

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

WRIT PETITION NO. 426 OF 2018

Buddha Vikas Mandal. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Ms.Pradnya Talekar with Ms.Madhavi Ayyappan for the petitioner.
Mr.H.S.Venegaonkar, Addl.GP for respondent Nos.1, 2 and 5.
Ms.Pallavi Thakar for respondent Nos.3 and 4- MMC.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 5th July 2018.

JUDGMENT : (Per A.S.Oka, J.)

Rule.

The learned Additional Government Pleader waives service for the respondent Nos.1, 2 and 5. The learned counsel appearing for the respondent Nos.3 and 4 waives service. Forthwith taken up for final disposal.

2. The challenge in this petition under Article 226 of the Constitution is to the communications dated 27th April 2017 and 5th May 2017. The subject matter of this petition is a Buddha Temple which is more particularly described in the writ petition. By the impugned communications, the Mumbai Municipal Corporation has called upon the

Sanjay
Kashinath
Nanoskar

Digitally
signed by
Sanjay
Kashinath
Nanoskar
Date:
2018.07.13
18:24:36
+0530

petitioner to remove the temple. There is an affidavit-in-reply filed by Shri Kulbhushan Vhora, Assistant Engineer (Maintenance) on behalf of the Mumbai Municipal Corporation. In the said affidavit, it is contended that when the petitioner was called upon to remain present for hearing before the Assistant Commissioner, A-Ward, the petitioner could not produce documents to show that the temple was in existence prior to 1960.

3. Our attention is invited to the judgment and order dated 1st October 2016 in PIL No.104/2010 (*Society for Fast Justice and another v. The State of Maharashtra and others*). The said decision, in turn, relies upon the orders passed by the Apex Court in Civil Appeal No.8519/2006. As of today, the law is that all religious structures which have been constructed after 29th September 2009 without obtaining permission of the local authority are required to be demolished. As regards religious structures constructed prior to the said date, either the same will have to be tolerated or relocated. In the present case, as it appears from the stand taken in the affidavit of Shri Kulbhushan Vhora, the test applied by the Municipal Corporation is whether the said religious structure was in existence in the year 1960 or prior thereto. The contention of the petitioner is that the structure was in existence prior to 1960.

4. Under the Government Resolution dated 5th May 2011, committees have been created at various levels for classifying the structures into categories “A”, “B” and “C”. The procedure for categorization has been laid down in the said Government Resolution. The structure subject matter of this petition will have to be classified as

falling in one of the three categories “A”, “B” or “C” as laid down by the said Government Resolution and the decision of this Court.

5. Therefore, it will be appropriate if the case of the petitioner is considered by the State Level Committee constituted under the Government Resolution dated 5th May 2011 as nothing is placed on record to show that after the application of mind, classification of the said structure has been made.

6. Accordingly, we pass the following order:

- (i) We direct the representative of the petitioner to remain present in the office of the Chief Secretary of the State Government who is the chairperson of the said committee, on 28th July 2018 at 3.00 p.m. The petitioner's representative shall produce on record true copies of various documents in support of the case of the petitioner. On that day, a date shall be fixed for hearing the petitioner;
- (ii) After considering the documents which may be produced by the petitioner and after giving an opportunity of being heard to the petitioner, the State Level Committee shall take appropriate decision regarding classifying the subject structure in one of the three categories;

- (iii) The decision taken by the State Level Committee shall be communicated to the petitioner. Till the date of communication of the decision to the petitioner, the action of demolition on the basis of the impugned notices/ letters shall not be taken by the Municipal Corporation;
- (iv) If the State Level Committee holds that the subject structure will have to be either demolished or relocated, we direct that the action of demolition and/or relocation shall not be taken for a period of two weeks from the date on which the order of the State Level Committee is communicated to the petitioner;
- (v) We make it clear that we have not made any adjudication on the merits of the controversy and all factual aspects are left open to the decision of the State Level Committee;
- (vi) Rule is made partly absolute on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)