

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6776/2015

Shrinivas Ganpatrao Cheval.

..Petitioner..

Versus

The State of Maharashtra & others.

...Respondents...

.....

Shri S.P. Urgunde, Advocate for petitioner.

Ms.R.P.Gour, AGP for Respondent Nos.1 to 4 & 7.

Respondent No.5 served.

Shri H.I. Pathan, Advocate for Respondent No.6.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 20.12.2016

ORDER :

1] Mr.Urgunde, learned counsel submits that adjacent to the house of the petitioner, the land of Marathwada Wakf Board in Survey No.337 exists, which admeasures 115 ft. to 120 ft. The said land is used for graveyard of Muslim community. There is a public road adjacent to the house of the petitioner. The same is used by the villagers of Sindgaon. In 2003, some people have manipulated the revenue record and extended the area of graveyard in Form No.8A of Grampanchayat record and the road is included in

the graveyard. They started digging the said road and using the said road for graveyard. Complaints were filed by the villagers including the petitioner with the Police Station on 7.4.2013 and 8.10.2013. They had also approached the Collector on 25.10.2013. The learned counsel submits that the Tahsildar had conducted enquiry and he found that there is manipulation in the revenue record i.e. Form No.8A of the graveyard. The Tahsildar had directed the District Wakf Officer, Latur, to correct his mistake. By manipulating the record, the area of the graveyard is extended. The learned counsel submits that action be taken against the encroachers.

2] The learned AGP states that after declaration of the graveyard in the official gazette on 7.3.1974, the Grampanchayat or Gram Sevak ought to have taken the entry of the said graveyard in the grampanchayat record. There is no entry in the grampanchayat in the form of Namuna No.8A of the said grampanchayat of the graveyard. The learned AGP submits that the application received from the villagers is forwarded to the District Wakf Officer for taking necessary action and the Tahsildar, Renapur, had called a meeting on 23.3.2013 of the villagers and

the representatives of the Muslim community of village Sindgaon. In response to the said request, the villagers as well as the representatives of the Muslim community at Sindgaon had assured to keep the peace and tranquility in the village. The learned AGP further submits that the Tahsildar, Renapur, has requested the Block Development Officer, Panchayat Samiti, Renapur, to submit the factual report alongwith the extract of Form No.8A.

3] Mr.Pathan, learned counsel appears for the respondent nos.6 and 8 and submits that even as per the notification in the official gazette, the graveyard exists and the Wakf Board does not allow any encroachments.

4] We have considered the submissions canvassed by the learned counsel for the parties.

5] The case of the petitioner appears to be encroachment on public road. The Tahsildar in his affidavit has suggested measurement of the land so as to resolve the dispute. The same would be in consonance with the factual matrix. It will be appropriate to measure the land of the graveyard.

6] The Wakf Board shall get the land of the graveyard

at village Sindgaon measured as appearing in the official gazette and other relevant documents as it is the Wakf Board which is responsible for maintenance of the Wakf property and also shall see that no encroachment takes place. After the measurement is carried out, the authorities shall take appropriate action in tune with the measurement that is carried out.

7] Needless to state, the same shall be done expeditiously and preferably within a period of six months. It will be open for the parties to take further steps pursuant to the measurement carried out. All contentions of the respective parties in that regard are kept open. The State authorities shall also see that no overt-act takes place and the property is maintained as per the record. Writ petition is accordingly disposed of. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)