

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.3018 OF 2015

Shri. K. Ravi Kiran and Anr.	}	Petitioners
versus		
Senior Inspector of Police	}	
Malbar Hill Police Station	}	Respondent

Mr. M. M. Vashi – Senior Advocate with Ms. Aprna Deokar and Mr. S. M. Sharma, Mr. Makarand Kale, Ms. Panthi Desai and Ms. Juile i/b. M/s. M. P. Vashi and Associates for the Petitioners.

Mr. D. A. Nalawade – Government Pleader for the Respondent.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- OCTOBER 20, 2015

P.C. :-

The papers in this Petition were permitted to be produced on account of the urgency pointed out by the Junior Advocate Ms. Deokar yesterday i.e. 19th October, 2015. Accordingly, the papers were produced today in the morning session. However, Since the learned Government Pleader, who was to appear on notice, was busy in another Court, we placed the matter in the afternoon session.

2) In the morning session, we had also requested Mr. Saluja assisting the Government Pleader to contact the concerned police official and attached to Malabar Hill Police Station. He be directed to remain present with the original records. Accordingly, the senior police official is present with the original record.

3) By this Petition under Article 226 of the Constitution of India, the Petitioners are challenging an order at Annexure 'F' page 27 of the paper book, whereunder, the Senior Police Inspector, Malabar Hill Police Station has addressed a communication to one Satish Dhavale dated 19th October, 2015. This Mr. Dhavale had sought permission to arrange a Dandia Raas function in the premises of Revenue Apartment, Narayan Dabholkar Road, Malabar Hill, Mumbai. The Senior Police Inspector has communicated and with reference to this application that the permission sought is rejected.

4) Mr. Vashi, learned Senior Counsel appearing in support of this Petition submits that this order is *ex-facie* illegal and deserves to be quashed and set aside. The impugned communication, in which the order and direction is contained, sets out no reasons at all. It is a one line order, wherein, the Petitioners have been told that the application is rejected. The Petitioners state that they and other State Government employees celebrate Navratri festival on one day. It is ordinarily prior

to one or two days to the main event of “Dassehra”. They had sought police permissions and to arrange similar function at the same premises in the year 2012, 2013, 2013 and 2014 respectively. The very same event is to be celebrated tomorrow. The Petitioners made applications well in advance, namely, 7th October, 2015 and 11th October, 2015. Though these applications were received well in advance, the concerned police station rejected the applications and refused the permission sought, by the impugned communication on the very last day. The order is dated 19th October, 2015.

5) Apart from attacking the order on the ground that it contains no reasons, Mr. Vashi would submit that adjacent to the building and premises is another complex known as Rocky Hill. That houses the sitting Judges of this Court. It also houses other government officials. Within the premises of Rocky Hill Complex and adjacent to the buildings located therein, Ganpati Festival is celebrated and by using similar facilities such as loudspeaker etc., but none of the residents or occupants of the complex have ever complained about such event. Similarly, there are slums and slum like colonies adjacent to and nearby the complex. These slum dwellers celebrate Navratri for entire 10 days, but nobody has raised objection with regard to such celebration. Therefore, if selectively some objections and that too of high dignitaries are taken into consideration and that is used as reason

to reject the application, then, the impugned order is not only illegal but also arbitrary and discriminatory. It violates the mandate of Article 14 of the Constitution of India.

6) Mr. Vashi has, from the Google Map, submitted that there are no vital installations such as hospitals or educational institutions, because of which any restrictions on holding such cultural events can be placed. There is also no reason to deny the request because the function or event organised by the residents of the Revenue Apartment had never resulted in noise pollution or causing disturbance, nuisance to the residents of nearby buildings. There are other buildings opposite the Revenue Apartments and in the surrounding, but none of them have any objection. Therefore, if merely some occupants and who are sitting Judges of this Court have objected to the event adjacent to Rocky Hill Complex, then, these objections have alone resulted in refusal of the permission. That could never be a justifiable ground. Thus, intervention and complaints by such high dignitaries has resulted in refusal of the permission. The extraneous factors have been, therefore, taken into consideration.

7) Since during oral arguments, Mr. Vashi mentioned the above that we called upon Mr. Saluja to produce the original files and records.

8) We also indicated to Mr. Vashi that as a Senior Counsel he can peruse the files, which contain only the letters addressed by the Prothonotary and Senior Master of this Court from time to time. These letters highlight the disturbance caused on account of such events being celebrated in the vicinity of Rocky Hill Complex. One such instance is mentioned and that of a building nearby. Even in the orders of this Court in other matters and relied upon demonstrate that complaints of noise pollution, nuisance have been made throughout Mumbai. The conditional orders granting permissions have been violated.

9) It is undisputed before us that the permission was sought on behalf of Cassi Mitha Building, the Central Revenue Apartments. These are residential buildings containing flats and apartments meant to house the Revenue Department and Central Government employees. These officials and housed in these complex styled as Revenue Apartments may have in the past sought permissions for holding of event on a day prior to Dassehra to celebrate Navratri/Dandia Raas. The permission sought is to hold cultural programme styled as Garba/Dandia Raas. The permission sought is on the condition that admission is free and restricted to members only. It is stated that proper parking arrangement without any public nuisance would be made and that in the past permissions have been granted.

10) That in the past permissions have been granted and similar permission has been sought for this year and for holding identical event does not *ipso facto* mean that it must be granted. Those residing in buildings meant to house serving government officials and that too Revenue Officials cannot claim any vested right to hold a event and to celebrate any festival with the use of loudspeaker etc. None can erect pandal and to hold such cultural programmes. Such festivals and celebrations associated with Navratri do not necessarily mean that they are integral practices or essential to the festival recognised in Hindu religion. In Hindus, Navratri festival may be special and a festive occasion. Such religious festivals, where Goddesses are worshiped and prayers are offered would not necessarily enable the citizens and residents to erect pandals and install therein idols at any and every place for worship. It may be that dance or cultural event styled as Dandia Ras/Garbha is associated with the festival. However, that cannot be celebrated at a public or private place as an absolute right. The reasonable restrictions have to be placed on such celebration and approvals and permissions have to be obtained from competent authorities. They may be or may not be granted. However, these cannot be claimed as of right and year to year. As the Hon'ble Supreme Court time and again holds, a practice which is religious and essential and integral to a religion may be held at a particular place and of

special significance to that religion. However, such practice though essential and integral may not be associated with any such place nor such place of special significance which is selected to hold any religious function or to practice any rituals. Therefore, as the Hon'ble Supreme Court holds in the case of *Dr. M. Ismail Faruqui etc. vs. Union of India and Ors.* reported in **AIR 1995 SC 605** at paras 80, 81 and 85 that the festivals and religious events may be a part of citizens' right to profess religion or assert a right of worship. However, the right to practice, profess and propagate religion guaranteed under Articles 25 and 26 of the Constitution of India does not necessarily include the right to worship at any place so that a refusal to perform it at a particular place *per se* may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution of India. The protection under Articles 25 and 26 of the Constitution of India is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. While offering of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or

integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.

11) Once the settled legal position is noted so also the nature of premises and the event, which is subject matter of this Petition, then, we cannot agree with Mr. Vashi that merely because in the past such permissions were granted and on conditions and they were not found to have been violated or breached, then, even for this year, the permission must follow. Such absolute right cannot be claimed and merely because in the adjacent building or residential complexes housing such high dignitaries and VIPs and sitting Judges of this Court, some events have taken place or used to take place would not give a right to the Petitioners to claim the permission to hold the cultural event within their premises. We do not find that such an act on the part of any resident would confer a right in the Petitioners. There are some events and there are some functions noisy as they may be, but they are suffered and tolerated by the public. On that basis, we cannot hold that others have a right. Merely at slums around Rocky Hill Complex such functions are held and they are causing nuisance but never any complaint was made in that regard by itself and without anything more would not confer a right in the Petitioners to a permission. We do not think that the original documents, which have been produced, contain

any specific names of occupants, much less sitting Judges, as is orally projected. That there are some orders passed by this Court, on which reliance is placed would not mean that the permission should be granted as a matter of right. We have only found some letters addressed by the High Court Administration and like any other ordinary residents and citizens of this country, the sitting Judges also have a right to bring to the notice of the High Court Administration any disturbance to the public peace or any disturbance or nuisance to them and if the High Court Administration projects and highlights or follows it up with the police and local administration that does not mean that any individual's bias, likes or dislikes or prejudices have been protected. The High Court administration ordinarily takes care of the Judges' official residence and equally takes up issues raised by the individual occupants. That does not mean that it is prevented in law to raise their grievances or bring them to the notice of the competent authorities.

12) We do not find any basis for the complaint in the Petition. As a result of the above discussion, we do not find any merit in the Petition. It is dismissed. No costs.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)