

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO. 3443 OF 2019**

Prabhu Yesu Janmotsav ... Petitioner

Versus

The Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr.Mihir Desai, Sr. Adv. a/w. Mr. Ankur Shah, Mr. Y. Cooper, Mr. Jatin Sheth for the Petitioner.

Mr.A.Y.Sakhare, Sr. Adv. a/w. Ms. Vandana Mahadik, Ms. Sheetal Metakari for Respondent No. 1.

Ms.Jyoti Chavan AGP for Respondent Nos. 2 and 3.

Mr.Firoz Bharucha i/b. Mr. Keven Chettiar for the Interveners in WPL No. 3443 of 2019.

Mr.Mayur Khandeparkar i/b. Mr.Joshua Abhay Patnigere for Intervenor in WPL No. 3443 of 2019.

Mr.Manohar Kulkarni – AE (Maint.) D Ward, present.

Mr.Akshay Warang, Sr. Clerk from the office of the Collector of Mumbai City, present.

CORAM : S.J. KATHAWALLA, &

B.P. COLABAWALLA, JJ.

DATE : 9TH DECEMBER, 2019

P.C.:

1. The Petitioner – Prabhu Yesu Janmotsav is a Public Charitable Trust formed under the provisions of the Maharashtra Public Trust Act, 1950. Respondent

Nos. 1, 2 and 3 are the Municipal Corporation, State of Maharashtra and the Collector of Mumbai respectively. Respondent No. 4 is the Monitoring Committee, which was constituted by this Court by its Order dated 16th March, 2001 passed in Writ Petition 2197 of 1998.3443

2. By the present Writ Petition, the Petitioner Trust has sought the following relief :

“(a) This Court be pleased to designate the Petitioner Trust a larger area to the extent of 25,000 sq meters at Girgaum Chowpatty to organise and celebrate the Christmas Music Festivals compared to the area designated i.e. 300 x 150 (i.e. 4180.3 sq. meters) under the Order dated 21st June, 2018 passed in Writ Petition No. 2197 of 1998 along with Writ Petition No. 1963 of 2000.”

3. By an Order dated 21st June, 2018, passed in Writ Petition Nos. 2197 of 1998 and 1963 of 2000, the Division Bench of this Court (Coram : A.S. Oka & P.N. Deshmukh, JJ.) gave several interim directions. In the present Writ Petition, we are concerned with the interim direction at Serial No. (i) of paragraph 23 of the said Order, which read as follows :

“(i) Three functions which are covered by the guidelines shall be hereafter conducted only on the designated area of 300 x 150 sq.

ft. area as shown in the plan annexed as Exhibits-B and C to the first supplementary report of the Monitoring Committee dated 15th February, 2018. No deviation shall be permitted without express permission of this Court.”

4. In support of the prayer sought in the above Writ Petition, which prayers is reproduced in paragraph 2 above, the Petitioner Trust has submitted as follows:

4.1. That the Petitioner Trust has been conducting Christmas Music Festival to celebrate the birth of Lord Jesus at Girgaum Chowpatty since the year 1965. At this festival, Churches across Mumbai come together and celebrate Christmas by singing Christmas carols. The Christmas Music Festival was started initially by Mrs. Tara Cherian, wife of the former Governor of Maharashtra Late Mr. P.V. Cherian and the very first woman Mayor in independent India.

4.2. That over the years, the people attending the Christmas Music Festival has increased substantially. In fact, 25,000 people from the Christian community have now started attending the yearly Christmas Music Festival. For the year 2015-16, Respondent No. 3 – Collector of Mumbai has himself observed that the number of people attending Christmas Music Festival, has substantially increased and thereby approved the usage of 18,000 sq. meters of Girgaum Chowpatty (as compared to 8,000 sq. meters) for the purpose of holding the Christmas Music Festival. In 2017, Respondent No. 3 has approved the usage of further larger area of 25,000 sq. meters of Girgaum Chowpatty. Also, the concerned Authorities have already granted the

Petitioner Trust the permissions to hold the Christmas Music Festival at Girgaum Chowpatty.

4.3. The entire Christmas Music Festival is organized and managed by the Petitioner Trust in a very professional manner. Security has always been the top priority of the Petitioner Trust. Therefore, the Petitioner Trust engages the best security guards. The Petitioner Trust engages/hires a team of more than 150 security personnel to monitor the Christmas Music Festival. The Mumbai Police Department vide its letter dated 16th December, 2015 has also appreciated the professional manner in which the Petitioner Trust managed the security of the Christmas Music Festival.

4.4. The Division Bench of this Court vide its Order dated 13th October, 2015 passed in Writ Petition Nos. 2197 of 1998 and 1963 of 2000 incorporated the guidelines formulated by the Monitoring Committee for the purpose of organizing the events at Girgaum Chowpatty. The guidelines specifically permitted the celebration of Christmas Music Festival at Girgaum Chowpatty. The Division Bench of this Court vide its Order dated 21st June, 2018 granted the following additional interim relief :

“Three functions which are covered by the guidelines shall be hereafter conducted only on the designated area of 300 x 150 sq.ft. area as shown in the plan annexed as Exhibits B and C to the first supplementary report of the Monitoring Committee dated 15th February 2018. No deviation shall be permitted without express permission of this Court.”

Therefore, pursuant to the above mentioned order, Respondent Nos. 1 and 3 have reduced the area to 4180.63 sq. meters i.e. 300 x 150 sq. feet, which is substantially inadequate as compared to the area, which was earlier granted i.e. 25,000 sq. meters to the Petitioner Trust for conducting the Christmas Music Festival

4.5. That, since the Order dated 21st June, 2018 was passed without the Trust being joined as party Respondent, the Petitioner Trust learnt about the said Order only in December, 2018, when the Petitioner Trust was informed by the Authorities that the Application of the Petitioner Trust to organize Christmas Music Festival shall be processed according to the directions issued in the Order dated 21st June, 2018.

4.6. That the Petitioner Trust therefore filed Writ Petition (L) No. 4071 of 2018 seeking express permission from this Court to approve a larger area to the Petitioner Trust to the extent of 25,000 sq. meters (instead of 4180.3 sq. mtrs.) at Girgaum Chowpatty for the purpose of organizing the Christmas Music Festival on 16th December, 2018. The Division Bench of this Court passed an Order dated 11th December, 2018 relaxing the directions contained in Clause (i) of paragraph 23 of the Order dated 21st June, 2018 passed in Writ Petition Nos. 2197 of 1998 and 1963 of 2000 and permitted the Petitioner Trust to hold Christmas Music Festival on an area of 15,000 sq. meters at Girgaum Chowpatty. It was recorded by the Court that the said Order is passed in the peculiar circumstances of the case and the same should not be treated as a Precedent. It was clarified that the said relaxation was only for that year.

5. The Petitioner Trust thereafter filed Review Petition (L) No. 59 of 2019

seeking review of the Order dated 21st June, 2018 passed in Writ Petition Nos. 2197 of 1998 and 1963 of 2000 so far as it relates to the Petitioner Trust. The said Review Petition is pending before this Court since September, 2019. Since the said Review Petition is pending, the Petitioner Trust have filed the present Writ Petition for the relief set out in paragraph 1 above.

6. The learned Senior Advocate appearing for the Petitioner Trust submits that the area of 4180.3 sq. meters would be insufficient for holding the Christmas Music Festival, which is a one day event. He has submitted that if the crowd of 25000 people (which includes senior citizens and children) is to be accommodated on an area 4180.3 sq. meters, the same would result in a stampede. He has further submitted that though there was delay on the part of the Petitioner Trust in filing the said Review Petition, the same is pending before this Court since September, 2019 and could not be taken up despite the Petitioner Trust having moved an Application for an early hearing. It is further submitted that the Petitioner Trust will immediately make an Application to the learned Chief Justice to have the said Review Petition decided at the earliest and consequently the Petitioner Trust will not be required to make similar Application in the year 2020. It is further submitted that the present request is made only for this year as an exception.

7. The learned Advocate appearing for the Intervenors supported the Petitioner Trust. They submit that the larger area is required for Christmas Music Festival than that permitted under the interim Order.

8. The Respondents have today filed their Affidavits. Since the Christmas Music Festival is scheduled on 15th December, 2019, the Petitioners as well as the Intervenors have proceeded on the basis of denials.

9. We have heard Mr. Sakhare, the learned Senior Advocate appearing for the Respondent No. 1 Corporation, Ms. Jyoti Chavan, AGP for Respondent Nos. 2 and 3 and Advocate Mr. Jaykar for Respondent No. 4 - Monitoring Committee. They have submitted that the Petitioner Trust should hold Christmas Music Festival within the designated area. They have submitted that the Petitioner Trust ought not to have filed the Review Petition as late as in September, 2019. According to them, the festival is never attended by 25000 people.

10. We have considered the facts narrated and submissions made on behalf of the Petitioner Trust as well as the Respondents. It is undisputed that the Petitioner Trust is holding Christmas Music Festival since the year 1965 at Girgaum Chowpatty i.e. since the last 54 years. It is recorded in the Order passed by this Court dated 11th December, 2018 that the claim of the Petitioner Trust and the Intervenors that approximately 25,000 people assemble for the said Christmas Music Festival is not specifically denied. Admittedly, the Petitioner Trust was not heard when the interim directions were passed. Other festivals i.e. Ram Leela and Krishna Leela are performed for a few days unlike the Christmas Music Festival, where Christmas carols are sung for 4 to 5 hours only on one day. The Order dated 21st June, 2018 itself contemplates deviation / relaxation of the directions contained therein upon express

permission of this Court. Though, admittedly the Petitioner Trust has filed the said Review Petition only in September, 2019, the fact remains that the same is pending hearing and final disposal, till date. After going through the photographs of the Christmas Music Festival produced before us, we cannot not lose sight of the fact that the Christmas Music Festival is conducted in a very disciplined manner, the same is manned by a large number of private security guards. The office of the Collector of Mumbai itself allowed the Christmas Music Festival to be held on an area of 18,000 sq. meters in 2016 and on an area of 25,000 sq. meters in 2017. Not a single complaint of nuisance being created in any manner, or qua breach of security at the festival or any individual being deprived of access to the Girgaum Chowpatty beach or any litter being created by the individuals attending the said Christmas Music Festival is received over these years. The Christmas Music Festival is admittedly attended by senior citizens as well as children. If the Petitioner Trust is required to hold Christmas Music Festival in the designated area, then the possibility of stampede cannot be ruled out. The statement of the Petitioner Trust to forthwith move the learned Chief Justice with a request to assign the Review Petition for hearing to the appropriate Bench, is accepted.

11. In the light of the above, we dispose off the above Writ Petition by passing the following order :

a) The interim directions at Serial No.(i) of paragraph 23 of the order dated 21 st June, 2018, passed in Writ Petition Nos.2197 of 1998 and 1963 of 2000, so far as, it

relates to the Petitioner Trust, is relaxed only for this year.

- b) The Petitioner Trust is permitted to hold Christmas Music Festival on an area of 15,000 sq. meters. It is made clear that this order is passed in the peculiar facts and circumstances of this case and the same should not be treated as a precedent.
- c) The appropriate Authority shall forthwith demarcate the same area of 15,000 sq. meters as was done with regard to the festival held in December, 2018.
- d) The above permission is granted, subject to the following directions :
 - i) The Petitioner Trust shall ensure that no commercial activities are conducted at the venue.
 - ii) The Petitioner Trust shall take all necessary permissions from the local authorities.
 - iii) The Petitioner Trust shall comply with the various Environmental Rules including the Noise Pollution Rules.
- c) The Writ Petition is accordingly disposed off.

(B.P. COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)