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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2981 OF 2017

Om Shree Sai Hanuman	
Seva Mandal	...Petitioner
vs.	
The Municipal Corporation of	
Greater Bombay & Others	...Respondents

Mr.J.M.D'silva for the Petitioner
Ms Pallavi Thakar for the respondent Nos.1 to 3
Shri Rahul Chavan, Sub Engineer Maintenance, G/North
Ward, Mumbai.

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : JUNE 26, 2018

P.C.:

1 Rule. The learned counsel appearing for the respondent waives service. Forthwith taken up for final disposal.

2 The challenge in this petition under Article 226 of the Constitution of India is to the notice/communication dated 14th July 2017 addressed by the Municipal Corporation to the petitioner calling upon the petitioner to demolish the temple of Lord Hanuman/Saibaba which is the subject matter of this petition. The contention of the petitioner is that the action of calling upon the petitioner to demolish the temple is in breach of principles of

natural justice. The learned counsel for the petitioner submits that large number of documents have been annexed to the petition to show that the temple is in existence prior to the year 1962. His submission is that in the light of Judgment and Order dated 1st October 2016 in Public Interest Litigation No.104 of 2010 (Society for Fast Justice and another Vs. State of Maharashtra and others), religious structures which are erected up to 29th September 2009 are protected and therefore, the present structure cannot be demolished by the Municipal Corporation.

3 The learned counsel for the respondents relied upon the affidavit of Shri Rajesh Kashinath Chavan, Assistant Engineer (Maintenance), G/North Ward and submitted that as the temple is on the footpath and as it is categorised as falling in 'B' category as per the Government Resolution dated 5th May 2011, it cannot be protected.

4 We have given careful consideration to the submissions. As per the Government Resolution dated 5th May 2011 and as per the directions of this Court in the aforesaid Judgment dated 1st October 2016, no illegal religious structures which have come up after 29th September 2009 can be tolerated. The decision of this Court holds that the illegal religious structures which are made upto 29th September 2009 will have to be either protected or relocated. Clauses (b) and (d) of paragraph 38 of

the said Judgment read thus:

(b) Hence, all illegal religious structures made after 29th September 2009 which have been already identified shall be demolished on or before 31st December 2016. The structures constructed before 29th September which have been identified as falling in "B" category shall be demolished on or before 17th November 2017. The structures constructed before 29th September which have been identified as falling in "C" category shall be removed and relocated on or before 31st December 2016. The Municipal Commissioners and the Collectors, as the case may be, shall be responsible for the implementation of these directions as provided in the second GR. Any Breach on their part will result into an action against them under the Contempt of Courts Act, 1971. The Home Department shall issue a circular to the Municipal Commissioners and Collectors enclosing therewith a copy of this Judgment within a period of three weeks from the date on which the Judgment is uploaded;

(c)....

(d) We direct the State Government to issue directions to the Committees constituted under the said GR dated 5th May 2011 to undertake exercise of identifying illegal religious structures or shrines erected on all the public properties in the State. Needless to add that after identifying such illegal religious structures, the same shall be divided into two broader categories as provided in the said GR of the structures erected prior to 29th September 2009 and the structures made after 29th September 2009. As provided in the said GR, all structures erected after 29th September 2009 shall have no protection. The structures erected up to 29th September 2009 shall be divided into three categories as provided in the

said GR dated 5th May 2011. Needless to add that out of these structures which will fall in the "B"category cannot be tolerated will have to be demolished;

5 Perusal of the affidavit in reply of Shri Rajesh Chavan records that as can be seen from the photographs marked as Exhibit-C, the temple is on the footpath. From clause (c) of paragraph 5 of the affidavit, it appears that the Mumbai Municipal Corporation came to the conclusion that no documents were produced to prove that the structure is in existence prior to year 1960. Obviously, the Mumbai Municipal Corporation has not considered the case of the petitioner in the light of cut off date of 29th September 2009. Faced with this difficulty, the learned counsel for the Mumbai Municipal Corporation on instructions states that if the Court directs, the Assistant Commissioner, G/North Ward, he will examine the documents available with the petitioner and will pass an appropriate order after giving an opportunity of being heard to the petitioner.

6 Another stand taken in the reply is that the temple is on a footpath and therefore, it may obstruct the pedestrians. Even if it is found that the structure was in existence on or before 29th September 2009, the Mumbai Municipal Corporation after considering the exigencies can always relocate the religious structure and this aspect can always

be gone into by the Assistant Commissioner.

7 Considering the peculiar facts of the case and considering the stand taken during the hearing by the the respondents, we pass the following order:

(I) We direct the authorised representative of the petitioner to remain present in the office of the Assistant Commissioner, G/North Ward on Monday 16th July 2018 at 11.00 a.m. The petitioner shall produce relevant documents in support of his case that the structure of the temple is in existence prior to 29th September 2009;

(II) After examining the documents and after giving an opportunity of being heard to the petitioner, the Assistant Commissioner shall record a finding as to in which category (A, B or C) the structure would fall;

(III) If he comes to the conclusion that the structure was in existence as of 29th September 2009, but the same needs relocation, the Assistant Commissioner shall identify the site where the structure can be relocated and issue communication in that behalf to the petitioner;

(IV) Appropriate decision shall be taken by the Assistant Commissioner as expeditiously as possible and in any event on or before 31st August 2018;

(V) If the Assistant Commissioner comes to the conclusion that the structure falls in a category which requires demolition, he shall grant time of at least 15 days to remove the temple from the date of

service of order passed by him to the petitioner;

(VI) If the Assistant Commissioner is of the view that the structure will fall in the category which requires relocation, he shall serve a copy of his order along with a notice specifying the place where the structure should be relocated. In such case, the Assistant Commissioner shall grant time of one month to relocate the structure from the date of service of the order on the petitioner;

(VII) We make it clear that we have made no adjudication on the issue whether the structure will fall in any of the three categories and all questions are left open to the decision of the Assistant Commissioner, G/North ward;

(VIII) Rule is made partly absolute on above terms with no order as to costs.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)