

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.2650 OF 2018**

1.The Poona Club Ltd.

...Petitioner

Versus

1.The Pune Municipal Corporation & Ors.

...Respondents

Mr.Harikrishna R.Ganbavale, for the Petitioner.

Mr.Rhishikesh M.Pethe, for Respondent No.1.

Mr.M.M.Pabale, AGP for Respondent Nos.2 to 5.

**CORAM : NARESH H. PATIL, ACTING CJ. &
G.S. KULKARNI, J.****DATE : 24th August, 2018**

P.C.:

1. The learned Counsel for the petitioner submits that the petitioner is a lessee and the State is the lessor. It is stated that the land is in possession of the lessee from the year 1885. On some portion of the land, a Dargah was constructed in the year 2016. It is submitted that in respect of Samaj Mandir located nearby the Dargah, the petitioner had approached this Court in Writ Petition No.25 of 2016 and by order dated 4th January,2016 the Court has passed the following directions:-

“1 Heard the learned counsel for the petitioner. Writ petition to be listed on scheduled date which is 2nd February 2016. Our attention is invited to the communication dated 14th December 2015 issued by the District Collector, Pune to the Assistant Commissioner of Pune Municipal Corporation. The said

communication records that the Pune Municipal Corporation has granted a contract to the respondent No.6 to construct a Samaj Mandir on a Government land in respect of which a lease was granted to the petitioner which has been renewed till the year 2037. In fact, the Collector called upon the Assistant Commissioner of the Municipal Corporation to explain as to how on a land held by the State Government, the Municipal Corporation has permitted construction of a Samaj Mandir.

2 Issue notice to the respondents returnable on 2nd February 2016. Learned AGP waives service for the respondent Nos.2 to 5. In addition to service of notice through Court, the Advocate for the petitioner shall serve private notice to the respondent Nos.1 and 6 along with an authenticated copy of this order.

3. By way of ad-interim order, we restrain the respondent Nos.1 and 6 from carrying out any further work on the basis of the Work Order No.3150 dated 11th September 2015. If proper affidavit of service of notice to the respondent Nos.1 and 6 is not filed on or before 22nd January 2016, ad-interim relief shall stand vacated without further reference to the Court.”

2. The petitioner has also brought to our notice an order dated 13th March,2015 passed by this Court in Public Interest Litigation no.104 of 2010 which reads thus:-

“1. It will be necessary to make a reference to the orders dated 9th October, 2014 and 9th January, 2015 passed by this Court. There are affidavits filed by the State Government on record. As noted in the earlier orders, under the Government Resolution dated 5th May, 2011, there is a provision for constituting various committees. There are committees at the level of Municipal Corporations. There are committees at the level of Districts. There

is a State level committee. The Government Resolution provides that the District Level and Corporation level committees shall classify illegal religious structures constructed after 29th September, 2009 into categories “A”, “B” and “C”. Except in the case of the Municipal Corporation area of Mumbai, there is nothing placed on record to show whether the categorisation of the structures into categories (A), (B) and (C) has been made by the Corporation level committees and District level committees in the State. The order passed by this Court on 9th January, 2015 notes that though there are large number of Municipal Corporations in the State, the said Government Resolution provides for constitution of only seven Municipal Corporation level committees. The said order notes that though there are Municipal Corporations of the cities of Pimpri Chinchwad as well as Ulhasnagar where there are large number of illegal structures, no Corporation level committees have been constituted for the said areas. Though various affidavits have been filed in this Court, in none of the affidavits filed by the State Government anything is set out about the compliances made by the committees constituted under the Government Resolution dated 5th May, 2011. Moreover, the illegal religious structures erected after 29th September, 2009 have no protection and as per the said Government Resolution, the same are to be demolished. Even going by the figures which are set out in various affidavits of the Government, hardly few illegal structures which have come up after 29th September, 2009 have been demolished. Going by the affidavits on record, except for the Corporation level committees at Mumbai, there is hardly any compliance with the entire scheme of Government Resolution dated 5th May, 2011 which has been issued in terms of the directions issued by the Apex Court. The State has not taken steps to constitute the Corporation level committees in relation to all the Municipal Corporations in the

State.

2. The affidavits placed on record show that in various cities in the State, there are very large number of illegal religious structures. We find that the scheme forming part of the Government Resolution dated 5th May, 2011 has been hardly implemented as a result of which large number of illegal religious structures continue to exist. We, therefore, direct the Additional Chief Secretary, Home to personally look into the aspect of implementation of the Government Resolution dated 5th May, 2011.

3. It is obvious that the Ministry of Home and Ministry of Urban Development will have to work together and ensure that the Government Resolution issued in terms of the order of the Apex Court is implemented in its true letter and spirit.

4. We direct the Additional Chief Secretary of Home Department to himself file an affidavit setting out the steps taken on the basis of the Government Resolution dated 5th May, 2011 by all the committees constituted at three levels in the State. The affidavit shall also give the status of categorisation of the structures and action taken for demolition of the illegal religious structures erected after 29th September, 2009.

5. We direct the State Government to ensure that appropriate directions are issued to all the local authorities in the State to ensure demolition of illegal religious structures which have come up after 29th September, 2009. A time bound schedule shall be laid down to all local authorities to demolish such illegal structures. The affidavit dealing with all the aforesaid aspects and compliance with the directions issued from time to time by this Court shall be filed by the Additional Chief Secretary of the Home Department on or before 21st April, 2015. The Petition shall be listed on 23rd April, 2015 in the category of "Fresh matters".

6. As far as Corporation level committee for Mumbai is concerned, there is an affidavit filed by Shri Sitaram Kunte, the Municipal Commissioner on 2nd March, 2015. An assurance is given that classification of structures in “A”, “B” and “C” categories will be finalised in the forthcoming meeting of the Municipal Level committee for the Municipal Corporation of Greater Mumbai. It is further stated that list of unauthorised religious structures falling in categories “B” and “C” which were erected before 1st May, 1960 will be sent to the State level committee for its consideration. There is an assurance given that if any unauthorised shrines are detected, an action shall be taken in accordance with the Government Resolution. We direct the Commissioner of the Mumbai Municipal Corporation to file an affidavit setting out compliance with requirements of the Government Resolution. Such an affidavit shall be filed on or before 21st April, 2015. Such affidavit can be filed by any officer nominated by the Commissioner of the Corporation not below the rank of a Deputy Municipal Commissioner.

3. In view of the orders passed by this Court the State Government and the Corporation to take necessary steps. The petitioner is also entitled to approach the Civil Court.

4. Writ petition is accordingly disposed of.

Prashant
Vilas
Rane
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signed by
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Vilas Rane
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[G.S. KULKARNI, J.]

[ACTING CHIEF JUSTICE]