

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
CIVIL REVISION APPLICATION NO.54 OF 2011

M/s Kothari Builders, Parbhani  
and others

Petitioners

Versus

The Maharashtra State Board of  
Wakf, through its Chief Executive  
Officer, Aurangabad & others

Respondents

Mr.P.V.Mandlik, Senior Counsel holding for Mr.A.S.Gandhi, advocate for  
petitioners.

Mr.P.R.Katneshwarkar, advocate for respondent no.3.

**CORAM : R.M.BORDE, J.**

**DATE : 23<sup>rd</sup> March, 2011**

**PER COURT:**

1            Heard Shri P.V.Mandlik, learned Senior Counsel holding for  
Shri A.S.Gandhi, advocate for petitioners and Shri P.R.Katneshwarkar,  
learned Counsel for respondent no.3.

2            **Rule.**

3            The order passed by the Wakf Tribunal directing  
impleadment of 30 persons as defendants in the suit presented by the  
petitioners herein, on consideration of an application tendered by original  
defendant no.3, is subjected to challenge in this Civil Revision  
Application.

4           In a suit presented by plaintiffs, the only relief that is claimed, is in respect of quashment of the order passed by the Chief Executive Officer, Maharashtra State Board of Wakf, Aurangabad, on 15.04.2004. The petitioners herein were admittedly party before the Chief Executive Officer and after considering the contentions raised by the petitioners as well as respondents including complainant, the Chief Executive Officer has passed an order directing removal of alleged encroachment committed by petitioners herein. The thirty individuals, who are requested to be impleaded as defendants in the suit, are stated to be the persons in whose favour interests have been created in the property by the petitioners and those persons are stated to be in possession of the property. However, those 30 persons/subsequent purchasers were not impleaded in the proceedings before the Chief Executive Officer.

5           It is well established that the plaintiffs/petitioners herein are the *dominus litus* of the proceedings initiated by them. Plaintiffs/petitioners take the risk of non impleadment of necessary parties. The impleadment of third parties is sought by one of the defendants. Those who are requested to be impleaded have not come forward nor the plaintiffs have consented for their impleadment. The order passed by the Wakf Tribunal directing impleadment of third parties as defendants, on consideration of application tendered by one of the defendants, *prima facie*, appears to be unwarranted.

6           Shri Katneshwarkar, learned Counsel appearing for the respondent no.3, has invited my attention to a judgment in the matter of

**Kasturi Vs. Iyyamperumal**, reported in AIR 2005 SC 2813. In paragraph 12 of the judgment, it is recorded as under:

“From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

7 In my view, presence of the third party is neither necessary nor proper for consideration of prayer made by plaintiffs/petitioners herein in the plaint presented to the Wakf Tribunal. They cannot be considered as necessary or proper parties for adjudication of dispute raised by plaintiffs / petitioners before the Wakf Tribunal. The observations made in the order are of *prima facie* nature.

8 In this view of the matter, the impugned order passed by the Wakf Tribunal on 24.02.2011, directing impleadment of the parties, on consideration of an application tendered by original defendant no.3, shall stand stayed.

**R.M.BORDE**  
**JUDGE**

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