

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2791 OF 2017

Hajrat Imam Husen Education & Welfare Society, Solapur	...	Petitioner
V/s.		
State of Maharashtra & Ors.	...	Respondents

- Mr.Atul Damale, Senior Advocate a/w. Mr.Shrishail Sakhare for the Petitioner.
- Mr.A.A. Alaspurkar, A.G.P. for Respondent No.1-State.
- Mr.Anand S. Kulkarni for Respondent Nos.2 & 3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th MARCH, 2018.

P.C. :

1] Heard learned counsel for the parties.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner-Trust is challenging the order dated 1st March 2017 passed by the Adhoc District Judge-3, Solapur, thereby allowing Miscellaneous Civil Appeal No.12 of 2017. The said appeal was preferred against the order dated 3rd January 2017 passed by Jt. Civil Judge Senior Division, Solapur, below Exhibit-5 in Regular Civil Suit No.991 of 2013.

3] The said suit was preferred by the present Petitioner-Trust against the Respondents and along with the suit the application for interim injunction was filed, restraining the Respondents from disturbing the possession of the Petitioner-Trust in the suit property. Both the trial Court and the Appellate Court have given the concurrent finding of fact and categorically held that the Petitioner-Trust has no right to remain in possession in the suit property. In view of thereof, this Court in writ jurisdiction does not find any reason to interfere in the said order and therefore, this Writ Petition deserves to be dismissed and stands dismissed.

4] At this stage, learned counsel for the Petitioner-Trust submits that the Petitioner-Trust is ready to give Affidavit-cum-undertaking that it will vacate the suit premises and hand over the vacant and peaceful possession thereof by the end of June 2018.

5] Accordingly, by way indulgence, in order to set the dispute at rest, the Affidavit-cum-undertaking given by one Tajoddin s/o. Makboolsab Moholkar, President of the Petitioner-Trust is taken on record. It is marked as "X" for identification. In this Affidavit-cum-undertaking, the Petitioner-Trust has undertaken that it will handover the actual possession of the suit premises by the end of June 2018, by removing the constructions raised thereon and also by

removing the other amenities, like, the machinery fixed for gym, library, sabha mandap etc. provided by the Petitioner-Trust. The Petitioner-Trust has also undertaken to withdraw the suit pending before the trial Court unconditionally and further to the effect that in the meanwhile, it will not create any third party interest.

6] In view of the Affidavit-cum-undertaking given by the Petitioner-Trust, the time upto June 2018 is granted to the Petitioner-Trust subject to condition that the Petitioner-Trust will handover vacant possession of the suit premises to Respondent No.1 after removing the constructions raised thereon and also by removing the other amenities, as stated above, and further subject to condition that, the Petitioner-Trust will withdraw the suit filed before the trial Court unconditionally, within a week and would not create any third party interest in the suit property.

7] At this stage, learned counsel for Respondent Nos.2 and 3- the Municipal Corporation submits that the Petitioner-Trust has also not paid the rent from the year 2012 and hence, the Petitioner-Trust be directed to pay such rent.

8] Learned counsel for the Petitioner-Trust, on instructions of the President of the Petitioner-Trust namely Tajoddin s/o. Makboolsab

Moholkar, makes a statement that the Petitioner-Trust will pay whatever arrears remained due with Respondent Nos.2 and 3 within one month.

9] The Writ Petition is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]