

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9878 OF 2015**

Shri Govind Yashwant Gurav & Anr.

... Petitioners

**VS.**

Shree Dev Gangeshwar Vishwastha  
Vyavastha, Ayanari & Ors.

... Respondents

Mr. Anand S. Patil for the Petitioner.

Ms. Jyoti Jadhav, AGP for the Respondent Nos.2 to 6/State.

Coram : **A.A. Sayed &  
Manish Pitale, JJ.**

Date : 05 October 2017

**P.C. :**

1 On 23 March 2016 this Court had passed the following order:

“1. Issue notice before admission to the Respondents, returnable after four weeks. Humdust permitted. Shri Kakade, learned AGP waives service of the notice on behalf of Respondent Nos.2 to 6.

2. The grievance of the Petitioners is that the Respondents have issued a notice under section 149 of the Cr.P.C. and have restrained the Petitioners, who have the lawful rights to perform the pooja in the temple. It is submitted that the police personnel have already been deployed at the said place and therefore the situation of law and order has arisen.

3. The learned counsel for the Petitioners has relied on a judgment of the Apex Court in the case of **Gulam Abbas and Ors Vs. State of U.P. And others [ AIR 1981 Supreme Court 2198]**. The Apex Court in the said case has observed that if there are existing or established rights of individuals to perform

their religious function, then it is the duty of the police to provide police protection. The Apex Court in paragraphs 30 and 32 has observed as under:

“30. In Haji Mohammad Isamil v. Munshi Barkat Ali (1923) 24 Cri L.J. 154 : (AIR 1922 Cal 483) there was a dispute concerning the conduct of a prayer in a mosque, and there being an apprehension of breach of peace the Magistrate under Sec. 144 drew up a proceeding and eventually recorded an order that “no man of either party will be allowed to read prayers in the mosque”. The Court held that the order was misconceived; that if the effect of the order was that no Muhammadan would be allowed to say his prayers in the mosque it was not justified under Section 144 and that the proper course was for the Magistrate to ascertain which party was in the wrong and was interfering unnecessarily with the legal exercise of the legal rights of the other party and to bind down that party restraining them from committing any act which may lead to a breach of peace . (Emphasis supplied).

32. Having elaborated the principles which should guide the exercise of that power we hope and trust that in future that power will be exercised by the executive magistracy in defence of such established rights of the petitioners and the Shia community and instead of prohibiting or suspending the exercise of such rights on concerned occasions on the facile ground of imminent danger to public peace and tranquility of the

locality the authorities would make a positive approach to the situation and follow the dictum of Turner C.J. That if they are satisfied that the exercise of the rights is likely to create a riot or breach of peace it would be their duty to take from those from whom disturbance is apprehended security to keep the peace."

4. In the present case, a declaratory relief has been granted in favour of the Petitioners by the Civil Court and the Civil Court has held that the Petitioners have the rights to perform their religious function in Respondent No.1 temple. We are, therefore, of the view that the police cannot, by taking recourse of section 149 of the Criminal Procedure Code, prevent the Petitioners from performing their religious pooja. We, therefore, direct the police to increase 'bandobast' at the site and ensure that an untoward incident shall not take place. The Petitioners shall also co-operate with the police to maintain harmony and tranquility during Holi festival.

Stand over to 20.4.2016."

2 Learned Counsel for the Petitioner states that the Petitioners will be satisfied if this order is made absolute and the Petition is disposed of.

3. In the circumstances, we dispose of the Petition by making an order dated 23 March 2016 absolute. We reiterate that it will be the responsibility of the police to ensure that no untoward incident takes place on the festival days.

**(Manish Pitale, J.)**

**(A.A. Sayed, J.)**