

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2152 OF 2022

Smt. Shashikala Surendra Ambade and ... Petitioners
Ors.

V/s.

State of Maharashtra and Ors. ... Respondents

Mr. Dhairyasheel Sutar for the Petitioners.

Mr. N.K. Rajpurohit – AGP for Respondent nos. 1 to 3.

Mr. P.M. Arjunwadkar for the Respondent No.4.

**CORAM : PRASANNA B. VARALE AND
KISHORE C. SANT, JJ.**

DATED : JULY 21, 2022.

P.C. :

. The petitioners resident of village Kurundwad having their agricultural lands situated in Gat No. 104 and Gat No. 107, approached this Court by the present Writ Petition, challenging the notice dated 2nd January 2020 issued by the respondent no.4, Kurundwad Municipal Council. The copy of the notice is placed on record at 'Exhibit-H', page 63. The notice indicates to the petitioner no.2, Sanjay Ambade that there is a tradition of conducting annual fair in Kurundwad Village known as Mahashivratri Yatra since long. The fair is conducted in certain agricultural lands. The land holders without accepting any compensation made available the vacant land for the annual fair. There is also a gazette notification to that effect and for

that particular period of 15 days of Mahashivratri fair and post Mahashivratri fair for 8 days. This private landed property is treated as a public property. The petitioner No. 2 is further informed to make a vacant land available to the Municipal Council, Kurundwad unconditionally for the annual fair of the year 2020 and if the petitioner fails to provide the vacant land and standing crop available in the land would be removed from the land and expenses for such removal of the crop from the land would be recovered from the petitioner no. 2. The notice further warned the petitioner no. 2 in case of resistance by the petitioner no.2 would be treated as a willful obstruction and the petitioner no. 2 would be treated as cause for law and order problem and legal action would be initiated against the petitioner no.2 and similar notices were issued to the other petitioners.

2. At the outset, we record a strong displeasure to the way approach by the counsel issuing such notices to the private land holders. Now when the petition was listed before this Court on 17th February 2020, respondent no. 4 Municipal Council tendered letter dated 7th February 2020 addressed to petitioner no.2 mentioning that subject land is not required for festival of Mahashivratri Yatra. The letter was taken on record. This was in consonance, probably, given in a year 2020. Committee has issued required consideration. Further two orders were passed by the Division Bench of this Court on 26th February 2022, first order contained three paragraphs and at 4.30 again detailed order was passed by this Court. Three photographs are part of the said order. It would be useful for our purpose to refer certain obstructions of this Division Bench reflected in the order dated

26th February 2022 on the backdrop of submission made on behalf of the Collector, Kolhapur and the Chief Officer, Kurundwad Municipal Council who were present before this Court through video conferencing.

3. Paragraph Nos. 3 and 4 passed by Division Bench of this Court are read as under:-

3. “..... They have tried to defend their action of destroying the soyabean crop on the Petitioners field by saying that in the meeting held, a member of the petitioners family had consented to the said action of the Respondents which the Petitioners before us have denied. When we asked them to produce the minutes of the said meeting and the signatures obtained of those present at the meeting, we are informed that they do not have such minutes or signatures. They have also submitted that in the 7/12 extract pertaining to the said field it is endorsed that during the Mahashivratri festival, they will take possession of the Petitioners' land for a period of 15 days for the festivities. We do not understand under which provision of law, such an endorsement is made/allowed and how the plot of the petitioners can be taken away for a period of 15 days especially when the Petitioners are growing soyabean crop on the said field. Even if this practice has been adopted in the past, the same cannot be relied upon as a precedent and the Court is required to stop such practice once it is opposed by the Petitioners. The Collector, Kolhapur has informed the Court that he will ensure that the field of the Petitioners is not used for Mahashivratri festivities scheduled in the next week and the said festivities will be confined and held only on the public road.

4. In view of the above, we pass the following orders :

i) The Respondents are hereby restrained by an order of injunction from using any part of the land/field of the Petitioners for the festival of Mahashivratri in the next week.

ii) The statement made by the Collector, Kolhapur that they will confine the festivities of Mahashivratri in the next week, only to the public road and not use any part of the field/land of the Petitioners, is accepted as an undertaking given to the Court.

iii) This order is dictated in the presence of the Respondent No. 2- Collector, Kolhapur and the Chief Officer, Kurundwad Municipal Council.

iv) Stand over to 10th March, 2022 when the Respondents shall remain present alongwith their respective Affidavits-in-Reply, if any."

4. In Affidavit-in-reply filed on behalf of the respondent no.4 through the Chief Officer, Kurundwad Municipal Council, certain statements are made alleging therein that the petitioners have carried out some encroachment on a public road. It seems that post filing of the petition it would be interesting to note that paragraph 7 in the affidavit-in-reply, the Chief Officer, Kurundwad Municipal Council, reiterates the statement made in the notice that certain private agricultural lands are kept open for 15 days for the fair and 8 days post fair and accordingly mutation entries are made in the revenue record.

5. It is also stated in the affidavit-in-reply that notice was issued to as many as 72 farmers. 7 farmers accepted the notice. Other farmers have supported the contentions of the petitioner. It is further stated that other area of the farmers whose Gut numbers were mentioned in the Mutation Entry No.1174 voluntarily offered their lands to the respondent no.4. There is no question of taking land forcibly from any of the farmers.

6. The matter was listed before this Court Yesterday i.e. on 20th July 2022. The counsel for the respondent no. 4 prayed for adjournment to seek instructions from the respondent no.4, the Chief Officer of the Kurundwad Municipal Council. Today, learned counsel appearing for the respondent no.4, on instructions, makes a statement before this Court that henceforth the lands of the petitioner who are

before this Court would not be subjected for conducting Mahashivratri Yatra and if the other land owners willingly and unconditionally offered their lands for conducting only Mahashivratri Yatra, respondent no. 4 would conduct Mahashivratri Yatra in those lands.

7. It is also submitted before this Court, on instructions, that if such Yatra is conducted seeking no objections and willingness from other farmers the respondent no.4 assures that no damage would be caused to the standing crops in the lands of the petitioners. The statement made by the learned counsel appearing for the respondent no. 4, on instructions, that the statement in a way of offered made by learned counsel for respondent no. 4 is agreed upon by the learned counsel for the petitioners. The statement made before this Court on behalf of respondent no.4 is accepted as an undertaking to this Court.

8. The learned counsel for the petitioner submitted that he is not pressing for the prayer in respect of damages to the crops nor he would make such prayer in future also. This statement of the petitioners by the learned counsel on behalf of the petitioners is also accepted as an undertaking to this Court. As the issue is now amicably resolved. We see no reason to other ancillary issues. On accepting these statements, the Writ Petition is disposed of.

(KISHORE C. SANT, J)

(PRASANNA B. VARALE , J)