

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CIVIL APPLICATION (L) NO.22675 OF 2016

IN

WRIT PETITION NO.4109 OF 2015

Ganpati Chowk Mitra Mandal ...Applicant

IN THE MATTER BETWEEN

Popatlal L. Navalakha & Anr.Petitioners.

Vs.

State of Maharashtra & Ors.Respondents.

Mr. T.D.Deshmukh with Mr. Abhijit T. i/by A. Tripathy, Advocates for the Applicant.

Mr. R.S.Kadam, Advocate for the Respondent Nos.6 and 7 in Civil Application.

Mr. A.P.Kulkarni, Advocate for R.No.2 in Civil Application.

Mrs. M.P.Thakur, AGP for R.Nos.1, 3 to 5.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 1ST SEPTEMBER, 2016.

ORDER:-

Heard Mr. Deshmukh the learned counsel for the Applicant, Mr. Kulkarni the learned counsel for Respondent No.2-Pune

Municipal Corporation and Mrs. Thakur the learned AGP for Respondent Nos.1 and 3 to 5.

2 This Civil Application is filed seeking directions to the Respondent No.2 to grant permission to the Applicant for erection of Pandal for the purpose of Ganesh Utsav on such conditions as this Court may deem fit.

3 Respondent Nos.6 and 7 filed the above Writ Petition. The Petition is already admitted. So far as the interim relief claimed in the Petition is concerned, the Division Bench of this Court (Coram: A.S.Oka & G.S.Patel, JJ.) passed the following order on 11.12.2015 (Ex.'C' Page 12 of this Application).

“1. Heard the learned counsel appearing for the Petitioners and the learned counsel appearing for the Respondent No.6. We have heard the learned AGP for the State of Maharashtra as well as the learned counsel appearing for the Pune Municipal Corporation. The affidavits on record and the orders passed by this Court from time to time show that the Respondent No.6 erected a pandal in the lane without obtaining any permission from the Pune Municipal Corporation. Though the Pandal was removed and reerected after obtaining

the permission, the Respondent No.6 covered the entire lane by tin sheets as can be seen from the photographs from pages 275 onwards. The affidavit of Shri Amit Ramchandra Katti on behalf of the Respondent No.6 tendered across the bar today which is affirmed on 7th October 2015 and the photographs annexed to the affidavit show that after erection of the pandal, an ambulance could enter the lane only through the pandal and there was no space outside the pandal for passing of the ambulance. The photographs annexed at ExhibitB show that the ambulance could barely pass through the pandal and there was no sufficient side space available on both the sides of the ambulance. It is obvious that a fire engine could not have entered the lane after the pandal was erected.

2. Considering the conduct of the Respondent No.6 and considering the manner in which the pandal was erected, hereafter permission shall not be granted to the Respondent No.6 by the Municipal Corporation to erect a pandal without seeking leave of the Court.

3. Another grievance made by the Petitioners is about the parking of vehicles inside the lane. The affidavit of Shri Shankar Rambhau Damase, the Police Inspector of Vishrambaug Traffic Division, Pune City, takes care of this grievance. We accept the statements made therein.

4. Hence, we dispose of the prayer for interim relief by passing the following order.

ORDER :

(a) We restrain the Pune Municipal Corporation from granting permission to the Respondent No.6 or to any one else to erect the pandal in the lane in question for any religious festival without seeking the leave of this Court;

(b) The hearing of the Writ Petition is expedited.

(G.S. PATEL, J)

(A.S. OKA, J)

4 In the light of above order, the present Civil Application is filed by the Applicant (Original Respondent No.6) for the reliefs as noted above. Mr. Kadam the learned counsel for the Respondent Nos.6 and 7 (Original Petitioners), at the outset, took objection to the maintainability of the Application. His submission was that the Corporation must come before this Court for the grant of permission. We do not find merit in the submission since the order dated 11.12.2015 passed by the Division Bench in the above writ petition does not contemplate that only Corporation can apply for grant of leave to erect Pandal. By the said order, the Respondent No.2- Corporation has been restrained from granting permission to the Respondent No.6 or to anyone else to erect the Pandal in the lane in question for any religious festival without seeking leave of this Court.

The order does not contemplate that only Corporation should seek the leave. In compliance of this order, the Applicant has sought leave and, therefore, the application is perfectly maintainable.

5 Mr. Deshmukh, the learned counsel for the Applicant states that the Applicant shall erect Pandal in the lane in question only if permission is granted by the Corporation. He also states that the Applicant will abide by all the terms and conditions that may be imposed by the Corporation. He states that utmost care will be taken to ensure that there would be no obstruction to vehicular traffic in particular, ambulance. Statements accepted.

6 Mr. Kadam, the learned counsel for the Respondent Nos.6 and 7 opposed this application. He expresses his apprehension that the Respondent No.2-Corporation is in connivance with the Applicant and the former would grant permission to erect Pandal in violation of the guidelines.

7 Mr. Kulkarni the learned counsel for the Respondent No.2, however, states that in the event, this Court grants leave and the

Applicant applies in accordance with the guidelines, permission would be given to erect Pandal in accordance with law. Statement accepted.

8 In the above facts and circumstances, we dispose of this application by passing the following order:

(1) Respondent No.2-Corporation is granted leave to consider Applicant's application filed on 3.8.2016 to erect Pandal in the lane in question and grant permission provided the Applicant complies with the guidelines of 2015.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)