

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CHAMBER SUMMONS NO.82 OF 2014  
IN  
SUIT NO.2507 OF 2011**

|                                                   |     |            |
|---------------------------------------------------|-----|------------|
| The Brihanmumbai Municipal Corporation and Anr.   | ... | Applicants |
| and                                               |     |            |
| Akhtar Hasan Rizvi                                | ... | Plaintiff  |
| versus                                            |     |            |
| F.E.Dinshaw Charities,<br>a Public Trust and Ors. | ... | Defendants |

Mr. Sarosh Bharucha with Mr. Mahesh Mishra i/by Mr. Ravi Thankaian, for Plaintiff.  
Mr. Rohaan Cama i/by Ms. Mukta Gobse, for Defendant Nos.1 to 5.  
Mr. U.S.Upadhya, AGP, for Defendant No.6.  
Mr. Nitin G.Raut with Mrs. G. Vas and Ms. Sunita Serrao, for Applicants in CHS 945 of 2014.  
Mr. Hemant Deshpande with Mr. R.Y.Sirsikar for BMC (Applicant) in CHS No.82 of 2014.

**CORAM: S.J. KATHAWALLA, J.**

**DATE: 14<sup>th</sup> OCTOBER, 2015**

**P.C.:**

1. The above Chamber Summons is taken out by the Municipal Corporation to be joined as a party Defendant to the above Suit.
2. The Plaintiff has filed the above Suit against the Defendants inter alia for a declaration that the Agreement for Sale under Exhibits B, C and D entered into between the Plaintiff and Defendant Nos.1 to 5 are valid, subsisting and binding on the parties thereto and for an order and decree against Defendant Nos.1 to 5 to specifically

perform the sale agreement under Exhibits B, C and D of the Plaint. The ground on which the Corporation seeks to be joined as a party Defendant to the above Suit is that “a Notification has been issued by the Government of Maharashtra being No.TPB-4310/2349/CR-262/2010/UD-11 dated 30-01-2012, whereby the State Government has reserved land admeasuring about 0.8 hector of CTS No.15/A of Village Malad in residential zone for public purpose of Christian Cemetery and an extension of the Hindu Cemetery with 9.00 mt. as well as a proposed road from the existing road to the cemetery through reservation of recreation ground”.

3. When this Court pointed out to the learned Advocate for the Corporation that the Corporation is neither a necessary nor a proper party to the above Suit and the Chamber Summons cannot be allowed, he submitted that in that event the Court may in its order clarify “that the Corporation shall be at liberty to take action available to them in accordance with law, pursuant to the Notification”. In view thereof, the following order is passed :

(i) The Municipal Corporation of Greater Mumbai shall be at liberty to take steps pursuant to the Notification in accordance with law.

(ii) All contentions of the parties including Applicants in CHS No.945 of 2014 are kept open.

(ii) The Chamber Summons is accordingly disposed of.

**( S.J.KATHAWALLA, J. )**