

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

WRIT PETITION NO. 10614 OF 2017

1. Shafique Ahmed Khan, age 49 yrs,
Adult, Indian Inhabitant of Mumbai,
President of Masjid Madarsa
Gulshan-E-Madina having its office at
Shivaji Nagar, Shiravane, Jopatpatti,
Nerul, Navi Mumbai – 400 706.

2 Darul Uloom Ahlesunnat
Gulshan-E-Madina,
A Public Trust, registered under provisions
of the Maharashtra Public Trust Act, 1958,
under the Registration No.158 of 1998,
Thane, having their registered office at 485,
Shivaji Nagar, MIDC Road, Nerul,
Navi Mumbai – 400 706.

... Petitioners

V/s.

1 State of Maharashtra
2 Maharashtra Industrial
Development Corporation,
A State Government undertaking, having
Its office at Mahape, Navi Mumbai
3 The Municipal Corporation Level
Committee,
constituted pursuant to the GR dated
5.5.2011, having their offices at
Mahape, Navi Mumbai.
4 The Deputy Engineer,
Special Planning Authority,
M.I.D.C., Mahape, Navi Mumbai.

... Respondents

Mr. R.D. Soni a/w Mr. Bipin J. Joshi for the Petitioners.

Mr. S.B. Kalel, A.G.P. for the State-Respondent No.1.

Ms. Shyamali Gadre a/w Ms. Shamira Naik i/b Little & Co. for
Respondent Nos.2 and 4.

Mr. Sandeep V. Morne a/w Mr. Mandar Bagkar for Respondent No.3.

**CORAM : ANOOP V. MOHTA AND
MANISH PITALE, JJ.**

DATE : 17th NOVEMBER, 2017.

ORAL JUDGMENT [PER : ANOOP V. MOHTA, J.]

1 Rule. Rule is made returnable forthwith. Heard finally
by consent of both the parties.

2 The Petitioners have challenged Resolutions dated
14.06.2017 and 10.08.2017 of Respondent No.3-Municipal
Corporation Level Committee and orders dated 11.09.2017 and
18.09.2017 issued by Respondent Nos.2 and 4-MIDC respectively and
thereby directed to demolish the religious structure of the Petitioner
trust situated at Shivaji Nagar, Nerul, Navi Mumbai. The religious
but unauthorized structure is in existence since last 19 years. The
community have been carrying out various religious/ charitable
activities.

3 Admittedly, as per the Respondents record, the structure
is unauthorized. There is no application and/or proceeding initiated
to till date to regularize the same. Admittedly, the Division Bench of
this Court by its judgment dated 01.10.2016 has in Public Interest

Litigation No.104 of 2010 issued the directions in paragraph 38 more particularly in sub-paragraphs (d), (e) and (f) thereof, which are as under :-

(d) We direct the State Government to issue directions to the Committees constituted under the said GR dated 5th May 2011 to undertake exercise of identifying illegal religious structures or shrines erected on all the public properties in the State. Needless to add that after identifying such illegal religious structures, the same shall be divided into two broader categories as provided in the said GR of the structures erected prior to 29th September 2009 and the structures made after 29th September 2009. As provided in the said GR, all structures erected after 29th September 2009 shall have no protection. The structures erected up to 29th September 2009 shall be divided into three categories as provided in the said GR dated 5th May 2011. Needless to add that out of these structures which will fall in the “B” category cannot be tolerated will have to be demolished; (e) We direct the State Government to complete the said exercise of identifying and categorizing the illegal religious structures including classification of various structures on the public properties till 31st March 2017;

(f) Depending upon the large number of structures identified, the State Government shall take appropriate decision fixing a reasonable outer limit for implementation in terms of the said GR dated 5th May 2011. Such outer limit shall be fixed by issuing Government Resolution which shall be placed on record along with the compliance affidavit;

4 Recently, the High Court has issued directions to take steps, without further delay, to implement the order/directions so referred above in the Public Interest Litigation. The Respondents local authorities are under obligation to demolish after identifying such unauthorized religious structures.

5 Based upon the judgment and the Government Circular, Respondents, in the present fact and circumstances, have identified the Petitioners' religious structure which is required to be demolished pursuant to the judgment/directions referred above. This is also for the reason that though time was provided and period was fixed, there was no application and/or objection filed of any kind by the Petitioner before the appropriate authority to justify and/or to support their case that the structure in question is in exempted category or is not liable to be demolished. As there was no such objection inspite of the public notice given, the concerned Respondents, based upon the material available with them and keeping in mind the admitted position on record about the unauthorized religious structure and the directions so issued, have taken the decision to demolish the structure, as it falls within the ambit of the Resolutions and the judgment. The impugned notice/action, therefore, is well within the frame work of law.

6 The submission that though they have not filed objection with documents within the prescribed period as per the public notice, still the Respondents concerned, could have considered their case and should not have passed the order; therefore, they are entitled to be heard is unacceptable. Once the public notice is given and the period as prescribed is over, in such matters, there is no special reason to grant or permit the Petitioner to agitate the objection and reopen the issue. Based on the material and the decision so taken by the concerned Respondent authorities, pursuant to the judgment, no contrary direction can be given, at this stage.

7 The submissions are made that the Respondents have not properly identified the nature of structure as required to be identified, pursuant to the judgment/Government Resolution; there was mistake made in identifying the structure; Petitioners' structure falls within the ambit of 'B' category and not 'C' category. These aspects cannot be gone into at the instance of the Petitioners at this stage of the proceedings. Respondent Nos.2 and 4 by affidavit dated 14.11.2017 have reiterated their finding and the decision in following words :-

“h. I say and submit that another meeting dated 11th August 2017 was convened when the Committee decided that the illegal religious structure are to be

demolished. I say and submit that the committee minutes of the meeting annexed the scrutiny report, list the name of the petitioner No.2 at serial No.2. I say and submit that the title of the column which states that the structures coming under C category are to be demolished. I say and submit that the report was an internal report to be placed before the committee. Annexed hereto and marked as Exhibit C is a copy of the minutes of the meeting dated 11th August 2017.

(i) I say and submit that pursuant to the discussion during the meeting a final security report of the Corporation with regards to the illegal structures was forwarded by the Corporation with its letter dated 6th September 2017. Annexed hereto and marked as Exhibit D is a copy of the letter dated 6th September 2017 alongwith its enclosure.”

8 The submissions of Respondents are that there is no deliberate mistake; and the Petitioners’ structure falls within the ambit of ‘C’ and not ‘B’ category, based upon the documents on record of the Petitioners.

9 Those Resolutions referring to the categories and its effect, whereby the concerned Respondents are empowered to take action to demolish such religious unauthorized structure need no interference. We have also taken a note of additional affidavit dated 17.11.2017 placed on record by the Respondents to justify their

action. The following paragraphs 5 and 6, conclude the issue against the Petitioner about the stated inadvertent error.

“5. I say and submit that I have already in paragraph 9 (h) of my earlier affidavit dated 14th November 2017 that the internal scrutiny report placed before the Municipal Corporation level Committee lists the name of the Petitioner No.2 at serial No.2 and the title/explanation of the column clearly specifies that the structures coming under C category are to be demolished. I say and submit that due to an inadvertent error the internal scrutiny report states that illegal religious structures coming under “C” category are to be demolished and those coming under “B” category are to be rehabilitated instead of stating illegal religious structures coming under “B” category are to be demolished and those coming under “C” category are to be rehabilitated. I say that this is nothing but an inadvertent oversight and cannot in any manner be considered as discrimination towards the Petitioners.

6. I say and submit that on clear comparison of the scrutiny reports beginning from page 136 and from page 146 of my affidavit dated 14th November 2017 all the structures which were earlier in category “C” with an explanation “to be demolished” in the title/heading of the column were correctly marked as category “B” with same explanation in the heading of the column in the scrutiny list forwarded by the Corporation vide its letter dated 6th September 2017 at page 145 of my affidavit.”

10 After going through the judgment, Resolutions and the affidavit placed on record and after hearing the learned counsel

appearing for the parties, and for the above reasons we see that there is no case, made out by the Petitioners to interfere with the decision/action which according to us falls within the ambit of provision of law and the record. The scope of writ jurisdiction is quite limited to re-adjudicate the disputed question of facts. The finding given and as recorded by the respondents authorities, cannot be treated as perverse or illegal or against the law. The Writ Petition is, therefore, dismissed. Rule is discharged with no order as to costs.

11 The learned counsel appearing for the Petitioners after pronouncement of the judgment in open Court has submitted to stay the demolition action based upon the impugned orders. Considering the judgment so referred above and the impugned actions, and for the reasons stated above, we see no case is made out to stay the demolition of the unauthorized religious structure. The oral prayer for stay is, therefore, rejected.

(MANISH PITALE, J.)

(ANOOP V. MOHTA, J.)