



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

**FIRST APPEAL NO. 3243 OF 2025
WITH
CIVIL APPLICATION NO. 13258 OF 2025
IN FA/3243/2025**

1. The Gram Panchyat, Dindrud,
Taluka Majalgaon, District Beed
Through its Sarpanch,
Smt. Kamalabai Dagadu Surwase,
Age; 55 years, Occ; Agril,
R/o; Village Dindrud, Tq. Majalgaon,
District; Beed.

...APPELLANT
(Ori.Deft. no.1)

VERSUS

1. Dargah Hazrat Osman Shah Wali,
& Graveyard, situated at Dindrud,
Tqluka Majalgaon, District; Beed,
Through legal heirs of Mutawalli,
Ilias Nawab Shaikh, Age; 52 years,
Occ; Agri, & Business,
R/o; Mominpura Road, Masoom
Colony, Beed, District; Beed.

...Orig.Plfff. No.1.

2. Pathan Farukh Khan Ansar Khan,
Age; 44 years, Occ. Business & Agri,
R/o; Dindrud, Taluka Majalgaon,
District; Beed.

...Orig.Plfff. No.2.

3. Shaikh Akhil Chand,
Age; 50 years, Occ; Business & Agri,
R/o; Dindrud, Taluka Majgalgaon,
District; Beed.

...Orig.Plfff. No.3.

4. The Maharashtra State Board of Waqf, through its Chief Executive Officer, having office at Panchakki, Chhatrapati Sambhajinagar. ...Orig.Deft. No.2.
...**RESPONDENTS.**

Advocate for Appellant : Mr. Sanjeev Deshpande (Senior Advocate) a/w Mr. Swapnil S. Paturnkar and Ms. Priyanka Deshpande i/b J.P. Legal Associates

Advocate for Respondent Nos. 1 to 3 : Mr. Javed Abdul Hameed Deshmukh

Advocate for Respondent No. 4 : Mr. Rajendra Deshmukh (Senior Advocate) a/w Mr. Nilanjan Pande and Mr. Ubaid Hashmi i/b Mr. N. E. Deshmukh

...

CORAM : Y.G. KHOBRADE, J.

Date of Reserve of Judgment : 09.02.2026

Date of Pronouncement of Judgment : 17.02.2026

JUDGMENT :

1. Heard the Senior Advocate Mr. Sanjeev Deshpande, a/w Mr. Swapnil S. Paturnkar, and Ms. Priyanka Deshpande, i/b J.P. Legal Associates for the appellant, Mr. Javed Abdul Hameed Deshmukh, for respondent Nos. 1 to 3 and Mr. Rajendra Deshmukh (Senior Advocate), a/w Mr. Nilanjan Pande, and Mr. Ubaid Hashmi i/b Mr. N. E. Deshmukh, appearing for the respondent No. 4.

2. By the present appeal under Section 83 (a) of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 (Act No. 43 of 1995) [As on the 1st May, 2025], (in short “the U.M.E.E.D. Act”) the appellant Gram Panchayat takes exception to the order dated 07.11.2025, passed below Exhibit-5 and 5-A in Waqf suit bearing No. 44 of 2025 by the learned District Judge/Chairman, Maharashtra State Waqf Tribunal, Aurangabad, thereby, temporarily restrained the present appellant/original defendant No. 1 from holding weekly Bazar and destroying Kabrasthan and changing the nature of the suit property i.e. Gut No. 731 (Old Survey No. 14) to the extent of 3 Acres (1 H 20 R) land situated at Dindrud, Tq. Majalgaon, District Beed, during the pendency of the suit.

3. The present appellant is the original defendant No. 1, whereas, the Respondent Nos. 1 to 3 are the original plaintiffs and the respondent No. 4 is the original defendant No. 2, in Waqf Suit No. 44 of 2024. (For the sake of brevity and convenience, the parties to the present appeal hereinafter will be referred in their original capacity as the plaintiffs and defendants).

4. The plaintiffs have filed the Waqf Suit bearing No. 44 of

2024 and prayed for declaration that, the suit property bearing Gut No. 731 (Old Survey No. 14) to the extent of 3 Acres situated at Dindrud, Tq. Majalgaon, District Beed. It is the contention of the plaintiffs that, suit land bearing Gut No. 731 (Old Survey No. 14) out of which 3 Acres situated at Dindrud, Tq. Majalgaon, District Beed, is owned and in possession of the plaintiffs. The description of said property is as under:

Towards East : Gavthan,
Towards West : River,
towards North : Gut No. 741 and 732,
Towards South : part of Gut No. 731

(For the sake of brevity, the above mentioned suit property hereinafter will be referred to as the “suit property/Waqf Property”.)

5. The Plaintiff no. 1 is the Waqf Institution Dargah Hazarat Osman Shah Wali. The plaintiff Nos. 2 and 3 are permanent resident of Dindrud and they are interested persons in respect of affairs of the Plaintiff no. 1. According to the plaintiffs, their ancestors were buried in the Graveyard i.e. suit property, therefore, they are interested persons in the Waqf property and the management of the Kabrasthan

(Graveyard). According to the plaintiffs, the Plaintiff no. 1 is owner and in possession of the Waqf property i.e. graveyard to the extent of 3 acres of land. The State Government issued Notification dated 14.02.1974 under the Old Waqf Act, 1954 and allotted 3 acres of land out of Gut No. 731 (Old Survey No. 14). The Surveyor/Commissioner/Tahsildar conducted the survey under the provisions of Section 4 of the Waqf Act, 1954 and declared 3 acres of land is a Waqf property. The said property is duly registered with Defendant No. 4, the Maharashtra State Board of Waqf, Aurangabad under Section 43 of the Waqf Act, 1955 vide registration No. MSBW/64/2007. So also, the suit property is recorded as Muslim Kabrasthan, to the extent of 1 H 20 R in the Revenue record i.e. 7/12 extract, after following due process of law provided under the Maharashtra Land Revenue Code (for short the "M.L.R. Code"). It is further contended that, the defendant No. 4, the Maharashtra Waqf Board measured the said suit property on 27.07.2016. As per the Revenue Map and record, the suit property is in possession of the Plaintiff being Graveyard since ancient period and the Muslim Community's dead bodies are buried therein without any disturbance. However, on 01.02.2024, the defendant No. 1 Grampanchyat, Dindrud, passed the resolution about removal of Iron Compound of

the suit property/ Graveyard and holding weekly Bazar by destroying Tombs as well as changing the nature of the suit property. Therefore, they submitted the representation with the Collector, Beed and other Competent Authorities but no action was taken. The plaintiffs further contended that, the defendant No. 1 being a Statutory Body, therefore, it is obligatory on its part to protect the suit of public property, however, with an ulterior motive allotted the suit property for weekly market.

6. It is further contended that, the said graveyard is ad-measuring 1 H 20 R i.e. total 3 Acres out of Gut No. 731 and there is open land ad-measuring 67 R, wherein, the weekly market is being held and organised by the Defendant no. 1 from decades. However, the defendant made encroachment upon the land of Muslim Kabrasthan (Graveyard) and permitting the vendors to install vegetable shops for Weekly market. So also, the vegetable vendors and vendees are causing damages to the Tombs and decreasing area of graveyard due to encroachment. Further, on 01.02.2024, the defendant No. 1- Grampanchayat, passed the resolution and started allotting stalls/shops for weekly market in the graveyard by destroying Tombs of Plaintiff's ancestors. Due to which there is every

possibility about rising communal dispute between the Hindu and Muslim communities. Therefore, prayed for declaration of ownership.

7. The plaintiffs filed Exhibit-5 and 5-A, an Application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure and prayed for temporary injunction, restraining the defendants, their servants, agents or any other persons on their behalf from installing shops, holding weekly market in the suit property and disturbing their possession during the pendency of suit.

8. The defendant No. 1 Grampanchyat filed its Written Statement/reply Exhibit-28. The defendant no. 1 denied claim of the plaintiffs. According to the defendants, the plaintiffs have suppressed material facts about the suit land. The suit is bad in law due to non-joinder of necessary parties. The plaintiffs have not disclosed proper description of the suit property. So also, suit property cannot be identified as per the provisions of the Order VII Rule 3 of the Code of Civil Procedure, when the property card identified as Waqf Property, to the extent of 2343.7 Sq.M. only. It is further contended that, the Government Gazette dated 14.02.1974, is fake, fabricated and bogus. So also, the Government Notification/ Gazette dated 14.02.1974 was

produced on record by the defendant No. 2, the Maharashtra Waqf Board with the office of the Collector, Beed has not disclosed that the suit property is the Waqf property. The Plaintiff admitted the revenue record, 7/12 extract wherein Muslim Kabrasthan is shown in respect of 1 H 20 R land as Muslim Graveyard (Kabrasthan). The dispute about mutation entry bearing No. 2127 is sub-judice in appeal before the learned Special Additional Magistrate, Majalgaon, District Beed. Therefore, the plaintiffs are having no interest, title over the suit property, hence, they are not entitled for the temporary injunction.

9. According to the defendants, the Dargah and adjoining land with old graves are only to the extent of 2343.7 Sq.M., however, the plaintiffs produced the manipulated measurement map of the land. Further, on 01.02.2024, the defendant No. 1 passed a resolution in its general body meeting in the larger public interest to protect the Government land from encroachment. The said land ad-measuring 1 H 87 R being the Government 'Gairan' land out of Gut No. 731 after the consolidation. The revenue record does not reflect entry of Kabrasthan at Gut No. 731 (old Survey No. 14) till 2007. According to the Defendant, weekly market is being held in the suit land from Nijam era. Further, various Government and quasi-government

buildings/structures are standing on the suit land including offices of Gram Panchayat, Zilla Parishad, Primary School since 1956. Two Government Godowns, Garden, Bus Stand, Shopping Complex, Ota for weekly market, public water well, and water tank etc., are standing on old Survey No. 14. Therefore, the plaintiffs have failed to make out *prima facie* case, no balance of convenience lies in favour of the plaintiffs. So also, if the injunction is not granted, no prejudice would be caused to the plaintiffs, hence, prayed for rejection of the application for temporary injunction.

10. On 07.11.2025, the learned District Judge/the Chairman, the Maharashtra State Waqf Tribunal, Aurangabad passed the impugned order below Exhibit-5 and 5-A and restrained temporarily the defendants, its agents, servants or any other person claiming through them from holding the weekly market/Bazar or destroying the Kabrasthan or changing the nature of the suit property during the pendency of the suit.

11. Mr. Deshpande, the learned Senior Advocate appearing for the appellant/defendant No. 1 canvassed that, on 22.08.2007 the Tahsildar, Majalgaon issued a communication to the Sub Divisional

Officer, Ambejogai about taking mutation entry in respect of the land Gut No. 731 (Old Survey No. 14), ad-measuring 1 H 87 R, out of which 1 H 20 R land is allotted to the Muslim Graveyard, but since past five decades, the weekly market is being held in suit land and it is mutated in the name of Grampanchyat as Gairan land. However, the Talathi effected mutation entry showing 1 H 20 R land for Muslim Graveyard. Therefore, an application is submitted for cancellation of the mutation entry No. 2127. On 12.01.2009, the Sub Divisional Officer, Ambejogai accorded sanction under Section 258 of the M.L.R. Code and revoked mutation entry No. 2127.

12. It is further canvassed that, on 28.02.2024 the Tahsildar (Revenue) issued a communication to the Sub Divisional Officer, Majalgaon about initiation of action and to submit the report about cancellation of the mutation entry No. 2127, in respect of the land bearing Gut No. 731 (Old Survey No. 14). As per the Government notification dated 14.02.1974, at Serial No. 35 to 38, the properties are shown as Waqf properties i.e. at Dindrud i.e. area 40 x 24 ft. of Ajdur Khana Road, the area 32 x 26 ft. Chila Maheboob Shubhani, 45 x 32 ft., Jumma Masjid and 105 x 45 ft., Masjid and graveyard area out of the suit property. However, the plaintiffs rely on false and

bogus Government Gazette dated 14.02.1974, wherein, the land ad-measuring 3 Acres allegedly allotted out of (old Survey No. 14) in favour of Dargah Hazarat Usman Shah Wali. Therefore, the learned Waqf Board/Tribunal, Aurangabad could have discarded said Government Gazette and ought to have rejected the temporary injunction, hence, impugned order is illegal, bad in law.

13. The learned Senior Counsel Mr. Deshpande appearing for the appellant further canvassed that, at the earlier point of time the defendant Grampanchayat had filed RCS No. 271 of 2008 before the Civil Judge Senior Division, Majalgaon. In said suit the Defendant specifically pleaded about holding the weekly market since past 50 years and construction of Opla for the vendors. So also, on one part of the survey No. 731 (Old Survey No. 14) there is government buildings/schools, warehouse, Bajuba Devsthan, Hanuman Mandir etc., situated. The suit land was never in possession of the plaintiffs, so also the plaintiffs are not the owner of the suit property. Therefore, the learned trial Court could have declined to grant temporary injunction. However, the learned Waqf Board/Tribunal passed the impugned order and recorded perverse findings, hence, prayed for quashing and setting aside the impugned order.

14. In support of the submissions, the learned counsel appearing for the appellant placed reliance on the case of **Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu and Others - 2023 DGLS (SC) 590, (Spureme Court) & equivalent AIR 2023 (SC) 2769, 2023 (16) SCC 264**, wherein it has been observed that;

“There is no material or evidence on record that before issuing notification under Section 5 of the Waqf Act, 1954 any procedure or survey was conducted as contemplated under Section 4 of the Act. In absence of such material, mere issuance of notification under Section 5 of the Act would not constitute the valid Waqf in respect of the suit land. Therefore, the notification dated 29.04.1959 is not a conclusive proof of the fact that the suit land is the Waqf property. It is for this reason probably that the appellant Committee had never pressed the said notification into service up till 1999”.

15. It further relied on the case of **Francisco Rodrigues and Another Vs. Angelica Rebello – 2010 (6) Bom. C.R. 69**, wherein it is held that;

“The person to be joined must be one whose presence is necessary as party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought

of relevant arguments to advance. The only reason which makes it necessary to make a person a part to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action”.

16. It further relied on the case of **Kasturi Vs. Iyyamperumal – 2005 AIR (SC) 2813, (Equivalent 2005 (6) SCC 733**, wherein the Hon’ble Supreme Court considered the scope of the appellate jurisdiction under Article 132 of the Constitution of India and held that;

“It is open to the Court to interfere with the order if it is held that two Courts below had acted without jurisdiction or acted illegally and when the material irregularity in the exercise on their jurisdiction in the matter of allowing application for addition of parties filed under Order 1 Rule 10 of the Code of Civil Procedure”.

17. The respondent No. 1/original Plaintiff filed the

affidavit/reply of one Shaikh Akhil s/o Chand and strongly resisted the present appeal as well as prayer for grant of stay to the impugned order.

18. The learned Senior Advocate Mr. Deshmukh canvassed that, as per the revenue record, as well as Government notification dated 14.02.1974, the plaintiff is owner and in possession of 3 acres of land, out of Gut No. 731 (old Survey No. 14 and suit land already declared as Waqf property by the State Government.

19. It is further canvassed on behalf of the Respondent/ori. Plaintiffs that, under the Government Gazette Notification dated 14.02.1974, the State Government allotted 3 acres of land out of Gut No.731 (Old Survey No. 14) to the plaintiff for Muslim Graveyard. The Government Gazette dated 14.02.1974 (document No. 5 of the Appeal Memo) produced by appellant/defendant shows that, the plaintiff Dargah Hazarat Usman Shah Wali, at Serial No. 35 to 38 and said land is shown as Waqf properties i.e. at Dindrud i.e. area 40 x 24 ft. of Ajdur Khana Road, then area 32 x 26 ft. Chila Maheboob Shubhani, 45 x 32 ft., Jumma Masjid and 105 x 45 ft., Masjid and graveyard out of the suit property. However, this document does not

suggest that 3 acres of land was allotted to the plaintiffs out of Gut No.731 (old Survey No. 14). But the Government notification dated 14.02.1974 itself shows that 3 acres of land out of old Survey No. 14 was allotted to the plaintiffs. Therefore, the Defendant/present appellant is neither owner nor in possession of the suit land. Therefore, the plaintiffs have made out *prima facie* case and balance of convenience lies in favour of the plaintiff. So also, if the temporary injunction is not granted in that event the vegetable vendors and large numbers of people who are attending weekly market is likely to cause damages to tombs of ancestors of the Muslim communities. Therefore, the learned trial court considered the facts and circumstances of the case and temporarily restrained the Defendants, its agents, servants or any other person holding weekly market on the suit property, hence, no case is made out to disturb the findings. Therefore, prayed for dismissal of the appeal.

20. In order to grant temporary injunction, the Court requires to consider *prima facie* case, the balance of convenience and irreparable loss, if injunction is not granted as contemplated under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908. Taking into consideration of cardinal principal and having regard to

the submissions canvassed on behalf of both the sides, I have gone through the record. It is not in dispute that, as per the revenue record i.e. 'Gav Namuna No. 7', Gut No. 731 is ad-measuring 1 H 87 R, out of which, as per the mutation entry No. 2127, 1 H 20 R land is allotted to the plaintiffs for Kabrasthan and 67 R land being Gairan land is given to the appellant-Grampanchyat. As per the revenue map, the Gavthan area/vacant land is shown towards South-West Corner, and BSNL Tower is shown adjacent to the land of Gavthan. There is a School towards North-West side of Survey No. 731. The Dargah is shown towards North-East side. The Defendant no. 1 as Gram Panchayat has not denied four corners of the suit premises.

21. Though the learned counsel appearing for the appellant/original defendant canvassed that, actual land of the Dargah is total 2400 Sq. Ft. and old tombs are situated adjoining the the Dargah, which is protected by the villagers. Therefore, mere entry in the notification issued by the State Government Gazette does not *ipso facto* the suit property is Waqf property. So also, there is no measurement conducted by making bifurcation of the Government land and so called Kabrasthan land. However, as per the revenue record i.e. 'Gav Namuna No. 7', Gut No. 731 is ad-measuring 1 H 87

R, out of which, as per the mutation entry No. 2127, 1 H 20 R land is allotted to the plaintiffs for Kabrasthan and 67 R land being Gairan land is given to the appellant Grampanchyat. The Government Notification issued on 14.02.1974 shows about allotment of 3 Acres of land out of Gat No. 731. Therefore, there is presumption that, the plaintiffs are owners and in possession of suit land. So also, the Defendant no. 1 has not brought any substantial material on record to show that, from last 5 decades weekly market is being held on the suit land.

22. Needless to say that, both the parties have not denied that the area of old Survey No. 14 and New Gut No. 731 is approximately 1 H 87 R. On the face of the record, it appears that, under Government Gazette published on 14.02.1974 the respondent No. 1/Original Plaintiff was given an area of 1 H 20 R. On face of the record it appears that, the survey was conducted and the required information under the annexure-A was submitted with the Divisional Commissioner, Chhatrapati Sambhajnagar, wherein, the land of Dargah Hazarat Osman Shah Wali and Muslim Graveyard shown in old Survey No. 14. As per the Gav Namuna No. 07 and mutation entry No. 2127, 1 H 20 R land is possessed by the respondent No.

1/plaintiff and remaining 67 R land shown being Gairan land is in possession of the appellant/defendant No. 1 Grampanchyat. It is not in dispute that, Tombs are constructed in the area of 1 H 20 R land allotted by the State Government in favour of the respondent No. 1/plaintiff.

23. No doubt, in past, the present appellant/original defendant No. 1 had instituted RCS No. 271 of 2008 and prayed for decree of declaration of ownership and perpetual injunction in respect of suit land against the State Government and other defendants including the Revenue Authority. In the said suit, the present appellant pleaded that, the Revenue Authority/Tahsildar without any inquiry effected the mutation entries on 13.01.1997 and shown Gut No. 731 (old Survey No. 14) for Muslim graveyard and without notice to the Grampanchyat the mutation entry No. 2127 was effected on 24.03.2007. On 10.07.2009, the learned Civil Judge Senior Division, Majalgaon passed an order below Exhibit-1 and framed preliminary issue, “*Whether this Court has jurisdiction to try the suit ?*”

24. On 31.07.2009, the learned Civil Judge Senior Division, Majalgaon, passed an order below Exhibit 19 and returned the plaint

to the present appellant- Grampanchyat/Defendant No. 1 for filing the same before Waqf Board/Tribunal at Aurangabad. However, admittedly, the present appellant/original defendant No.1 has not filed the suit till date before the Waqf Board/Tribunal.

25. During the course of hearing, the respondents/ori. plaintiffs have filed photographs on record, which shows that the vegetable vendors are sitting on the Tombs in Graveyards and selling vegetables and people are visiting to purchase the vegetable. So also, some tombs are damaged. Since the suit land is allotted for Muslim Graveyard and it is in possession of the Respondent no. 1/Ori. Plaintiff, therefore, the Defendant no. 1 Grampanchyat has no right to conduct Weekly market in the suit property. Therefore, to my view, the Respondents/ Plaintiffs have made out *prima facie* case and balance of convenience lies in their favour. So also, if the temporary injunction is not granted in that event there is every possibility of damage being caused to the Tombs of deceased Muslim persons including forefathers of the plaintiff nos. 2 & 3.

26. On face of record it appears that, vide order dated 22.08.2007, the Tahsildar requested the learned Sub Divisional

Officer, Ambejogai to cancel the mutation entry as it is erroneous and the learned Sub Divisional Officer by its communication dated 12.09.2009, allowed the said proposal under Section 258 of the M.L.R. Code and has cancelled the mutation entry No. 2127, however, the said order has not been executed till date.

27. During the course of hearing, the learned Counsel appearing for the respondent No. 4, produced a proclamation dated 26.11.2025 published by the appellant/Grampanchyat and proceeding dated 26.12.2025, wherein the appellant/ori. Defendant Grampanchyat resolved to maintain the status-quo in respect of the land of the Kabrasthan to the extent of four corners of the Muslim Graveyard. As per the proclamation the Defendant/ Grampanchyat has decided to only assemble market within 67 R area.

28. As per the facts narrated, herein above, the land ad-measuring 1 H 20 R allotted to the respondent No. 1/plaintiff under the Government Gazette published on 14.02.1974 and as per the mutation entries, the land ad-measuring 67 R is left with the defendant No. 1 Grampanchyat, out of Gut No. 731 (Old Survey No. 14). The respondent No. 1/plaintiff has placed on record the

registration certificate of Waqf Institution, which shows that 3 acres of land out of Survey No. 14 is registered in the name of Waqf Institution. Though the appellant/plaintiff contended that, the Government Gazette dated 14.02.1974 is fake and fabricated, but the 7/12 extract produced on record by the defendant No. 1 from the year 1981 to 2016 appears that, in the column of rights, the land ad-measuring 1 H 20 R is mutated as Muslim Kabrasthan. The appellant/defendant No. 1 has brought nothing on record to show that, the said Government Gazette dated 14.02.1974 is fake and fabricated. So also, the appellant/ defendant has not initiated any proceedings against respondent No. 1/plaintiff for creating false and fabricated Government Gazette. Therefore, considering the material available on record and there is every likelihood of damage being caused to the Tombs and as such on *prima facie* satisfaction, the learned trial Court held that, if the weekly market is allowed to be held on the area of 3 acres of land out of Gut No. 731, there is every possibility to cause damage to the graves but could also cause desecration to the graves if the people walk on it or install shops over it. Therefore, I do not find that the findings recorded by the learned trial Court are perverse, illegal, bad in law, hence, I do not find that the appellant has made out substantial grounds to interfere with the

impugned order. Therefore, present appeal is dismissed.

29. Consequently, the Civil Application No. 13258 of 2025 in First Appeal No. 3243 of 2025 is disposed of.

(Y.G. KHOBRAGADE, J.)

mahajansb/