

(2014) 08 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : LPA 99/2014

Markazi Tahaf-U-Ze Qabristan Committee	APPELLANT
Vs	
State and Others	RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2014) 4 JKJ 519

Hon'ble Judges : Muzaffar Hussain Attar, J; Ali Mohd. Magrey, J

Bench : Division Bench

Advocate : S.H. Thakur, Advocates for the Appellant

Judgement

Muzaffar Hussain Attar, J.—The Appellant-writ petitioner, filed OWP 678/2013, pleading therein that the private respondents have encroached upon the grave yard. It is also pleaded in the writ petition that not only 13 marlas of grave yard have been encroached upon but some other inhabitants of the area have also encroached upon other parts of the grave yard. However, specific reference is made to 13 marlas of land, which, according to the Appellant-writ petitioner, have been encroached upon by the private respondents. It is in this backdrop that prayer was made in the writ petition for issuance of direction to the respondents-Srinagar Municipal Corporation, not to grant any Building Permission to the private respondents for construction of any structure on the land covered by Survey No. 692, situated at Malkhah, Halqa Patwar Nowhatta, Srinagar. Further prayer was made that official respondents be directed to take the aforesaid piece of land under their control and take strict action against all those, who have, allegedly, encroached upon the grave yard. Some other reliefs, incidental to the aforesaid reliefs, were also prayed for.

Respondents did not file the Reply Affidavit.

2. The learned writ Court, after hearing learned counsel for the parties, dismissed the writ petition vide its order/judgment dated 11-06-2014.

3. Mr. Thakur, learned counsel for the Appellant, in support of the Appeal, submitted that when the respondents had not filed the Reply Affidavit,

it has to be deemed, in law, that the pleadings, in the writ petition, have been admitted and in such circumstances, writ petition ought not have been

dismissed. Learned counsel, in support of his contention, referred to and relied upon judgement of Hon'ble the Supreme Court reported in AIR

1987 SC 1682. Mr. Thakur further submitted that 13 marlas of land, to which reference is made in the writ petition and about which, it is alleged

that it has been encroached upon by the private respondents, was projected as a sample example only, when, as a matter of fact, large chunk of

grave yard has been encroached upon by different persons. He also referred to one of the reports of S.H.O., Police Station, Rainawari, Srinagar,

sent to Sub Divisional Police Officer, Khanyar, Srinagar, on 09-06-1992. Learned counsel also submitted that the ex-parte decree, passed by the

learned Civil Court, in favour of the private respondents, is subject matter of Appeal before the Appellate Court. Mr. Thakur, accordingly,

submitted that the impugned judgement, being illegal, the Appeal deserves to be allowed.

4. We have considered the material placed on record and submissions made at the bar.

5. In writ petitions, pleadings are to be supported by necessary evidence and documents. Any pleading, which is not supported by

material/documents, cannot be considered by the writ Court and normally, in such circumstances, no relief can be granted in favour of the

petitioner(s). Even in absence of Reply Affidavit of the respondents, it cannot be presumed by the Court that the pleadings in the writ petition have

been admitted by the other side. The petitioner(s), in order to succeed in the writ petition, has/have not only to plead the facts but also support

those facts with the material/evidence to enable the Court to take a view in accordance with law. Even in case Reply Affidavit is not filed by the

respondents, the Court has to consider the pleadings of the Writ petition and material available on record and thereafter take a view as to whether

any relief can be granted or not.

6. In the case on hand, allegations are made that the grave yard has been encroached upon. There are statutory/administrative Authorities, who can

look into this aspect of the matter and take a view after conducting enquiry and hearing the parties, who are affected by the orders of such

Authorities. The learned writ Court, in the peculiar facts of this case, has rightly not accepted the contention of learned counsel for the Appellants.,

more so, when the Civil Court decree is already passed in favour of the respondents.

7. The learned writ Court has rightly observed that the BOCA, a statutory Authority, cannot be restrained from exercising its statutory powers. If

any person files an Application before the Competent Authority and seeks permission for raising building on a particular piece of land, objection

can be raised before the said Authority by the aggrieved person(s). The statutory Authority, after considering the objections, can pass orders in

accordance with law but mandamus, to prohibit a statutory Authority not to exercise its powers, cannot be issued.

8. We are satisfied that the disputed questions of fact have been raised in the writ petition, which, in the facts of this case, cannot be adjudicated

upon, in exercise of writ jurisdiction.

9. For our above stated reasons, we find no merit in this Appeal. It is, accordingly, dismissed along with connected IAs. However, dismissal of this

Appeal and writ petition, shall not come in the way of the Appellants to approach the appropriate Authority for vindication of their legal rights, if

any available to them. Dismissed along with connected IAs.