

(2025) 09 BOM CK 0333

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 3735 Of 2014

Sayed Haji s/o Sayed Mustaffa

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 15-09-2025

Acts Referred:

Hyderabad Atiyat Inquiries Act, 1952 — Section 12(2), 13

Citation : (2025) 09 BOM CK 0333

Hon'ble Judges : R. M. Joshi, J

Bench : Single Bench

Advocate : G. R. Syed, S. N. Kendre, A. S. Deshmukh

Final Decision : Disposed Of

Judgement

R. M. Joshi, J

1. Rule. Rule made returnable forthwith. By consent of both sides, heard finally.
2. These Petitions take exception to the order passed by the Additional Collector (Atiyat), Latur dated 07.03.2014 in File No. 2013/Religious/CR-96 passed under the provisions of the Hyderabad Atiyat Inquiries Act, 1952 (for short 'the Act'), whereby the Appeal filed by contesting Respondent, Hidayatali, came to be allowed and he is declared to be successor of Atiyat grant and held to be entitled to receive possession of subject properties.
3. The facts as well as points of law involved in these Petitions being same, by consent of both sides, these Petitions are heard finally together and decided by this common judgment.
4. For the sake of convenience, facts as mentioned in Writ Petition No. 3735/2014 are taken into consideration. It is clarified that except for the relationship between the parties and their claims in respect of succession, facts in these Petitions are common.
5. Petitioners challenge the order impugned passed in favour of Syed Hidayatali

(contesting Respondent) whereby he was held to be Mutawalli in respect of Hazarat Sayed Chand Dargah and Masjid, Udgir (for short "Dargah and Mosque"). It was further directed therein that the land resumed by the Government bearing Survey Nos. 167 and 230 be released in favour of this Respondent. Similarly, the amount received from the Ek Sal Lavani was directed to be paid to him.

6. It is the case of the Petitioners that Muntakhab was issued by the Competent Authority i.e., Collector, Osmanabad (Bidar Sharif) holding that the succession right in respect of Atiyat grant is in favour of Syed Burhan. On his death, Syed Asadullah and Syed Noorudin were found to be the only his heirs. Under the circumstances, the succession was given in favour of elder son Syed Asadullah and Syed Nurroodin was held to be his Deputy.

7. Petitioners claim that by order dated 11.07.1983 the lands in question were resumed by the Government for the alleged non-compliance of the conditions of Atiyat grant by its holders. Accordingly, by notification dated 11.07.1983 Ek Sal Lavani system was adopted. This order was came to be challenged before Deputy Collector (Atiyat), Udgir. Initially, said order was stayed, however, later on it came to be vacated on 08.05.1990. The said order was taken exception in an Appeal and further Revision and the said litigation finally landed in this Court in Writ Petition No. 1676/1992. Syed Abdul Kasim, son of Syed Meera Hussaini, fought the said litigation. In the said Writ Petition, Syed Hidayatali appeared on behalf of the Petitioner therein claiming to be constituted attorney of the Petitioner. According to the Petitioners in the said Writ Petition, heirs of the Syed Abdul Kasim moved Civil Application No. 842/1996 claiming themselves to be the legal representative of deceased. Similar Applications were made by others claiming to be the heirs of the Atiyat grant holder. This Court, by order dated 20.07.1996, allowed the Petition and set aside the impugned orders and remanded the matter back to the Deputy Collector (Atiyat), Udgir for its disposal in accordance with law. It was further observed that till the inquiry is held, the possession to be continued with the Government with a liberty to auction the land on Ek Sal Lavani basis. It is claimed by the Petitioners that there are other nine Petitions pending before the Deputy Collector (Atiyat), Udgir in respect of the subject properties filed by the Petitioners and the others including contesting Respondent Syed Hidayatali.

8. Syed Hidayatali moved Writ Petition No. 8026/2010 seeking direction to the Deputy Collector (Atiyat), Udgir to decide his application dated 21.09.1996. This Petition came to be disposed of with liberty to file fresh Application. Accordingly, Syed Hidayatali filed fresh application on 03.03.2011 before Competent Authority claiming the succession to the post of Mutawalli and also possession of Survey Nos. 167 and 230 situated at Udgir with further prayer to pay entire auction amount in respect of these lands to him. Since the said proceeding was pending decision, parties required to approach this Court by filing Writ Petition wherein a direction was issued to dispose of the Application within three months of the

appearance of the parties. Deputy Collector (Atiyat), Udgir by order dated 12.07.2013 dismissed both Applications in file No. 2012/Inam/CR/2 and directed Syed Hidayatali to approach the concerned Authority for appointment of Mutawalli before Waqf board. Being aggrieved by the said order, Syed Hidayatali preferred Appeal before Additional Collector, Latur in Appeal File No. 2013/Religious/CR-96. In the said Appeal, Syed Hidayatali as well as Petitioners and other Respondents were heard. Appellate Authority accepted the contention of Syed Hidayatali of he being appointed as Mutawalli by Syed Abdul Kasim s/o Syed Meera Husaini on the basis of document titled as power of attorney. It was further directed that the subject properties be handed over into his possession along with the amounts received in an auction for Ek Sal Lavani.

9. Petitioners being aggrieved by the said order, has preferred these Petitions on following amongst other grounds:

(i) That the Additional Collector (Atiyat) erred in holding that Syed Hidayatali has been appointed as Mutawalli by Syed Abdul Kasim under a power of attorney without deciding the issue as to whether the deceased himself was Mutawalli.

(ii) On the basis of the power of attorney, Mutawalliship cannot be transferred and that on death of the executor of the power of attorney, the said document ceased to have effect.

(iii) Additional Collector erred in drawing conclusions on the basis of the orders passed by this Court of directing Rs. 20,200/- to be paid to the deceased Syed Abdul Kasim as it was clarified therein that the said order was an interim order and it was passed without affecting the rights of the parties.

(iv) The Additional Collector erred in directing Tahsildar to handover the possession of the subject properties to Syed Hidayatali when there were in all nine Petitions including Petition filed by Syed Hidayatali were pending before Deputy Collector (Atiyat), Udgir for adjudication into their rights.

(v) Additional Collector failed to consider provisions of Section 12(2) of the Act which constitutes that if any dispute arises involving questions of succession, legitimacy, divorce or other questions of personal law, the Atiyat Court shall direct the parties to get the dispute decided in the competent Civil Court and on production of the final decision of the Civil Court, the Atiyat Court shall give effect of such decision.

(vi) Additional Collector committed error in not deciding all Applications together.

10. Learned Counsels for the Petitioners made number of submissions and on occasion contrary to the interest of each other. Such submissions were obvious in view of the fact that all Petitioners claim their exclusive right of succession of Atiyat grant. The sum and substance of their contention, however, is that contesting Respondent Syed Hidayatali could not claim the succession into the Atiyat grant in view of the fact that he is not the successor of the person in whose favour Muntakhab has been issued. It is their contention that on the basis

of power of attorney, the right of succession cannot be conferred upon him by Syed Abdul Kasim. According to them, the power of attorney even if accepted to have been executed by Abdul Kasim, after his death the said document has ceased to have effect. In any case, it is their contention that the Atiyat inquiries in the grant is inherited by succession and cannot be transferred. In this regard, reference is made to Muntakhab issued in favour of Mir Abbasali P. Sayad Ismael, Sayad Hasan Fot Varis Khurshidabegam, Sayad Murtuja, Mohd. Ismael and Sayad Mustafa & Sayad Abdul Khadar P. Sayad Lal. By referring to the provisions of Section 13 of the Act, it is contended that the orders passed relating to the Atiyat inquiries in the grant including Jagirs on or after 18.09.1948 and before commencement of this Act of 1952, shall be deemed to be final orders validly passed by the Competent Authority and the same shall not be questioned in any Court of law. It is their contention that the previous orders by Atiyat Court clearly indicate that the Atiyat grant was inheritable and as such, it was not open for the Court to hold Syed Hidayatali as successor of the Syed Abdul Kasim on the basis of power of attorney. They also made reference to the order passed by this Court dated 20.07.1996, which according to them mandates the parties to obtain succession first and then to seek the possession of the land resumed by the Government.

11. Per contra, learned Counsel for contesting Respondent, Syed Hidayatali, submitted that there is no dispute about the execution of the power of attorney by Syed Abdul Kasim, who was a successor of grant holder. It is his submission that the title of the document becomes immaterial and intention of Syed Abdul Kasim of transferring of the Mutawalliship in favour of Syed Hidayatali can be ascertained from the recitals of the document. It is his submission that the said document indicates that it was Syed Hidayatali who was performing all rituals of Dargah and Mosque and for this reason, Mutawalliship was transferred in his name. In support of his submissions, he placed reliance on judgment in case of Haji Abdul Razaq vs. Sheikh Ali Bakhsh and Another, (1948) 50 BOM L.R. 661 to contend that there was no embargo for the Syed Abdul Kasim to transfer the Mutawalliship in favour of Syed Hidayatali. He also placed reliance on the judgment of Coordinate Bench of this Court in case of Poulad Deochand Patil vs. Samasta Aher Nhavi Panch Trust, 1992 Mh.L.J. 412 in order to argue that in certain situations ex post facto hearing could be a substitute for grant of prior hearing in a given case. He argued that even if this concluded that it would be appropriate to direct rehearing of the Application, the order of possession of the subject lands by the contesting Respondent Syed Hidayatali needs to be continued in his favour. Without prejudice to his contentions, it is his submission that the appearance in the inquiry before the Authority needs to be restricted to the extent of person who have any right of succession through the concerned persons in whose favour Muntakhab has been issued and not all objectors/claimants.

12. An issue was also raised on behalf of the Petitioners that in spite of the order passed by this Court of granting status quo, the contesting Respondent Syed

Hidayatali has taken the possession of the subject lands during the operation of order of stay. Counsel for Respondent opposed the said contention by claiming that though order was passed initially, the same was not continued and hence, the possession taken is not contrary to the orders. It is further claimed that the subject lands are given into the possession of the present contesting Respondent, the said possession be continued with him.

13. In order to appreciate the rival submissions, it would be relevant to take note of the provisions of the Act. As per the statement and object, the Act is aimed at consolidation of law relating to Atiyat grant, in respect of Atiyat inquiries, inquiries as to the claims to succession to, or any right, title or interest in Atiyat grants and matters ancillary thereto. Section 13 of the Act gives finality of the decision of Atiyat Court. Atiyat Courts, means a Court or Authority competent to make Atiyat inquiries and inquiries as to the claim of succession or any other right, title or interest in Atiyat grants and matters ancillary thereto. Section 3 provides that all Atiyat grants subject to the provisions of Hyderabad Abolition of Jagirs Regulation, 1358 Fasli, the Hyderabad Abolition of Cash Grants Act, 1952 and the Hyderabad Abolition of Inams Act, 1954 continue to be held by the holders thereof subject to conditions laid down in Muntakhabs or Vasiqas. Section 3-A makes provision with regard to inquiries as to Atiyat grants. In case of Atiyat grant specified in sub-section (1) of Section 2 in clause (b), the inquiry with regard to right, title or interest therein shall be held in Atiyat Court in accordance with the provisions of this Act. It further provides that in the course of such inquiries, Atiyat Courts are competent to inquire into the claims to succession arising in respect of such grants. Proviso to this sub-section states that the claims to the succession arising after the completion of Atiyat inquiry or Atiyat grant shall not be entertained in any Court and all such claims shall be filed and decided by the competent Civil Court. The said proviso clearly applies only to the extent of the matters covered by Section 2(1)(b)(i) of the Act. Sub-section (2) of Section 3-A makes specific provision with regard to Atiyat grants specified in sub-clauses (ii) to (vi) of clause (b) of sub-section (1) of section 2. All inquiries as to the claim of succession or any right, title or interest and the matter ancillary thereto shall be held in Atiyat Courts in accordance with the provisions of this Act. It is thus clear that in respect of inquiry with regard to the succession, the powers are vested in the Atiyat Court to conduct the inquiry and to determine the claim as to succession or any right, title or interest therein including ancillary matters.

14. Section 12 provides for decision of Civil Court to prevail on question of succession, legitimacy, etc. As far as the question of succession, legitimacy, divorce or other questions of personal law are concerned, the final decision of Civil Court shall be given effect by Atiyat Courts under this Act, irrespective of whether decision of Atiyat Court was given before or after the decision of Civil Court. Sub-section (2) provides that if in the course of any inquiry as to the claims to succession, any dispute arising involving question of succession, divorce or legitimacy or personal law, the Atiyat Court shall direct the parties to

get the dispute decided in the competent Civil Court and on production of final decision of Civil Court, Atiyat Court shall give effect to such decision. These provisions are clarificatory in nature and do not take away the powers of Atiyat Court to conduct an inquiry into the claim of succession and to decide dispute involving the question of succession or right, title or interest therein. What is required to be referred to the Civil Court is inter se dispute between the persons claiming to be successors of the person holding the Atiyat grants and to that extent the decision of the Civil Court would prevail upon the question of succession, legitimacy, etc. Thus, only for this limited purpose a reference could be made to the Civil Court and that each objection or claim to the succession cannot be referred to the Civil Court, since the said subject solely lies to the jurisdiction of these Courts. Merely because the parties have moved the Civil Court for the decision of succession, that per se does not affect the powers vested in the Atiyat Court to decide succession or right, interest etc. No doubt, in case of a decision of Civil Court on legitimacy, succession or divorce or other question of personal law, the same shall be given effect by Atiyat Court.

15. The provisions of the Act clearly indicate that formant has been provided for the decision of the subject matters covered by the Act including the jurisdiction and procedure of the Atiyat Courts and appeals against orders.

16. The matters as to the fulfillment of the conditions of the Muntakhab and resumption of the land by the Government for non compliance thereof, also would be subjected to the decision of the Atiyat Courts.

17. It would be pertinent to note that perusal of entire Act, it does not deal with the appointment of Mutawalli. The terms Mutawalli does not find place in entire text of the enactment. It only deals with succession, right, title and interest of Atiyat grants and ancillary matters. The purport of these provisions is to determine right, title and interest of persons in the Atiyat grants. The terms 'mutawalli' finds place in the Wakf Act, 1995, wherein section 3(i) defines mutawalli as person who is appointed to perform duties of mutawalli. Needless to emphasize that mutawalli does not get any right, title or interest even in the properties of wakf. The very nature and designation of a mutawalli is to perform duties without interest being created in the properties. On the contrary, the successor of interest of Atiyat grant holder in appropriate cases has right, title and interest in the properties. Thus, a serious question would arise as to whether there can be appointment of a mutawalli/manager under the provisions of the Act, and the answer thereto would be in negative.

18. Before analyzing the facts in the context of the provisions of law, it would be fruitful to take note of certain orders passed by this Court as well as Courts in the Act. Along with rejoinder, Petitioner in Writ Petition No. 3735/2014 has placed on record granting succession in respect of the subject property. The said order reads thus:

By this order, the succession is granted to Sayed Asadullah i.e. elder son of

Sayad Burhan, Atiyat grant holder and 'Shikami' is granted to younger son Sayad Noorudin in File No. 3/11/1310 Fasli. There is one more order of 1352 Fasli, granting succession in favour of Sayad Multani, son of Sayad Moinuddin to the extent of his share in the properties. There is nothing on record to indicate these orders being challenged at any point of time. Apparently, these orders have attained finality.

19. The State Government through Tahsildar, Udgir, by notice dated 11.07.1983 invited applications from the villagers for allotting subject lands for "Ek Sala Lavni", for non performance of duties assigned to grandfather of Sayad Abdul Quasim s/o Syed Mira Hussainee. This notice came to be challenged before the Atiyat Court and finally dispute reached to this Court in Writ Petition No. 1676/1992. This Court by order dated 20.07.1996, decided the Petitions and relevant portion of the order reads thus:

"8. On going through the various orders which are passed in this matter, I think this is a fit case to remand it to Deputy Collector (Atiyat) for determination of question involved in the case as pleaded by the parties. Liberty can be granted to the respective parties to putforth their claim either as a successor mutavalli or legal heirs or representative of deceased Mutavalli or inamdar to challenge the order of resumption.

9. In the result, the writ petition is allowed. The impugned orders are quashed and set aside. The matter is remanded to Deputy Collector (Atiyat), Udgir for disposal in accordance with law, keeping in view the aforesaid observations. Till the enquiry is held, the possession shall be continued with the Government and the Government is at liberty to auction the land on Eksala lavani basis. Liberty to the parties to intervene in the enquiry, if they are not made parties to the application preferred by the original petitioner."

Thus, by said order it is directed that till enquiry is held, possession of subject lands were directed to be continued with Government with further liberty to auction the lands on Eksala Lavani.

20. In the meantime, various proceedings and applications were taken out for receiving the amount derived from auction of 'Ek sala Lavani'. Though orders were passed permitting the withdrawal of amounts to meet expenses and orders are also passed in respect of the encroachments caused on subject properties but none of the order on merits came to be passed determining rights of parties.

21. Hidayatali filed application being no. 2012/Inam/CR-2 before Deputy Collector (Atiyat) for appointment as successor and Mutawalli. This application came to be rejected by order dated 12.07.2013 by holding that appointment of Mutawalli cannot be done under the provisions of the Act. An appeal came to be filed against this order being Appeal No. 2013/Religious/CR-96, before Additional Collector (Atiyat), Latur. This Appeal came to be allowed by impugned order dated 07.03.2014.

22. In the context of above orders/facts of the present case, the Petitioners as well as contesting Respondent Syed Hidayatali claim to be the successor of Atiyat grant holder. No doubt, there cannot be any straight jacket formula to decide as to whether the Atiyat grant would be inheritable or not and the same would depend upon the nature of grant and the conditions mentioned therein. At this stage, there is nothing on record to indicate the nature of the Atiyat grant, in the present case, however, the orders passed by the Atiyat Court of inquiries, which forms part of the record, prima facie indicate that the said Atiyat grant was heritable. The orders of succession passed in respect of the subject properties indicate that on the death of the Atiyat grant holder or successor, his heirs are held to be successors of Atiyat grant. Thus, prima facie there is material on record to indicate that the succession to the Atiyat grant is hereditary in nature and could not be transferred by any other mode. In such circumstances, the order impugned indicate that on the basis of the appointment done by Syed Abdul Kasim, who is legal heir of Syed Lal, Syed Hidayatali is claiming to be the successor to the Atiyat grant. In prima facie view of this Court, such mode of succession of the Atiyat grant in question is apparently alien to the nature of the Atiyat grant and this aspect requires detailed consideration by Atiyat Court. The judgment in case of Poulad Deochand Patil (supra) has no application to the present case as the said judgment does not deal with issues covered by the Act. In the said case a wakf was created by will and in the instant case there is Atiyat grant.

23. Perusal of the record, more particularly, impugned order indicates that Authority has failed to take into consideration the orders passed by the Atiyat Courts granting the succession of the Atiyat grant by inheritance. The Atiyat Court, therefore, committed serious error in law as well as in fact by declaring Syed Hidayatali as the successor of the Atiyat grant holder.

24. These Petitions are pending since 2014 and this Court passed order dated 02.05.2014 in Writ Petition No. 4047/2014, issuing notice to Respondents, returnable on 27.06.2014 and 'till then' interim relief in terms of prayer clause 'c' is granted. Prayer clause 'C' reads thus:

"Pending final disposal of this Writ Petition Impugned Judgment and order dated 7-3-2014 passed by the upper Dist-Collector Latur in Appeal No. 2013/Religious-Inam/CR /96 be stayed."

On 27.06.2014, interim relief granted was extended 'till then' and Petition was stood over to 18.07.2014. This order was continued on 18.07.2014. As per record, the Petition appeared before the Court only on 24.02.2022. Petition was adjourned to 17.03.2022 and thereafter 21.04.2022. This Court passed order to continue interim relief, if any, till then i.e., 07.07.2022. Thereafter, on 06.06.2023 interim relief was continued till next date. On 25.07.2023, order was passed that interim relief, if any, to continue till listing of matters and its extension is done thereafter.

25. In this backdrop, a pursis came to be filed by contesting Respondent, Hidayatali, on 02.08.2023 claiming that on 13.04.2023 the possession of the subject land has been handed over to him. Though technically it would not be a case of contempt of Court in view of the fact that interim relief was not continued for intervening period, however, fully knowing the fact of pendency of Petitions since 2014 and interim relief being granted at some point of time, neither it was proper on the part of the Authorities to handover possessions of the lands in question nor was it appropriate on the part of Respondent to take over possession.

26. In any case, Syed Hidaytali prima facie since had no right to have been appointed as successor on the basis of writings/power of attorney by Syed Abdul Kasim neither he could be declared as successor nor he has any right to receive possession of the properties in question by the Atiyat grant, and consequently he cannot be permitted to retain the possession thereof. The land, therefore, stands resumed in favour of Government and till the issue of succession of Atiyat grant is decided and till such determination, it would be open for the Authorities to auction the same on 'Ek Sal Lavani' basis.

27. As a result of above discussion, the impugned order cannot sustain and deserves interference. Since number of persons have claimed the succession in respect of the Atiyat grant, it would be necessary to direct the Atiyat Court to conduct fresh inquiry by giving an opportunity of hearing to all the Petitioners and Syed Hidayatali. The order of Additional Collector, Latur passed in proceedings bearing File No. 2013/Religious/CR-96 dated 07.03.2014 stands set aside.

28. The Atiyat Court of enquiry to decide applications/proceedings raising claims of succession, in accordance with law and independently on merit after hearing concerned parties and without getting influenced by the observations made by this Court herein above, which are made on prima facie consideration of record.

29. Rule is made absolute in above terms.

30. Petitions stand disposed of in above terms.

31. Pending civil application(s), if any, stands disposed of.

Later on:

32. After pronouncement of this judgment, learned Counsel for contesting Respondent – Hidayatali seeks stay of the judgment passed by this Court for a period of eight weeks.

33. Learned Counsels for Petitioners and other Respondents opposes grant of stay.

34. In order to enable the Respondents to move the Hon'ble the Supreme Court testing judgment passed by this Court, the judgment passed by this Court stands stayed for a period of six (06) weeks from today.