
(2013) 11 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 3715 of 2012

Sikh Education Society

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 4 ALLMR 293

Hon'ble Judges : Z.A. Haq, J;A.B. Chaudhari, J

Bench : Division Bench

Judgement

A.B. Chaudhari, J.—Rule. Rule made returnable forthwith, with the consent of the rival parties. Sikh Education Society, Nagpur has filed the present Writ Petition, inter alia, praying for:-

(i) By suitable writ, order or direction, direct the respondents to stop burial of dead bodies at and remove unauthorized and illegal Graveyard/Kabristan situated on Kh. No. 86, Mouza Nari, Tahsil and District: Nagpur.

(ii) By appropriate writ, order or direction direct the respondents to ensure that no burying or burial of dead bodies is permitted on the said land in future.

2. In support of the Writ Petition, Mr. P.A. Abhyankar, learned counsel for the petitioner submitted that the petitioner is an Educational Society registered under the relevant Acts. In the year 2001, the petitioner-society was allotted part of the land in Khasra No. 81/1 admeasuring 3.78 hectares by the Government for establishing its Pharmacy College, which is functioning since then with an intake capacity of 400 students. The Respondent No. 6, an association of Muslims, encroached upon the adjoining plot after the allotment of land to the petitioner-society as aforesaid; and started burying the dead bodies treating it as Kabristan. According to learned counsel for the petitioner, the Development Plan nowhere shows any Kabristan in the said encroached area by the respondent No. 6 and, in the absence thereof, there should not be any activity of burial of dead bodies in the nearby Khasra No. 86 of Mouza Nari, Tq. &

Dist. Nagpur. Learned counsel for the petitioner then submitted that it is the boundened duty of the respondents to remove the said encroachment and prevent burying dead bodies by the Muslim community treating it as Kabristan for the simple reason that it is not an Kabristan area. The petitioner-society, its college and students are put to great inconvenience due to the act of burial of dead bodies in the said Khasra No. 86.

3. Per contra, learned counsel for the respondents including respondent No. 6, pointed out that during the course of hearing of the present Writ Petition, it was found that the burial grounds in the city of Nagpur, which has seen exponential increase in the population in the last two decades, have been found to be not available proportionally. The development continues unabated in the city of Nagpur but without making provision for burial of dead bodies in appropriate localities with appropriate area. The said site in Khasra No. 86 where the burial ground has been identified and is being utilized by respondent No. 6 and the Muslim community at large. Is being used since the year 1999 i.e. even before allotment of land in favour of the petitioner-society, which was fully aware of the activity of burial in the said burial ground. Learned counsel for the respondents then pointed out that the present Writ Petition was filed in May 2012 ventilating a grievance in respect of apathy and inaction on the part of the State authorities on the representations which were made on 30.5.2005 as averred in paragraph 6 of the Writ Petition, followed by representation dated 13.7.2005 for prevention of the use of the said land as burial ground and, as such, the petition is barred by delay and laches. Learned counsel for respondents then pointed out that the burial ground is being used for several years and it is not the forest land but was being wrongly shown as a forest land. At any rate, according to learned counsel for the respondents, by now, during pendency of the present Writ Petition series of developments have taken place and looking to the pressing need for burial ground for Muslim community, Khasra No. 86 has been found to be most suitable area for locating burial ground for the entire area, which has come up in the last two decades. Accordingly, the authorities, namely, the respondents, their District Planning Authority have taken a decision on 24.1.2013 to treat Khasra No. 86 as a burial ground for the Muslims. Under the said agreed position for necessary changes in the Development Plan, it was decided to send a proposal to the State Government under the Maharashtra Regional Town Planning Act, 1966 (in short "the Act of 1966") and accordingly by a letter dated 2.11.2013 the Nagpur Improvement Trust had forwarded the proposal to the Nagpur Municipal Corporation and is now awaiting further steps for action tinder the Act of 1966.

4. In reply, learned counsel for the petitioner invited our attention to the averments in paragraph Nos. 5 and 6 of the Writ Petition that the petitioner was making representations and, therefore, the petition does not suffer from delay and laches. He relied on the decision of the Hon'ble Supreme Court in the case of Shri Girish Vyas and Another Vs. The State of Maharastra and Others, more particularly paragraph 109 thereof, which reads thus,

109. The demolition was objected to by the appellants amongst others on the ground that there was delay and laches in moving the petitions to the High Court. It was submitted that if the petitioners were vigilant, they could have seen the building coming up from November 1996 onwards, but the petitions have been filed only in August 1998. According to them by the time the petitions were filed, the tenants' wing was complete, and even the other wing of Sundew Apartments was nearing completion. The Division Bench has rejected this submission in paragraph 220 of its judgment by observing that merely because a construction is coming up, a citizen cannot assume that it is illegal or that the developer had obtained the construction permission in a manner contrary to law. Besides, when the petitioner in Writ Petition No. 4434/1998 (who is Corporator) sought the information about the construction, he was informed by PMC that the same could not be made available under the relevant rules, though no such rules were shown to the Division Bench. The High Court has on the other hand noted that as a matter of fact even the construction of the building meant for the tenants was actually said to have commenced in March 1997 only. Hence, in the facts of the present case it could not be said that the writ petitions suffered on account of delay and laches, and therefore the High Court was right in rejecting that contention.

The learned counsel for the respondents, therefore, prayed for dismissal of the Writ Petition.

5. We have heard learned counsel for the rival parties at length. We have perused the entire record and proceedings. At the outset, we find that the city of Nagpur has grown rapidly in the last two decades, with the influx of the population in the city to a great extent of all communities. The planners did not make arrangement for cremation/burial grounds in the city as per the requirement of the population that has increased manifold in the last two decades. The position as on date is that there are less funeral/burial grounds in the city or even in the outskirts of the city where the new development has taken place. As a result of the said situation, people were compelled to identify government sites for treating them as funeral/burial grounds. The present one is the case of such a type. It is well-established from the records which we have seen from the Government, Nagpur Municipal Corporation and Nagpur Improvement Trust documents so also the uncontroverted averments in paragraph 2 of the written submissions on behalf of respondent No. 6 that a function of opening of the burial ground by the respondent No. 6 Muslim association was held on 19.11.1999 as seen from the invitation, posters and photographs on record. The allotment of plot was made to the petitioner-Education society in the year 2001 and, as such, it was impossible to believe that the petitioner-society did not know that nearby site in Khasra No. 86 was being utilized by Muslim community for burial ground. That apart, the fact is undisputed that the petitioner-society took the piece of land two years after activity of burial started in the burial ground i.e. Khasra No. 86. In other words, the petitioner is an allottee after the activity of burying started in the said burial

ground. It may be true that Khasra No. 86 has not been earmarked as a burial ground for Muslim community but then as already pointed out, due to lack of planning for burial ground in the Development Plan and for the reason that the Khasra No. 86 was handed over to Forests Department for garden in the year 1995 as Sarai land, appears to be the reason why the said land was left out. At any rate, the said Sarai land has been handed over to Forests Department for maintaining a garden and not for development of any forest. As earlier pointed out that there is a dire need in the city of Nagpur for the burial/funeral ground. If the petitioner does not like to have a burial ground as its neighbour, it cannot make a complaint since it was allotted the plot two years after the burial ground was opened. The petitioner society exists for its earning own huge profit of running a Pharmacy College as against the burial ground for Muslim community for nobody's profit. The public interests therefore, tilts in favour of respondent No. 6-Association for use of the said piece of Khasra No. 86 as a burial ground, viewed from the doctrine of "Utilitarianism". If the petitioner wants to have a luxury of not even looking at the burial ground, none has prevented it to have a wall obstruction towards the burial ground in their own plot. But to ask for a personal luxury of not having a burial ground near its College is something which cannot be countenanced.

6. That apart, we find that the petitioner-society has nothing to do with the said burial ground, except its apprehension of having a so called inauspicious burial ground near the College. The petition has been filed in May, 2012 whereas activity of burying dead bodies has been continuing since 1999 without any disturbance to anybody. In our opinion, the petition is hopelessly barred by delay and laches and is liable to be dismissed on that count also. The judgment cited by the learned counsel for the petitioner is not applicable since the facts of the said case are exactly the other way. Moreover, in that case the public interest that was involved, was in favour of the State and the citizens while in the present writ petition the public interest is in favour of the cemetery/Kabristan for Muslims. During pendency of the present proceedings before this Court a plethora of developments have taken place and, in fact, it is due to institution of the present petition the activity to recognize Khasra No. 86 as burial ground started when as a matter of fact it was the duty of the Planners and State Government to have shown Khasra No. 86 as the burial ground. We have seen the proceedings of the District Planning Development Committee so also the correspondence between NMC and NIT. We are quite satisfied and happy that at least at such a late stage the public representatives of this District and other authorities have, for dire need of the burial ground in Khasra No. 86, prepared a proposal for change in the user of Khasra No. 86 as a burial ground from that of a garden or as the case may be for the forests department. We have seen the communication dated 2.11.2013 which is taken on record and marked "X" for identification's sake. The said communication is issued by the N.I.T. addressed to the Commissioner, Nagpur Municipal Corporation with reference to the proposal for change of user of Khasra No. 86. We are satisfied that the said proposal ought to be processed

and finalised in accordance with Act of 1966 as expeditiously as possible and, at any rate, within certain stipulated period. That being so we think the following order would subserve the interests of justice.

ORDER

(1) Writ Petition No. 3715/2012 at the instance of the petitioner is dismissed.

(2) The Nagpur Municipal Corporation, Nagpur Improvement Trust and State Government are directed to complete the proposal for change of user and decide the same in accordance with M.R.T.P. Act, 1966 in respect of the lands proposed for burial ground, as expeditiously as possible and, in any case, within a period of six months from today.

(3) The Forest Department of the Government of Maharashtra shall take steps to allow change of user of garden of Forest Department or as the case may be, as burial ground for Muslim-Kabristan, on the lands proposed by District Planning Development Committee, Nagpur Municipal Corporation and Nagpur Improvement Trust.

(4) The Nagpur Municipal Corporation which has received the communication dated 2.11.2013 shall complete the scrutiny and placement thereof before the appropriate authority within a period of two months from today and, thereafter the State Government is directed to allow change of user in the Development Plan within a period of next four months and report a compliance to this Court accordingly.

(5) No order as to costs.