

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2417/2014

(LOPNATH SHIVLAL TANDIL **VERSUS** THE COLLECTOR, AMRAVATI & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri U.J. Deshpande, counsel for the petitioner.
Ms T.H. Udeshi, A.G.P. for the R-1.
Shri S.S. Shingane, counsel for the R-2.
Shri S.S. Wahane, counsel for the R-3.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATE : JULY 15, 2015.

Heard.

By this petition, the petitioner challenges the order of the respondent no.2-Municipal Corporation dated 04.04.2014 directing the demolition of the unauthorized construction of the Hanuman Temple on a public utility plot in the Anandwadi area.

According to the petitioner, the petitioner resides near the Temple and is a worshiper of Lord Hanuman. The petitioner claims to be the president of the Hanuman Mandir Trust which is claimed to be a registered public trust under the provisions of the Bombay Public Trusts Act, 1950. According to the petitioner, the respondents are not entitled to seek the demolition of the Temple on the basis of the directions issued by the High Court in certain writ petition and also the Government Resolution dated 05.05.2011 as the Temple is constructed on the public utility land before since 1997.

The respondents have filed the separate affidavits-in-reply. It is stated in the affidavits-in-reply that the Corporation is taking action against the unauthorized structure in pursuance of the Government Resolution dated 05.05.2011. According to the

respondents, the Temple is illegally constructed on the land reserved for public utility and, hence, the Temple cannot be regularized in view of the Government Resolution dated 05.05.2011. It is denied by the respondents that the Hanuman Temple was constructed on the public utility plot in the year 1997 and it is stated that the Temple is constructed recently. The respondents have also disputed the existence of the trust and the averment that the petitioner is the president of the same.

On hearing the learned counsel for the parties, and on a perusal of the affidavits-in-reply filed on behalf of the respondents, it appears that the issue involved in this writ petition cannot be decided in exercise of the writ jurisdiction under Article 226 of the Constitution of India. There is a serious dispute about the construction of the Temple in the year 1997 and the registration of the trust and the capacity in which the petitioner has filed the instant petition. In stead of availing the other remedies in which the parties would have been entitled to tender evidence both, oral and documentary, the petitioner has approached this Court seeking the aforesaid relief. The relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction and the respondent no.2- Municipal Corporation cannot be directed to regularize the Temple. The petitioner is free to avail the other remedies, if advised.

In the result, the writ petition is dismissed with no order as to costs.

The points raised in the petition are kept open.

JUDGE

JUDGE