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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10602 OF 2015

Ravindra S. Tambe & Anr. ...Petitioners
vs.
The Commissioner of Solapur
Municipal Corporation & Ors. ...Respondents

Mr.Ashok B. Tajane for the Petitioners
Mr.V.S.Gokhale, AGP for the State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : OCTOBER 23, 2015

P.C.:

. Not on board. Taken on board.

1 Heard the learned counsel for the petitioners. The submission of the learned counsel for the petitioners is that the structure of the temple in which the idol of Goddess is installed is in existence from the year 1996, and therefore, as per the Government Resolution dated 5th May 2011, a case for regularization of the said structure ought to have been considered by the concerned Authority. He submitted that the petitioners have already applied for regularization of the unauthorised construction. He submits that there is a suit pending in the Civil Court where the prayer is for demolition of the said structure. He states that one such suit has been already dismissed. He further states that the temple is not a permanent temple of Goddess. The contention of the learned counsel for the petitioners is that every year, during 9 days of

Navratri, the idol is removed from the structure and therefore, strictly it is not a temple. He, therefore, submits that the impugned action of passing order of directing demolition of the temple is completely illegal as the guidelines in the Government Resolution dated 5th May 2011 have not been implemented.

2 We have considered the submissions. The GR dated 5th May 2011 is issued on the basis of the directions issued by the Apex Court in Special Leave Petition (Civil) No.8519 of 2006 (Union of India Vs. State of Gujrat and others). As per the decision of the Apex Court and even as per the aforesaid G.R, no illegal religious structure constructed after 29th September 2009 can be protected and such religious structures are required to be demolished.

3 The contention of the learned counsel for the petitioners that the present structure of the temple is in existence right from the year 1996 is completely false as can be seen from the averments in clause (A) of paragraph 2 which reads thus:

"2(A)...Above plot is admeasuring 691.19 sq.mtrs., the petitioners have constructed a Devi Mandir in the year 1996 with bricks and iron sheet on the top. However, in the year 2012 there was a leakage in the roof, therefore, the roof of iron sheet is removed and slab has been put over the four walls and plaster of the said structure is done..."

(underline added)

4 Even assuming that the original structure was in existence in the year 1996, admittedly in the year 2012, a new construction having RCC slab has been made by the petitioners without obtaining any permission. Therefore, the admitted position is that the present structure has come into existence in the year 2012 in which idol of Goddess has been installed.

5 Going by the averments made in the petition, it is a full fledged temple and the idol is shifted outside the temple only for 9 days in a year. Therefore, as per the directions of the Apex Court, this religious structure which is erected in the year 2012 cannot be protected. The petitioners have taken law into their hands and have brazenly made RCC construction in the year 2012. The petitioners cannot be allowed to commit a gross illegality in the name of the religion.

6 As the structure is completely illegal which is not protected by any policy, the same cannot be regularized. On the contrary, as per the directions of the Apex Court, religious structures erected after 29th September 2009 are liable to be demolished. Hence, no case for interference under Article 226 of the Constitution of India is made out. Writ petition is rejected.

(A.S.GADKARI,J.)

(A.S.OKA,J.)