

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11173 OF 2013

Muslim Kabrasthan Trust,)
A Public Trust registered under the provisions)
of Bombay Public Trust Act, through its)
Having office C.S. No.8416, Sidheshwar Peth,)
Solapur, through its Chairman and trustees,)
(i) Mr. Mainuddin A. Rahiman Shaikh,)
Age:-58 years, Occu:-Business,)
Rahimtbi Zopadpatti, Near Siddheshwar)
Temple, Solapur.)
(ii) A. Sattar Mahibubsab Murshad,)
Age:-63 years, Occu:-Business,)
R/o:-105, Railway Lines,)
Muslim Kabrastan, Solapur.)
(iii) Shabbir Ahmed Shaikh,)
Age:-48 years, Occu:-Business,)
R/o:-Near Sidheshwar Mandir,)
Rahimatbi Zopadpatti, Solapur.)
(iv) Dadamiya Mahibubsab Murshad,)
Age:-85 years, Occu:-Business,)
R/o:-North Sadar Bazar, Solapur. .. Petitioner

Versus

Solapur Municipal Corporation, Solapur)
(Though its Commissioner) .. Respondent

Mr. T. D. Deshmukh, for the Petitioner.

Mr. R. S. Alange, for Respondent.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 02.09.2013 passed by the Learned Civil Judge, Junior Division, Solapur, by which order the application Exh.142 filed by the Petitioner for impleading the WAKF Board as a party Defendant in the suit came to be rejected.

3. The suit in question has been filed for declaration and permanent injunction by the Petitioner being the original Plaintiff. It is the case of the Petitioner that the property in question is being used as a Kabrastan by the Muslim Community. The Petitioner was registered as a public trust, but during the pendency of the instant suit has been registered as a WAKF on 13.02.2006 under the provisions of the WAKF Act, 1995. In view of the said registration the Petitioner/Plaintiff sought the impleadment of the WAKF Board as a party Defendant in the suit. The

said impleadment was sought on the basis of the mandate of Section 90 of the WAKF Act. At this stage, it is required to be noted that the Respondent herein i.e. Defendant to the suit i.e. Solapur Municipal Corporation denied the title of the Plaintiff to the land in question.

4 . The Trial Court has rejected the said application on the ground that the suit being for declaration and injunction and since the Plaintiff is seeking a declaration that the scheme of the Defendant Corporation for rehabilitation of Indo-Tibetan shopkeepers and Mini shopping center is illegal, it is not necessary for the WAKF Board to be impleaded as party, as the suit is not for title or possession of the WAKF property. In so observing the Trial Court has glossed over the fact that the Plaintiff has been registered as a WAKF during the pendency of the suit as also the fact that the Defendant Corporation has denied the title of the Petitioner to the land in question. In my view, having regard to the aforesaid facts the mandate of Section 90 is required to be followed. The said provision postulates that in every suit or proceeding relating to or possession of a WAKF property, the Court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding. Sub Section 3 further provides that in the absence of a notice under Sub Section (1), any decree or order passed in the suit or proceeding shall be declared void. It is having regard to the mandate of Section 90, that the Plaintiff filed the application

Exh.142, in my view the Trial Court has erred in rejecting the application Exh.142. Having regard to the facts and circumstances which are prevailing in the instant suit. The impugned order therefore is required to be quashed and set aside and is accordingly, quashed and set aside. The application Exh.142 would accordingly stand allowed. The Plaintiff would be entitled to join WAKF Board as a party Defendant to the suit. Amendment to be carried out within three weeks from date. The Trial Court thereafter to pass appropriate orders for service to be effected on the WAKF Board. The Plaintiff would see to it that the WAKF Board is represented in the Trial Court. Since the suit is of the year 2000 and since there is reservation in the development plan which has been adverted to herein above, the hearing of the suit is expedited. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M. SAVANT, J]