

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

WRIT PETITION NO. 5431 OF 2017

Madarsah Anjuman Garib Nawaz

...Petitioner

Versus

Mira Bhayandar Municipal Corporation & Anr.

...Respondents

.....

Mr.Sandesh Patil a/w. Mr. Jeet Gandhi i/b. Mr. Chintan Y. Shah for
the Petitioner.

Ms. Pooja R. Singh i/b.Mr. Mayuresh S. Lagu for Respondent
No.1.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MAY 4, 2017**

P.C. :

1. Not on board. Upon mentioning, taken on board.
2. Rule. Rule made returnable forthwith. By consent, the petition is heard finally and disposed of at the stage of admission.
3. This petition is directed against the order dated 15.04.2017 passed by the learned District Judge-5 and Additional Sessions Judge, Thane thereby dismissing the appeal is under challenge.
4. The learned counsel for the petitioner submits that the petitioner has filed Regular Suit No. 682 of 2016 for a declaration

and injunction challenging the notice dated 10.06.2016 issued by the Corporation i.e. respondent no. 1 for demolition of Madarsah and directing to relocate the suit property. As per the case of the petitioner, they are running Madarsah since 2002 on a private land owned by the petitioner.

5. As per submission made by the learned counsel for the respondents i.e the Corporation, the suit land is reserved for the playground as per development plan of the Corporation.

6. The learned counsel for the petitioner submits that the notice given by the Corporation is illegal and not in consonance with the directions given by the **Division Bench of this Court in P.I.L. No. 104 of 2010 on 01.10.2016** (Society for Fast Justice & Anr. vs. The State of Maharashtra & Ors.). He further submits that Madarsah is not on public street and therefore, it cannot be covered under the directions of the implementation given by the Division Bench of this Court. He further submits that the Corporation has to follow the procedure under the M.R.T.P. Act and no notice can be given. He further submits that if the Madarsah is standing on the private land, it is necessary for the Corporation to take steps for acquisition of the said land and after acquiring the said land, the

development plan can be considered as reserved for playground. He further submits that it is not a public place, but standing on a private land and therefore, the notice issued by the Corporation is illegal. He further submits that the order dated 15.04.2017 passed by the learned District Judge-5 and Additional Sessions Judge, Thane needs to be set aside.

7. The learned counsel for the respondents has relied on the judgment and order dated **02.05.2016 passed by the Apex Court in Special Leave Petition No. 8519 of 2006** (Union of India v. State of Gujarat and Ors.). She further submits that the Corporation has followed the direction of the Supreme Court and also the G.R. dated 05.05.2011, which was issued pursuant to the compliance of the order of the Supreme Court. She further submits that the structure of Madarsah falls under 'B' category structure as per G.R. and therefore, it cannot be regularized as it falls under reservation area for playground.

8. Perused the orders of the Supreme Court in SLP No. 8519 of 2006 and also Division Bench of this Court. In **Special Leave Petition No. 8519 of 2006**, the Supreme Court has given a

specific direction to the State Government to review the possession of the unauthorized religious construction/ unauthorized religious structures pursuant to which G.R. was issued.

9. Perused the order dated 26.09.2016 passed by the learned 4th Jt. Civil Judge, Senior Division, Thane rejecting the temporary injunction application. He has considered that no documents were produced to show that the land where the Madarsah is standing on is a private land. It is admitted that in the development plan of Mira Bhayandar Municipal Corporation, the survey no. 122 is reserved for playground. The learned judge has rightly held that the documents showing ownership or title of the petitioner in the suit land were not produced. Similarly, today also these documents are not produced, so also permission or approved plan by the Corporation in respect of the structure of Madarsah is not produced in the petition. This fact is dealt with *prima facie* by the learned Civil Judge Senior Division, Thane. Similarly, the learned District Judge, Thane has also considered the G.R. where unauthorized religious buildings are categorized under 'A' and 'B' category and the present building falls under 'B' category, which cannot be regularized.

10. Moreover, it appears that the notice was given not only for demolition but also for relocation of the structure.

11. It is submitted by the learned counsel for the respondents i.e. the Corporation that if the building is going to be relocated, then the Corporation will give permission to the said structure.

12. In view of this, I considered the G.R. and also considered the concurrent findings given by both the Courts. The Corporation has given due notice to the petitioner. This petition is taken on production and I do not find good case in the absence of relevant documents. I do not find any reason to set aside the order passed by the learned District Judge-5 and Additional Sessions Judge, Thane. Hence, no case is made out.

13. The learned counsel for the petitioner submits that in view of this order, nothing remains in this Petition, hence it is dismissed.

(MRIDULA BHATKAR, J.)