

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 908 OF 2017

Shivshankar Ganesh Charity Trust ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. C.K. Pendse, i/b Mr. Kunal V. Phoole, for the Petitioner.

Mr. Abhay L. Patki, Addl. G.P., for the Respondent No. 1.

Mr. A.Y. Sakhare, Senior Advocate, a/w Ms. Vandana Mahadik,
a/w Ms. Kejalee Mastkar, for MCGM.

**CORAM : SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.**

DATE : 6 October 2017

ORDER :

By this writ petition, the petitioner-Shivshankar Ganesh Charity Trust challenges the notice of the corporation, dated 15th November 2016 under Section 351 of the Mumbai

Municipal Corporation Act, 1888 directing the petitioner to demolish the Shivshankar Ganesh Temple within 15 days or else the Corporation would take steps to demolish the same.

Shri. Pendse, the learned Counsel for the petitioner *inter alia* submitted that the impugned notice is liable to be set aside, as the same is based on the Government Resolution dated 4th October 2010 that stands superseded by the Government Resolution dated 14th March 2011 and 5th May 2011. It is stated that in view of the Government Resolution dated 5th May 2011, it would be necessary for the Corporation to take the permission of MHADA, who is the owner of the property on which the temple is located and also to secure the reports from the police and the planning authority. It is submitted that the notice dated 15th November 2016 cannot be based on the Government Resolution dated 4th October 2010, when the said Government Resolution stands superseded by the Government Resolution dated 5th May 2011. It is submitted that though the Shivshankar Ganesh Temple is a very old monument that is constructed before 1955, the same is sought to be demolished despite the report of the police authorities that the demolition of the structure would give rise to law and order situation. It is submitted that in any case, since the impugned notice is based on the Government Resolution dated 4th October 2010 that stands superseded by the Government Resolution dated 5th May 2011, the notice is liable to be set aside.

Shri. Sakhare, the learned senior counsel appearing for the corporation submitted that the report from the police and the planning authority, viz. the corporation was secured before issuing the notice dated 15th November 2016. It is however, fairly admitted that the notice does not refer to the Government Resolution dated 5th May 2011 and the reference to the earlier Resolution dated 4th October 2010, which could not have been implemented after the Government Resolution dated 14th March 2011 was issued is made in the impugned notice.

On a perusal of the impugned notice and the affidavit in reply filed on behalf of the respondent-corporation, it appears that the impugned notice is based solely on the Government Resolution dated 4th October 2010 that stands superseded by the Government Resolution dated 5th May 2011, that is issued in pursuance of the directions of the Hon'ble Supreme Court in special leave petition No. 8519 of 2006. Since the impugned notice is based on the Government Resolution that stands superseded by the Government Resolution dated 5th May 2011 and since we find that some of the formalities that are required to be complied before the issuance of the notice in furtherance of the Government Resolution dated 5th May 2011 are not complied with, the impugned notice cannot be sustained.

Hence, for the reasons aforesaid, the writ petition is

allowed. The impugned notice is quashed and set aside. The municipal corporation is free to take appropriate action, in accordance with law.

Rule is made absolute in the aforesaid terms, with no order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]