

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7121/2019

Municipal Council, Umrer, through its Chief Officer, Umrer, District Nagpur

...Versus...

Itwara Masjid Committee, through its President Shri Habib Kha Sher Kha Pathan and another

WITH

CIVIL REVISION APPLICATION NO.68/2019

Municipal Council, Umrer through its Chief Officer, Umrer, District Nagpur

...Versus...

Itwara Masjid Committee Through its President Habib Kha Sher Kha Pathan and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.P Khajanchi, Advocate for petitioner
Shri A.V. Bhide, Advocate for respondent no.1
Shri K.J. Tople, Advocate for respondent no.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/01/2023

1. Writ Petition No.7121/2019 raises a challenge to the order dated 19/07/2019 passed by the Civil Judge, Junior Division, Umrer below Exh. 36 in Regular Darkhast No.15/2017 as well as consequential action taken pursuant to the order dated 19/07/2019 which directs to take the possession of the premises in question by breaking open the lock. The Civil Revision Application No.68/2019 challenges the order dated 12/06/2019 passed in Regular Darkhast

No.15/2017 below Exh.40 (pg.199) whereby the preliminary objection of the Municipal Council, Umrer regarding maintainability of the Darkhast proceedings has been turned down.

2. Both the parties do not dispute that the suit property as of now is in the possession of the Court, though the decree, sought to be executed in Regular Darkhast No.15/2017 is in favour of Itwara Masjid Committee.

3. The Municipal Council, Umrer also raises a claim of being entitled to the said property as against the claim of the Itwara Masjid Committee, which is presently subjudiced in Regular Civil Suit No.419/2008, in which, both the Municipal Council, Umrer as well as Itwara Masjid Committee are parties.

4. The learned counsels for the respective parties, upon instructions, make a joint statement that it would be in the interest of all the parties that Regular Civil Suit No.419/2008 be decided within a period of six months from today, for which duration, the possession of the property should be continued with the Court. Such a course of action is likely to resolve the dispute once for all by the Court before whom Regular Civil Suit No.419/2008 is pending, rendering a finding as to the ownership and title of the said property, considering which, Writ Petition No.7121/2019 and Civil Revision Application No. 68/2019 both are disposed of by directing that the property in question shall continue to remain in the custody of the Court in Regular Darkhast No.15/2017.

5. The learned Trial Court who is seized of Regular Civil Suit No.419/2008 shall decide the matter within a period of six months from today. The parties shall appear before the said Court on 23/01/2023. The Itwara Masjid Committee shall enter into the witness box for the purpose of examination-in-chief, whose cross-examination shall be completed by 25/01/2023. In case any additional witnesses are to be examined, they shall be examined by the Itwara Masjid Committee by 15/02/2023, whose cross-examination shall also be completed by the said date. By 28/02/2023, the Municipal Council, Umrer shall lead its evidence along with those of its witnesses whose cross-examination shall be completed during that period. The learned Trial Court shall proceed to hear the arguments, in case the evidence is completed, in the first week of March, 2023 and shall decide the suit as expeditiously as possible within the aforesaid duration. It is made clear that the findings rendered in Regular Civil Suit No.419/2008, shall govern the parties and the further course of action to be taken in Regular Darkhast No.15/2017 and based upon the findings rendered the learned Trial Court shall also pass appropriate orders regarding delivery of possession of the property.

6. No order as to costs.