

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST.NO.30998 OF 2017
WITH
CIVIL APPLICATION ST.NO.30999 OF 2017

Mohammed Suleman Gain .. Applicant
Versus
Maharashtra Housing & Area Development
Authority and Ors. .. Respondents

Mrs. Anita Castelino i/b. Sanket Mungale for appellant/applicant
Ms. Soumya Srikrishna i/b. Denzil A. with Nanki Grewal with Yogini
Borade i/b. Wadia Ghandy & Co. for respondent Nos. 4 to 20
Mrs. M.R.Bhoir for respondent No.3 Corporation.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 8th February 2018.

P.C.

1] This appeal from order is directed against the order dated 2nd November 2017 passed by the learned Judge, City Civil Court, Mumbai rejecting ad-interim relief in draft notice of motion in L.C.Suit No.2176 of 2017. The appellant is the original plaintiff, who has filed a suit for a declaration that he has right to visit and offer Mazar and prayers, celebrate religious festivals of Sunni Muslim community and pursue his religion at the Dargah at Saifee Jubilee Street.

2] The said Dargah is a suit structure where the appellant, pending the suit, wants to visit on 16th February 2018 to offer prayers as it is an auspicious day in Sunni cult of Muslim religion. Learned Counsel for the appellant has submitted that it is a public place and the respondents have started developments around Darga and have closed the access illegally. She further submitted that the Darga is not kept in tact and due to the demolition and redevelopment work, the right of appellant to visit the Darga and offer prayers is curtailed. Learned Counsel for the appellant further submitted that the respondent No.21 who was initially residing on ground floor and was in charge of Dargah has given a letter in the year 2005 that Darga is a public place and she is only a caretaker. Learned Counsel therefore prays that permission be given to the appellant to visit Dargah on 16th February 2018 and the order passed the learned trial Judge be relaxed to that extent.

3] Learned Counsel for respondent Nos. 4 to 20 submits that the redevelopment process has already been initiated and the structures around the Darga and the whole building are demolished. The other structures are also in dangerous and dilapidated condition

and, therefore, boundaries of the entire structure and entry to Dargah is closed with due permission from Corporation and Police authorities. It is unsafe to allow anybody to enter the premises where the re-development is going on. She supported the order passed by the learned trial Judge rejecting the ad-interim relief and submitted that the notice of motion is fixed for hearing in the month of March 2018.

4] Perused the impugned order rejecting ad-interim relief. Learned Judge has considered the contentions of the respondents in the affidavit in reply filed by defendant No.21. It is contended that though the defendant No.21 has evicted from the suit premises; she is declared and certified as a tenant. It is submitted that the suit property is a private property and not a public property or a public religious place and the Dargah is a grave of her ancestors. Moreover the road is realigned and the area is redeveloped and is entirely closed for the purpose of safety and security.

5] My attention is drawn to the order passed by the Division Bench of this Court (Anoop V. Mohta, J (as he then was) and Smt. Anuja Prabhusdessai, J) dated 17th July 2017 in Writ Petition

Lod.No.1726 of 2017 wherein in para 5 the Division Bench has directed that the work of re-development of cluster project is in progress. A statement is further recorded that the respondents (the developers) are not touching and / or will develop the project, keeping in mind the religious area (The Darga). The learned Counsel for respondents further clarified and assured that the roof of Darga so also some portion of the walls around Darga are demolished. However, the respondents have not touched and kept the Darga in tact.

6] In view of this it appears that it is unsafe to allow appellant or any other person to enter during the process of re-development inside the cluster or the area under development. Moreover, the notice of motion is fixed for hearing in the month of March 2018 and the same can be decided finally.

7] The order passed by the learned Judge is a well reasoned order and I am of the view that no interference is required at this ad-interim stage. A.O. dismissed. No costs.

(MRS.MRIDULA BHATKAR, J.)