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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL REVISION APPLICATION NO. 110 OF 2012
WITH
CIVIL APPLICATION NO.9241 OF 2017
IN
CIVIL REVISION APPLICATION NO. 110 OF 2012**

1. Grace Constructions,
A registered Partnership
Firm, Office at 287, Guruwar
Peth, Pune-411 042
2. Shaikh Salim Mehmood,
Age: Major, Occ: Business,
Partner M/s Grace Constructions
A Registered Partnership Firm
Office at 287, Guruwar Peth,
Pune-411 042
3. Abdul Rauf Shaikh Mehmood
Chindhiwala, Age: Major,
Occ: Business,
Partner M/s Grace Constructions
A Registered Partnership Firm
Office at 287, Guruwar Peth,
Pune-411 042 ..APPLICANTS

VERSUS

1. Mohd. Ansar Salik,
Age: 72 years, Occ: Business,
R/o. 275/A, Guruwar Peth,
Pune-411 042
2. Mr. Anwar Baigh Kadar Baig,
Age: 65 years, Occ: Business,
R/o. 286, Ganeshpeth,
Pune-42.
3. Mr. Shaikh Mehboob Fakir
Mohammad, Age: 65 years,

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Occ: Business, R/o. 33 Gokhale
Peth, Pune-42.

4. Mr. Abdul Aziz Nanwa Shaikh,
Age: 64 years, Occ: Business,
R/o. 715 Nana Peth, Pune-42.
5. Hashmuddin s/o Moinuddin Inamdar,
Age: 36 years, Occ: Business,
R/o. 715, Nana Peth, Pune.
6. Maqbook Bhai Haji Badshah Bagwan,
Age: 56 years, Occ: Business,
R/o. 629, Raviwar Peth, Pune-42.
7. Bhagwan Jamshed Malik,
Age: 38 years, Oc: Business,
R/o. 1577, Shukrawar Peth,
Pune-42.
8. Pune Municipal Corporation,
Through its Commissioner,
9. Maharashtra State Wakf Board,
Through its Chief Officer, A'bad.
10. Mr. Shaikh Hamid Babumiyah
Inamdar, Age: 65 years,
Occ: Retired, R/o. 395,
Nana Peth, Pune-2
11. Shaikh Roshanbi Hajimohammad Shafi
Age: 68 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2
Since deceased through L.R.
R.No. 10 i.e. Shaikh Hamid
Babumiyah Inamdar.
12. Miss. Aminabi Babumiyah Shaikh,
Age: 75 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.
13. Shaikh Ashabi Babumiyah,

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Age: 43 years, Occ: Household,
R/o. 311, Bavani Peth,
Kashewadi, Pune-42.

14. Mrs. Mumtaji Masoom Shaikh,
Age: 70 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.
15. Mr.Mohammad Hussain Masoom,
Age: 33 years, Occ: Service,
R/o. 395, Nana Peth, Pune-2.
16. Mr. Akhtar Masoom Shaikh,
Age: 28 years, Occ: Service,
R/o. 395, Nana Peth, Pune-2.
17. Mrs. Farida Najmulla Hussain
Mulla, Age: 42 years, Occ: Household,
R/o.Gulistan, Plot No.450,
14, Khar Road (W), Mumbai-400 052.
18. Mrs. Shainaz Masoom Shaikh Inamdar,
Age: 38 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.
19. Raziya Shaikh Noormohammed,
Age: 38 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.
20. Ms. Nazima Masoom Shaikh Inamdar,
Age: 27 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.
21. Mr. Hajiali Shaikh Budhan,
Age: 50 years, Occ:Business,
R/o. 395, Nana Peth, Pune-2.
22. Mr. Riyaz Shaikh Budhan,
Age: 45 years, Occ:Business,
R/o. 395, Nana Peth, Pune-2.
23. Ms. Maimuna Shaikh Budhan,
Age: 40 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.

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24. Ms. Shakila Shaikh Budhan,
Age: 34 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.
25. Mrs. Mumtaj Shaikh Abdul Aziz,
Age: 53 years, Occ: Household,
R/o. 749, Guruwar Peth, Pune-42.
26. Mrs. Shamim Shaikh Mohammad Sharif,
Age: 36 years, Occ: Household,
R/o. 503/63, Laxmi Nagar,
Near Premal Hanuman Mandir,
Parvati, Pune-9.
27. Mrs. Hasina Shaikh A. Rehman,
Age: 58 years, Occ: Household,
R/o. 693, Guruwar Peth, Pune-42.
28. Mrs. Abedabi Bashir Shaikh,
Age: 65 years, Occ: Household,
R/o. 395, Nana Peth, Pune-2.
29. Mr. Shaikh Ajaz Mohammad
Bashir Inamdar,
Age: 38 years, Occ: Rickshaw
Driver, R/o. 395, Nana Peth,
Pune-2.
30. Mr. Shaikh Parvez Mohammad
Bashir Inamdar, Age: 23 years,
Occ: Business, R/o. 395,
Nana Peth, Pune-2.
31. Mrs. Malika Naushad Alisukhi,
Age: 40 years, Occ: Household,
R/o. Shantaram Das Building,
2nd Floor, Pune.
32. Mrs. Almas Mustak Patel,
Age: 32 years, Occ: Household,
R/o. 437, Rasta Peth, Pune-11.
33. Mrs. Reshma Irfan Khan,

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Age: 27 years, Occ: Household,
R/o. Room No.23, Patkar Plot
No.8, Mahatma Gandhi Vasahat,
Opp. Patil Estate, Shivajinagar,
Pune-411 005.

34. Mrs. Kausar Musthak Mohammad
Hussain Shaikh,
Age: 24 years, Occ: Household,
R/o. 607, Darshaninagar,
Bibvewadi, Pune-37.
35. Mrs. Saida Salim Babumia
Shaikh Inamdar,
Age: 60 years, Occ: Household,
R/o. Gole Vasti, Chaphekar Chal,
Bhosari, Pune.
36. Mr. Irshad Salim Shaikh Inamdar,
Age: 28 years, Occ: Service,
R/o. Gole Vasti, Chaphekar Chal,
Bhosari, Pune.
37. Mrs. Samina Shaikh Inamdar,
Age: 25 years, Occ: Household,
R/o. Gole Vasti, Chaphekar Chal,
Bhosari, Pune.
38. Mrs. Sabia Shaikh Ayyaz,
Age: 35 years, Occ: Household,
R/o. Gole Vasti, Chaphekar Chal,
Bhosari, Pune.
39. Pune Municipal Corporation,
Through its Commissioner, Pune. ..RESPONDENTS

Mr Amol K. Gawali, Advocate for applicants;
Mr M.A. Khan, Advocate for respondent Nos.1,4, 5
and 7;
Mr S.P. Chapalgaonkar, Advocate for respondent
Nos.3, 8 and 9

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CORAM : N.W. SAMBRE, J.**DATE : 11th JULY, 2017****ORAL ORDER :**

This application is by the defendants to the Wakf Suit No. 49 of 2008. In the said suit, an application came to be moved by the present applicants seeking rejection of the plaint on the grounds; (a) that the suit is barred by the provisions of Section 87 of the Wakf Act, 1995 as the suit property, Kabrasthan is not registered under Section 36 of the Act and (b) suit is barred under Section 42 of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Said application came to be rejected by order dated 24th September, 2011. As such, present civil revision application.

2. Mr. Gawali, learned Counsel for the applicants and Mr. Chapalgaonkar, learned Counsel for respondent Nos. 3, 8 and 9 would submit that the order of cancellation of registration of wakf passed by the tribunal on 24th September, 2009 was

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confirmed upto Apex Court and in view thereof, Wakf Suit No.49 of 2008 is not maintainable. They would invite attention of this Court to the order passed in Special Leave to Appeal (C) No.14399 of 2010, in which final judgment and order dated 9th February, 2010 in Civil Revision Application No. 183 of 2009 passed by this Court was questioned. According to them, in Civil Revision Application No. 183 of 2009, vide order passed on 9th February, 2010, the order of cancellation of registration of wakf passed by Wakf Tribunal was confirmed. As such, according to them, present civil revision application needs to be allowed.

3. Per contra, learned Counsel for respondent Nos. 1,4,5 and 7 would oppose the claim on the ground that this Court while deciding First Appeal No.469 of 1997 has held that there exists Kabrastan in Survey No. 395/A and as such, same has to be read down as wakf property. He would harp upon the observation made in the said order which was further confirmed in Letters Patent Appeal No.39 of

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1992 which was decided on 26th February, 1993.

4. Considered rival submissions. The Maharashtra State Board of Wakf on 24th April, 2008 issued registration certificate under Section 36 of the Wakf Act in relation to the suit property.

5. The said order of granting registration was questioned under the provisions of Section 83(2) of the Wakf Act, 1995 by some of the respondents and present applicant being applicant No.24. The Maharashtra Wakf Tribunal vide its order dated 24th September, 2009 decided the said application being Application No. 28 of 2008 and set aside the impugned order dated 24th April, 2008 issuing registration certificate of the suit property as wakf property. The said order was questioned in Civil Revision Application No.183 of 2009 before this Court. This Court on 9th February, 2010 considered the order of cancellation of registration of wakf and rejected the revision upholding the order of cancellation. Both these

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orders were subject matter of challenge before Apex Court in Special Leave to Appeal (C) No.14399 of 2010 Mohammad Ansar Salik and othrs vs Shaikh Hamid Babumiya Inamdar and others with Special Leave Petition (C) No. 13917 of 2010. The said matters before Apex Court came to be decided by order dated 13th January, 2016 and dismissed Special Leave to Appeal upholding the orders of Wakf Tribunal and this Court in Civil Revision Application.

6. In the application under Order 7 Rule 11(d) of the Code of Civil Procedure, present applicants have not raised plea based on the judgment of the Apex Court, as the same is later in point of time, however, it is worth to take judicial note of the fact that while dealing with the application under Order 7 Rule 11(d) of the Code of Civil Procedure, learned tribunal has dealt with the said provision. Learned tribunal then considered the provision of Section 87 of the Wakf Act, which reads thus:

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"87. Bar to the enforcement of right on behalf of unregistered wakfs.—

(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

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11(d) of Code of Civil Procedure was filed, the fact remains that Section 87 of the Wakf Act was on the statute book and as such, was very much applicable to the proceedings in hand."

8. In view of above observations, particularly having regard to the provisions of Section 87 of the Wakf Act, as was prevailing before amendment, it has to be held that suit in question is not maintainable.

9. It is clarified that the suit under Wakf Act is not maintainable, however, present respondents-original plaintiffs are not remediless as they have every right to take recourse to remedy as is available in law for espousing their cause.

10. In Wakf Suit No. 49 of 2008, present respondents based on the registration ordered in First Appeal No. 469 of 1977 prayed for decree of eviction and for peaceful possession of the suit property (wakf property) by demolishing structure

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thereon and also decree for injunction restraining the present applicants and other original defendants from doing any sort of construction including further construction over the wakf property.

11. Present applicants-defendants moved application at Exhibit-95 under Order 7 Rule 11(d) read with Section 151 of the Code of Civil Procedure stating that there exist development agreement and power of attorney dated 31st March, 2004 in respect of suit property and adjacent property bearing CTS No.395B, Nana Peth, Pune, registered on 31st March, 2004. It is further claimed that High Power Committee of Slum Rehabilitation Scheme accorded sanction for redevelopment on the said properties and slum clearance order was passed by the defendant Municipal Corporation. It is further claimed that prior permission under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'Slum Act')

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should have been obtained for filing suit in question. As such, suit is hit by the said provisions of Slum Act. It is further claimed that there are 107 tenants in the suit property and adjoining property. As such, sought rejection of the plaint.

12. The application came to be rejected by the Wakf Tribunal on 24th September, 2009, which order is questioned in the present proceedings based on the developments which are narrated herein before.

13. The submissions of the respective Counsel based on the above referred events as are narrated if appreciated, it is required to be noted that this Court in Civil Revision Application No.180 of 2009 decided on 9th February, 2010 confirmed the order of cancellation of registration of wakf on the ground that same was hit by the limitation prescribed under Section 36 of the Wakf Act. The said order was confirmed in Special Leave to Appeal (C) No. 14399 of 2010 and 13917 of 2010 decided on

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13th January, 2016. As a consequence whereof, the property in relation to which the suit was filed cannot be termed to be the property of wakf and as such, once it can be inferred that the property is not wakf property, wakf suit cannot be held to be maintainable.

14. Though Mr. Khan, learned Counsel for the original plaintiffs in the suit tried to urge that effect of judgment delivered on 17th October, 1989 in First Appeal No. 469 of 1977 confirmed in Letters Patent Appeal No. 39 of 1992 is required to be appreciated, however, earlier judgments were noticed to have been delivered under the earlier Wakf Act of 1954 and after commencement of the Wakf Act, 1995, Section 36(8) contemplates fresh registration within stipulated limitation. The effect of the said provision over the judgments in first and letters patent appeal was considered.

15. In the aforesaid background, in my opinion, the contentions of the learned Counsel for

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the original plaintiffs irrespective of cancellation of registration of wakf suit is maintainable cannot be sustained.

16. In view thereof, it has to be held that the suit in question is not maintainable in view of provisions of Order 7 Rule 11(d) of the Code of Civil Procedure.

17. In view of above, in my opinion, if the suit is permitted to be continued being wakf suit under the provisions of Maharashtra Wakf Act, same will be upsetting view of the tribunal of cancellation of registration confirmed by this Court in revision and further confirmed by the Apex Court.

18. As such, Civil Revision Application, stands allowed in terms of prayer clause (B).

19. Civil Application stands disposed of accordingly.

(N.W. SAMBRE, J.)