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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3098 OF 2017

Sonya Maruti Seva Samiti Trust

...Petitioner

Versus

The Commissioner, MCGM & Ors

...Respondents

Mr Sanjeev Sawant, *i/b AP Deshmukh, for the Petitioner.*

Mr NV Walawalkar, Senior Advocate, *with Pooja Yadav, for Respondents Nos. 1 & 2-MCGM.*

Mr Sukanta Karmakar, *AGP for the State.*

Mr Shelar, PI & Mr Raut, API, Malad Police Station, *are present.*

CORAM: G.S. PATEL, J

DATED: 10th November 2017

PC:-

1. Heard.

2. The petitioner seeks a stay on the removal of a Hanuman Mandir at Malad (West). The facts show that a notice was issued to the petitioner on 3rd August 2017. The petitioners replied on 4th August 2017 and they claim in that reply as they do in this petition that the temple has been in existence for the last several decades.

3. The argument now from Mr Sawant on behalf of the petitioner is that as far back as on 6th October 2008 the Municipal Corporation of Greater Mumbai (“MCGM”) had offered the

petitioners an alternate site. Nothing, he says, has materialized. It is equally true, however, that the petitioners have done nothing to enforce that so-called commitment of 2008 by the MCGM. It is now contended that the petitioners' representation must be fully considered, alternative locations must be given and till then the temple should not be removed.

4. The argument overlooks the fact that there is an operative and binding decision of a Division Bench of this Court being the order and judgment dated 1st October 2016 in Public Interest Litigation No. 104 of 2010, *Society for Fast Justice v State of Maharashtra & Ors.* That order categorized various religious structures in three different categories. Category (B) is of illegal religious structures that cannot be regularized and must be demolished.

5. The petitioners' temple falls in this category and it is only now argued that this categorization is incorrect and requires to be reviewed. This is not something that can be examined at this stage. Indeed there is no prayer in the writ petition directed against that categorization at all. The consequence is that the Division Bench order will operate against the petitioners' structures as it will against all other structures in that category. In the operative portion, the Division Bench directed that (B) category structures are to be demolished by 17th November 2017. This was an order, as I have noted, of 1st October 2016.

6. The notice in question of 3rd August 2017 obviously followed that order and was in implementation of it.

7. What is determinative to my mind, in a situation like this, is the location on the ground. I have two sets of photographs. One, a compilation of three photographs, taken on record and marked "X1" (collectively) for identification, is tendered by Mr Sawant for the petitioners with today's date. The second set is one photograph tendered by Mr Walawalkar for MCGM. This is taken on record and marked "X2" for identification. Even if one goes by the photographs produced by the petitioners especially the one at pages 2 and 3, it is *ex facie* apparent that the temple is in the middle of a road. In fact, from the MCGM photograph taken from a slight elevated angle, it seems that the traffic is required to navigate around that temple and that pedestrians are forced to one side of it and traffic, although this is only so far one-way, is all required to use the space that is left to one side of the temple. There is no logical or rational reason why a temple of this kind needs to be in the middle of a busy thoroughfare in a city like Mumbai.

8. If the petitioners have any right in obtaining an alternative site from the MCGM or the State Government, those rights are not determined by the removal of this structure.

9. There is no cause to interfere with the impugned action of the MCGM. The Writ Petition is rejected. There will be no order as to costs.

10. The ad-interim order stands vacated forthwith.

(G. S. PATEL, J)