

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 15079 OF 2022

CLASSIC CORPORATION,
A partnership firm, registered under the
provisions of the Partnership Act 1932,
having its office at 46, 3rd Floor, 179,
Commercial Chamber, Yusuf Meher Ali
Road, Through its Partner: Yunus Ismail
Umretiya, Age 64 years, Occ.: Business,
Residing at 64, Eby Castle, Flat No. 48,
6th Floor, Mohammad Ali Road,
Mumbai 400 003

...Petitioner

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through Urban Development,
Department of Govt. Maharashtra,
Mantralaya, Mumbai 400 005
served through the office of the Govt.
Pleader (Org. Side), PWD Building,
Bombay High Court, Mumbai 400 023
- 2. THE MAHARASHTRA STATE
BOARD OF WAQFS,**
Panchakki, Aurangabad, Maharashtra
431 002
- 3. THE CHIEF EXECUTIVE
OFFICER,**
The Maharashtra State Board of Waqfs,
Panchakki, Aurangabad, Maharashtra
431 002

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4. **THE COMMISSIONER,**
The Municipal Corporation of Greater
Mumbai, Mahapalika Bhavan, Opp.
CST, Dr DN Road, Mumbai 400 001
5. **THE EXECUTIVE ENGINEER,**
Building Proposal (City)-1,
New Municipal Building, CS No. 355B,
Bhagvan Walmiki chowk, Vidyalkar
Marg, Opp Hanuman Mandir, Salt Pan
Road, Antop Hill Wadala (E),
Mumbai 400 037
6. **AHMED HAMID POONAWALA,**
Age Adult, Occ.: Business, C/o Akhtar
Adam Fazlani, Room No. 46, 2nd
Floor, 83, Zakariya Masjid Street,
Companywala Building, Mumbai 400
009

...Respondents

WITH
INTERIM APPLICATION NO. 1147 OF 2023
IN
WRIT PETITION (L) NO. 15079 OF 2022

ANWAR I SHAIKH,
Through his Constituted Attorney,
Juzer Nagree, 182, Yusuf Meher Ali Road,
(180/184), Burhani Manzil (Asharfi
Manzil), 2nd Floor, Mumbai 400 003

...Applicant

IN THE MATTER BETWEEN

CLASSIC CORPORATION,

A partnership firm, registered under the provisions of the Partnership Act 1932, having its office at 46, 3rd Floor, 179, Commercial Chambers, Yusuf Meher Ali Road, Through its Partner:
Yunus Ismail Umretiya, Age 64 years, Occ.: Business, Residing at 64, Eby Castle, Flat No. 48, 6th Floor, Mohammad Ali Road, Mumbai 400 003

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Age Adult, Occ.: Business, C/o Akhtar
Adam Fazlani, Room No. 46, 2nd
Floor, 83, Zakariya Masjid Street,
Companywala Building, Mumbai 400
009

...Respondents

WITH
INTERIM APPLICATION NO. 145 OF 2023
IN
WRIT PETITION (L) NO. 15079 OF 2022

SAJID HAROON GUJRATI,
Age 39 years, Occ.: Business, R/o. Room
No. 7, 1st Floor, Zakaria Masjid Street,
Bhavnagri Mohalla, Mumbai 400 009

...Applicant

IN THE MATTER BETWEEN

CLASSIC CORPORATION,
A partnership firm, registered under the
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having its office at 46, 3rd Floor, 179,
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Road, Through its Partner:
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Mumbai 400 003

...Petitioner

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CST, Dr DN Road, Mumbai 400001
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Building Proposal (City)-1, New
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6. **AHMED HAMID POONAWALA,**
Age Adult, Occ.: Business, C/o Akhtar
Adam Fazlani, Room No. 46, 2nd
Floor, 83, Zakariya Masjid Street,
Companywala Building, Mumbai
400009

...Respondents

WITH
INTERIM APPLICATION (L) NO. 2368 OF 2023
IN
WRIT PETITION (L) NO. 15079 OF 2022

1. **ALAM ALI ABDUL RAZZAK BARA,**
165 Kambekar Street, 2nd Floor, Flat
NO. 9, Mumbai 400 003
2. **PERVIN A H PATCA,**
Bismillah Height, 19th Floor,
Flat No. 1905, 14/38, Shaikh Burhan
Kamruddin Street, Teli Mohalla,
Nagpada, Near Gook Luck Motor
Training School, Mumbai 400 008
3. **ZOHRA RAHIM BATLIWALA,**
140/142, Shop No. 4, Plaza Shopping
Centre, Ground Floor, Next to Stay Inn
Guest House, Mumbai 400 003
4. **MOHD ZUBAIR IBRAHIM**
MULTAN,
114 Kambekar Street Barkat Manzil,
2nd Floor, Flat No. 203, Above Chinese
and Grill Hotel, near Minara Masjid,
Mumbai 400 003
5. **MOHAMMED JAMAL**
MOHAMMED GHURE KHAN,
Memon Wada Road, Hirani Building,
1st Floor, Room No. 4, Bismillah Hotel,
Mandvi,
Mumbai 400 003

...Applicants

IN THE MATTER BETWEEN

CLASSIC CORPORATION,

A partnership firm, registered under the provisions of the Partnership Act 1932, having its office at 46, 3rd Floor, 179, Commercial Chamber, Yusuf Maher Ali Road, Through its Partner: Yunus Ismail Umretiya, Age 64 years, Occ.: Business, Residing at 64, Eby Castle, Flat No. 48, 6th Floor, Mohammad Ali Road, Mumbai 400 003

...Petitioner

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Through Urban Development,
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CST, Dr DN Road, Mumbai 400 001

5. **THE EXECUTIVE ENGINEER,**
Building Proposal (City)-1,
New Municipal Building,
CS No. 355B, Bhagvan Walmiki
Chowk, Vidyalankar Marg, Opp
Hanuman Mandir, Salt Pan Road,
Antop Hill Wadala (E), Mumbai 400
037
6. **AHMED HAMID POONAWALA,**
Age Adult, Occ.: Business, C/o Akhtar
Adam Fazlani, Room No. 46, 2nd
Floor, 83, Zakariya Masjid Street,
Companywala Building, Mumbai 400
009
7. **CENTRAL WAQF COUNCIL,**
Ministry of Minority Affairs,
Government of India, Central Waqf
Bhavan, P-13 & 14, Push Vihar, Sector –
6, Saket, New Delhi 110 017

...Respondents

APPEARANCES

FOR THE PETITIONER	Mr Sharan Jagtiani, Senior <i>Advocate, with Mutahhar Khan, Amaan Khan & Khurram Agboatwala, i/b Judicare Law Associates.</i>
FOR THE APPLICANTS IN IA(L)/2368/2023	Ms Rohaan Cama, with Anish <i>Karande & Hrutivik Patil, i/b India Law Alliance.</i>
FOR THE APPLICANT IN IA/145/2023	Ms Apurva Thipsay, i/b Divya V <i>Parab.</i>
FOR THE APPLICANT IN IA/1147/2023	Mrs Sana Yusuf Baugwala.

**FOR RESPONDENTS
NOS. 2 AND 3- WAQF
BOARD**

Ms Swapnali Lindait.

FOR RESPONDENT NO.6 Mr Yusuf S Baugwala.

**FOR RESPONDENT - Mr Abhay L Patki, Addl. GP.
STATE**

**CORAM : G. S. Patel &
Neela Gokhale, JJ.**

DATED : 14th March 2023

ORAL JUDGMENT (Per GS Patel J): -

INTERIM APPLICATION NO. 145 OF 2023:

1. Heard Ms Thipsay for the Applicant. The Applicant is an individual who is not specifically concerned with the dispute in the Writ Petition, which is essentially between the Petitioner and the Maharashtra State Board of Waqfs. The Applicant, Mr Sajid Haroon Gujrati, is a businessman who says that being a Muslim, he has an interest as a beneficiary of every Waqf and is therefore a person interested in the Waqf. But that in itself will not give him a right of intervention. in paragraph 6, Mr Gujrati says that he can “*assist this Court in deciding the dispute regarding the Waqf in question*” because the Petitioner claims that the trust or trusts in question are not Waqfs and the provisions of the Waqf Act, 1995 (“**Waqf Act**”) are inapplicable to the trust.

2. This is a strange application. The law is settled: an intervention by someone who professes that he has something to contribute should not be accepted if he has no direct or legal interest in the litigation. Merely having material to show is not good reason to allow such an impleadment or intervention.¹ The fact that he believes he has something to contribute gives such an Applicant no locus at all. Perhaps the Applicant's attempt is to position himself as a self-appointed amicus. We have no need for that either. We are quite ably assisted by counsel already appearing and should we need the assistance of amicus, at least at the Bombay Bar there is absolutely no shortage of counsels who can be appointed including, if necessary, Ms Thipsay herself without reference to any particular individual litigant.

3. The Interim Application is dismissed.

INTERIM APPLICATION NO. 1147 OF 2023:

4. The Applicant is one Anwar I Shaikh who has filed through his constituted Attorney one Mr Juzer Nagree. Anwar Shaikh claims that he is the legal owner of Cadastral Survey No. 1175 of the Mandvi division. This is the property of which the Writ Petitioner, Classic Corporation, also claims to be the owner. The controversy between Anwar Shaikh and Classic Corporation is therefore about title to CS No. 1175. Indeed, we are told that Anwar Shaikh has filed a substantive Civil Suit No. 9230 of 1993 asserting title and this is pending in the City Civil Court. There is also a second declaratory

¹ *Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Mumbai & Ors*, (1992) 2 SCC 524.

SC Suit No. 2279 of 2018 challenging certain Maharashtra Housing and Area Development Authority (“**MHADA**”) orders.

5. Interestingly, Anwar Shaikh seems to agree with Classic Corporation on at least one point, namely that CS No. 1175 is not Waqf property. That commonality of purpose is noted for the record. However, the Classic Corporation Writ Petition, directed against the Waqf Board, is not the place to agitate rival claims about title.

6. We understand the concern expressed on behalf of the Applicant-Anwar Shaikh that no order in this Writ Petition should prejudice Anwar Shaikh’s civil claims that are yet pending adjudication in Civil Suits. That goes without saying. In fact, Anwar Shaikh is better protected in that regard if he is not made a party to this Writ Petition because then no order in the Writ Petition can possibly bind him. If on the other hand, we allow his impleadment, then there is no doubt that he would be bound by our decision.

7. The application appears to us to be thus misconceived and not in Anwar Shaikh’s interest. We dismiss it but we clarify that no order in this Writ Petition will be read as having determined or decided on merits any claim that Anwar Shaikh may have made in his Civil Suits. Those will be decided on their merits uninfluenced by any orders or directions or observations in the Writ Petition.

8. The Interim Application is disposed of in these terms. There will be no orders as to costs.

WRIT PETITION (L) NO. 15079 OF 2022:

9. **Rule.** The Respondents all waive service including the private Respondent No. 6. There is an Affidavit in Reply on behalf of Respondents Nos. 2 and 3, respectively, the Maharashtra State Board of Waqfs (“**the Waqf Board**”) and its Chief Executive Officer. Respondents Nos. 1, 4 and 6, viz., The State of Maharashtra, the Municipal Corporation of Greater Mumbai “(**MCGM**)” through the Municipal Commissioner and the Executive Engineer of the MCGM are not concerned.

10. We have today heard at some length, Mr Jagtiani, learned Senior Counsel for the Petitioner, and Counsel respectively for Respondents Nos. 2 and 3 on the one hand and Respondent No. 6, an individual (“**Poonawala**”), on the other.

11. Poonawala himself has filed a separate Writ Petition (L) No. 29748 of 2022. The two Respondents are the MHADA and Classic Corporation, the Petitioner in the present Writ Petition. The Poonawala Writ Petition is as yet on a lodging number. It has been filed through Mr Havnur who has recently undergone a serious surgery and is unlikely to resume for several weeks yet. We are making no order in the Poonawala Petition although that is within the assignment of this Court. We are only directing that Writ Petition (L) No. 29748 of 2022 will be tagged with the present Writ Petition (L) No. 15079 of 2022.

12. In both Petitions, all office objections are to be removed and filing defects are to be cured before the next date.

13. By two separate orders above, we have today disposed of two other Interim Applications. On a previous occasion, we allowed an Intervention Application on behalf of some Applicants represented by Mr Cama.

14. The dispute here pertains to five properties at Kambekar Street, Pydhonie, Mumbai 400 003 in the Mandvi Division. These are CS Nos. 1172, 1173, 1/1173, 1175 and 1176. Classic Corporation says that it is the owner in respect of three of the properties, namely CS No. 1172, CS No. 1173 and CS No. 1175. It is the developer in respect of CS No. 1/1173 and CS No. 1176. There is another claimant in respect of CS No. 1175 for which we have passed a separate order in the application by Anwar Shaikh, i.e., Interim Application No. 1147 of 2023.

15. We are today proceeding on the basis of the claim made in the Writ Petition for the purposes of this Writ Petition.

16. First, look at the prayers including interim prayers. Prayer clauses (a) to (e) read as follows:

“(a) that this Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order, and direction under Article 226 of the Constitution of India directing the Respondent No. 3, to withdraw the said letter dated 21.05.2019 (being

Exhibit “A” hereto) or be pleased to quash and set aside the same;

(b) that this Hon’ble Court be pleased to issue a Writ Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order, and direction under Article 226 of the Constitution of India directing the Respondent No. 5, to withdraw the said circular dated 18.09.2019 (being Exhibit “B” hereto) and be pleased to direct the Respondent Nos. 4 and 5, to allow the Petitioner to continue with the redevelopment of the new building as per the plan sanctioned by it being uninfluenced with the said letter dated 21.05.2019 (being Exhibit “A” hereto);

(c) that this Hon’ble Court be pleased to issue a Writ Prohibition or a Writ in the nature of Prohibition or any other appropriate Writ, order, and direction under Article 226 of the Constitution of India prohibiting the Respondent Nos. 2 and 3, from exercising their power under the Waqf Act, 1995 over the said properties more particularly with the inquiry no. 1/2017 initiated by the notice dated 17.02.2022 (Exhibit “C” hereto);

(d) pending the hearing and final disposal of the above Petition, this Hon’ble Court be pleased to stay the operation of the said circular dated 18.09.2019 (Exhibit “B” hereto) and direct the Respondent Nos. 3 and 4 to decide application for sanction for further construction over the part of the said properties and further direct them to allow the redevelopment over the said properties in accordance with law;

(e) pending the hearing and final disposal of the above Petition this Hon’ble Court be pleased to restrain the Respondent Nos. 2 and 3 from proceeding with inquiry No. 1/2017 in respect of the said properties bearing CS No. 1172,1173, 1/1173, 1175 and 1176 of Mandvi Division.”

17. Classic Corporation says that it has amalgamated the five plots and has begun redevelopment of the buildings. It claims to be entitled to do this under Development Control Regulation 33(7) which controls the redevelopment of cessed buildings. By definition and under the MHADA Act 1976, a cessed building is one that is tenanted. This has some impact on the claim made by Poonawala. It seems that after Classic Corporation either purchased the properties or had Development Agreements (“DAs”) with the original owners, Poonawala filed a complaint with the Waqf Board. On that complaint, the Waqf Board wrote to the Municipal Commissioner on 21st May 2019 asking him to issue a stop work notice to Classic Corporation regarding the redevelopment of all five properties. Acting on that communication from the Waqf Board, by a circular dated 8th September 2019 the MCGM asked Classic Corporation to submit a No Objection Certificate (“NOC”) from the Waqf Board and, pending that, to discontinue all redevelopment work on three of the plots in question namely, CS Nos. 1172, 1173 and 1/1173.

18. It seems that from that time until now Classic Corporation has tried to explain that it is the lawful owner of three of the five properties with registered conveyances under which full title has passed to it, and that for the other two properties it holds registered DAs. It has been pointed out that the matter is entirely outside the purview of the Waqf Board.

19. It seems that the Waqf Board then scheduled a hearing on 26th February 2022. The notice of that hearing (and which is dated

17th February 2022) included, apart from the three properties CS Nos. 1172, 1173 and 1/1173 also CS Nos. 1175.

20. The Petition then says that Classic Corporation appeared before the Waqf Board and its Chief Operating Officer on 26th February 2022. After some hearing, the proceedings were closed but no order seems to have been passed. It is submitted by Ms Lindait, learned counsel for the Waqf Board, is that the matter is still open and is being investigated. No final decision has been taken. The submission is that the Court should not intervene and certainly there should be no question of pre-empting a decision by the Waqf Board at this stage. The submission is that the Waqf Board is the only authority under the Waqf Act to investigate into the affairs of registered Waqfs controlled by that Act. If there is a case of an illegal alienation of waqf property, then that is a matter entirely within the jurisdictional remit of the Waqf Board. Accordingly, the submission is that the Petition is premature and there is no decision of the Waqf Board as yet that can be called into question. No case has been made out for interrupting the decision-making process by the Waqf Board.

21. The submissions on behalf of Poonawala are somewhat more complicated and will require us to refer to not only his status as claimed in his separate Petition but also a brief look at Classic Corporation's case regarding the acquisition of title or rights to these properties. These are set out from paragraph 3.1 of the Classic Corporation Petition. We need not deal with them at length at this stage. We will only attempt to summarise them briefly. CS No. 1172 is at 198 Kambekar street. This was originally, in 1923, the property

of one Noorani. It changed hands in 1931. =It then passed in that year to the Bai Fatimabai Kasam Aliyani Charitable Trust and remained there until 1985 when it was sold to one Anantapur Trading Company under a registered conveyance. Classic Corporation acquired it by registered conveyance from Anantapur on 1st August 2011. The submission here is that the immovable property went out of the Bai Fatimabai Kasam Aliyani Charitable Trust ten long years before the advent of the Waqf Act. There is, therefore, no question of the property being waqf property. There is little purpose achieved, Mr Jagtiani says and, though only *prima facie*, we agree, in saying that the property “was once upon a time” the property of *some* charitable trust. Nobody is denying that. But if the property was transferred by that trust with Charity Commissioner’s permission in 1985, at a time when the Waqf Board did not exist, it cannot today in 2023 be rolled back to some historical position without anybody challenging the Charity Commissioner’s permission or challenging the conveyance or conveyances thereafter. This property has 31 tenants.

22. CS No. 1173 at 201-204 Kambekar Street has 20 tenants. It was the subject of a consent decree of this Court in Suit No. 913 of 1944 passed on 28th August 1944. The property belonged to one Joosul. In 1955, it was declared evacuee property and Joosul’s name was deleted. On 6th May 1981, M/s V Razzak Brothers purchased the property under a registered conveyance. On 13th June 2007, it passed to the hands of one Mohammed Irfan Dadani and one Abdul Rahim Dadani by another registered conveyance. Classic Corporation purchased it from the Dadanis on 21st December 2011 under a separate registered conveyance. The submission by Mr

Jagtiani is of course that CS No 1173 is not and cannot be turned as Waqf property. It was never part of any trust.

23. CS No. 1/1173 has 26 tenants. It is at 202–208 Kambekar street. On 20th June 1923, one Haji Siddick Haji Sumar created a private trust and conveyed the property to that private trust. On 27th May 1992, one Rukaiya Mohammed Aslam Patni bought the property under a conveyance. Being a private trust, this does not need Charity Commissioner's permission. On 10th December 1998, Rukaiya died and the property passed to Nargis Rormiyan under Rukaiya's testamentary writing. On 8th February 2001, the property was purchased by one Saifuddin, one Hamida and one Hafisa under a registered conveyance, and with whom on 17th January 2012, Classic Corporation entered into a DA, which is also registered. This property was thus never a part of any charitable trust at all.

24. CS No. 1175 is at Yusuf Meher Ali road. It has 10 tenants. Before 1991, it was owned by one M/s Kantilal Doshi & Co. On 29th April 1992, one Salimuddin Shamsi and one Afzal Umer bought the property under a conveyance and then sold it on 31st December 2013 to Classic Corporation under a registered conveyance deed. The building on this plot still stands.

25. CS No. 1176 at Yusuf Meher Ali road has 21 tenants. One Fatmabai formed a trust on 26th February 1931 and a scheme was settled by the High Court on 15th November 1948 named the Bai Fatimabai Kasam Aliyani Charitable Trust. On 27th July 1937, the trustees purchased this property. On 7th March 2011, the trust

entered into a Memorandum of Understanding with Classic Corporation for redevelopment. On 2nd August 2014 and 26th December 2014, the Charity Commissioner gave permission for redevelopment and a DA came to be registered. The building itself was demolished in June 2018 but no construction is being carried out.

26. Where stands Poonawala in all of this? In his own Petition, he says that he is the tenant of room No. 12-B on the third floor of the building No. 210 to 214 of Kambekar Street. This is the building on CS No. 1173. It is Poonawala who has complained to the Waqf Board that some or all of these properties are waqf properties. In the Classic Corporation Petition he has not filed any Affidavit in Reply. He has attempted to show us a compilation of documents but *prima facie* these are unconvincing at this stage because they relate to the scheme referred to above. It is difficult to understand this, because the only scheme in question framed by the High Court was in respect of CS No. 1176. But CS No. 1173 was, as we noted, never part of any trust property at all.

27. Poonawala states clearly that he is even now a tenant of Classic Corporation and has a rent receipt from Classic Corporation. We pointed out to his counsel the perils of denying a landlord's title. The answer we received, and we note this, is that Poonawala is prepared to face the consequences of a denial by a tenant of a landlord's title. He maintains that these are Waqf properties. *Prima facie* we find the approach extremely difficult to appreciate. In his own Petition, Poonawala has sought rights and reliefs that are

entirely dependent on his position as a tenant. For example, he has sought the execution of a Permanent Alternative Accommodation Agreement (“PAAA”) and the payment of transit rent. If he is not a tenant and not a tenant of Classic Corporation, it is impossible that he could seek such reliefs or seek a direction against MHADA to order that he be given these benefits. There are clearly not only conflicting but, even at this *prima facie* stage, mutually destructive stands. This is only a *prima facie* view. For now, we are leaving contentions open and we permit Poonawala to file an Affidavit in Reply in this Petition by 3rd April 2023.

28. We must note two further submissions that are presented before us. These are on behalf of the Waqf Board and our attention was drawn to its Affidavit in Reply that starts from page 312. At Exhibit “A” from page 324 is the photocopy of Form “B”. Then from page 330 is a registration certificate and there is a register of public trusts annexed thereafter. At page 339, against the entry relatable to the Fatimabai Haji Usman Charitable Trust there is an entry of CS No. 255. This is also shown in Exhibit “A” and apparently a property that is at 208 Kambekar Street. Now it is clear that while the Charitable Trust may have its address anywhere, that address or the property at that address does not automatically become the ownership asset of the trust. The register shows us what is the property of the trust and this is CS No. 255, not any of the other CS numbers that are the subject matter of this Petition. We have noted this at some length because, as the Petition points out, the notice from the Waqf Board to Classic Corporation of 21st May 2019 and which we find at Exhibit “A” to the Petition refers to three trusts: i) Haji Siddick Haji Somar Trust, 202, Kambekar Street ii)

Haji Usman Allaharakha Jusbani Charitable Trust at 208 Kambekar Street and iii) Bai Hawabai Religious and Charitable Trust, 198 Kambekar Street. The communication only notes these trusts and their addresses but does not mention that any particular CS numbers are their ownership immovable properties. This is only partly argued in respect of one property at this stage today.

29. The Waqf Board notice specifically references a complaint by Poonawala and *prima facie* we are unable to see how Poonawala can claim to represent or to espouse the cause of the Waqf Board. The Waqf Board is a statutory authority and strictly speaking, it has no cause of its own. It has to decide a matter that is properly brought before it. The question is therefore whether merely on any complaint that anyone may file, the Waqf Board is necessarily required to launch a full spectrum investigation and in the meantime to stay all development of the property. When the Waqf Board is presented at the threshold with explanations, documents, and especially registered documents, when it is explained that these properties are not any longer and some were never part of any charitable trust, we do not see how the Waqf Board can still insist on “proceeding further”. In the light of such material, it could as well close the complaint by saying that there is no action required. It is *prima facie* difficult to believe that every complaint, no matter how unsubstantiated, by some person must result in this kind of an enquiry and a stoppage of work. If the complaint is found to be without merit, then it is unclear what consequences are likely to be visited on the complainant. We find it difficult to conceive of a situation where a person may make a false or a motivated complaint, succeed in delaying the project, succeed in prejudicing other tenants

who will not get re-accommodation and may even have to forego transit rent but should suffer no consequences himself.

30. We are unable to understand the basis of Poonawala's opposition. Perhaps, as Mr Jagtiani points out, this can be explained because what Poonawala seeks is an exclusivity of rights as a certified tenant of MHADA. But there are other claimants to those very premises namely his own family members and it is perhaps this that has agitated Poonawala into attempting by this route to stall the development. This is the submission that is made by Mr Jagtiani that we will examine if required on the next date.

31. We have noted these rival submissions only as material for the basis of our view today that there is a sufficient *prima facie* case made out for the grant of ad interim relief.

32. On behalf of Mr Poonawala, reliance is placed on three decisions by the Supreme Court in *Maharashtra State Board of Wakfs v Yusuf Bhai Chawala & Ors*,² *Maharashtra State Board of Wakfs v Shaikh Yusuf Bhai Chawla & Ors*³ and in *Telangana State Wakf Board & Anr v Mohamed Muzafar*.⁴ We will consider these at the final hearing of the Petition.

33. However, it seems to us that there is not only a *prima facie* case but any test of balance of convenience or any evaluation of competing prejudices or equities requires that there be a stay in

2 (2012) 6 SCC 328.

3 (2022) 0 SCC 1252. 2022 SCC OnLine SC 1653.

4 (2021) 9 SCC 179.

terms of prayer clauses (d) and (e) set out above subject to certain further qualifications.

34. Thus, apart from granting Rule, we grant interim relief in terms of prayer clauses (d) and (e). This means that not only are the proceedings before the Waqf Board stayed until the next date, but the MCGM's stop work notice will also remain stayed until the next date. As regards the MCGM, not only is the stop work notice stayed, but the MCGM will on a similar basis process all further applications and submissions for further development.

35. Our principal reasons for ordering this is actually not a concern about Classic Corporation, but is of the several other tenants affected by the stay on this re-development. A delay now, especially one at the instance of Poonawala, and this is why we have been at some pains to identify his position in this entire affair, is undoubtedly likely to prejudice those other persons. Many of them are represented by Mr Cama who supports Mr Jagtiani and says there is no cause for complaint. All of Mr Cama's clients are opposed to Poonawala. We see no method of redressing the balance. If Poonawala was to succeed in his attempt at staying or stalling the project of redevelopment through the intervention of the Waqf Board, he would undoubtedly be required to be put to terms. Poonawala would have to be prepared to pay a substantial deposit to cover the amount of transit rent that is being paid or has been offered to other tenants who are not with him. He may even be required to put to terms about any loss or prejudice likely to be caused to Classic Corporation. These are not terms that we can

impose on the Waqf Board and this is not even our suggestion. We are stating this because this appears to us the balance of equities that is required.

36. Equally, this does not mean that Classic Corporation can get a free run. These interim reliefs are, therefore, necessarily made subject to the outcome of the Writ Petition and are on a without prejudice and no equities basis. This means that should the Classic Corporation Petition ultimately fail, Classic Corporation will not be allowed to plead any equities or claim any compensation or redress for any work that it has done or any amount that it has spent between now and the next date.

37. We do not know the terms of the DAs or the scheme of the redevelopment proposed by Classic Corporation. We can only anticipate that part of that redevelopment involves moving existing tenants as certified by MHADA to transit accommodation or paying them transit rent in lieu of transit accommodation. These orders today are therefore not to be seen as excusing or exempting Classic Corporation from the performance of these obligations. If transit rent has to be paid, any delay caused by these Petitions is not going to be a reason for Classic Corporation to deny payment of transit rent.

38. Again, the same question rears head: what about Poonawala? Should he receive transit rent? We think that would be more than somewhat incongruous. His entire stand is unclear. He simultaneously claims that these are Waqf properties and that he is a

tenant of Classic Corporation entitled to the benefits of re-development. If Poonawala insists that he is prepared to take the consequences of maintaining that these are Waqf properties, then that necessarily means that, according to him, Classic Corporation could not have acquired title, cannot undertake development and therefore cannot be expected to pay transit rent. But that surely must apply only to Poonawala, because this is his, and only his, submission. This consequence cannot apply to anyone else because the others are supporting Classic Corporation. Therefore, until the next date Poonawala will not be entitled to receive transit rent. The entire amount of transit rent that is payable against the unit that is in his occupation will be deposited in this Court and will be invested by the Court Registry in accordance with the usual practices of this office. All contentions are expressly kept open. We note that Poonawala has already vacated and the building has already been brought down. Rent due to Poonawala (and to be deposited in Court) will be on par with other tenants.

39. All Affidavits in Reply are to be filed and served by 3rd April 2023. We permit the Waqf Board to file a further Affidavit in Reply by that date. Rejoinders are permitted by 13th April 2023.

40. List the Petition on 25th April 2023 at 2:30 pm.

(Neela Gokhale, J)

(G. S. Patel, J)