale this land became futile and meaningless. The complaint deserves to be disposed off. Hence such order.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.75.**

**REPORT**

**COMPLAINT NO. 90/2010 and 96/2010**

**Complainant- Suo -muto action on the basis News paper.**

**Tarun Bhart and Rahebar, Aurangabad.**

**DARGAH HADEKALA KHULTABAD**

**DETAILS OF THE PROPERTIES** :-

**PART I**

Sy.No.223 of **Daulatabad** adm. 9100 Sq. Mtrs. of Dargah Wahbuddin Opposite Fort Daultabad is Wakf property.

**PART II**

The Land Gut No.89 (42) of Dhorkin is Wakf of Khudamin Dargah Hadekala Khultabad and it is allotted by CEO Mr. S.S.Ali Quadari to his relative .

**PART III**

S.No. 291 of **Parbhani** is the Wakf and the CEO Wakf allotted the plot 40 x 100 feet to one Shashi Shekhar Shakharam Bhalerao, under the order dt. 24-9-2008 under the lease deed dt. 16-9-2008

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The news was published in Daily Tarun Bharat (**P-4601**) and Daily Rahebar (urdu) (**P.4602**) dated 4-4-2010 that, the Criminal Prosecution was lodged against the CEO Mr. S.S. Ali Quadari. Mr. Raft Baig filed a complaint (**P.4450 R-72**) making allegation that, the CEO Wakf leased lands to his near relatives.

It appears that, the CEO Wakf called the tenders for allotment of this land on lease vide order dated 18-2-2010 (**P.4603-4604**). The tender of Mr.Mohd. Mushfiquddin s/o Mohd. Fariuddin appears to have been accepted (**P.4605-4608**). One Mr. Pathan Feroz Khan Bashirkhan filed a complaint in Police Station making the allegation of irregularities (**P.4609-4610**). Thereafter one Javed Yayar Khan Mahemood Yarkhan filed a complaint in police station (**P.4611-4612**) and copies of the all of these documents together with some other documents were produced before the Commission by Mr. Raft r/o Mil corner Aurangabad (**P.4613-4637**)

**NOTICES TO THE PARTIES:-**

The summons bearing O.W.No.177/10 dt. 5-4-2010 was issued (**P.4638**) in the name of Sayed Noorul Jafar the office Superintendent of Wakf calling him upon to make the statement on 12-4-2010 in respect of the news in the papers.

At the same time the summons O.W.O. No.178/10 dt. 5-4-2010 was issued to Mr. Javed Yarkhan calling him upon to make statement on 12-4-2010 in respect of the news paper . (**P.4638A**)

The summons was issued to the CEO Mr. S.S. Ali Quadari O.W. No.366/2/1 dt. 12-8-2010 (**P.4639**) calling him upon to make statement on 23-8-2010 in respect of allotting Gut No.89 of Dhorkin.

The summons was issued to the Superintendent Mr. Norool Jafar O.W. No.366/2/2 dt. 12-8-2010 (**P.4639**) calling him upon to make statement on 23-8-2010 in respect of allotting Gut No.89 of Dhorkin.

The summons was issued to the **CEO Mr. S.S. Ali Quadari** O.W. No.367/2/1 and **DWO Parbhani Mr. Khusrookhan** dt. 12-8-2010 (**P.4640**) calling them upon to make statement on 23-8-2010 in respect of allotting plot out of S. No. 291 of Parbhani and **they did not file reply**.

**OBSERVATION OF COMMISSION**:-

**PART I**

It appears, as regards Sy. No.223 of **Daulatabad**, R.C.A. No.63/2009 is pending in the Court Hon'ble Dist. Judge (**P.4615-4623**) and vide the order dated 25-2-2010 the status–quo (**P-4623**) is directed to be maintained by the parties. It appears that, this appeal was arising out of R.C.S. No.821/08 filed on 20-9-2008. The Wakf Board is the party to the litigation as a respondent no.4. Obviously the CEO Wakf must be in know of this litigation. When the matter is subjudiced and when the order of status-quo is operating against the parties, the land in question could not be allotted by the CEO Wakf to any of the parties. This fact appears to have been brought to the notice of the CEO Mr. S.S.Ali Quadari. However the order of the court of law carried no meaning before the interest of the relatives of Mr. S.S. Ali the CEO Wakf **Therefore, he appears to be liable for this irregularity and illegality. The CEO appears to have interfered in the order of Court of law and even he may be liable for the contempt of court.**

The Police complaint is filed (**P.4611**). I am told that, private complaint also is filed in the court of Magistrate (**P-4624**)

**PART II**

Mr. Rafat the complainant (**P.4450** ) produced the copy of the complaint by Khudamin Dargah Hadekala Khultabad dated 3-2-2010 (**P-4627**) wherein the office bearers of the Dargah Committee alleged that, the Land Gut No.89 (42) of Dhorkin is allotted by CEO Mr. S.S.Ali Quadari to his cousin father in law. Significantly Mr. S.S.Ali Quadari did not give reply to the notice (**P.4639**). Mr. Raft produced several documents in support of this fact. Document page no.**4628** is in respect of appointment of Fazluddin Hanifuddin as Mutwalli of the said Dargah. The document (**P.4629**) is the order dated 30-12-2008 passed by the CEO Mr. S.S. Ali Quadari directing the District Wakf Officer to obtain the possession of this land. That means the person who was holding the possession was dispossessed vide the panchanama (**P.4634**) and the possession was delivered to Mr. Fazluddin (**P.4636**). **This is how the CEO started looking after the interest of his close relatives that too, from side of his wife. Mr.S.S.Ali Quadari is responsible for this irregularity also.**

**PART III**

The complaint also produced the copy of order dt. 24-9-2008 passed by the CEO Wakf **(P 4641)** allotting the plot 40 x 100 feet to one Shashi Shekhar Sakharam Bhalerao, out of S.No. 291 of **Parbhani** along with the copy of lease deed dt. 16-9-2008 (**P 4642-4643).** The CEO was asked whether the provisions of S 32 (2) (j) of Wakf Act were followed, and he did not file reply. This indicate that the CEO misused and abused his powers in this transaction. It is true that as per the provisions u/s 56 of the wakf act the land can be leased for the period below one year, even without resolution however, Mutwalli or the committee would be competent to exercise such powers and not the C.E.O. vide Rule 25 of the Rules framed in 2003. The C.E.O. is incompetent to exercise such powers.

The CEO Mr. S.S.Ali Quadari was served with the summon O.W. No.382/10 dated 31-8-2010 calling him upon to make statement on 15-9-2010 (**P.4644**) in respect of the property in part I.

The CEO Mr. S.S.Ali Quadari was served with the summon O.W. No.383/10 dated 31-8-2010 calling him upon to make statement on 15-9-2010 (**P.4645**) in respect of the property in part II and he did not file reply to both the summons. The service report is (**P.4646**).

As far as the property of Dargah Hadekala Part-I is concerned , the Wakf Board may take the appropriate steps and may set right the grievance of other tenderers.

As far as the property of Dhokin is concern in part-II, the Wakf Board may take action u/s 52, 54 & 55 of the Wakf Act 1995.

The similar action may be taken by the Board in respect of Parbhani property in part III.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.76.**

**REPORT**

**COMPLAINT NO. 51/2008**

**Complaint By Mr. Khalek Painter r/o Beed.**

**DARGHA HAZARAT SAYED SULEMAN**

**DETAILS OF THE PROPERTIES** :-

Land Sy. No.119 adm. 22 A. 18 G., Sy.No.148 Adm. 23 A. 22 G. , Sy No.21 adm. 22 A. 21 G. and Sy. No.22 adm 25 A. 22 G. situated at Beed is a Wakf of Dargha Hazarat Sayed Suleman, which is stated at Sr. No.16 P. No.54 of Govt. Gazette published in 1974.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant filed a complaint (**P.4650-4651**) making allegation that, the land adm. 1 A. 8 G. out of Sy No.20 is in the Middle of the City which is in possession of Aneesuddin s/o Jan Mohammad and decree was obtained to recover the possession however, during the course of execution Aneesuddin leased it to Sk. Jainuddin s/o Sk. Sujadoddin and Mirza Shafiq Baig for 75 years on 4-6-1992 illegally. Subsequently resolution No.62 and 85 dated 18-10-1994 were passed by increasing the rent however the said transaction of leased was illegal. The complainant has produced the copy of Gazette (**P.4652**) and copy of 7/12 extract (**P-4653-4666**) and did not produce a single document to support his contentions.

**NOTICES TO THE PARTIES:-**

Since vague allegations being made and since no documents being produced in support of the allegation, the summons could not be issued to any of the party.

**OBSERVATION OF COMMISSION**:-

Since the complaint being vague and the documents being not produced the Commission could not taking any action in the matter and so the complaint deserves to be filed.

Still I may observe, looking to the seriousness of the matter, that the Board of Wakf may place all of the relevant material before the law officer of the Board and in turn, the law officer of the Board may consider and judge the validity of the alleged transaction and shall make a report to the Board of Wakf, with a copy to the Secretary of Minority Development Department Manatralya Mumbai for information and necessary action.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.77.**

**REPORT**

**COMPLAINT NO. 61/2009**

**Complaint By Smt. Khudrunnisa Begum d/o Mohd. Sulanoddin and three others. r/o Beed.**

**MASJID BUNDELPURA BEED.**

**DETAILS OF THE PROPERTIES** :-

Sy.No.102/2, is a Wakf property of Masjid Bundelpura and Sy.no. 51 is the Wakf Property of Tarafgirma Jama Masjid Killa Beed . The complainant alleged the illegal dealing in respect of these properties.

As regards Sy.no.102/2, the subject has been already dealt under Report No.32 and so it need not be considered here.

Here only matter of Sy.No.51 is to be considered.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged (**P.4675-4676**) that, the Wakf Board granted the lease of Sy.No.51 adm. 5 A. to Ayyubkhan s/o Raheman Khan r/o Beed, however Ayyubkhan, conspired with Abdul Khalekh s/o Musa and re-leased the land to Shaikh Nizamoddin s/o Jainuddin illegally for 99 years. The complainant enclosed the copy of lease deed (in Marathi) dated 22-11-1999 (**P.4677-4678)** in support of his contentions.

**NOTICES TO THE PARTIES:-**

The CEO Wakf was served with the summons O.W. No.395/4/3 dt. 21-10-2009 (**P.4679**) calling him upon to make the statement on 6-11-2009 and he did not respond.

The D.W.O. Wakf Beed was served with the summons O.W. No.395/4/4 dt. 21-10-2009 (**P.4679**) calling him upon to make the statement on 6-11-2009 and he did not respond.

The Ayyubkhan Rahimkhan and Abdul Khaleq Mohd. Mosa were served with the summons O.W. No.395/4/1 and 4/2 dt. 21-10-2009 (**P.4679**) calling him upon to make the statement on 6-11-2009 and they did not respond.

The CEO Wakf Mr. S.S. Ali Quadari was served with the summons O.W. No.461/2/1 dt. 7-12-2009 (**P.4680**) calling him upon to make the statement on 6-11-2009 and he did not respond.

The **D.W.O.** Wakf Mr. Maqsud Ahmed was served with the summons O.W. No.461/2/2 dt. 7-12-2009 (**P.4680**) calling him upon to make the statement on 6-11-2009 and **he filed reply** on 19-6-2010 (**P.4681**) stating that, this land was leased to Ayyubkhan and now people of the locality unanimously built Iddagh on that site.

**OBSERVATION OF COMMISSION**:-

The site in dispute, as per contents of the complaint, appears to be a part of city and surrounded by the housing developments. The D.W.O. admitted in his reply (**P. 4681**) that this land was leased to Ayyubkhan Rahimkhan for 51 years. However the D.W.O did not utter a single word about the subsequent transaction by Ayyubkhan to Sk. Nizamoddin dated 22-11-1999. The D.W.O was specifically asked in both of the summons dated 11-10-2009 (**P. 4679**) and dated 7-12-2009 (**P. 4680**). Despite such specific statement in the summon, the D.W.O. observed silence about it. **This displayed malafide on the part of D.W.O. Mr. Shaikh Maqsud Ahmed.** The document of lease has categorically proved the fact of illegal transaction entered by Ayyubkhan in favour of Shaikh Nizamoddin. Significantly Ayyubkhan the leasor and Abdul Khalekh Mohd. Musas the attesting witness did not file reply to the summon. Having regard to the fact that, these two persons i.e. Ayyubkhan and Abdul Khalekh did not file reply to the summon, the fact that, the D.W.O. did not in-light on the material question in dispute and the fact that, the allegation in the complaint is supported by the document dated 22-11-1999 (**P-4677**), I have no difficulty to observe and conclude that, Ayyubkhan must have entered into the illegal transaction of lease for 99 years, by violating the provisions of section 32 (2) (j) r/w rule 56 of the Wakf Act 1995, **and his such endeavor must be in support the D.W.O. Beed and the social worker Mr. Abdul Khalekh Mohd. Musa**. I May mention here that, one Mr. Khalekh Penter has filed several complaints before this Commission and if he may be the same person, his non filing of the reply to the summons in question, speak his malafide that, he might have not only supported the illegal transaction, but might be beneficiary by way of wrongful gain, alonwith the D.W.O. Mr. Maqsud Ahemd. The CEO Mr. S.S. Ali Quadari is also equally responsible for the collusion because of his silence to both of the aforesaid summons.

**In short I observe and conclude that, there was illegal transaction of lease dated 22-11-1999 for 99 years, in violation of section 32 (2) (j) r/w Section 56 of the Wakf Act and Mr. Ayyubkhan Rahimkhan, is responsible for it, Mr. Khaleq Mohd. Musa, the CEO of Mr. S.S.Aliq Quadari and the D.W.O. Mr. Maqsud Ahemad are responsible for this transaction.**

I may further observe that, even if today the Iddgah might have been erected on this site, such subsequent event would not legalize the illegal transaction.

The Board may verify whether Idgah is built on the entire land in question adm. 5 A. and if any portion out of this land is in possession of a private person, the DWO Beed may be taken to task for his incorrect/false statement.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.78.**

**REPORT**

**COMPLAINT NO. 39/2008**

**Complaint By Khaja r/o Beed**

**DARGAH MAGDUM SAHAB WAGHORA**

**DETAILS OF THE PROPERTIES** :-

420 acres of lands is Wakf of Dargha Magdum Sahab of Waghora Dist. Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint (**P.4690**) that, the Dargah Magdum Sahab Waghora has got a Wakf of 448 Acres land, out of which 288 Acres are at Waghora, 40 acres at Rajegaon and 120 acres at Talkheda. Today, according to the complaint, not a single acre is possessed by the Mutwalli for the services of Dargah.

The Complainant attached the copy of form no.9 (**P-4691-4692**) with the complaint.

**NOTICES TO THE PARTIES:-**

The CEO Wakf was served with the summons O.W. No.396/3 /1dt. 26-10-2009 (**P.4693**) calling him upon to make the statement on 4-11-2009 and he did not respond.

The **D.W.O.** Wakf Mr. Maqsud Ahmed was served with the summons O.W. No.396/3/2 dt. 26-10-2009 (**P.4693**) calling him upon to make the statement on 4-11-2009 and **he filed reply** on 4-6-2010 (**P.4696-4697**)

The copy of this summons (**P.4693**) was served on **Sk. Nazir,** the President City (I) Congress Committee and he **filed reply** (**P. 4694**) stating that, the letter head of his office was misused by some person.

The CEO Wakf Mr. S.S.Ali Quadari was served with the summons O.W. No.486/09 dt. 30-12-2009 (**P.4695**) calling him upon to make the statement on 7-1-2010 and he did not respond.

**OBSERVATION OF COMMISSION**:-

The complaint (**P.4690**) is on the letter head of Mr. Shaikh Nazir the President City I Congress Committee and so he was called upon to make the statement about it vide the summons (**P.4693**). He filed the reply (**P.4694**) and he stated that, several people visit his office and somebody might have misused the letter head of his office. Mr. Nazir stated to be having no concern with this complaint.

Significantly enough the D.W.O. was expected to make a statement as regards the query made by the commission in the summon, as regard the account of 448 acres of land. Instead of given such account, the D.W.O. made a statement as regard incorrectness of the complaint. As a matter of fact the D.W.O. Mr. Maqsud

Ahmed was not called upon to verify the contents of the complaint and to make a statement about it. He was called upon to give the account of 448 acres of land of Dargah Magdum Sahab Waghora. **Mr. Maqsud Ahmed did not utter a single word about it. This indicate the malafides on the part of Mr. Maqsud Ahmed. Such employee is required to be dealt with seriously by the Wakf Board as well by the Govt.**

Not only in present matter but, again in two matters, he acted in the similar way, and this office complained to the CEO Mr. S.S. Ali Quadari vide Summons O.W. No.339/10 dt. 15-7-2010 (**P. 4698-4700**) giving all the details and asking him to take the disciplinary action against Mr. Maqsued Ahmed. There is however no compliance report from the other end.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.79.**

**REPORT**

**COMPLAINT NO. 93/2010.**

**Oral Complaint by the person not to disclose his name**

**VARIOUS PROPERTIES IN MARATHWADA REGION**

**DETAILS OF THE PROPERTIES** :-

Various properties in Marathwada Region have been **encroached by the Government** as stated in the list enclosed herewith. (**P. 4721-4727**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The office of the Commission came across with the statement under the signature of the then CEO Mr.S.S.Ali Quadari stating therein the encroachment committed by the Govt. and the Sámi Govt. local bodies on the Wakf properties. The information received by the office being not authentic, being by the person not to disclose his name, this office wanted to confirm the said statement from the office of the CEO and so the summons was issued, calling the CEO to make the statement.

**NOTICES TO THE PARTIES:-**

The CEO Mr. S.S.Ali Quadari, and the D.W.O. Mr. Munirkhan Pathan were served with the summons O.W. No.228/2/1 and 228/2/2 dated 30-4-2010, (**P.4728**) calling them upon to make the statement about it on 10-5-2010. The copy of the list (**P.4729-4736)**) of properties was enclosed alongwith the summon. The incumbent however did not respond.

The CEO Mr. S.S.Ali Quadari, and the D.W.O. Mr. Munirkhan Pathan were served with the summons O.W. No.229/2/1, 230/2/1, 231/2/1, 232/2/1/, 233/2/1 (**P.4737,4738,4739,4740 and 4741/2010**) calling him upon to make the statement about it and he did not respond.

The same summons was served against Mr. Shafiq Ahmed, D.W.O. Jalna (O.W.NO.229/2/2), (D.W.O. Parbhani, O.W. No.230/2/2), D.W.O. Nanded O.W No.231/2/2, D.W.O. Osmanabad O.W. 232/2/2 and D.W.O. Latur O.W.No.233/2/2 dated 30-4-2010 by their name alongwith the CEO Board of Wakf (**P. 4737-4741**) together the copies of the list (**P.4729-4736)** and none of them respond to the said summons.

**OBSERVATION OF COMMISSION**:-

The authenticity of the information could not be confirmed by this office, the response being not given either by the CEO or by any of the D.W.O. Still the fact remains that, the list of the properties received by this office is under the signature of the CEO Mr. S.S.Ali Quadari and non- confirmation of the aforesaid fact would not matter very much. Since the CEO stated under his signature that, the Govt. and Semi Govt. offices committed encroachment on the Wakf properties, I may be justified to make the observations. The summons could not be

sent to the said Govt. or semi Govt. bodies under the impression that, the confirmation would be received from the CEO and the DWO. However, the highly objectionable conduct was displayed by the CEO as well as DWO in the matter in which the CEO himself had take action. In one breath the CEO takes action on the Govt. and the semi Govt. and in another breath he doesn't assist the Commission. I expressed in the introductory clause and the scheme prepared by me, that there shall be a separate branch in the office of the Wakf Board to search the properties which are wakf but which are not under the control of the Wakf Board. The reason for making such proposal is that, the CEO himself may not be aware of all the Wakf properties, as he has displayed from his conduct in this matter.

I observe and direct that, either the Board of Wakf or the Govt. of Maharashtra shall verify from the list (**P.4721-4727**), whether the encroachment is committed and if the answer is in the affirmative, they shall see that, the donation is paid by them to the Board of Wakf, together with the rent as per prevailing market economical rate of rent renewable after each five years.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.80.**

**REPORT**

**COMPLAINT NO. 32/2008**

**Complaint by Mr. Aziz Ahemd r/o Aurangabad.**

**LEASE -VARIOUS PROPERTIES**

**BY MR. M.M.SIDDIQUI**

**DETAILS OF THE PROPERTIES** :-

Various properties, as stated in the summons below, were dealt with either by lease or otherwise by the then Secretary of the Maharashtra Wakf Board Mr. M.M.Siddiqui presently working as a Account Superintendent of the Wakf Board.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant made several allegations in the complainant (**P.4750-4756**) and specially in respect of misuse and abuse of powers by Mr. M.M.Siddiqui, the then Secretary of the Wakf Board and allotment of various properties on lease or otherwise to difference persons.

**NOTICES TO THE PARTIES:-**

The summons was sent to the then Secretary of the Board of Wakf Mr. M.M. Siddiqui O.W. No.296/08 dt. 10-11-2008 (**P-4757-4758**) and it was not served on the ground that, he went to holy Haj.

The summons was sent to the then Secretary of the Board of Wakf Mr. M.M. Siddiqui O.W. No.220/09 dt. 22-6-2009 (**P-4759-4760**) and it was not served on the ground that, he was on leave.

The CEO of Mr. S.S.Ali Quadari was served with the copy of summon O.W. No.221/09 dt. 22-6-2009 (**P. 4759-4760**) for his information and necessary action and as usual Mr. Quadari did not take care to file statement.

The summons was sent to the then Secretary of the Board of Wakf Mr. M.M. Siddiqui O.W. No.426/2/1 dt. 17-11-2009 (**P-4761-4763**) and it was served on the office of CEO Wakf.

The CEO of Mr. S.S.Ali Quadari was served with the copy of summon O.W. No.426/2/2 dt. 17-11--2009 (**P. 4761-4763**) for his information and necessary action and as usual Mr. Quadari did not take care to file statement.

The separate summons also was issued and served on CEO Wakf O.W. No.427/09 dated 17-11-2009 (**P.4764**) asking him to serve the summon and to make the report to this office however, that has not been attended as usual.

The CEO of Mr. S.S.Ali Quadari was served with the summon O.W. No.385/10 dt. 3-9-10 (**P. 4775**) calling him up on to file statement on 8-9-10 and he did not attend.

The summons O.W. O.No.386/10 dated 3-9-2010 was served on Mr.M.M.Siddiqui calling him upon to make the statement on 19-11-2008 (**P.4775-4776**). He appeared and sought adjournment vide application dated 8-9-2010 (**P-4777**) and dated 15-9-2010 (**P- 4778** ) lastly he filed reply (**P.4779)** alongwith the short copy of Wakf Act 1954 (**P.4780-4782**) and letter dated 10-10-2000 from the Ministry of Social Justice of the Central Govt.(**P-4783-4784**).

**OBSERVATION OF COMMISSION**:-

The complainant produced copies of several orders, issued by the Secretary of the Board of Wakf, in the name of various persons, by way of abuse and misuse of the powers as under:-

| Sr. No. | Order and dated | Particulars | Page No. | Remarks |
|---|---|---|---|---|
| 1 | No.WKF/SNT/ 1877/99 Dt. 15-10-98 | The plot measuring 10x10 feet out of C.T.S. No. 4624 was lease to Dilip Suryawansi, on rent of Rs. 100/- p.m. | 4765 | |
| 2. | No.1195/99 Dt.10-12-99 | The shop lease to one Mr. Sayed Anwar Ali s/o Sayed Afsar Ali on rent of Rs. 150/- p.m. | 4766 | |
| 3. | No.378/99 Dt.16-4-99 | The plot measuring 30x40 out of Sy No.113 of Harsul lease to Mr. Sayed Afijuddin on yearly rent of Rs.400/- | 4767 | |
| 4. | No.1061/99 Dt. 2-11-99 | Plot Adm.19x40 lease to Mr. Sultankhan on rent of Rs. 75/- p.m. | 4768 | |
| 5. | No.368/99 Dt. 7-4-99 | N.O.C. to **Sub-late** two shops of Masjid Rly. Station Aurangabad | 4769 | |
| 6. | No.574/99 Dt.16-6-99 | The possession of Mr. Abdul Gafoor on plot adm. 8x6 **regularized** on monthly rent of Rs.100/- | 4770 | |
| 7. | No.649/99 Dt. 7-7-99 | Plot bearing CTS No.11442 adm. 40x30 was lease to Mr.Mohd. Mahebub on yearly rent of Rs.800/- | 4771 | |
| 8. | No.641/99 Dt. 2-7-99 | The possession of the Khoka adm. 6x6 was regularized to Mr.Sk. Saleem on monthly rent of Rs. 100/- | 4772 | |
| 9. | No.565/99 Dt.11-6-99 | The possession of the plot adm. 6x8 was regularized to Mr.Mohd. Ajaz monthly rent of Rs. 100/- | 4773 | |
| 10. | No.1126/99 Dt. 17-99-99 | The shops bearing No.3, 4, 30 and 31lease to Mr. Mohd. Manjur on monthly rent of Rs.1200/- | 4774 | |

As per aforesaid statement, supported with the documents, various properties were leased or permitted to be sub-leased or the possession was regularized on very meager rent amount. The sites appear to be at corners of Roads and/or at material places and so the quantum of rent may be comparatively very negligible and as such the Secretary misused his powers.

The aforesaid orders do no where disclose whether the Secretary Mr. M.M.Siddiqui who appears to be the signatory of the aforesaid documents was delegated with the powers to issues the such orders. The said orders further do not disclose whether the Board had taken decision to allot the aforesaid premises.

Mr. M.M.Siddiqui filed reply (**P.4779**) and simply stated that, the order of lease were issued for a temporary period of 11 months involving no policy matter vide section 15 (j) of the Wafk Act 1954.

a) He did not making a statement as to whether any resolution was passed by the Wakf Board and he was authorized to issue such orders. It appears that, the Secretary of the Wakf Board was not given the powers to issue the orders of allotment of the property on lease. Mr. M.M. Siddiqui has obviously misused and abused the powers-nay–he issued the aforesaid orders without any powers and he is therefore liable to the stringent punishment.

b) Mr. M.M.Siddiqui made a reference of the Wakf Act 1954 and produced copy of section 15 (j) of the Act, however the said Act would not be applicable for the reason that all of the aforesaid orders were issued after the Wakf Act 1995 was enforced. Section 32(2)(j) r/w section 56 of Wakf 1995 require a resolution to have been passed by the Board to sanction the lease and as per rules 25 and 26 of the Maharashtra Wakf Rules 2003, the Mutwalli has to actually lease the property and not the Wakf Board. The action of Mr. Siddiqui in giving property on lease therefore, was utmost illegal. Mr. Siddiqui has availed the powers of the Board though he was not empowered and he is liable for serious punishment.

**Mr. M.M. Siddiqui appears not only to be responsible for misuse and abuse of his power but I would not be wrong to say that, issuing of such orders may be for extraneous consideration.**

**At the same time Mr. S.S. Ali Quadari the CEO of Wakf is firstly responsible for negligence in not giving the reply to this office and secondly responsible for having hands in gloose with Mr. M.M.Siddiqui.**

**The Wakf Board may either regularize the possession of the aforesaid person by entering into the fresh agreement of lease and may fix the rent as per the prevailing rates with a term of renewal after each three years OR the Wakf Board may initiate the proceeding to eject them from the property and may obtain the vacant possession from them.**

The Wakf Board may even take action under Bombay Government Premises (Eviction) Act 1955, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.81.**

**REPORT**

**COMPLAINT NO. 62/2009**

**Complainant by Mohd. Osman s/o Gulam Jilan**

**President of Beed.**

**MASJID MANDIBAZAR BEED**.

**DETAILS OF THE PROPERTIES** :-

Sy. No.143 is a Wakf Property of Masjid Mandi Bazar Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant made a grievance of several properties viz. Sy No. 224,573, 366, 369, 375, etc. together with Sy.No.143 in the body the complaint (**P.4780-4783**). However in prayer clause he made a grievance in respect of Sy.143 only. He made a grievance that, one Mr. Govindrao Chikhlikar a Sabhapati of Congress party joined hands with Mr. Sujauddin s/o Hassan Mohiuddin and caused him to submit application in the office Dy. Collector L.R. to take the entry in the 7/12 extract as "Pratbandit" and thereafter he transferred this land to various persons.

**NOTICES TO THE PARTIES:-**

Though the complainant made aforesaid allegations in the complaint, he did not produce a single document to support it. On the contrary the complainant himself produced the xerox copy of application (**P.4784-4786**) submitted by Mr. Wahidduddin Khatib, the heir of Hassan Mohiuddin in the office of Tahsildar Ambejogai which disclosed that, this land Sy.No.143 together Sy.No.224 is in his possession. Such being matter the summons was not issued to any of the party, the heirs of Mutwalli being in possession of the land.

**OBSERVATION OF COMMISSION**:-

The complainant simply made allegation that, one Mr. Govindrao Chikhlikar joined hand with Sujauddin s/o Hassan Mohiuddin and succeeded to transfer the land. He however did not produce a single document to support such contention. As against this the Xerox copy of application (**P.4784**) referred to above makes it clear that, the land is in possession of the heirs of Mutwalli. The complaint therefore renders without substance and so it is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.82.**

**REPORT**

**COMPLAINT NO. 12/2008**

**Complainant by M.A.Nasir Ali and**

**villagers r/o Ambai Tq. Sillod Dist. Aurangabad.**

**MASJID AT AMBAI TQ. SILLOD.**

**DETAILS OF THE PROPERTIES** :-

Gut No.493 of village Ambai is a Wakf property for service of Masjid.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr. Nasir Ali and others of village Ambai filed a complaint (**P-4800**) alleging that, Gut No.493 which is adjoining the Bus stand is Inam and so is having a great potential/demand. However that has been encroached and being encroached by selling plots. The 7/12 extract showing this land to be Inam for service of Masjid (Pratibandit Sataprkar) in Kabjedar column is also produced (**P.4801**).

**NOTICES TO THE PARTIES:-**

The documents being not produced by the Complainant to support the allegation of encroachment and illegal sale, the Commission thought it better to call the information from the Sarpanch of village and accordingly the notice was issued bearing O. W. No.310/2008 dated 15-11-2008 (**P-4802**). The Grampanchayat was quite prompt in giving the reply (**P-4803-4804**) with the list of those who committed encroachment.

The CEO Wakf was served with the copy of summon O.W. No.310/08 dated 15-11-09 (**P.4802**) for information and he did not attend.

The Commission therefore, issued summons to the said parties i.e. S/Shri Sandushah, Turabshah Gulabsha, Iqbalshah Habibshah, Mahemudshah Habibshah, Sardarshah Khakishah, Sabbirshah Shedushah, Khajushah Rahemanshah and Vajirshah Gulabshah O.W. No.194/8/1 to 194/8/8 dated 20-4-2010 (**P-4805**)

The CEO Wakf was served with the summon O.W. No.195/10 dt. 20-4-2010 (**P.4805**) calling him upon to make the statement on 30-4-2010 and he did not attend.

In response to the aforesaid summons Iqbalshah and Vajirshah appeared on 30-4-2010 and they filed application for adjournment (**P.4806**). Vajirsha appeared and gave separate application on 30-4-2008 for adjournment (**P.4807**) and again appeared on 10-5-2010 and he submitted application for adjournment (**P-4808**). He did not turn up thereafter and hence no reply.

Mr. Mahemudshah Habibshah filed reply (**P-4809**) and admitted to be having a house in Gut No.493 since last 25-30 years, with copy of the letter issued by Asstt. Collector, Aurangabad (**P-4810**) and the N.A. tax payment receipt (**P-4811**).

**OBSERVATION OF COMMISSION**:-

The contention of the complainant that, Gut No.493 is Wakf has been supported by the 7/12 extract (**P.4801**) as well as the copy of the letter issued by the Asstt. Collector Aurangabad (**P-4810**), which is produced by Mahemudshah Habibshah. These documents are sufficient to conclude that Gut no.493 is a Wakf property.

Unfortunately the CEO Wakf did not file a reply to the summon (**P-4805**). **This is how one who is care taker of the wakf property is highly negligent and irresponsible**. Mr. S.S. Ali Quadari was the CEO of the Wakf Board when the summons was served. The Wakf Board as well as the Government may take necessary action against him. I may say that, the things are suspicious even against Mr. Quadari, for the reason that, the situation of the property is quite adjoining to the Bus Stand and the responsible officer like the CEO, instead of Assisting this office by furnishing the detailed information, has even not given the reply to the summon The safe inference may be that, his silence may be for the extraneous consideration.

Mahemudshah Habibshah admitted in his reply (**P-4809**) to be having a house in Gut No.493 that too, since 25-30 years and he added to have not committed the encroachment. His such statement carries no meaning.

I have come to conclusion that, Gut No.493 is a Wakf property and that has been encroached by opponents as stated in (**P. 4804**), together with others who might have dared subsequently.

It is now for the Board of Wakf to initiate the legal proceeding against the encroachers and to take the land in control and management of the Wakf Board.

The Wakf Board may even take action under Bombay Government Premises (Eviction) Act 1955, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.83.**

**REPORT**

**COMPLAINT NO. 35/2008**

**Complaint by President Masjid Byculla**

**AHELE-HADIS MUMBAI**

**DETAILS OF THE PROPERTIES** :-

The Mosque registered as Mohammed Bin Ismail Moallim is a Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The Mosque which is a Wakf registered as Mohammed Bin Ismail Moallim appears to be under the management of the other side whose names are not stated and the allegation of irregularities are made.(**P.4815-4816**).

**NOTICES TO THE PARTIES:-**

The issue involved in the matter in respect of non furnishing the accounts and other irregularities, being out of the scope and jurisdiction of this commission, the notices were not issued against the parties.

**OBSERVATION OF COMMISSION**:-

The allegation in the complaint relating to non furnishing of account and irregularities by the other side whose names are not stated in the complaint, is out of scope and jurisdiction of the commission. It is further stated in the complaint that, the respondents are negotiating with the builders to transfer the property. The complainant therefore may approach to the appropriate court of law. The Commission is here to make the inquiry as regards the illegalities-irregularities of past and not of future. The complaint therefore is disposed off.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.84.**

**REPORT**

**COMPLAINT NO. 70/2009**

**Complaint by President of Samajwadi Party**

**Mr. Shaikh Naim s/o Shaikh Lal r/o Hingoli.**

**MASJID PALTAN AND MADARSA ANJUMAN ISLAMIYA**.

**DETAILS OF THE PROPERTIES** :-

Gut No.168 adm. 3 H. 63 R of village Borja Tq. Aundha Dist. Hingoli is a Wakf of Masjid Paltan and Madarsa Anjuman Islamiya.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr.Shaikh Naim s/o Shaikh Lalal the President of Samajwadi Party sent a complaint by post.(**P.4820-4821**) alongwith several documents which would be referred hereinafter. According to complainant, the aforesaid Gut No.168 adm.3 H. 63 R of Village Borja has been transferred under sale deed No.2430 dated 8-6-1995 (**P.4822-4831**) to Shri Shivaji Dagdu Padole and Nagorao Parsram Padole for Rs.90,000/- whereas the Market price that day was Rs. 1,06,000/-. The copy of 7/12 extract (**P.4832**). The people of town as well as the Mutwalli of Masjid and the D.W. O. Parbhani made a several complaints and sought the inquiry however, that proved invain. Not only this but the notice dated 26-2-2001 also was served on the Board of Wakf through Mr. Vijay Sharma Advocate on the Marathwada Wakf Board (**P-4833-4835**). The D.W.O. Parbhani also made a complaint dated 20-1-2001 in this regards (**P-4836-4837**) Not only this but the office of the D.W.O.Parbhani (Not the office of the CEO) brought this fact to the Notice of the Personal Assistant of the Wakf Minister under letter dated 16-10-1998 (**P.4838-4841**). However no action is taken by either the Minister or the Wakf Board in the matter. All of the aforesaid are the contents of the complaint together with the documents enclosed alongwith it. The complainant therefore approached to this office.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.272/7/1 to 272/7/4 dated 25-5-2010 was issued through the CEO Wakf Aurangabad in the name of Vendors Salimkha Majidkha Pathan, Sattarakha Taherkha Pathan, r/o Paltan Tq. & Dist Hingoli and Vendees Shivaji Dagduji Padole, and Nagorao Padole r/o Jalgaon Tq. Aundha Dist. Parbhani (**P.4842**) calling them upon to make the statement on 5-6-2010. The CEO however did not send the compliance report in respect of service.

Summons O.W. No.272/7/7 dated 25-5-2010 was issued to the complainant Shaikh Naim Shaikh Lal calling him upon to make the statement on 5-6-2010. (**P.4842**)

In additional it he was contacted on phone to attend this office and produce the copy of Gazette and other documents. However he did not respond.

The Summons O.W. No.272/7/5 and 272/7/6 dated 25-5-2010 was served on Mr. S.S. Quadari the CEO Wakf and Mr. Khushro Khan the D.W.O. Parbhani calling them upon to make the statement on 5-6-2010.(**P.4842**). They did not respond.

**OBSERVATION OF COMMISSION**:-

On having a minute scrutiny of the sale deed (**P.4822-4831**) I found in the first para itself to have been stated that, the land belongs to the Mosque, however in just adjoining line prior to this statement, it is stated that, "**the land belong to us**". As such there are two inconsistent statements just one after the other as regard the title of the land. This was the reason to call the complainant before this office, however he did not attend. **Unfortunately the CEO Wakf, instead of acting as a care taker, acted as a enemy of the Wakf Board by non filing the reply to the summon of this office.**

This office therefore rendered helpless to record the findings as regard the nature and character of the Inam as Mashrutul Khidmat or otherwise.

However the documents produced by the complainant are substantial to say that, the land must be Mashrutul Khidmat. The complainant appears to have served a notice dated 26-2-2001 against the Board of Wakf, through Adv. Mr. Vijay Sharma making a reference of the earlier correspondence, and notices, and lastly asking the Wakf board, to take action in respect of illegal transfer of land Gut no.168. (**P.4833**) Not only this but the D.W.O. Parbhani also made the similar grievance (**P.4836**). **The D.W.O. Parbhani was bold enough to make the grievance directly to the Personal Assistant of the Wakf Minister in his letter dated 15-10-98 (P. 4838), probably because of the reason that, the Wakf Board was not taking any action in the matter.**

I may however observe that, this is matter which is required to be investigated by the Board and the action is required to be take against the wrong doors, if the property may be the Wakf and if that might have been transferred without the prior sanction of the Wakf Board and without compliance of section 32 (2) (j) of the Wakf Act 1995.

The commission tried its best by serving the summons against the private parties as well as the CEO Wakf to assist the Commission by filing the reply. Not only this but the office of CEO Wakf Board was contacted many times on phone to file the reply, the question of quite valuable property being involved. However all of such efforts went on deaf ears of the CEO, the Superintendent of the Wakf Board and that is reason for helpless situation of the commission. **The wakf Board as well as Govt. may take a suitable action against the then CEO Mr. S.S. Ali Quadari who is responsible for negligence and in action.**

The Wakf Board also may take legal action u/s 52 -54 of the Wakf Act to recover the possession from the vendees. The Board also may initiate Criminal Proceeding against the vendors.

The Wakf Board may even take action under Bombay Government Premises (Eviction) Act 1955, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.85.** **REPORT**

**COMPLAINT NO. 45/2008**

**Complaint by Sayed Muzaffer s/o Sayed Shakoor the**

**Secretary of Kabrasthan Jamat Shaikh Committee)**

**DETAILS OF THE PROPERTIES** :-

Sy. No.2 adm. 3 A. situated at Khulatabad Dist. Aurangabad. is a Wakf property

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complaint is filed by Mr. Sayed Muzffar Sayed Shakoor (**P-4850-4852**) alongwith the documents. The complainant alleged that, respondent no.1 to 19 have encroached on the land of the Kabarsthan. The Municipal Council of Khultabad also gave plots to some of the aforesaid person on lease and license without any rights. I may state here that this subject and part of complaint is already covered in the report No.65 and so I may not reconsider it here. ( **Report P-339**) The Second part is in respect of institution of the suit in the court of law and only this issue is required to be considered in the matter.

**NOTICES TO THE PARTIES:-**

The summons O.W. No.247 to 254 dt. 7-5-2010 were issued to the illegal occupants of the plots through the CEO Wakf calling them upon to file reply on 18-5-2010 and they did not respond to this office. (**P.4853-4855**), nor the CEO Wakf sent a compliance report.

The CEO Wakf Mr. S.S.Ali Quadari was served summon bearing O.W.No.247/3/3, 248/3/3, 249/3/3, 251/3/3, 252/3/3, 253/3/3, 254/3/3, dt. 7-5-2010 calling him upon to make statement on 18-5-2010 and he did not respond. (**P.4853-4855**)

The summons was issued the C.O. Municipal Council Khultabad through the CEO Wakf bearing O.W.No.247/3/2, 248/3/2, 249/3/2, 251/3/2, 252/3/2, 253/3/2, 254/3/2, dt. 7-5-2010 calling him upon to make statement on 18-5-2010 and there is no report of compliance from the CEO Wakf and the CO M.C. also did not respond. (**P.4853-4855**).

**OBSERVATION OF COMMISSION**:-

See report No.65 (**P-339**) as regards encroachment by 20 persons on the Wakf property. No separate finding.

The complainant has produced the copy of the order dated 31-7-2008 passed by the Wakf Tribunal Aurangabad in application No.3/2007 wherein the application for restoration of suit No. 17/2007 was rejected (**P. 4856-4858**). The copy of the suit is (**P.4859-4862**). Copy of the Roznama is (**P.4863**) Since the application of restoration was dismissed, the complainant was called, as per endorsement on the complaint by the Commission dated 4-5-2010, to inquire whether the order of dismissal of restoration application was challenged before the appellate authority and he replied in negative. Since the suit was filed and subsequently dismissed, the

Commission has left with no alternative then to advise the complainant to take action under section 54 of the Wakf Act or under any other legal provision.

At the same time the Board of Wakf, not only may, but must, take an action u/s 54 of the Wakf Act 1995 to recover of possession of the property, when the plots were leased by the Municipal Council and not by the Wakf Board. The Municipal Council has absolutely no authority to lease the plots of the Wakf. The Board of Wakf however will have to exert by making inquiry whether the plots are leased by the Municipal Council and then the appropriate action may be taken.

**The Govt. may also take appropriate action not only against the Municipal Council but also against the then C.O. of the Municipal Council who leased the plots of the Wakf to different persons. At the same time the Chief Officer of the Municipal Council Khultabad is responsible for creating the complication and causing damage/loss to the Wakf property. The Wakf Board may take action u/s 52-54 of the Act 1995.**

The Wakf Board may even take action under Bombay Government Premises (Eviction) Act 1995, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.86.**

**REPORT**

**COMPLAINT NO. 92/2010**

**Complaint by Abdul Rahimkhan s/o Karimkhan r/o Aurangabad.**

**DARGAH HAZARAT SHAH PEER MOHAMMAD.**

**DETAILS OF THE PROPERTIES** :-

Gut No. 97 (Sy. No.18) is Wakf of Dargah Hazarat Shah Peer Mohammad.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant stated in the Complaint (**P.4870-4871**) that, the Gut No.97 is a Wakf and that has been encroached as well as it is being transferred by making plots. He enclosed the copies of publication issued by Adv. Rajendra Kisanrao Dharphale (**P.4872**) and by advocate Sow Anuja Kannadkar (**P.4873**). Both of these documents disclose that, the land is being disposed of by converting into plots. The copy of Gazette showing Sy.No.18 dated 17-5-1973 alongwith other two lands i.e. Sy.No.26 and 17 are the Wakf properties (**P.4874**). The copy of form No.9 also is produced showing this land alongwith other lands as Inam for Dargah (**P.4875**). The Dy. Collector (Atiyat) issued a publication and published in the Gazette dated 24-7-2003, enumerating this land alongwith aforesaid two lands to be the Inam (**P.4876-4877**).

**NOTICES TO THE PARTIES:-**

The summons O.W.No.210/2/1 and 210/2/2 dated 22-4-2010 were served on the CEO Wakf Mr. S.S. Ali Quadari and the D.W.O. Mr. Munirkhan Pathan respectively, in respect of the publication by Rajendra Advocate calling them upon to file the reply on 30-4-2010 and they did not attend (**P.4877-A**).

The summons O.W.No.211/2/1 and 211/2/2 dated 22-4-2010 were served on the CEO Wakf Mr. S.S. Ali Quadari and the D.W.O. Mr. Munirkhan Pathan respectively, the publication by Sow Anuja Advocate calling them upon to file the reply on 30-4-2010 and they did not attend (**P.4878**).

The summons O.W.No.208/10 dated 22-4-2010 (**P.4879**) was served on Mr. Rajendar Kisanrao Dharphale, Advocate r/o Aurangabad calling him upon to file a reply on 30-4-2010 and he did not attend.

The summons O.W.No.209/10 dated 22-4-2010 (**P.4880**) was served on Sow Anuja Kannadkar Advocate r/o Aurangabad calling her upon to file a reply on 30-4-2010 and one Bhaskar Madhorao Kute appeared and filed a statement that, the agreement of sale has been cancelled. (**P.4881**) which is stated in publication (**P.4873**).

**OBSERVATION OF COMMISSION**:-

The CEO and D.W.O. Wakf did not file reply to the summons (**P.4878**) and so the factum of this land being Wakf, and that there has been creation of third party rights, has not been brought on record, by the authority who was competent.

Still the documents referred to in this report viz. copy of Gazette (**P.4874**) and copy of form No.9 (**P.4875**) and copy of subsequent Gazette issued by Dy. Collector (Atiyat) (**P.4876**) have sufficiently established that, the land Sy.No.18 together other lands Sy.No. 17 and 26 are the Inam of Dargah.

It appears that the CEO Wakf issued the order on 1-8-2009 and registered the aforesaid land as Wakf of the Dargah (**P. 4882-4883**) and thereafter issued the certificate dated 7-8-2009 (**P. 4884**). These documents further corroborated that, these lands are the Wakf properties .

It may be observed that neither the Mutwalli of Dargah nor the CEO nor the D.W.O. are taking care of the land properties of the Wakf. This is how the valuable land properties adjoining to Aurangabad city are being carelessly neglected by not only the Mutwalli but also by the CEO and D.W.O Wakf. As a matter of fact the land being situated adjoining to Aurangabad itself, within a very short radius, the CEO and DWO were expected to bring the material not only to prove these lands to be Wakf but, to bring the material in respect of Commission of encroachment or otherwise, before this office. However the CEO and DWO Aurangabad displayed gross negligence, carelessness and adamancy that too, for properties of the God. **The then CEO Mr. S.S. Ali Quadari and D.W.O. Mr. Munirkhan Pathan are therefore liable for gross inaction to protect the Wakf properties and they are liable to be taken of with disciplinary action.** At the same time the Mutwalli is also responsible for negligence. If the prompt action is not taken, the land would be converted into plots and would be sold adding the further complication. The Wakf Board therefore may take the immediate action in the matter u/s 52 and 54 of the Wakf Act 1995.

The Wakf Board may even take action under Bombay Government Premises (Eviction) Act 1955, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.)

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.87.**

**REPORT**

**COMPLAINT NO.77/2009**

**Complaint by Shaikh Abudl Sattar Shah Mohammad R/o Beed.**

**MUNICIPAL HOUSE NO. NO.2-2-52 OF BEED**

**DETAILS OF THE PROPERTIES** :-

Municipal House No. No.2-2-52 of Beed as a dilapidated mosque of Beed.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint (**P-4890-4892**) that, in the Government Gazette dated 24-1-1974 (**P-4893**), the area of this site as shown as 22x18 feet. As against this, the area of this site is shown as 72.73 Sq. Mtrs. in the Municipal record (**P-4894**). This site is shown to be of the Mosque in this document. As against this the Wakf Board on the application of the people of locality granted permission to build of Mosque on the site adm. 13.5 x14.5 feet i.e. less than one shown in the Municipal record (**P.4895**). Not only this but the name of Khurshid Khatun is shown in the subsequent Municipal record of this site (**P.4896**). The complainant sought the possession of this site for construction of Mosque.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.460/09 dated 7-12-09 was served on the CEO Wakf Mr. S.S.Ali Quadari calling him upon to file the statement on 16-12-2009 and he did not respond. (**P. 4897**).

**The summons was sent to Chief Officer Municipal Council Beed bearing O.W No.386/1 dated 12-10-09 calling him upon to make the statement on 26-10-09 and he did not attend (P. 4898).**

The summons was sent to City Survey Officer Beed bearing O.W No.386/3/2 dated 12-10-09 calling him upon to make the statement on 26-10-09 and he did not attend (**P. 4898**)

The summons was sent to Smt. Khurshid Khatun w/o Ahmed Nasir Bin Samlan Beed bearing O.W No.386/3/3 3dated 12-10-09 calling her upon to make the statement on 26-10-09 and she did not attend ( **P. 4898**) .

The summons O.W.No.385/3/1/09 dated 12-10-09 was served on the CEO Wakf calling him upon to file the make statement on 26-10-2009 and he did not respond. (**P. 4899**).

The summons O.W.No.385/3/1/09 dated 12-10-09 was served on the D.W.O Beed calling him upon to file the statement on 26-10-2009 and he did not respond. (**P. 4899**).

The summons O.W.No.385/3/3/09 dated 12-10-09 was sent to Khurshid Khatun calling her upon to file the statement on 26-10-2009 and he did not respond. (**P. 4899**).

**OBSERVATION OF COMMISSION**:-

The complainant want to seek the possession of the site of more area then the one shown in the Govt. Gazette (**P.4893-4894**). The Board of Wakf refuted his such claim in the communication (**P.4895**). The Board of Wakf adviced him to take the necessary steps. It appears that, the site in dispute is in possession of Khurshid Khatun (**P.4896**). The dispute in respect of the area of the site and title thereon is involved in the matter and it is beyond the jurisdiction of the Commission.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.88.**

**REPORT**

**COMPLAINT NO.65 & 66/2008**

**Complaint by Mr. Md. Osman s/o Gulam**

**Jilani Khatib r/o Ambejogai Dist. Beed.**

**DETAILS OF THE PROPERTIES** :-

Lands Sy.No. 76, 126,141,143,155,224,366,369,375, 435, 436, 498, 499, 500, 501,502,503 and 573 totally adm. 462 A. 5 G. situated at Ambejogai Dist. Beed are the service Inam (Mashrutul Khidmat) for Jama Majsid Ambejogai. The complainant Mr. Md. Osman s/o Gulam Jilani filed a complaint No. 65/2009 (**4949-4956**) and complaint No.66/2009 (**P-4957-5004**). The grant is under Muntkhab No.1857 **(P-5005-5006)** The copy of Gazette is (**P-5007**). The copy of Revenue Record having list of these properties is (**P-5008**) The copy of mutation entry No.22 is (**P-5009**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

It appears from the record that, some of the Inamdars and Mutwallies were not performing the service to the Mosque and so the aggrieved people and specially Mr. Sujawuddin submitted application on 20-2-1979 to the Dy. Collector Ambejogai prying to take these land in the Govt. custody by removing the illegal occupants (**P-5010-5012**) It appears the Govt. also noticed that, the properties of service Inam were either encroached or illegally transferred and so the circular was issued by the Divisional Commissioner on 9th of January 1985 (15-10-1975) to his subordinates directing to record the name of religious institution in Kabjedar column whenever there is services Inam, by deleting the name of Inamdar (**P-5013**). The question no.3009 also was asked in the Assembly on 24-4-2006 stating that, majority of the service Inam lands have gone under the private ownership. (**P-5014**) The Govt. also issued a circular dated 31-5-1996 (**P-5015**) stating that it is necessary for the Revenue Officer to keep watch on the Inam properties to see whether the religious institutions are properly served – maintained and to submit the report to the Govt.

The Hon'ble High Court decided W.P. No. 2823/81 dt. 13-8-1990 in the matter of Muntkhab No.1857 and orders of the Divisional Commissioner dated 9-1-1981 and Dy Collector dated 22-1-1975 are confirmed holding that, the lands under this Muntkhab are Madadmash (Private Inam) and not Mashrutul Khidmat (service Inam). (**P-5016-5020**)

**NOTICES TO THE PARTIES:-**

The summons O.W. No.461/2/1 and 461/2/2 dated 15-9-2010 were served on Mr. S.N.M.Quadari, the CEO Wakf and Mr. Maqsud Ahmed D.W.O. (**P. 5020A**). Both of them claimed time vide application received on 21-9-2010 (**P.5020B and 5020C**),copy of the complaint was sought and was supplied (**P.5020-D**)

**OBSERVATION OF COMMISSION**:-

It was held by the aforesaid revenue authorities as well as by the Hon'ble High Court that, though the Inam was for khitabat it was not attached to any religious institutions and so it was personal grant having a character of Madadmash and not having character a services Inam-Mashrutul khidmat.

**DOCUMENTS TO DISPLAY SERVICE INAM**

The complainant has produced several documents in order to display that, the Inam of these lands was for religious institutions. The maps of Sy.No.76,141,376, 498, 436, 503,501, 596 are produced, wherein the lands are shown to be for religious institutions (**P-5021-5028**). The extract of revenue register having the details of these land under mutation entry no.22 is also produced **(P-5029**), showing these lands for service of Jama Masjid.

The extract of namuna no.1 produced on record also show that, these lands are for religious – Deosthan as under:-

| Sy. No. | Page No. |
|---|---|
| 573 | 5030 |
| 366 | 5031 |
| 501 | 5032 |
| 499 | 5033 |
| 503 | 5034 |
| 502 | 5035 |
| 500 | 5036 |
| 498 | 5037 |
| 375 | 5038 |
| 369 | 5039 |
| 596 | 5040 |
| 224 | 5041 |
| 155 | 5042 |
| All Sy.Nos | 5043 |

The 7/12 extract of these lands also have the mention of Jama Masjid as under:-

| Sy. No. | Page No. |
|---|---|
| 375 | 5044 |
| 366 | 5045 |
| 369 | 5046 |
| 76 | 5047 |
| 126 | 5048 |
| 141 | 5049 |
| 143 | 5050 |
| 155 | 5051 |
| 435 B | 5052 |
| 435 C | 5053 |
| 436 | 5054 |
| 498 | 5055 |
| 499 | 5056 |
| 500 | 5057 |
| 501 | 5058 |
| 502 | 5059-5060 |
| 503 | 5061-5062 |
| 506 | 5063 |

The mutation entries of these lands also have the mention of Jama Masjid –Deosthan-Khidmati (**P-5064-5068**) There is again mutation entry No.6645 dated 10-1-1997 (**P-5069**) wherein there is specific mention that, there is obstructed title (Pratibandhi Malki) and further entry that, the land is non- transferable (Hastantr Ayogya). The mutation entry no.3901 dated 10-10-1982 is in respect of recording the names of heirs of all the lands coming under Mutkhab No.1857 on the basis of order dated 15-9-1982 passed by the S.D.O. Ambejogai (**P-5070**)

**The namuna no.9 has also got the list of these properties (P-5071). This form no.9 is maintained by the Revenue Department showing the service Inam lands only.**

It appears that, the Wakf Department was kind enough to take the cognizance of illegal transfer of the lands. The then CEO Mr. M.Y. Patel issued a letter on 8-2-2006 for the first to the SDO Ambejogai asking him not to grant permission for sale, the lands being Wakf (**P-5072**) The DWO Beed also woke up in 2008 and issued the letter in such form on 19-2-2008 .(**P-5073**) The complainant Md. Osman was all the while alert and he gave application on 13-3-2008 to the Tahsildar Ambejogai making a complaint that, his applications are being not attended though the Collector directed the Tahsildar under his letter no.2008/ MSHAKA-2 /Jama/21/Kavi/375 dt. 25-2-2008 (**P-5074**) See page no.429-433 of this report.

**LITIGATIONS**

Some of the copies of the Judgment are produced by the complainant. The perusal of the same would display as to how there was no uniformity of opinion amongst the revenue officers. Nobody tried to see the previous mutation entries which displayed the conflict of opinion amongst them. When there was a conflict, it would have been better to make the reference of it to the higher authority but non of the officer applied such mind. Ultimately that resulted into chaos and the loss to the Wakf and the Wakf properties. They are referred as under:-

The copy of the judgment dated 30-09-1982 passed by the Dy. Collector (L.R.) in file No. 81/MIA/9 (**P-5075-5077**) is produced wherein the said authority categorically held that the lands under Muntakhab No.1857 are religious service inam attached with the institution-Jama Masjid and they are **not liable for abolition under Hyderabad Abolition of Inam and Cash Grant Act-1954, The said authority explained and interpreted the term " Khitabat" quite rightly and recorded such findings**

This judgment was taken in appeal No.197X- WTl- **and it was dismissed** under the order dated 30-03-1987 **(P-5078-5079)**

**XXXXXXXXXX**

It appears that the matter was taken up in the civil Court by Mohd. Vahiduddin Vs.Yusufoddin, bearing civil suit No. 124/1956 for deciding the shares of inamdars wherein the court decided the question of the character of Inam and held under issue No.1 that the land Sy. No.499 and 501 **are Inam lands**. The plaintiff asserted in the plaint that the suit lands were Inam **granted for religious purpose –service of Khitabat of Mosque and in such lines the aforesaid finding was recorded (P-5080-5090)**

The copy of the judgment of high court in appeal No.1263/1962 dated 25-07-1969 is produced.**( P-5091-5095).** From this judgment it appears that initially the first appeal preferred by the aggrieved party was allowed by setting aside the judgment of the trial court. However, the second appeal was allowed by the high court and the judgment of the trial court was restored.

**XXXXXXXXXX**

The copy of order dated 22-1-1975 in case No.73/HLA/ 3 passed by Dy. Collector (L.R.) Mr. M.A.Aziz Baig, wherein he declared the petitioners Govindrao Laxman and two others as occupant of the land Sy.No.499 and 501 under section 2(A)-I (VI) of the Hyderabad Abolition of Inam and Cash Grant. Act 1954. (**P.5096-5098**), though he observed that, Khitabat is service to community. Moreover in the last line of the order he declared the aforesaid person as a occupants of the lands. **I may say that no soon the question of declaration of the character of Inam arises, the revenue authority looses the jurisdiction to decide it and the jurisdiction vest in Civil Court prior to 1995 and in the Wakf Tribunal thereafter. See AIR 1998 S.C. 912.**

Quite contrary to it the same authority at the same station has taken the contrary view in the matter hereinbelow. The copy of order dated 31-5-1976 appears to be the order passed by the Dy. Collector (L.R) Mr. M.A.Aziz Baig wherein he categorically **held that, the lands under the Muntkhab No.1857 are not community service Inam but they are meant for maintenance of Jama Masjid and Dargah for which the Inam Abolition Act is not applicable.(P.5099-5101)**

**xxxxxxxxxxxxxxxxxxxxxxxx**

i) The Addl. Collector Beed decided the case No. PK-91/CD/1/Appeal/ROR/72 dated 26-11-1993, which was filed on 4-11-1991 in respect of the lands Sy.No.366 and Sy.No.369 wherein the petitioner Mohd. Mohiuddin s/o Mohd. Khairoddin claimed that, the words "Jama Masjid and Archak." May be deleted from the kabjedar column of 7/12 and the Addl. Collector Mr. Shri K. Wanpal held that, **the lands are Inam of religious institution and they are not transferable and they are of "Prtibandhit" ownership (P-5102-5105)**

This judgment was taken in appeal No.94/REV/R/9 decided on 13-4-1998 and by confirming the judgment the appeal was dismissed (**P-5106-5108**).

Both of the judgments were again taken in appeal No.98/ROR/REV/PL/R/2 decided on 27-2-2001 before the Addl. Commissioner, Aurangabad and it also was dismissed on the ground of the jurisdiction, since as per section 2-A(2)of the Hyderabad Abolition of Inam and Cash Grant Act, the office of the Commissioner was not invested with the power to decide the 2nd Appeal .(**P-5109-5110**)

It is clear from the aforesaid judgments that, the lands Sy. No.366 and 369 which are out of Muntkhab No.1857 were held to be the service Inam lands and they were not transferable. As per the record available with me, these judgments were not challenged before the appellate court and so they reached to the finality. As a matter of fact, such being the matter there should not have been a contrary/counter view as regards the lands under Muntkhab No.1857. However, as per the following judgments, the things went otherwise.

**xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

The proceeding was instituted by Ahmed Mohiuddin and three others claiming the declaration of the nature of Inam of lands Sy. No 366, 375, 499-A, 499-B, and 501/1-A u/s 2-A and for grant of occupancy right u/s 6 of Hyderabad Abolition of Inam and C.G. Act 1954 and he was successful to obtain such order from the Dy Collector Land Reforms (Mr. P.B.Akoskar) dated 10-6-1998. (**P.5111-5113**). The **Dy. Collector held that, the lands are community services Inam and he granted occupancy right** in favour of Ahmed Mohiuddin to the

extent of their share. The trick he played in this matter was that, he impleaded only the State Govt. as respondent. Naturally the opposite party being not impleaded, who was supposed to bring the material on record in support of religions institutions, such material was not brought on record. The Dy. Collector also did not make efforts to go through the other revenue record and specially the mutation entries about the aforesaid judgment (P. 5075, 5078, 5080, 5099, 5102, 5106 and 5109 ). Had he taken such pains he would have certainly noticed that, the court of the competent jurisdiction made otherwise observations. The Judgment of W.P. No.2823/1981 **(P. 5016-5020)** only was referred and relied in this matter.

This judgment was taken in appeal No.HIA/41/A/2000 / PK.153/L-3 before the Govt. It was decided by the **State Revenue Minister** on 28-10-2002 and by confirming the aforesaid judgment the appeal was dismissed. (**P.5114-5115**)

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The complainant further produced the copy of case No.97/Wtn/appeal/L decided on 13-4-1998 against the order dated 30-10-1996 passed by the Dy. Collector Land Reforms in respect of land Sy.No.366 and 369. The matter was remanded by the Addl. Commissioner under his order dated 13-4-1998 (**P.5116-5118**) . It appears the trial court therein granted the occupancy right in favour of the petitioner u/s 6 Hyderabad Abolition of Inam and Cash Grant Act 1954. The Addl. Commissioner, went against the view of the lower court by recording the specific findings,

> "These lands were declared community service Inam lands even though the entries in revenue record are mutated accordingly and continued in the name of Jama Masjid"

> "The advocate for the appellant further mentioned that, the lower court while passing the order under appeal has also failed to take into consideration that, previously the nature of Inam lands in question i.e. Sy.No.366 and 369 is already decided and held to be the conditional /service Inam lands concerning for the services of **Khitabat and Imamat** of religious institution Jama Majsid Ambejogai vide Judgment passed by the authority i.e. Dy. Collector (L.R.) Beed u/s 2 of the Act in earlier case style as Kashinath V/s Mohd. Zahuruddin and others on 31-3-1976"

> "The lower court has totally failed to take into consideration the aforesaid real fact and documentary evidence filed on record and has passed the order under appeal in a very causal manner and also without applying its judicial mind, thereby causing loss to Atiyat grants concerning to religious institutions which is Govt. property".

By making such observation the Addl. Commissioner remanded the matter to Dy. Collector (LR) Beed for fresh inquiry. Despite it the aforesaid two matters (P.5111 and 5114) were decided by taking quite contrary view. The reason for the same appears as observed hereinabove that, Mr. Ahmed Mohiuddin played a trick by non-impleading the material private parties and so the important record of the previous proceeding might not have been brought on record. ***I feel that, Mr. Ahmed Mohiuddin would be liable for Criminal prosecution for concealing the material record from the court and as such by playing fraud against the court. At the same***

***time Dy. Collector who passed the orders (P. 5111) also would be liable at least departmental action for not taking the required precaution of perusing all the mutation entries of the land and not taking precaution of non impleading the necessary parties to the proceedings.*** He should have perused the mutation entries No.6645 and 3901.(P.5064-5068 and 5069-5070).

**XXXXXXXXXXXXX**

The copy of the judgment dated 30-6-2000 is produced (**P.5119-5120**) wherein Revision Petition was disposed by the Addl. Commissioner on the ground that, the notification issued by the Govt. delegating the powers to the Commissioner to hear appeal u/s 2 (A) (2) of the Hyderabad Abolition of Inam and Cash Grant. Act 1954 was bad in law in view of the Judgment of Hon'ble High Court in W.P.No.159/82 decided on 3-5-2000 and also W.P.No.804/91, 295/97, 288/97 and 83/97 decided on 2-5-2000. In this connection I visited in the Hon'ble High Court at Aurangabad with application (**P.5121**) and also found after perusing the record that, the notification of the Govt. the delegating the powers was quashed. (Also see page 5109)

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One Mr. Mohd. Zainulabuddin s/o Md. Zahuruddin also filed an application in the Court of Dy. Collector at Ambejogai praying **to delete the words as "Jama Masjid and Archak"** from the kabjedar column of lands 7/12 extract of Sy.No.375, 499, 499A, 501B (**P.5122-5123**). The application was **decided by the Addl. Collector on 30-7-1993 by rejecting it**, (**P.5124-5125**) (also see p.5102) and by categorically holding that, the order was passed by the lower court contrary to the instructions issued by the Commission vide letter No.279 dated 15-10-1975 (P.5013).

> "-------- the Wakf Board was finding it difficult to ascertain ------ the rights of the Board because of the wrongful entries of such Inam holders in the occupants column and because of such wrongful entries, the holders were selling such lands or disposing them in the manner the Inam holder desire. This request of the Board was considered by the Commissioner Aurangabad and he clearly instructed by the above letter to the Tahsildar to ascertain such cases and **put the Inam holder in the other rights column and to take entry of such institutions (Masjid Dargah) in the occupants column.**------ The Divisional Officer Ambejogai did exactly contradictory in passing his order -------- As a matter of fact it is not the Govt. intention to abolish the Deosthan Inam ----- but still the Govt. has intention to retain Deosthan Inam lands with the institutions".

It is seen from the documents referred to hereinabove that, Mr. Mohd. Jainulabuddin s/o Mohd. Jahuruddin has claimed the occupancy certificate by abolition of Inam As against this his statement was recorded before the Dy. Collector (Atiyat) on 12-8-1982 wherein he categorically admitted that, the various lands from Mutkhab No.1857 are service Inam for Jama Masjid at Ambejogai (**P.5126-5128**). **Mr.Mohd. Jainulabuddin would be liable for prosecution for playing fraud against the court.**

**xxxxxxxxxxxxxxxxxxxxxxxxxxxx**

It appears that there was move to take all the lands under Muntkhab No.1857 in the custody of the Govt., the services being not rendered to the Mosque by some of the Inamdars. The publication to that effect was issued

by the Tahsildar, Ambejogai on 31-7-1973 (**P. 5129**). The matter was taken up in appeal which was decided on 28-2-1989 by the Dy. Collector (Atiyat) Ambejogai Mr. D.R. Bansad. The proceeding was quashed on the ground that the lands under Muntkhab No.1857 are community service Inam and so thorough inquiry was needed (**P.5130-5138**).

Significantly enough, while making reference of the orders of abolition of Inam by the authority, he also made a reference of the application of Mr. Shujauddin s/o Hasan Mohiuddin dated 20-2-1979 under which he claimed that, the lands under this Muntkhab are service Inam for Jama Masjid, Ambejogai (P. 5136). Quite contrary to it Mr. Shujauddin made a claim of occupancy right under the Hyderabad Abolition of Inam and Cash Grant Act 1954 vide the order dated 4-8-1971 passed by the Commissioner in file No.1971/WTA/ Appl/11, HA5/71 (P.5135), and also in file No.70/END/882 the application filed by him before the Dy. Collector for removing the encroachment from the lands (P.5010-5012). As such in one breath he claimed the occupancy right under abolition Inam Act, in 1971 and it appears that, when he lost the properties in another breath he claimed that, the lands are Mashrutul Khidmat. **Mr.Sujauddin would be liable for prosecution for playing fraud against the court.**

The similar is the case in respect of Mr. Ahmed Mohiuddin. The Dy Collector made a reference of his application dated 8-8-1973 (P-5132) wherein he categorically stated that, these lands are for the service of **Khitabat and are Mashrutul Khidmat** (P.5132). As against this the same person submitted separate application (P.5111) making a claim that, the lands Sy.No.366 and 375 are the community service Inam and he prayed for the occupancy right which was granted in his favour vide the order dated 10-6-1998. **Mr. Ahmed Mohiuddin would be liable for prosecution for playing fraud against the court.**

The Dy. Collector made reference of abolition of inam as follows:-

a) Land Sy.No.499/5 and 501B, 143 possessed by Govindrao and Vijykumar, the inam abolished in file No.App/A-22/71 Sujauddin V/s State wherein the Commissioner Aurangabad held that, Khitaba is community service Inam.(P.5133)

b) Land Sy.No.493 possessed by Dynoba s/o Namdeorav Pawar Inam abolished holding that, it is community service inam. (P.5134) .

c) Land Sy.No.596, 344, 345 Inam abolish in file No.71.H/A. 5 (P.5134).

d) Land Sy.No.143 held by Govindrao Nirutirao Chiklikar. Wherein Inam was abolish in file No.1971/WTA/App/11, H.A./71 dated 4-8-1971 and the occupancy right are declared. (P.5135)

**Xxxxxxxxxxxxxxxxxxxxxxxxxxx**

The copy of parawise remarks dated 6-6-2008 given by the Dy Collector Atiya indicate that, W.P. Nos. 1048/94,3610/03, 7471/05, are still pending in the High Court(**P.5139**).

**Xxxxxxxxxxxxxxxxxxxxxxxxxxx**

**ORDERS PASSED BY MINISTERS**

A) See page No.**5114, 5115**, the order dated 28-10-2002 passed by the State Revenue Minister.(See page 452 of this report.

B) The copy of the order passed by the revenue minister dated 24-05-2005 (**P-5140-5143)** is produced wherein the appeal preferred by Nasir Mohiuddin Chirag Mohiuddin and five other against Dynoba Namdev Patil, Sujauddin Hussain and Ahmed Mohiuddin was dismissed. The mutation entry No.11245 dated 25-08-2005 was immediately taken in revenue record

**(P-5148).** The decision was given by relying the judgment in W.P.2823/81 **(P-5016-5020)** The said authority stated on second page of the judgment /order that the **directions were issued by the High Court in W.P. No. 804/2008 on 06-03-2000 that the issue in respect of Inam abolition vide S.2 A of the Act shall be taken up at the Ministerial level** and Nasir Mohiuddin and other preferred appeal 17-08-2000. While dismissing the appeal the chief minister who decided it categorically stated at page two that **Nasir Mohuiddin had taken a ground that the land Sy. No, 596 is meant for services to Jama Masjid Ambejogai.** As a matter of fact no sooner such ground was raised by the party, the powers of the revenue authority or the minister came to end vide the provisions U/S 6 of the Wakf Act. Secondly the wakf board was not a party to the proceeding though it was necessary party. When the Minister observed in the last but second para of the order that the land appears to be having no concern with any religious institution, the verification of this facts was necessary / must since that was related to the jurisdiction of the Civil Court or the Tribunal and not to the revenue authorities. No such care was taken and the appeal was disposed.

Fortunately the W.P.No.7471/2005,1048/94,3016/2003 are preferred in the high court and it appears that they are pending (P-5139)

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C) The copy of the order dated 24-05-2005 passed by the Chief Minister as regards Sy. No.155 is produced **( P-5145-5147),** wherein the appeal preferred by Gulam Mohiuddin and two other Vs. Gulam Samdani Chirag Mohiuddin and seven others was dismissed. The mutation entry No. 11245 was recorded on 25-08-2005 on the strength on such order **(P-5148).** The judgment and order in W.P. No.2823/05 (P. 5016-5020) was referred while dismissing the appeal. The Board was not a party to the proceeding though it was necessary party. It was observed and held that, the said land had no connection with the religious institution. No sooner such observation was made, the said authority lost the jurisdiction.

D) The copy of the order dated 24-05-2005 passed by the chief minister as regards Sy.498 and 500 is produced **(P-5149-5152)** wherein, the appeal preferred by Pandarinath Keshav Sakhare and four other against Ahmed Mohiuddin and four others was dismissed. The judgment W.P.No.2823/81 was relied.

My aforesaid observation would equally apply here.

This order also suffered for the aforesaid grounds and specially non- empleading the Wakf board as a party. This judgment is challenged is W.P. No.7471/2005 and the order of the status-quo is in operation as per the order of the court.**( P-5153-5162).**

**XXXXXXXXXXXXX**

E) The copy of the order dated 05-06-2007 passed by the state revenue minister is produced in respect of land Sy. No. 435,436 and 596. This appeal was preferred by Gulam Mahemood Gulam Samdani and three other Vs. Bansilal Mohanlal Pardesi and the appeal was dismissed **(P-5163-5168).** The Mutation entries are **(P-**5169- **5172-**5175). The judgment and order in W.P. No.2823/05 (P. 5016-5020) was referred while dismissing the appeal. The Board was not a party to the proceeding though it was necessary party. It was observed and held that, the said land had no connection with the religious institution. No sooner such observation was made, the said authority lost the jurisdiction.

The copy of the order dated 28-10-2002 is produced in respect of land Sy. No, 366,375,499 and 501 which was dismissed by the State Revenue Minister. This judgment also suffers for the aforesaid reason and specially for non imploding the Wakf Board of the party.(**5114)**

**xxxxxxxxxxxxxxxxxxxxxxxxx**

**DELAY IN DESPOSING THE SUCCESSION PROCEEDINGS**

**The Commission came accros with the instances of gross delay in disposing the application/ proceedings for succession certificate preferred by the Inamdars, as under**:-

The copy of application for succession under Atiyat Inquires Act filed by Mohd. Osman Gulam Jilan on 24-6-2008 is produced (**P.5176-5180**) (which is incomplete ) I went through this document. I found that, the original petition was filed by Gulam Jilani in the year 1973. He died on 28-5-1997 without looking the decision of the matter. The petition of 1973 was not decided till 1997 during his life. Subsequently one Jainnulabuddin filed objection which was allowed, by dismissing the succession case on **1-7-1998** by the court. The matter then went in revision and it was dismissed. The matter then went in the Hon'ble High Court in W.P. No.1036/2003 and by allowing it the matter was remanded to the lower court for decision. The result thereof is not known the documents being not produced.

**XXXXXXXXXXX**

Similar is the case in W.P. No.1507/2001 decided on 12-6-2001 (**P. 5181-5184**), wherein also the order dated **1-7-1998,** as the one in above para was set aside by the Hon'ble court together the order dated 23-2-1999 passed by the Addl. Collector and order dated 10-7-2000 passed by the Revision Authority and the matter was remanded.

i) The copy of the order dated 2-12-2004 passed by the Dy. Collector (Atiyat) Ambejogai in Case No.73/Inam/BD/1111 is produced on record (**P-5185-5190**) The petition for succession was rejected by holding that the Atiyat Act is not applicable,

(ii) The copy of appellate authority (**P- 5191-5195**) wherein the appeal was partly allowed and the matter was remanded to the Trial Court and

(iii) The copy of order dated 25-4-2008 passed by the Dy. Collector (Atiyat) in the same matter (**P.5196-5198**). wherein there is reference on W.P.No. 1507/01 (P.5181) and the **application for succession was rejected on the ground that, it was not clear that, the Inam was for Khitabat**.

As against this several other authorities referred hereinabove categorically held that, the Inam was for Khitabat. However, the significant fact to be mentioned is that, the Dy. Collector by taking recourse of the Judgment in W.P. No.2823/91 **rejected the claim by holding that, the character of Inam was individual and not service Inam- not for Khitabat.** As a matter of fact the last order was passed in 2008 (**P-5196**) wherein the Judgment of the Hon'ble High Court in W.P. No.1507/2001 dated 12-6-2001 ought to have been referred. However though the said Revenue authority made a mention thereof in the first page of the judgment he avoided to take the cognizance thereof and decide the matter in such line. This is how some of the revenue officers were hostile to the Wakf and Wakf properties and because of such things the complications were created, for one or other reason.

**XXXXXXXXXXXXXX**

**Following are the instances in which the Succession Certificate was granted –**

The copy of the judgment passed by M.R.T. Aurangabad dated 27-5-2002 is produced in case No.67/B/2001/B/Atiyat/ Panditrao and 12 others V/s Ajajuddin and 12 others, (**P.5199-5206**), wherein the revision was dismissed by upholding the order passed by the Lower Court, **granting therein the succession certificate in favour of respondents.**

The copy of the order dated 30-10-2000 passed by the Dy. Collector (Atiyat) Mr. Panduran Kulkarni in case No.71/HAEO/2/1 is produced wherein **the succession certificate was granted** in favour of Ajazuddin the heirs of Mohd. Saijuddin in respect of the lands of Muntkhab No.1857. (**P.5207-5211**). At the last page of the order which is in English there is specific statement that, the succession is granted for "Sy. No.76 adm. 31 A. 35 G. of Ambejogai **subject to performance of service Jama Masjid Ambejogai".**

The copy of the order dated 10-9-1976 passed by Dy. Collector Atiyat Mr. P.R. Kulkarni in case No. 71/HAEO-50 is produced wherein the **succession was granted** in favour Zebunnisa w/o Kutubuddin (**P.5212-5216**)

The copy of the order dated 18-9-1965 passed by the Dy Collector (Atiyat) in file No.28/65 is produced wherein the heirs of Mr. Wahiduddin claimed succession and it was granted (**P.5217-5220)**

**This is how some of the authorities like the one above fairly granted the succession certificate and some other authorities refused, may be with otherwise intention.**

**Xxxxxxxxxxxxxxxxxxxxxxxxxxx**

**TRANSFER OF PLOT**

It appears from the publication in the News paper Ambejogai Times dated 15-2-2007 that, Smt. Shubhangi Dattraya Bodhkhe purchased a plot No. 45 out of Sy. No.435/3 from Shaikh Mohiuddin s/o Siraj Mohiuddin adm. 32x50 feet and the Gramsevak called for objection from the public. This is how the Inamdar turned hostile to inam property (**P.5221**), and started disposing the Inam lands and started earning money. Such disposal appears to be without permission of the Wakf Board. **The CEO as well as the DWO simply played a roll of spectator.**

**The complainant Mohd. Osman was alert.**

**Mr. Mohd.Osman Gulam Jilani is the person and the only person who is worried about the encroachments and illegal disposal of the inam properties** and he is all the while taking required action, however besides mere correspondence the revenue authorities deed not taken a substantive action to prevent such illegalities as under:-

a) it appears that, Mohd. Osman submitted application on 13-9-2005 for self immolation against encroachment and the Circle Officer mentioned it in his letter dated 19-1-2006 (**P.5222**).

b) Mohd. Osman issued letter on 5-3-2007 against the publication in the newspaper (**P.5221**) and the Dy. Collector mentioned it in his letter dated 8-3-2007.(**P.5223**)

c) The Dy. Collector (LR) Beed issued a letter dated 12-4-2007 to the SDO Ambejogai in respect of publication in the newspaper (P.5221), in reference to the application of Mohd. Osman dated 5-3-2007. (**P.5224**)

d) The SDO Ambejogai issued a letter on 4-5-2007 to the BDO Ambejogai in reference to the application dated 5-3-2007 of Mohd. Osman in respect of the aforesaid publication in newspaper (**P.5225**).

e) The BDO, Ambejogai issued a letter to the Gramsevak on 20-3-2007 in this connection (**P. 5226**).

f) One Nandkishor Mundada issued a letter on 15-3-2007 stating that, the Inam of the land Sy. No.435 and 436 is not abolished and the plots out of these lands are being transferred without the permission. (**P.5227**)

g) The Dy. Collector Ambejogai issued a letter dated 18-4-2007 to the BDO Ambejogai in reference to the submission dated 27-2-2007 of Mohd. Osman (**P.5228**)

h) Mohd. Osman submitted application dated 9-3-2007 to the Dy. Collector (Atiyat) making a complaint that, the Tahsildar Ambejogai is not attending his grievance. (**P.5229**)

i) The Dy. Collector (Atiyat) Ambejogai issued a letter dated 13-2-2006 to the Tahsildar Ambejogai directing him to take the entry of the religious institution in Kabjedar column of 7/12 extract (**P.5230**)

j) The D.W.O. Beed issued a letter dated 31-3-2007 to the Tahsildar Ambejogai asking him that, the letter dated 13-2-2006 i.e. (P. 5230) of the Dy. Collector is not being followed and complied. (**P.5231**)

k) The Dy. Collector (LR) issued a letter dated 12-4-2007 to the Tahsildar Ambejogai directing him to make the compliance of the application dated 20-3-2007 of Mohd. Osman in respect of mutation of the name of Jama Masjid in 7/12 extract (**P.5232)**

l) The Dy. Collector (LR) Beed issued a letter dated 13-4-2007 to the Tahsildar Ambejogai in reference to the application dated 7-3-2007 in respect of mutation of the name of Jama Masjid in kabjedar column of 7/12 extract (**P.5233)**

m) The Dy. Collector Ambejogai issued a letter dated 18-4-2007 to the Tahsildar Ambejogai in reference to the application dated 20-3-2007 of Mohd. Osman in respect of mutation of Jama Masjid in kabjedar column of 7/12 extract (**P.5234)**.

n) The SDO Ambejogai issued a letter dated 4-5-2007 to the Tahsildar Ambejogai in reference to letter dated 13-4-2007 of the Dy Collector (LR) Beed to make the necessary compliance thereof (**P.5235)**

o) The Dy. Collector (Atiyat) issued a letter dated 5-9-2006 to the Tahsildar Ambejogai in respect of taking the mutation of religious institution in kabjedar column of 7/12 extract (**P.5236)**

p) The Talathi Ambejogai for the first time issued a letter dated 17-7-2007 in reference to the letters of Tahsildar Ambejogai by way of compliance that Inam of 9 lands was abolished, the names of particular persons either in exclusive or with Jama Masjid are there in the record of the land of Sy.No.76, 126,141,224, 435, 436,502,503,573,410, 411, & 412 (the mention of Sy. No.410, 411, & 412 as (Inam as come for the first time) (**P.5237-5238)**.

q) The Tahsildar Ambejogai also issued a letter on 30-7-2007 (in reference to page No.5224, 5230, 5232 and 5233 to the Dy. Collector (LR) Beed stating that, the Inam of lands Sy. No.155, 366, 369, 375, 499, 436, 498, 500, 501 & 596 are already abolished. (**P.5239).** The Inams of other lands are not abolished. The Talathi could not understand as to whether the name of religious institution was to be mutated in the kabjedar column of the lands either of which Inam was abolished or the other lands of which the Inam was not abolished. Obviously the Talathi was expected at least to take such mutation entry in the record of those lands of which the Inam was not abolished. **I feel that, the ignorance of the Talathi in not to following the simple thing was deliberate, just to create further complication and just to disobey the order of superior, and just to protect the interest of the private person, may for extraneous consideration.**

r) It appears that, one Mohd. Asifuddin Khatib gave a threat of self immolation, for removing encroachment of Sy. No.573,435,436,366,369 & 375 and in that reference the SDO Ambejogai issued a letter dated 13-2-2006 to the Tahsildar Ambejogai to refrain him from it (**P.5240**).

s) It appears that, one Mohd. Asifuddin Khatib gave a threat of self immolation, for getting possession of Sy. No.76 and in that reference the SDO Ambejogai issued a letter dated 5-9-2006 to the Tahsildar Ambejogai to refrain him from it (**P.5241)**

t) The Divisional Commissioner Aurangabad issued a letter dated 28-2-2006 to the Collector Beed (**P.5242)** in respect of encroachment and illegal transfer of Sy. No.573, 435, 536, 366, 369 and 375, in reference to the application of Asifuddin dated 9-2-2006.

u) The SDO Ambejogai issued a letter dated 21-12-2006 to the Tahsildar Ambejogai in reference to the letter of Collector dated 7-12-2006 calling the report in respect of encroachment on Sy No.436, 366, 369, 573, 435 & 375 (**P.5243)**

v) The SDO Ambejogai issued a letter dated 5-9-2006 to the Tahsildar Ambejogai calling his report in respect of encroachment and illegal transfer (**P.5244)**

w) The SDO Ambejogai issued a letter dated 6-3-2006 to the Tahsildar Ambejogai calling him to refrain Mohd. Asifuddin from the fasting in respect of encroachment and illegal transfer of the lands **(P.5245)**

**This is how the responsible authorities like Dy. Collector, SDO, Tahsildar etc. played with the paper correspondence only. Nobody took pains to take a substantive action which I feel, must be deliberate, just to make the complication in respect of the Wakf properties.**

**KHITABAT**

It is true that there is mention of only "Khitabat" in the Muntkhab while dedicating these lands as Inam (**P.5005**). The name of any religious institutions such as Dargah, Masjid is not stated therein. However, there are several documents from Revenue Department showing these properties to be for Jama Masjid of Ambejogai Dist. Beed .

The Hon'ble High Court in W.P. No.2823/81 decided on 13-8-1990 (P.5016-5020) upheld the judgment dated 9-1-1981 delivered by Addl. Commissioner Aurangabad and 22-1-1975 delivered by Addl. Collector (L.R.) Beed and held that.

> "It is not necessary and it is not also desirable in view of the fact that, the documents on record do not show any connection of any institution such as Masjid or Dargah with the present petitioner and it is more than clear that, this is a right of remuneration given to an individual for his service"

On this ground the petition was dismissed. There is no dispute the dedication was for "Khitabat". **The point arises as to whether the dedication of the property for Khitabat would mean the remuneration of the services to be rendered to the society or otherwise.** The Word Khitabat, in my view would mean that, the grant was to the person who reads-recites "Khutba". The Dy. Collector (L.R.)Beed has explained this term in his judgment dated 30-9-1982 (P.5075). He observed that,

> "According to religious service "Khitabat" means to read over "Khutba" at the time of Namaj and such grants have been confirmed attaching with Mosque"

By taking such view the said authority held that, the land under Muntkhab No.1857 are service Inam and the application for occupancy right under Hyderabad Abolition of Inam and Cash Grant Act 1954 was rejected. In this connection I may observe that, Khutba which may be called as Bayan or lecture is to be delivered-recited in every prayer on Friday as well as prayers of Ramzan Idd and Bakri-Idd. Unless the khutba is recited, there is no prayer –Namaz in all respect as required. If either khutba is not recited or if it is recited but the Namazi (Worshipper) did not attend and listen it deliberately, he would be liable for a great sin. As such reading/reciting Khutba in aforesaid prayer is essential part of Namaz. Here the grant was made for Khitabat i.e.

for reading –reciting khutba. In other words this grant was to the post who reads khutba and was not to a person who is khatib. Such property therefore, would be carried with the post "Khatib" and not with a person. Such may be the position of the shariyat, as far as khutba and khitabat is concerned. In view of such matter the aforesaid grant under Muntkhab No.1857 would not be regarded as a personal grant but it would be a grant for a particular service to be rendered in the Mosque or at the Iddgah. The responsible authority of "***MARKAZI DARUL IFTA IMARATE SHAAREIAAH AURANGABAD (M.S***.)" also issue Fatwa in this respect, after the problem was brought to its notice by the Commission. (**P-5245-A**). **When such is the matter, the provisions of the Hyderabad Abolition of Inam and Cash grant Act would not be attracted. All the lands under Muntkhab No.1857 would be exempted by virtue of the provision u/s 1(2) (i) of the Hyderabad Abolition of Inam and Cash Grant Act**. Now the point arises as to whether the aforesaid judgment of the revenue authorities as well as the Hon'ble High Court in W.P.No.2823/05 would be restjudicata . In this connection I may refer the principle laid down in **ARI 1998 S.C. 972.** (Report Page .896-901) It is held in para no.7 of the judgment.

> "These entries in the Inam fair register establish the ingredient of Wakfs as defined under S. 3(1) of the Act. For the purpose of that definition it is not necessary that, the dedication should be in favor of Dargah. It is sufficient if the dedication is made for purpose recognized by the Muslim Law as pious, religious and charitable".

This issue has been sufficiently dealt with by the Hon'ble Supreme Court in the aforesaid case in AIR 1998 S.C. 972. On going through the facts of this case, I found that the Wakf property was leased and sub leased some where before 1961 by the Mutwalli. The said transaction was challenged by filing a suit in the Civil Court on 8-8-1967. The suit was dismissed on 14-2-1975 by the trial court. It was taken in first appeal before the Hon'ble High Court and the appeal was allowed by passing a decree in favour of Wakf Board. The parties went to the Hon'ble Supreme Court. The issue of res-judicata was raised therein in the background of following facts.

Before this litigation the Tahsildar made a suo-mooto inquiry u/s 3 of Andra Predesh (A.A.) Inams (Abolition and conversion into Ryotwari) Act 1956, on three points (1) whether the property in dispute is inam land (2) whether such Inam land is in Ryotwari, Jamindari and (3) whether such inam land is held by any institution. The Tahsildar under his order dated 17-1-1967 held that, the land specified below is Inam land, the land is in Inam village and the land is not held by any institution. Matter was taken in appeal before Revenue Divisional Officer which was dismissed on 21-8-1967. It was then taken in the Hon'ble High Court (A.P.) under article 226 of the Constitution and it also was dismissed by the order and judgment dated 22-4-1970. In such back ground, the Hon'ble Supreme court in para no.12 of the Judgment held that,

> "In the light of the legal position, we hold that, the decision of the Tahsildar u/s 3 of the Inams Act as to the character of Wakf property which was upheld by the High Court of A.P. being one passed without jurisdiction, can not operate as res-judicata and the Hon'ble Court A.P. was justified in ignoring the said decision and in not giving effect to it".

Such grant would not come under the provision of the Inam Abolition Act. I have already observed that, the said provision of law would not be attracted to such grant.

Even if it is assumed that, the grant was personal grant for rendering services to the community, the point arises as to whether the grantee would hold a personal right on such property. In this connection I went through the case of R Dorasamy Reddy V/s The Board of of Wakf (A.P. ) reported in 1978 (2) A.P.L.J. 399 wherein it is held-

> "It is true that, the land was granted to an individual to perform service. But it does not mean that, he acquires title to that property. Similarly if the land can be resumed for non performance of service and can be re-granted to another person for rendering service, it does not mean that, the original grantor continues to be owner of the property. When once wakf created it continues to be a Wakf. When Inam is resumed and re-granted it does not mean that there is revocation of the service. It only means that the Wakf property is entrusted to another individual to performance service (P.923A-923E)"

This view was approved by the Hon'ble Supreme Court in the aforesaid authority AIR 1998 S.C. 972 in para no.6. As per this principal even if there is personal grant for rendering service in the Mosque or Iddgah, the grantee does acquire any title to the property and ultimately that becomes non-transferable. Such land does attract the provisions of Inam Abolition Act.

The Hon'ble Supreme Court further held in para 8 of the Judgment

> "Sub-section 4 of section 6 further provides that, the list of Wakfs published under sub-section (2) of section 5 shall, unless it is modified in pursuance of decision of the Civil Court under Sub-section (1) be final and conclusive. Therefore, any dispute relating to the character is to be decided in the manner provided under the Wakf Act. Subject to the result of Civil Suit, if filed the list of Wakf published in the official gazette is final and conclusive ------ no suit having been filed challenging the Wakf property, the entries in the official gazette describing the property the Wakf become final and conclusive"

Here it appears that, the suit was not filed by the interested party challenging the entry in the Gazette recognizing the aforesaid lands to be the Wakf properties under Muntkhab No.1857, and such entry would be conclusive of the content therein and it will carry its force all the time to come, until it is quashed by the competent court of law.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.89.**

**REPORT**

**COMPLAINT NO.55 /2008**

**Complaint by Khalekh Painter, r/o Beed.**

**DETAILS OF THE PROPERTIES** :-

Land Sy.No.516 adm. 29 A. 18 G. 517, 24 A. 273 Adm. 29 A. 36 G. and Sy. No.274 30 A. 11 G. totally adm. 113 A. 25 G. situated at Madalmohi (Jawharwadi) Tq. Gevrai Dist. Beed are the Wakf properties of Masjid Chorgalli Beed. The details thereof are described at Sr. No.34 Page No.16 of the Gazette dated 24-1-1974 (**P.5300**)

**NATURE OF TRANSACTION WITH OTHER DETAILS :-**

The complainant alleged in the complaint (**P.5301-5302**) that some of these lands are declared surplus under the provisions of Maharashtra Agriculture Ceiling on holding Acts and the said lands are distributed to the people. The complainant alleged that, the Mutwalli approached to the Tahsildar and SDO Gevrai and made a complaint about it however that has yet not been decided, right from 3-12-2005.

**NOTICES TO THE PARTIES:-**

The summons bearing O.W. No.133/09 dated 13-4-2009 was issued to Tahsildar Gevrai calling him upon to make the statement on 6-5-2009 (**P.5303**) however he did not attend.

The summons bearing O.W. No.134/09 dated 13-4-2009 was issued to Talathi Sajja Madalmohi Tq. Gevrai calling him upon to make the statement on 6-5-2009 (**P.5303**) however he did not attend.

The copy of the summons bearing O.W. No.135/09 dated 13-4-2009 was sent to collector Beed for information (**P.5303**) however he did not attend.

The summons bearing O.W. No.136/09 dated 13-4-2009 was issued to DWO Beed for information (**P.5303**) however he did not attend.

**OBSERVATION OF COMMISSION**:-

The complainant has also produced the copies of 7/12 extract of Sy. No.516 only (**P.5304-5306**) wherein the name of the allottees under ceiling act are entered in Kabjedar as well cultivation column. The Mutwallies obtained succession certificate on 21-1-1981 from Dy. Collector (Atiyat) (**P.5307-5309**). It appears that, the SDO Beed called information vide letter dated 12-6-1980 (**P.5310**) from the Tahsildar whether the Mutwallies preferred an appeal against the aforesaid declaration and what is the stage of the appeal. He then stated that, the orders to distribute the surplus lands are not received from the Govt. and so the possession the land shall be recover from those to whom the lands are distributed. The Tahsildar issued a letter giving a copy to the Talathi

asking him to recover the possession of lands and to lease it on yearly basis. (**P.5311**) Accordingly the Talathi recovered the possession of the lands vide the receipt dated nil (**P.5312**). The Talahti issued a letter dated 11-8-2003 (**P.5313**) to the Tahsildar asking his guidance whether the names of the aforesaid new holders are to be deleted and the names of successors – Mutwallies are to be inserted in the Kabjedar column. It appears that no directions are issued by the later. The DWO woke up on 19-1-2004 and issued a letter to the Dy. Collector (Atiyat) Beed to insert the name of Mosque in the Kabjedar column of 7/12 of these land (**P.5314**). However no action has been taken by the later. The Inamdars preferred a petition in the office of Dy. Collector (L.R.) on 14-2-2004 claiming exemption from the provisions of Ceiling Act 1961 (**P.5315- 5317**) and that appears to be pending. As a matter of fact the Mutwallies ought to have submitted a return in compliance the provision of the Maharashtra Agriculture Ceiling on Holdings Act and should have claimed the exemption immediately after implementing the said Act within the prescribed time limit. Neither the complainant nor the Mutwalli produced the document to display that, such type of return was the submitted in the said proceedings. Any way now they have no other alternative than to prosecute their claim in the petition dated 14-2-2004 (P.5315).

The copy of **note no.2 MLJ 1974** is produced (**P.5318**) however the facts of the case being not available, I am unable to make observation. The copy of the Govt. Gazette dated 18-8-1990 also is produced (**P.5319**), wherein the Govt. of Maharashtra has exempted the property of Balaji Temple Dharur Trust. It appears that, the said trust was created for giving the medical relief and education and on this ground the benefit of exemption was granted to them u/s 47 (2) (a) of the Maharashtra Agriculture Lands (Ceiling on holding) Act 1961. It is not clear from the available recorded where the Inamdar Chorgalli Masjid claimed such exemption by filing proceeding before the competent authority. I may suggest that, the Mutwalli of this Masjid may obtain the papers of Balaji Temple trust and may compare their case with the case of the said trust and they may take the appropriate legal steps.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.90.** **REPORT**

**COMPLAINT NO.40/2008**

**Complaint by Ayyubkhan s/o Bhikankhan Pathan**

**r/o Palshi-shahar, Aurangabad.**

**PALSHI-SHAHAR AURANGABAD**

**DETAILS OF THE PROPERTIES** :-

Land Sy.No.114 and 118 adm. 34 A 14 G situated at village Palshi-Shahar, Aurangabad are the Wakf Properties of the Mosque.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged that the people have committed encroachment thereon. (**P.5329**) The copy of the Gazette (**P.5330**) is produced. The 7/12 extract (**P-5331-5333**) also display that, this is service Inam. The Khasrapatrak (**P-5334**) has also got specific mention that this is a service Inam.

It appears that Dalsing Thansing (deceased) and Bhaulal Thansing and Bhikaram Thansing are in possession of the lands and they filed R.C.S. No.334/83 (**P-5335-5342**), for declaration of their title and perpetual injunction and that was decreed on 30-6-2005. The Wakf Board had taken the matter in appeal No.337/2005 and it was decided on 16-3-2006 (**P.5343-5355**) wherein the decree of declaration of title was quashed and set aside; the plaintiff were declared as Pattedar and it was further held that, the suit lands are not the Wakf. The complainant alleged in the complaint that, the lands are encroached and illegally occupied.

**NOTICES TO THE PARTIES:-**

The notice was served bearing O.W.No.104/08 dated 25-7-2008 on the CEO Wakf calling him upon to make the statement whether the appeal was preferred challenging the appellate judgment in R.C.A.No.337/05 and there is no response (**P.5356**).

The notice by way of reminder was served bearing O.W.No.262/08 dated 31-10-2008 on the CEO Wakf calling him upon to make the statement on 15-11-2008.(**P.5357**) and he did not attend.

The notice by way of reminder was served bearing O.W.No.353/08 dated 19-11-2008 on the CEO Wakf calling him upon to make the statement on 25-11-2008. (**P.5358**) and he did not attend.

The summons bearing O.W.No.257/2/1 and 257/2/2 dated 13-5-2010 was served on Mr. S.S.Ali Quadari and Munirkhan Pathan the CEO and DWO respectively, to file the statement on 23-5-2010 and they did not attend. (**P.5359**)

The summons bearing O.W.No.258 and 259 dated 13-5-2010 was served on Munirkhan Pathan the DWO and Mr. S.S.Ali Quadari the CEO to file the statement on 23-5-2010 and they did not attend. (**P.5360-5361**)

**OBSERVATION OF COMMISSION**:-

The Wakf Board produced the copies of 7/12 extract, Khasrapatrak and the Gazette in order to show that, these lands are service Inam. As against this trial court in R.C.S no.334/83 simply stated in last line of para no.11 page 6 of the Judgment that, plaintiffs have produced sufficient material on record to show that, the suit land is not Inam Land. The said Court did not make a specific statement either at this stage or any where in the judgment as to what were/are those documents. The aforesaid revenue documents produced by the Wakf Board carry a presumptive value and it was for the other side to rebut it. Both the courts besides stating that, the plaintiff of the suit are having a long standing possession, they did not discuss the evidence in rebuttal, produced by the other side.

Moreover as per section 6 (4) of the Wafk Act 1995 the list published by Govt. about the Wakf properties get a force of conclusive proof and the plaintiffs were under obligation to bring evidence to disprove it. No such evidence was brought, as it appear from the judgments.

The appellate court held and declared that, the plaintiffs are Pettedar. That would mean that, the landlord is somebody else. Both the courts did not record the finding as to who is the landlord of the lands. Such are the question which assumes a legal importance and so it was necessary for the Wakf Board to prefer an appeal against the judgment of appellate court. However neither the CEO nor the DWO filed a statement in answer to the summons of this office. As per my knowledge village Palshi is hardly 10 K.M. away from Aurangabad City and so the lands which are quite big in area are very valuable. **Non filing of the reply by the CEO Mr. S.S.Ali Quadari and the DWO Mr. Munirkhan Pathan as regards such valuable property would be susceptible to infer that, their such silence may be in colusion for extraneous consideration and so they would be liable for the disciplinary action.**

There being categorical finding of the courts of competent jurisdiction that it is not a Wakf property the commission may state that, the suit as well as appeal were decided after 1995 i.e. after coming into force the Wakf Act 1995 which provides that, such dispute shall be decided by the Wakf Tribunal. This question would be open for consideration and for taking the next legal step by the Wakf Board.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.91.**

**REPORT**

**COMPLAINT NO.86 /2010**

**Suo-Motoo Complaint**

**KAMILDAD-SHAH AND EKKHANA MOSQUE NANDED**

**DETAILS OF THE PROPERTIES** :-

Sy.No. 1 adm. 3 A. 30 of Nanded is a Wakf of the Dargah Kamildad-Sshah and Ekkhana Mosque Nanded. This office has taken cognizance on the oral complaint.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

It was learnt by the Commission that Sy.No.1 of Nanded is prime property and that has been either encroached or illegally dealt with by the Collector Nanded.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.166/2/1 and 166/2/2 dated 20-3-2010 were served on Mr. S.S. Ali Quadari the CEO and Mr. Abedkhan the DWO Nanded calling them upon to file the statement on 29-3-2010 and they did not attend. (**P.5370**).

The proclamation O.W. No. 196/2010 dt. 20-4-2010 was served on the CEO by publication on the board calling him upon to attend on 28-4-2010 (**P.5371**) and he did not attend.

The proclamation O.W. No. 197/2010 dt. 20-4-2010 was served on the D.W.O. Nanded through the CEO calling him upon to attend on 28-4-2010 (**P.5372-5373**) and he did not attend.

Mr. S.S. Ali Quadari the CEO was served of order fine of Rs. 500/- O.W. No.262/2010 dt. 14-5-2010 and he did not attend. (**P.5374**)

Mr. Abidkhan the DWO Nanded was served through the CEO the order fine of Rs. 500/- O.W. No.263/2/1, dt. 14-5-2010 (**P.5375-5376**) and he filed reply dated 4-6-2010 (**P.5377**).

**OBSERVATION OF COMMISSION**:-

The DWO stated that, the land Sy.no. 1 adm. 3 A. 30 G. is a conditional Inam for rendering services to Dargah Kaleemdad Shah and that has been notified in the Govt. Gazette part-8 Sr. No.16 dated 31-10-1974 (Copy of the Gazette not produced). According to him the Govt. had taken the land in custody and the possession has never been re-delivered to the Wakf Board. Again the DWO did not state as to what efforts were made by him or by the CEO, by issuing letters or otherwise, to obtain the possession of the land. He then stated that, the Govt. has allotted 1 A. 9 G. of land for Tonga Stand, to the Municipality Nanded on rent. The Municipality leased it to the

people on rent. The D.W.O. did not state the source of his information in this regard, nor he has attached the copies of documents possessed by him in this connection. He then stated that, the people have committed encroachment on some of the other portion of the land and the Collector regularized it by granting on lease.

It was boundand duty of the DWO to make a clear statement as to what efforts were made by him or by the CEO to recover the possession from the Collector. He also did not state as to what kind of protest was raised by him or by the CEO against the act of regularization of lease by the Collector Nanded. They also did not take any action against the allotment of the site adm. 1 A. 9 G. to the Municipality Nanded for Tonga Stand and subsequently sub lease of it to the people.

**Keeping silence by the DWO Nanded as well as non filing of reply by the CEO Mr. S.S. Ali Quadari would be vulnerable to infer that, they must collusion with lessee and Sub-lessee and that may be the reason for their silence. The reasons for making such observations are that the land is situated in the prime part of Nanded City and the DWO as well as CEO do not bother even if the possession of land is lost and even if the Wakf Board is refrained to collect the revenue. The DWO Nanded as well the CEO Aurangabad are liable for loss of possession of this property as well as the loss of revenue of the Wakf Board.**

**The Wakf Board may initiate the proceedings either for restoration of possession to the Board or for regularization of the lease, of course with a lump sum amount of donation and the rent as per the prevailing commercial rate payable by the tenants.**

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.92.**

**REPORT**

**COMPLAINT NO.98 /2010**

**By Ahmedulla Siddiqui r/o Aurangabad.**

**DARGAH SHAH JAMAL BABA**

**DETAILS OF THE PROPERTIES** :-

Land Sy.No.1 Phulambri Dist. Aurangabad is Wakf of Dargah Shah Jamal Baba and the complainant is Mutwalli and Sajjada Nasin (**P.5380-5381**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged that, this land is being utilized by Grampanchayat Phulambri for Weekly Bazar and it is getting rent of Rs. 1,37,500/- p.a. According to the complainant, the Wakf Board as well the Mutwalli should get the share. Even besides this according to him the people have committed encroachment on the land and the Wakf Board is negligent to protect the possession.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.388/10 dt. 6-9-2010 was served on CEO Wakf Board calling him upon to file the statement on 14-9-2010 and he did not attend. (**P.5382**).

**OBSERVATION OF COMMISSION**:-

The complainant has produced the copy of 7/12 extract of Gut No.3 Phulambri (Not of Sy. No.1) (**P.5383**). The share of 8 Anna is shown in the name of Inamdar meaning thereby that this is a Inam land. In kabjedar column also there is mention of Inam but it is having a confusing statement, whether this Inam is liable for Khalsa or not?

The complainant has produced the copy of succession proceeding together with its translation in English (**P.5384-5400**). It appears from the documents that, this is Wakf land. However I am unable to make any observations as regards the other points raised by the complaint there being no documents. There being gross delay in filing the complaint i.e. on 23-8-2010 the summons could not issued to the parties like Grampanchayat and others.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.93.**

**REPORT**

**COMPLAINT NO.88 /2010**

**By Hameedkhan s/o Ameenkhan r/o Shahunagar, Kadegaon Ahmednagar.**

**DETAILS OF THE PROPERTIES** :-

The complaint is filed (**P. 5421**) about Several lands situated in Pune Dist.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant did not state specifically the Sy. Nos. of the lands. He simply gave the area as 11 A. 34 G. at Supha, 53 A. 3 G. at Saswad, 380 A. at Indapur, 352 A. 33 G. at Ahmednagar (**P.5422-5423**). He then attached a computerized statement dated 27-5-2005, wherein several Sy. Nos. are mentioned without any statement as to whether those lands are subjected either to transfer, lease or otherwise. He also attached the extract of alienation register of 1886-87 (**P. 5424-5437**).

**NOTICES TO THE PARTIES:-**

The summons O.W.No.240/2/1 and 240/2/2, dt. 7-5-2010 were served on Mr. S.S. Ali Quadari the CEO Wakf Board and Mr. Sayed Faize the DWO Pune calling them upon to file the statement on 15-5-2010 and they did not attend. (**P.5438**).

**OBSERVATION OF COMMISSION**:-

The complaint did not produce any document to indicate the Commission of irregularity by sale, lease or otherwise. The complaint is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.94**

**REPORT**

**COMPLAINT NO. 58/2009**

**Complainant by Abdul Sattarshah s/o**

**Hassan Mohammad and others Six r/o Beed.**

**MOSQUE OF SARANGPURA BEED**

**DETAILS OF THE PROPERTIES** :-

Sy.No.128 adm. 28 A. 38 G. situated at Beed is Wakf of a Mosque of Sarangpura Beed. The copy of the Gazette is produced in support of it (**P.5440**). The 7/12 extract of year 2007-08 of the land is produced. It display the name of Roshan Ali in bracket in Kabjedar column and the name of Dinkarrao Dynobarao Giram in otherwise column (**P.5441**). The copy of form no.9 (**P.5442**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complaint (**P.5443-5445**) is filed by Abdul Sattar Shah s/o Hassan Mohammad and Six others alleging that, their grandfather Karimshah s/o Sher Ali was the Muntkhab holder and Mutwalli of this land, which is Mashrutul Khidmat. They were rendering services to Mosque out of income derived from the land. After the death of their grandfather, Raheman Shah the father of complainant migrated to Karnatak State and settled there for sufficient long year. The Opponent Roshan Ali exploited the situation and by taking disadvantage he leased the land for 99 years to Mr. Dinkarrao Dynobarao Giram under the document dated 6-6-1987 for total rent of Rs.15,000/- (**P.5446-5447**) and Mr. Dinkarrao is in possession of the land. The mutation entry no.1935 was effected in his name (**P.5448**).

It appears that prior to this transaction Roshan Ali leased this land to Smt. Mahemudda Begum w/o Abdul Rahim for 17 years i.e. 1970 to 1986 for total consideration of Rs.500/- (**P.5449-5450**).

**NOTICES TO THE PARTIES:-**

The CEO Wakf was served with the summon O.W. No.284/5/3 dated 20-7-2009 (**P.5451-5452**) calling him upon to make the statement on 3-8-2009 and he did not file reply.

The D.W.O. Wakf Beed was served with the summon O.W. No.284/5/4 dated 20-7-2009 (**P.5451-5452)** calling him upon to make the statement on 3-8-2009 and he did not file reply.

The summon was also issued to Mr. Roshan Ali s/o Munuwar Ali the lesser O.W.No.284/51 dt. 20-7-2009 and he being dead he could not be served, vide the report of D.W.O. Beed.(**P.5453**) and (**P.5454-5455**).

Mr. Dinkarrao Dynobarao Giram was served with the summons O.W. No.284/5/2 dt. 20-7-2009 vide the report of the D.W. O. Beed (**P.5453) (P.5454-5455-A) and he did not file reply.**

The summons was also issued to the complainant Mr. Abdul Sattar Shah Mohd. Shah r/o Beed, calling him upon to attend this office and it could not be served for want of address.**(P 5453)** (**P.5456-5457**).

**OBSERVATION OF COMMISSION**:-

The complainant categorically stated that, the aforesaid land is Mashrutul Khidmat of Masjid Sarangpura, Beed. They have supported their contention through the copy of Gazette (**P.5440**), 7/12 Extract (**P. 5441**) and Form No.9 (**P. 5442**) and opportunity was given to Mr. Dinkarrao Giram to make a statement in his connection by serving summon (**P. 5456-5457 & 5453**) and he did not avail it. There being no challenge to the aforesaid statement, which is supported by the conclusive and presumptive documents I can safely conclude that the land is Mashrutul Khidamat.

The transaction of lease in question took place in 1987 (**P.5446-5447**). That time Wakf Act 1954 was in force. Section 36 A which was amended in 1964 provided and prohibited the lease of the agriculture land for more than 3 years. Of course, as per the said provision if the said transaction would have been with prior sanction of the Board that, would have been valid. However the deed of lease no where stated that, the permission of the Board was obtained any time to lease the land. When such is the matter the transaction of lease would be out and out void.

It is commonly said that, what belongs to all belongs to none. Here the property was Wakf i.e. of all Muslim people for getting the services to the Mosque. No third person therefore took care as regards its illegal disposal. Mr. Roshan Ali being simply the holder of the land by way of trustee, he did not take care at least obtain the adequate return by way of rent. He leased it for 99 years only for total one time amount of Rs. 15,000/-. This caused me a great pain that, a quite big piece of land adm. 28 A. 38 G. was leased in total consideration only Rs 15,000/- for 99 years.

**Mr. Roshan Ali s/o Munuwar Ali was obviously responsible for this illegal transaction. However be being now dead no more comments can be made.**

**The CEO/The Secretary of Wakf and the then D.W.O. Beed are also equally responsible for this transaction, the action being not taken by them. They are liable for the necessary action to be taken by the Wakf Board.**

The transaction of lease being fragrant void the Board of Wakf will have to take appropriate legal action to evict Mr. Dinkarrao from the land and to obtain the possession.

We have only to see as to how far the Board of Wakf would be alert and quick to take the legal action.

The Wakf Board may take action u/s 52 and 54 of the Wakf Act 1995 or even may take action under Bombay Government Premises (Eviction) Act 1995, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.95**

**REPORT**

**COMPLAINT NO.71/2009**

**Complaint by Shaikh Naim s/o Shaikh Lal R/o Hingoli Dist. Hingoli.**

**DETAILS OF THE PROPERTIES** :-

No property. Sought the relief of transfer of CEO Mr. S.S. Ali Quadari. (**P-5458-5459**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The transaction of either movable or immovable property of Wakf is not involved in the matter.

The complainant alleged that, Mr. S.S. Ali Quadari the CEO Wakf is incompetent and eligible to be appointed on the post of CEO. Because of his wrong decision, the wakf properties are being put to loss. His behavior to the people as well as Advocates is very adamant and arrogant. He therefore prayed that he may be transferred.

**NOTICES TO THE PARTIES:-**

The grievance of the complainant being beyond the jurisdiction of the commission notice were not issued to the parties.

**OBSERVATION OF COMMISSION**:-

The grievance of the complainant being beyond the jurisdiction of the Commission the complaint is hereby disposed off.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.96**

**REPORT**

**COMPLAINT NO.34/2008**

**Complaint by I.A. Sayyed r/o Pune,**

**DETAILS OF THE PROPERTIES** :-

No property is involved in the matter. The complainant sought the relief of correction of the Gazette wherein the Shiya properties are shown as Sunni Properties. (**P.5460-5461**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

As stated above.

**NOTICES TO THE PARTIES:-**

The grievance of the complainant being beyond the jurisdiction of the commission notice were not issued to the parties.

**OBSERVATION OF COMMISSION**:-

The grievance of the complainant being beyond the jurisdiction of the Commission the complaint is hereby disposed off.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.97.**

**REPORT**

**COMPLAINT NO.42/2008**

**Complaint by Capatan Sayed Hussain s/o Sayed Ahmed**

**Mehandi r/o Hyderabad (A.P.)**

**DETAILS OF THE PROPERTIES** :-

No property is involved in the matter. The complainant sought the relief of appointment of mutwalli (**P-5462)**

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

As stated above.

**NOTICES TO THE PARTIES:-**

The grievance of the complainant being beyond the jurisdiction of the commission, notices were not issued to the parties.

**OBSERVATION OF COMMISSION**:-

The grievance of the complainant being beyond the jurisdiction of the Commission the complaint is hereby disposed off.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.98**

**REPORT**

**COMPLAINT NO.28/2008**

**Complaint byDr.Mohd. Khalil Pathan Quadari r/o Mahim, Mumbai.**

**DETAILS OF THE PROPERTIES** :-

No property is involved in the matter. The complainant sought the relief to make the inquiry as regards the threats given to him (**P.5463-65**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant is a Pesh-imam of Masjid and Trustee of Dargah as well as Masjid. He made a grievance to have been threatened to sign blank paper by Sohel Khandwani, Amin Khandwani, Rasheed Arb etc. and on his refusal he has been threaten to kill. Mr. Sohel Khandwani took out the revolver when he refused to sign. The complainant prayed to make the inquiry.

**NOTICES TO THE PARTIES:-**

The grievance of the complainant being beyond the jurisdiction of the commission, notices were not issued to the parties.

**OBSERVATION OF COMMISSION**:-

The grievance of the complainant being beyond the jurisdiction of the Commission the complaint is hereby disposed off.

(**A.T.A.K.SHAIKH**)

Commission.

**Sr.No.99**

**REPORT**

**COMPLAINT NO.64 /2009**

**Complaint by Mr. Md. Osman s/o Gulam**

**Jilani Khatib r/o Ambejogai Dist. Beed.**

**DETAILS OF THE PROPERTIES** :-

The details of property not given in the Complaint (P-**5466-5467**) copy of Muntkhab is (P.**5468**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant Mohd. Osman s/o Gulam Jilani stated about the grant given to Dargah and Mosque in the name of Gulam Hussain s/o Abdul Hakeem as a Inamdar. The complainant then described the manner in which the heirship was conferred on the subsequent generations. He has alleged that, some of the adversely interested persons from the relatives of the Inamdar have committed encroachment and succeeded to mutate their names in the Municipal record and now they have changed the nature of the property and reduce the area of Kabarsthan.

**NOTICES TO THE PARTIES:-**

The summons bearing O.W. No.359/2/1 and 359/2/2 dated 19-9-2009 was issued to Shri Sayed Sadeq Ali the CEO and the Mr. Maqsud Ahmed D.W.O. Beed respectively calling them upon to file reply on 29-9-2009 and they did not attended. (**P.5469**).

The proclamation O.W.No.459/09 dated 15-12-2009 was issued in the name of Mr. S.S.Ali Quadari the CEO calling him upon to attend on 24-12-2009 and he did not attend. (**P.5470**)

The order of fine of Rs.500/- O.W. No.44/10 dt. 20-1-2010 was issued against the Mr. S.S. Ali Quadari and he did not attend (**P.5471**)

**OBSERVATION OF COMMISSION**:-

The complainant did not produce any document giving the particulars of the property held by the Dargah and Mosque as a Wakf. The CEO and D.W.O. also did not cooperate this office. There being absolutely no evidence either oral or documentary, the Commission is unable to make observation and so the complaint is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.100**

**REPORT**

**COMPLAINT NO.84 /2010**

**Complaint by Mr. Md. Salauddin s/o Jamaluddin r/o Beed**

**DETAILS OF THE PROPERTIES** :-

Sy.No.95 adm. 14 A. 19 G. is Inam of Dargah Sayed Shah Raziuddin Makki Mominpura Beed under Muntkab No. 999/1297 Fasli (**P-5472-5474**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The allegation of violation of provision of law to lease the property are made by the complainant.

**NOTICES TO THE PARTIES:-**

Notice not issued as per the observation below.

**OBSERVATION OF COMMISSION**:-

The issue in respect of violation of law to lease the land has already been covered in report No.1**5, 16 & 17** and so the separate finding are not recorded.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.101**

**REPORT**

**COMPLAINT NO. 83 /2010**

**Complaint Suo-Motoo-Newspaper Rahebar**

**dated 18-1-2010 and Hindustan .**

**DETAILS OF THE PROPERTIES** :- No details of the property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The news was flashed in daily Rahebar, the Urdu Newspaper Aurangabd (**P-5475**) and Daily Hindustan (**P-5476**) on the front page about (a) construction of house by Mr. S.S.Ali Quadari the then CEO Wakf on the graveyard of Roza Bag Aurangabad, (b) regularization of plots at the @ of Rs.10/- per sq. ft. on Shanur-Miya Dargah Road Aurangabad, (c) allotment of lands Sy.No. 508, 509 of Jalna. But no details viz. Sy.No.plot nos. house nos. the names of the persons to whom the lands or plot were allotted etc. are given.

**NOTICES TO THE PARTIES :-** Notice not issued.

**OBSERVATION OF COMMISSION**:-

Though the news was published in January 2010 nobody approached to this office to give details as aforesaid, so as to take the cognizance of the matter. This office therefore could not take the cognizance. The Suo-Motoo complaint is filed herewith.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.102**

**REPORT**

**COMPLAINT NO.38 /2008**

**By one Ajmalkhan r/o Nashik received by post.**

**DETAILS OF THE PROPERTIES** :-

The complaint is received by post (**P. 5477-5479**) alleging that the complainant was appointed to work as a representative of Wakf Board in Nashik Region vide letter dated 21-2-2008 and this order was withdrawn vide the letter dated 25-2-2008 (**P.5480-5481**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complaint does not involve any property of the Wakf Board.

**NOTICES TO THE PARTIES:-**

Notices not issued.

**OBSERVATION OF COMMISSION**:-

The dispute raised by the complainant is beyond the jurisdiction of this Commission and so the complaint is filed.

(A.T.A.K.SHAIKH)

Commission

**Sr.No.103**

**REPORT**

**COMPLAINT NO.5/2007**

**By Mr Anwar Ali Khan r/o Aurangabad**

**DETAILS OF THE PROPERTIES** :-

The complainant filed a unsigned complaint (**P.5482**) stating that, he is a tenant on the plot of Prakash Bhafna which is Wakf property Dargah Hazarat Dawood Ganj Laskari Magribi Aauliya.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant is in possession of this plot, however he is getting threats of eviction and so he approached to this office.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.301/2008 dated 12-11-2008 (**P.5483**) was issued against Mr. Dilip Ramgopal Chitlange, Kulbhushan Ramchandra, Prakash Baphana and the CEO Wakf and they avoided the service vide the report of the bailiff. Incumbent no.4 the CEO was served and he did not file reply.

**OBSERVATION OF COMMISSION**:-

The record reveals that, the complainant approached to the Wakf Tribunal by filing a suit no. 198/2006 with application for injunction Exh. 5 (**P-5484-5490**) and he got relief. Since the matter is sub-judiced the Commission may simply make the factual observation. If the complainant may be having possession on the site he can not be evicted by force by a private party. The Board of Wakf however, may be competent to evict him, if the Board so desire, still the eviction would as per the process of law.

(A.T.A.K.SHAIKH)

Commission

**Sr.No.104.**

**REPORT**

**COMPLAINT NO.81/2009**

**By Asar Farookhi, President Aukaf Parishad, Aurangabad.**

**DETAILS OF THE PROPERTIES** :-

No properties is involved in complaint (**P-5491-5492**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged that, after the term of Wakf Board of five years is over the Board is now being run by Mr. Ahmedkhan Pathan, who has become whole and sole. Moreover Mr. Tarekh Anwar is not holding post of Rajsabha at present and so he has no right to participate in the Wakf proceedings. Still he attend meetings at Mumbai by having a Air Journey from Delhi, he stays in Five Start Hotels and it is illegal.

The complainant further stated that, Mr. S.S.Ali Quadari does not hold the qualification and legal requirement to occupy the chair of CEO etc.

**NOTICES TO THE PARTIES:-**

The parawise remarks of the CEO Wakf were called vide O.W. No.491/2009 dated 30-12-2009 and he did not file reply.(**P. 5493**).

The summons O.W. No.188/10 dt. 13-4-2010 was served on Mr. S.S. Ali Quadari the CEO calling him upon to give parawise remarks on 19-4-2010 and he did not attend. (**P.5494**)

The proclamation O.W. No.212/10 dt. 22-4-2010 was served on Mr. S.S. Ali Quadari the CEO calling him upon to give parawise remarks on 5-5-2010 and he did not attend. (**P.5495**)

**OBSERVATION OF COMMISSION**:-

When the question of competency of the CEO to hold the post as well as Mr. Tarekh Anwar to attend the meetings was involved, the CEO was expected to file the reply, however as usual he did not take care to file it. This is how Mr. S.S.Ali Quadari was turned of a thick skin.

If the contents of the complaint may be true, it is a very serious matter. The process of the Commission being not respondented the findings could not be recorded in the matter.

(A.T.A.K.SHAIKH)

Commission

**Sr.No105.**

**REPORT**

**COMPLAINT NO. 1/2007**

**By Anisuddin Siddiqui r/o Parbhani.**

**DETAILS OF THE PROPERTIES** :-

Land Sy.No.90 and 91, Gut No.341 adm. 22 A. 22 G. situated at Karegaon Dist. Parbhani is Wakf of Masjid Maheboobshai Parbhani (**P.5496**).

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged that, Mr. Mohiuddin Abdul Aziz r/o Kadarabad Parbhani committed encroachment on land Sy.No.91 and he is trying to sale it out.

According to complainant his mother Khairunnisa Begum was Mutwalli of this Mosque, who had four daughters i.e. sisters of the complainant. One of the sister by name Noorunnisa was married with Mr.Mohinuddin Abdul Aziz r/o Parbhani. She died issueless, within 6 months of the marriage. The rights of either Noorunnisa Begum on her husband Mr. Mohinuddin came to an end, no sooner Noorunisa died. Sayed Mohinuddin therefore had no right to continue in possession of the Wakf land. Still he is continuing the possession and that amounts to an encroachment.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.261/08 dated 31-10-2008 was served on Sayed Mohinuddin Abdul Aziz (**P-5497**) calling him upon to file the statement on 15-11-2008. In response to it he filed reply dated 18-12-2008 (**P-5498**), through his son Mohd. Abdul Quadar.

The summons O.W. No.402/08 dated 30-12-2008 was served on Head Master, Z.P. Kanyashala Vasmatnagar, calling him upon to produce the first page of the service book of Abdul Quadar, so as to verify his date of birth and he did not comply. (**P-5499**)

**OBSERVATION OF COMMISSION**:-

The complainant has produced the copy of Muntkhab (**P.5500**), the copy of Gazette (**P.5501**), copy of Mutation Entry (**P.5502**) copy of 7/12 extract (**P.5503**) to support the fact that, the aforesaid land is Mashrutul Khidmat of the Masjid. Mr. Sayed Mohinuddin did not deny this fact in his reply (**P.5498**). He also did not deny the death of his wife namely Noorunnisa. The only point to be considered is whether Mohd. Abdul Quadar s/o Md. Mohinuddin is from first wife or second wife. If he may be from first wife, Sayed Mohinuddin would be entitled

to continue the possession, the property being from his first wife. If Abdul Quadar may be from Second wife, Mr. Mohinuddin would be incompetent to continue the possession.

The statement of Md. Adbul Quadar was recorded (**P.5504**). He stated that, he was born from Noorunnisa Begum. She died on 23-4-1977. He has produced the copy of death certificate (**P.5505**). He also has produced the Domicile Certificate showing his birth date as 15-7-1975 (**P.5506**), as well as the transfer certificate (**P.5507**) and the SSC Certificate (**P.5508**) to support it.

The opponent as such has produced sufficient prima facie evidence to support that, Abdul Qudar was born on 15-7-1975 from his first wife, who died in 1977 and thereafter, he remarried with the Second wife. In this connection the efforts were made to contact with the complainant on phone however, he could not be contacted. The material brought by the opponent, therefore has not been assailed or disproved by the complainant.

It appears from the reply of opponent that, suit no.83/08 is filed by the complainant in the Wakf Tribunal and it is pending. Such being the matter, the Tribunal would be the competent authority to record the findings. The complaint is disposed off.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.106.**

**REPORT**

**COMPLAINT NO. 23/2008**

**Complaint by Baig Iftekharullah the Secretary**

**Marathwada Wakf Board Employees Union.**

**DETAILS OF THE PROPERTIES** :-

No property involved.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant who is a Secretary of the Marathwada Wakf Board Employees Union has filed a complaint dated 25-10-2007 (**P-5510-5513**) before this Commission making a claim of the C.P.F., D.A., arrears of IVth and Vth pay Commission, and also claimed the grants to be paid by the Govt. to the Wakf Board in para no.1 to 6 of the complaint. So far as these claims are concerned, they are beyond the jurisdiction of the Commission.

The complainant during the course of the proceedings also gave a separate application (**P.5514-5516**) with copy of Govt. Gazette (**P.5517-5518**) making a claim of pension and family pension in addition to the earlier grounds raised in the original complainant.

As far as para no.7 and 8 of the complaint, it is alleged that the semi Government Agencies like CIDCO, M.S.E.B. as well as the Govt. itself committed encroachment on the wakf properties. The Commission is competent to take the cognizance thereof. The allegations in the complaint however were quite vague and so the complainant was called upon by issuance a summon to furnish the details.

**NOTICES TO THE PARTIES:-**

The summons O.W. No.114 dated 20-8-2008 (**P.5519**) was served on the complainant calling him upon to furnish the details of the allegation in para no.7 and 8 of the complainant and though he attended this office, he did not furnish the details.

The reminder bearing O.W. No.38/2/1 dated 18-1-2010 with a copy to CEO Wakf O.W. No.38/2/2 (**P.5520**) was served and still there has been no response from the complainant.

**OBSERVATION OF COMMISSION**:-

As observed hereinabove the Commission may look into the allegations in para no.7 and 8 of the complainant in respect of encroachment committed by the Govt. and semi Government agencies. The complainant was called upon by issuing the aforesaid summon to furnish the details of the allegations made by him. However he did not attend. The Commission therefore has been rendered helpless.

The Complainant has claimed the benefits of pension and family pension together with the other service benefits. So far as the claim of pension etc. is concerned he has produced the copy of the Govt. Gazette dated 16-8-2003 (**P.5517**) which is attached with form no. BG -6 wherein, in clause no.16, there is a mention of pension, gratuity and family pension. The complainant was pointed out with the fact that, the mere mention in a format of a particular aspect would not amount to be a statutory provision of law. The complainant could not point out the statutory provision as such, to support his claim of pension and family pension. He however was insisting and was questioning as to why clause 16, as referred to above was inserted in the format. So far as the factual aspect is concerned, he was of course right that the aforesaid format has got a mention of pension etc., however still the fact remain that a mere statement in the format would not take place of the statutory provision and this by itself would not entitle the Wakf Employees for such benefit, unless it is incorporated in the statutory law. It will be for the employees of the Wakf Board to agitate the matter with the Government and it will for the Government to decide it. It would be most improper for the Commission to issue any guidelines to the Government. Hence the complaint is filed.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.107.**

**REPORT**

**COMPLAINT NO. 95/2010**

**Complaint by Abdul Rahimkhan s/o Karimkhan r/o Aurangabad.**

**DARGAH HAZARAT SHAH PEER MOHAMMAD AT GHANDHELI**

**DETAILS OF THE PROPERTIES** :-

Land Sy.No.17,18 and 26 equal to Gut No. 79, 97, & 66 adm. 22 A. 36 G., 23 A. 20 G. and 8 A. 11 G. respectively situated at Ghandheli Tq. & Dist. Aurangabad (**P.5525-5530**) are the Wakf properties of Dargah Hazarat Shah Peer Mohammad at Ghandheli.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged that, opponents, who are 60 in numbers, are in possession and they are trying to transfer it by sale. He has produced the documents (**P.5531-5545**) in support of his case that these lands are Wakf properties and that they are in possession of the opponents vide (**P.5546-5557**).

**NOTICES TO THE PARTIES:-**

The summons bearing O.W. No. 256/2/1 and 256/2/2 dated 12-5-2010 (**P.5558**) was served on the CEO Mr. S.S. Ali Quadari and D.W.O. Mr. Munirkhan Pathan calling them upon to make the statement as regards these land and they did not attend.

The letter bearing O.W.No.498/10 dated 13-9-2010 (**P-5559**) was issued to Sarpanch Ghandheli requesting to serve as many as 60 summons bearing O.W. No.398 to 457 of 2009 dated 9-9-2010 against the opponents (**P-5560**).

Respondent nos. 2,3,4,5,6,8,9 appeared through advocate and filed application for adjournment on 23-9-2010 (**P.5561-5562**). They again sought adjournment on 5-10-2010 (**P.5563)** and lastly they filed reply (**P.5564-5570**) alongwith a list (**P.5571)** and documents (**P-5573-5582**).(**P-5584-5585**) (**P-5588**) (**P-5591**) (**P-5593**) (**P-5596-5608**).

Respondent no.1 also appeared on 23-9-2010 and submitted application for adjournment with power of advocate (**P.5609-5610**). He also sought adjournment on 5-10-2010, 12-10-2010 and 19-10-2010 (**P-5611-5613**) and lastly filed reply (**P.5614-5621**). He has produced several documents in respect of purchase of 10 A. of land ought of Sy.No.18 and running the dairy thereon. The said documents being irrelevant, they are not separately numbered, in order to avoid the unnecessary burden to record.

Both of the opponent parties contended that, the complaint is vague, as well as, barred by limitation. The question of the nature and character of this land as a Inam or otherwise was considered in the application filed by Dawoodkhan (**P.5605**) by the Dy. Collector Atiyat and the application was rejected. The said order is still

standing and operating. Respondent no.1 the Milk Dairy contended that, the public notice was issued in Daily Lokmat for two times before purchase of thislands, calling upon the public who have had an objection for the transaction of purchase and nobody raised objection. The sale deed therefore, was executed on 2-11-1994. The Milk Dairy is standing on the land till this date. This respondent made a mention of Khasrapatrak saying that, the name of Rasal Family is existing thereon, but such material document is not produced.

The opponent no.2 to 9 further added that the regular civil suit no.54/1953-54 (**P.5599**) was filed for declaration and that was decreed. I may mention here only that this Judgment and Decree would be in personam and not Judgment in rem, since the parties to the litigation were private and not either state or the Wakf Board.

**OBSERVATION OF COMMISSION**:-

The complainant produced several documents in order to support that, these lands are Inam for service of Dargah Shah Peer Mohammad. The copy of Gazette dated 17-5-1973 (**P. 5542**) has specific mention about this fact. This documents carries a presumptive value as held in AIR 1998 S.C. 972 (**P.896**) and **W.P. No.61-A of 1982 (P-902)** In view of such matter the aforesaid lands will have to be presumed service Inam, as provided u/s 6 of the Wakf Act 1995. The complainant then produced the copy of Govt. Gazette dated 24-7-2003 having a publication issued by the Dy. Collector Atiyat, that these lands are Inam of the Dargah (**P.5531**)

The CEO Wakf registered this Institution as Wakf and issued certificate to that effect (**P.5533-5535**). The 7/12 extract (**P. 5536-5538**) have got a mention in Kabjedar column about the character of the lands as for a service of Dargah. The Khasrapatrak (**P. 5539-5540**) also have got a specific mention about Shah Peer Saheb and page **5541** as Madatmash. The extract of form no.9 (P**. 5543-5545**) also has got a similar mention. All of these documents are the copies of public record and they carry a rebuttable presumptive value. Such is the over whelming documentary evidence with the complainant to establish that, these are the Wakf properties.

Now I consider the evidence produced by the opponents. The extract of Pahani Patrak (**P.5577-5580**) do not display the title over the property and so these documents are rather irrelevant. The Khasra Patrak (**P.5582-5584**) are relating to Sy.No.47, 64 appears to be of some different lands or at least I am unable to connect them with the lands in dispute. The 7/12 extract from page **5585** onwards also relate to Sy.No.47 and 64 and my above observation would apply here also. The decree of regular civil suit no.54/1953-54 would be a decree a personam, it being in between private parties intersee. So far as the claim of complainant or the claim of the Wakf Board is concerned, it could not carry any binding effect against them. One Dawood Abdullah Khan filed a petition in the Court of Dy. Collector Atiyat (**P-5605**) appears to be for grant of succession certificate and that was rejected. The rejection thereof would not mean that the properties in question are or are not Wakf. The question of nature and character of the properties was not involved in the said proceeding and no such finding were recorded by the said authority, much less it could not record such findings. So far as character of these lands as a Wakf, it was not considered and decided in any of the litigation and so both of the above judgments would not carry any binding force and consequence on the claim of the complainant.

The opponent no.1 Milk Dairy also claimed that the lands in question are not Wakf. According to it, the Khasra Patrak carry the entries that they are not Wakf. It however did not produce such material document to support

its contention. This opponent has produced several documents, but they are irrelevant, the documents being for the title of the land and title of the Milk Dairy. Here the documents as regards the character of this land were expected to be produced, which are not produced.

Mr. S.S. Ali Quadari the CEO and Mr. Munirkhan Pathan the D.W.O. even did not file the reply to the summon (**P.5558**) of this office . It appears that, these lands are not within the control and supervision of the Wakf Board. Here neither the Wakf Board nor the Muslim public in general is getting the benefit thereof. Still the responsible authority/ies of the Wakf Board appears to be careless to protect such valuable properties, though they were questioned through summons. The properties are quite adjoining to Aurangabad City, say in the radius of about 10 Km. from Aurangabad City and are quite valuable. The CEO and D.W.O. therefore are responsible for the loss of this properties, since in my view they may be having a personal advantage, the properties being possessed by the private people.

Having regard to above observations, the disputed land appears to be a Wakf of the Dargah Hazarat Shah Peer Mohammad at Ghandheli and the Wakf Board would be competent to initiate the proceeding u/s 52 and/or 54 of the Wakf Act 1995 so as to restore the possession.

The Wakf Board may even take action under Bombay Government Premises (Eviction) Act 1955, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.108.**

**REPORT**

**COMPLAINT NO. 101/2010**

**Complaint by Mohd. Abdul Sattar s/o Abdul Razzak**

**r/o Harshnagar, Aurangabad.**

**DARGAH HAZARAT SAYED SHAHGUALM HUSSAIN QUADARI KILLE ARK KALADARWAJA, AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

Land Sy. No.39, C.T.S. No. 6666 situated at Kille Ark Kala Darwaza Aurangabad is a Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complaint is filed (**P-5625-5628**) alleging that, Lt. Colonal Sayed Badruddin obtained temporary Mutwalliship under the order dated 8-11-1971 without having a succession certificate. Subsequently such order of appointment was cancelled. However Mr. Badruddin illegally transferred plots to as many as 30 persons enlisted in the complaint. The complainant claimed to be a successor of Shaikh Nawab Shaikh Abdul Razzak Quadari. He submitted several applications to the Wakf Board for his appointment as Mutwalli, however the Wakf Board ignored it. He alleged that, the remaining portion of land has been encroached by the people, and the Board in collusion with them, is not taking any action. The Wakf Board, the Wakf Institution as well as applicant who is a successor of original Mutwalli, are sufferer.

**NOTICES TO THE PARTIES:-**

The complaint was filed on 12-10-2010 i.e. at the winding point of time of the Commission, and the complainant did not produce some of the documents asked for and so the summons could not be issued to the parties.

**OBSERVATION OF COMMISSION**:-

I have no other alternative than to record the findings on the basis of the record produced by the complainant. Copy of the Gazette dated 17-5-1973 (**P-5629-5630**) contains the entry at Sr. No.38 of this Dargah, however I could not locate the land possessed by Dargah as a Wakf. The copy of Muntkhab is (**P.5631-5632**). Mr. Badruddin was appointed as a Mutwalli vide the order dated nil in file no.23-4-1972 (**P.5633**). There is also one document indicating that Nazim Atiyat had attached the land adm. 20 Biga of this Dargah because of non-supervision. (**P-5634-5635)** There is specific statement that the character and nature of the land is Mashrutul Khidmat. It is not clear whether this order was passed before or after appointment of Mr. Badruddin as a Mutwalli under the aforesaid order. The Board then passed the order (**P-5636-5637**) terminating the Mutwalliship of Mr. Badruddin. The pedigree is produce on record (**P-5638-5640**).

The complainant has produced the copies of City Survey record, in order to show that, the land property is a Wakf of this Dargah. However on going through this record I could connect only about 23 or 24 Gunthas of land as a Wakf, though the complainant is claiming 1 A. 34 G. as Wakf. The extract of City Survey No.6666 (**P-5641-5642**) has got a mention that it is Wakf and Mr. Sayed Badruddin Husainkhan is a Mutwalli of Dargah. The area of the land shown in this documents is only 2381.6 Sq. Mtrs. which may hardly come to 23 or 24 gunthas. The extract of City Survey No.6666/4 (**P-5643**) is of 469.60 Sq. Mtrs having no mention of Wakf. The complainant then has produced the extract of City Survey No.6643 (**P-5644-5649**) having no mention therein that, this is a Wakf. The complainant has claimed 1 A. 34 G. as a Wakf land. He however did not produce documents to support this contention, except the land adm. 23 or 24 G. as observed hereinabove. Since the complaint being filed in the closing session of the Inquiry, the Commission could not go in more deep, so as to find the exact area of the land of Wakf. This issue therefore is kept open for consideration and adjudication.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.109.**

**REPORT**

**COMPLAINT NO. 100/2010**

**Complaint by Sayed Allaoddin Miyan s/o**

**Sayed Tajoddin, r/o Aurangabad.**

**MASJID CHANDGAON TQ. VAIJAPUR DIST. AURANGABAD.**

**DETAILS OF THE PROPERTIES** :-

Land Gut No.49/1 adm. 14 H. 56 R., Gut No. 49/2 adm. 13 H. 44 R. and Gut No. 55 adm. 10 H. 89 R of village Chandgaon Tq. Vaijapur Dist. Aurangabad are service Inam of Masjid Chandgaon, as per contents of the complaint (**P.5700-5703**). The copy of Gazette is also produced (**P.5704**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged that these lands are leased for long terms for 99 years and it is explicitly illegal in the light of the statutory provision of law under the Wakf Act. He prayed to conduct the inquiry and also to remove Smt. Noorjah Begum and Smt.Bilkisjah Begum from the post of Mutwalli. He produced the 7/12 extract (**P.5705-5707**) in order to prove that the land Sy. No. 49/1 and 49/2 are in possession of Sitaram, Babasaheb and Ambadas s/o Punjaba and land Gut No.55 is in possession of Sakha Hari Rahane. These documents categorically display that, these lands are service Inam of Masjid Chandgaon Tq. Vaijapur Dist. Aurangabad.

**NOTICES TO THE PARTIES:-**

The summons bearing O.W. No.485/4/3 and 485/4/4 dated 5-10-2010 (**P.5708**) was served against Mr. S.S. Ali Quadari the CEO and Mr. Munirkhan Pathan the D.WO. calling them upon to make the statement about these lands and they did not attend.

The summons bearing O.W. No.485/4/1 and 485/4/2 dated 5-10-2010 (**P.5708**) was issued under certificate of posting (**P-5709**) against Smt. Noorjah Begum and Smt. Bilkisjahn Begum, calling them upon to make the statement. Smt. Bilkis Bano appeared and filed application dated 12-10-2010 and 19-10-2010 (**P. 5709 A-5710**) for adjournment and thereafter she filed reply on 25-10-2010. (**P.5711-5712**) admitting these lands to be Wakf and the lease of the same for 99 years with further contention that it was with the permission of Wakf Board. (**P-5713-5716**).

The summons bearing O.W. No.484/7/5 to 484/7/7 (**P-5717**) was issued under certificate of post (**P.5709**) against Baliram, Ramesh, and Shivnath s/o Sakhahari Rahane (**P.5717**) They filed reply (**P.5718-5719**) alongwith the deed of lease (**P. 5720-5753**), after seeking adjournment (**P.5754**).

The summons bearing O.W. No.484/7/1 to 484/7/3 (**P-5717**) was issued under certificate of post (**P.5709**) against Sitaram Punjaba Vaidya, Babasahed Punjaba Vaidya and Ambadas Punjaba Vaidya. (**P.5717**) They file

reply (**P.5755-5757**) alongwith the deed of lease (**P.5758-5766**). The copies of orders issued by the Wakf Board and the 7/12 extract produced by them are not separately Numbered.

**OBSERVATION OF COMMISSION**:-

It appears from the documents (P.5734) and (P.5746) produced by Rahane brothers that initially the Mutwallies Smt. Noorja Begum and Smt. Bilkisjah Begum granted the lease of land Gut No.55 adm. 2 H. 43 R and 2 H. 83 R under the lease deed dated 16-6-1993 and 16-6-1995 to Rahane Brothers for long term of 99 years by accepting huge amount of Rs. 1,10,000/- and 1,20,000/- respectively for these transactions. It appears that, the permission of the Wakf Board was not obtained. Obviously these transactions were contrary to the provision of section 36-A of the Wakf Act 1954. This provision has barred to lease agriculture Wakf land for more than three years. These two ladies who appears to have no regard for the sentiments of the donor and who have no regard for their own **Iman**, became hostile and entered in to such illegal act. I feel that **both of them would be liable for the Criminal Prosecution, since firstly they entered into the illegal transactions, secondly they accepted huge amount as a consideration for the transaction, thirdly they grabbed the entire amount and fourthly they are not rendering the services to the Mosque.**

It appears that, subsequently the Board of Wakf regularized this transaction under order dated 19-7-1996 (**P. 5713**) by allotting this land of rent of Rs.1000/- p. a. without mentioning the period of the lease. As such the Wakf Board also did not abide the statutory provision of law. The Board was expected to impose a particular tenure and its renewal thereafter. As such the Wakf Board also acted rather in a rash and careless manner.

The Mutwallies Smt. Noorjaha Begum and Smt. Bilkishjah Begum again committed mischief by executing a separate lease deed dated 11-7-2002 (**P.5720**) by accepting Rs. 1,70,000/- again for 99 years and the Wakf Board did not take any action against them. **One Mr. Kazi Laik Ahmed Khaliloddin Inamdar gave consent to this transaction. It is not clear as to how and why he came in picture. This person also equally responsible for the illegality.**

Similar in the case in respect of the transaction with Sitram Punjaba and others. In this matter also the aforesaid two ladies leased Gut No.49/1 adm. 14 H. 56 R. for Rs. 7,50,000/- (**P.5758**) without mentioning period of lease under the document dated 25-3-1997. They again executed a separate document dated 5-12-1997 of the same land Sy.No.49/1 adm. 14 H. 56 R. for Rs. 2,55,000/- for 99 years (**P- 5759**). This transaction was regularized by the Board of Wakf under the order dated 29-10-1997 (**P.5715**) by repeating the mistake as observed hereinabove i.e. without mentioning the period of lease and term of renewal thereafter.

I may mention here that, the complainant Sayed Allauddin is the husband of one of the Mutwalli Noorjah Begum. Significantly Bilkis Bano the Second Mutwalli responded the summon of this commission and other Mutwalli Noorjah Begum did not. These circumstances are suspicious (susceptible) to infer that the present complaint may be collusive in between the husband and wife. They grabed huge amount on account of lease by turning hostile to the Wakf and the Wakf Board and now they wanted to turn hostile to the lessee. **As observed hereinabove they are liable for Criminal prosecution of the offence of mischief, falsification of record by fabrication and forgery, together with the other penal provisions.**

The significant fact is that though Divisional **Commissioner repeatedly directed (P 4965 and 5013) to enter the name of religious institution** and not of the private person, in Kabjedar Coloum of 7 x 12, **it is not followed** as it is displayed in 7 x 12 extract (P 5705), and **no action is taken against such employees, may be because that the property is Wakf**. The Wakf Board, the CEO and the DWO, who appears to be worried for their salaries only, do not want to detect such matters, and to take action against delinquent. I would suggest that the State Govt. may-must take action in such matter, by having a revamp of the Wakf and Trust properties, and to punish those who indulge in such illegality. It may be born in mind that, no sooner the name of a private person is entered in Kabjedar Colum of 7 x 12 extract, he gets temptation to dispose the property, with a view to earn money.

It appears that Gat No. 49/2 adm 13 H 44 R is still in possession of Mutwalli and significantly, the complainant did not whisper about it in the complaint. Similar is the case of S.No. 81 which is Wakf as it is seen from the Gazattee (P 5704). When these properties appear to be possessed by the Mutawalli, the Mosque can have the funds for service. This further add that the Mutwalli have got a source of income, and they do not want to render service to Mosque, and they further want to obtain the possession of the aforesaid lands, of course with their ulterior motive.

**I would be justified to suggest to initiate to Criminal Prosecution against Mutwalli; together with the complainant who may be behind all of this episode; and to remove the aforesaid Mutitwalli from the post.**

At the same time the Wakf Board may initiate the proceeding u/s 52 and 54 of the Wakf Act 1995 to restore the possession of the aforesaid lands to the institution of Wakf and the Wakf Board.

The Wakf Board may even take action under Bombay Government Premises (Eviction) Act 1955, the amendment Act no.1 of 2008 which came into force w.e.f.27-8-2008 which is made applicable to the Wakf Properties. (See M.L.J.2008 (2) Journal P.8 and M.L.J. 2008 (5) Journal P.12.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.110.**

**REPORT**

**COMPLAINT NO. 41/2008**

**Complaint by Saleem Hazi Gaffar r/o Roshangate, Aurangabad.**

**DANDESHA WALI, AURANGABAD**

**DETAILS OF THE PROPERTIES** :-

Land Sy.No.3 and 4, C.T.S. No.20295 of Kaisarsingpura and Maljipura, Salar Jang Estate, Aurangabad.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complainant alleged in the complaint dated 25-7-2008 (**P. 5770**) and also in the Second complaint dated 25-8-2009 (**P. 5771**) that, the site adm. 228 x 205 ft. is a Wakf property. The said site has been illegally encroached by the Corporation Aurangabad. The complainant filed the copy of Gazette dated 3-5-1973 pointing the entry at Sr. No.173 saying to be relating to this land (**P -5772**). He also produced the copy of C.T.S. No.20295 and the Toch map (**P. 5773-5774**), the photograph of the Tomb (**P. 5775**) and the copy of paper publication dated 30-3-2008 (**P. 5776**)

**NOTICES TO THE PARTIES:-**

The summons was sent to the complainant Saleem Hazi Gaffar bearing O.W. No. 93/2009 dated 13-4-2009 (**P. 5777**) calling him upon to produce more documents and for want of full address it was not served. However the complainant personally appeared before the Commission on 23-9-2009 and obtained the copy of the summons and thereafter he did not turn up.

The summons O.W. No. 380/2/1 and 380/2/2 dated 8-10-2009 (**P. 5778**) were served on Mr. S.S.Ali Quadari the CEO and Mr. Munirkhan Pathan the D.W.O. Wakf calling them upon to make the statement about this site and they did not attend.

The proclamation bearing O.W. No.437/09 dated 24-11-2009 was served on Mr. S.S. Ali Quadari the CEO and he did not attend (**P-5779**).

The order of fine of Rs. 500/- was served on Mr. S.S. Ali Quadari bearing O.W. No.47/10 dated 21-1-2010 and he did not attend nor paid the fine. (P.**5780**).

**OBSERVATION OF COMMISSION**:-

The entry in the Gazette (P.5772) display at Sr. No.173 that, the site adm. 228X205 Sq.ft. Ashoka Railway Hotel in Kesarsingpura/Maljipura, Aurangabad out of Sy.No.3 and 4 is a Wakf property. The photo of the Tomb (P. 5775) also display that it is the Wakf property. The complainant moved the office of the Wakf Board, whereupon the publication was issued in daily Insaf dated 30-3-2008 calling objection, if any, to register this

property as a Wakf. The further progress in the matter is not known. As against this the City Survey Record (P. 5773-5774) does not display that, this property is a Wakf.

Unfortunately the CEO and DWO Wakf did not cooperate this office by filing the statement in response to aforesaid summons, although the DWO issued a publication in Daily Insaf dated 30-3-2008 (**P.5776**) in the proceeding filed by the present complainant. This is how, the responsible officers of the Wakf do not want to take care to protect the Wakf property. It is generally noticed that, there are the private people who intend to protect the Wakf property, in fact for no personal gain, and they file the proceeding, however it appears that, the responsible officers /employees of the Wakf Board do not cooperate them, may be with ulterior motive Had there been no paper publication (P.5776) under the signature of D.W.O. Wakf I would not have made these observation. However at one point of time the Officer of the Wakf Board initiates a proceedings and thereafter he does not take care of the same, not only this but he does respond to the process of the office of commission and all of this speak in volumes that, the in action by them must be for their ulterior motive and so I would suggested that, the Wakf Board shall take a serious action against them, here the DWO.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.111.**

**REPORT**

**COMPLAINT NO. 87/2008**

**Complaint by Unknown person i.e. Suo-Moto Complaint.**

**DARGAH HAZARATSHAH ALI NANDED.**

**DETAILS OF THE PROPERTIES** :-

Sy.No.4 adm. 3 A 23 of Nanded is a Wakf property.

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The complaint is made orally on condition not to disclosed his name stating that, Sy.No.4 adm. 3 A. 23 G. of Nanded is a Wakf property & it is being encroached by the people.

**NOTICES TO THE PARTIES:-**

The summons bearing O.W. No.167/2/1 and 167/2/2 dated 20-3-2010 were served on the CEO of Mr. S.S.Ali Quadari and D.W. O Mr. Abedkhan calling them upon to make the statement as regard the encroachment on the aforesaid land and they did not respond. (**P.5785**)

The proclamation bearing O.W. No.198/10 and 199/10 dated 20-4-2010 were served on the CEO Mr. S.S. Ali Quadari and Mr. Abedkhan the DWO Nanded calling them to make aforesaid statement and they did not respond. (**P.5786-5787**).

The fine of Rs. 500/- was imposed against Mr. Abedkhan the DWO Nanded under O.W. No.264/2/1 dated 14-5-2010 (P-5788) and also on the CEO Mr. S.S.Ali Quadari (**P.5789**) and they did not respond.

**OBSERVATION OF COMMISSION**:-

It appears that, the aforesaid land may be part of Nanded City and as such a prime property. The Commission however rendered helpless, the statement being not filed either by the CEO Wakf or by the DWO Wakf. As a matter of fact they being the responsible Officers were expected to file the statement and to bring the clear picture before the Commission and also to save the Wakf property and to increase the Revenue of the Wakf. However the care takers themselves became hostiles. The Wakf Board may take the necessary action against them.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.112.**

**REPORT**

**COMPLAINT NO. 99/2010**

**Complaint by Suo-Moto Complaint**

**Daily Lokmat Time dated 29-9-2010**

**JAMA MASJID VAIJAPUR DIST. AURANGABAD**

**DETAILS OF THE PROPERTIES** :-

Sy. No.50/166, 167 of Vaijapur appears to be a Wakf property. (**P.5790**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

The news was published in Daily Lokmat Time Aurangabad dated 29-9-2010 (P.5790) stating that, the aforesaid lands are Wakf of Jama Masjid and the complaint was filed by one Sayed Gayasuddin s/o Siyasuddin of Kazi Lane Vaijapur in capacity of a former Inamdar stating that a false and fake 7/12 was prepared, the mutation entry was recorded on that basis and the attempts were being made to grab the property, by Sayed Mujauddin s/o Sayed Amiruddin, Sayed Riyazuddin s/o Sayed Amiruddin, Sayed Sirauddin s/o Amiruddin r/o Aurangabad and Sayed Fasiuddin s/o Amiruddin r/o Vaijapur Dist. Aurangabad.

**NOTICES TO THE PARTIES:-**

The full addresses of the complainant as well as the one who were named as accused were not available with the Commission and so it was thought proper to collect the information from the concerned police station.

The summons bearing O.W. No.481/2/1 was issued against the Police Sub-Inspector Vaijapur calling him upon to make statement on 11-10-2010 and he did not respond. (**P.5791**) The copy of this summons was also served on the CEO Wakf calling him upon to make the statement and he also did not respond.

**OBSERVATION OF COMMISSION**:-

The Commission rendered helpless for want of information. The concerned Police Station with whom the FIR was lodged and the CEO Wakf being care taker of the property, were under obligation to assist the Commission by furnishing the information. The CEO Wakf carry more responsibility to extend the assistance to the Commission. However both of them had a deaf ears to the call of the Commission. The Commission therefore is rendered helpless. The Wakf Board may take the suitable action against the CEO Wakf.

(**A.T.A.K.SHAIKH**)

Commission

**Sr.No.113.**

**REPORT**

**COMPLAINT NO. 79/2009**

**Complaint by Mr. Abdul Khaleq Penter r/o Beed**

**MASJID PIMPALNER, DIST. BEED.**

**DETAILS OF THE PROPERTIES** :-

Land Sy. No.101 (Gut No152) adm. 32 A. 25 G. situated at Pimpalner, Dist. Beed is Wakf of the Mosque having entry thereof in the Govt. Gazette at P.68 Sr.No.80 (**P.5795**)

**NATURE OF TRANSACTION WITH OTHER DETAILS:-**

Mr. Khaliqu Penter filed a complaint (**P.5795-5797**) alleging that 16 A.25 G. out of the aforesaid land is illegally allotted to Mr. Mukaramjan s/o Gulam Mohammad and remaining 16 A. to Mr. Abdul Majeed Mohd. Sikandar for 51 years on yearly rent of Rs. 1000/- each. The complainant alleged that, allotment of the land for more than 3 years is illegal, in the light of the provision u/s 56 of the Wakf Act 1995. As a matter of fact, this land would fetch Rs. 50,000/- per year and the salaries of Peshimam and others would be paid + other expenses of the Mosque would be born. He prayed that, this land may be allotted by calling the tender by issuing the advertisement in the Newspaper. The 7/12 extract of this land is (**P.5798**) having the name of Dagdu Abdul as a Mutwalli in bracket. Subsequently the name of the Mosque is mutated in Kabjedar column vide entry no.650.

**NOTICES TO THE PARTIES:-**

The summons O.W.No.498/2/1 and 498/2/2 dated 5-12-2009 were served on Mr. S.S.Ali Quadari the CEO Wakf and Mr. Maqsud Ahmed calling them upon to make a statement as to whether the provision u/s 32 (2) (J) of the Wakf were followed while allotting this land to the aforesaid persons (**P-5799-5800**).

There being no response the proclamation bearing O.W. No. 473/09 dated 16-12-2009 was issued against Mr. S.S.Ali Quadari calling him upon to make statement. (**P.5801**) He simply issued direction to the D.W.O. Beed under the letter dated 19-12-2009 to make the compliance. (**P.5802**) **Significant fact to be mentioned is that the aforesaid letter is by way of threat to the D.W.O. to make the compliance, otherwise the disciplinary action would be taken against him. The CEO, though he is responsible authority of the Wakf Board, himself did not take care to file the reply.**

**OBSERVATION OF COMMISSION**:-

The D.W.O. Beed filed reply dated 18-12-2009 (**P.5803**) admitting therein, the allotment of the land on lease for 51 years by the Wakf Board, to the aforesaid the two person, on the rent of Rs. 1000/- p.a. each. **He however did not make any statement as regards the compliance or non compliance of section 32 (2) (j) of the Wakf Act 1995, though he was specifically asked. Needless to state that, Mr. S.S.Ali Quadari displayed his irresponsible conduct by non filing the reply, though the aspect of compliance or non**

**compliance of section 32 of the Act was relating to his office.** I propose that, such irresponsible officer is required to be dealt with seriously by the Government.

It appears that, this land was initially leased to Abdul Majeed s/o Abdul Sikandar some where on 8-5-1978 under the registered deed (**P.5804-5805**), under the signatures of Mr. Gulam Dastgirkhan Guljarkhan the Chairman of the Wakf Board, Mr. Ahmed Been Abood and Abdul Azim Abdul Hameed the members of the Board. There is no statement in this document whether the Board had passed the resolution to lease the land. This transaction however was prior to 1995.

Subsequently the aforesaid transaction was regularized under the order dated 3-6-1996 (**P. 5806**) by allotting 16 A. 25 G. to Mr. Mukarmjahan and remaining 16 A. to Abdul Majeed on rent of Rs. 1000/- of each for a long time of 51 years. The rent deed was accordingly executed by Mr.Mukarmjahn Gulmahamad on 16-6-1996 (**P.5807-5808)** having no document by Abdul Majid**.** The illegalities and objectionable points of these documents are as under:-

a) Both of the aforesaid documents i.e. P.5806 and 5807 are silent as regards passing or non passing of resolution by the Wakf Board.

b) The D.W.O. Wakf Mr. Maqsud Ahmed is also silent about this aspect in his reply (P.5803).

c) The land was leased for long term of 51 years and that is obviously illegal virtue of under section 56 of the Wakf Act 1995.

d) The big area of lands adm. 16 A. 25 G. and 16 A. were allotted on rent of Rs. 1000/- only per year. The quantum of Rent was comparatively very meager to the area of the land.

e) There is no term of renewal of lease after a particular period. On the contrary clause 7 of the document (P.5806) indicate that if the lessee want to obtain the lease after expiry of 51 years, the then prevailing market rate would be applicable, meaning thereby that until expiry of 51 years, the lease was not to be renewed and the lessee were entitle to enjoy of such big area of land for meager and negligible amount of Rs.1000/- per year.

The Talathi of the Village who appears to have a sense of law made a proposal dated 13-6-1976 to delete the name of the private person and to insert the name of religious institution in the kabjedar column (**P.5809**) and his such proposal was accepted by his higher authority. On the contrary I found that the Talathi of various places in Beed District were making the entry of the name of private person in the kabjedar column of the Wakf land, despite the directions of the Divisional Commissioner and the Govt. (**P.3134 and 5013**). The act of this Talathi who so ever he may be deserves to be appreciated, who obeyed the orders of his superior under the aforesaid circular.

**The transaction of lease being in violation of section 56 of the Wakf Act 1995 and being illegal, that too, against the interest of the Wakf and the Wakf institution, the entire land deserves to be restored to the**

**Wakf Board and deserves to be allotted afresh by calling tenders by giving a wide publicity in the newspaper as proposed by the complainant.**

**The allotment of the land under the agreement dated 8-5-1978 (P.5804) and the order dated 3-6-1996 (P.5806) being illegal the allotte of the land, either he may be a Chairman or the member/s of the Board, deserves to be taken the legal action of, if they may be surviving.**

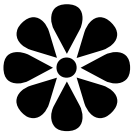
(**A.T.A.K.SHAIKH**)

Commission

**GOVERNMENT CENTERAL PRESS, MUMBAI**

# THE REPORT OF COMMISSION OF INQUIRY WAKF BOARD MAHARASHTRA

(AURANGABAD)



MAHARASHTRA VIDHANMANDAL SACHIVALAY
VIDHAN BHAVAN, MUMBAI
2015

# THE REPORT OF COMMISSION OF INQUIRY WAKF BOARD MAHARASHTRA

(AURANGABAD)