

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1177 OF 2023

**MOHAMMAD ISSA MOHAMMAD YUSUF
VERSUS
THE STATE OF MAHARASHTRA THROUGH
THE PRINCIPAL SECRETARY AND OTHERS**

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Advocate for Petitioner : Mr. Atul M. Karad
AGP for Respondent/State : Mr. P. K. Lakhotiya
Advocate for Respondent Nos.3 and 4 : Mr. Satyajit S. Bora
Advocate for respondent – Waqf Board : Mr. Y. B. Pathan

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**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 31.01.2023

PER COURT :

We have heard the learned advocate for the petitioner, learned AGP, learned advocate Mr. Bora and perused the papers. We have also heard the couple of intervenors.

2. The petitioner is impugning the order passed by the respondent No.4 - Commissioner of the Parbhani Municipal Corporation dated 22.01.2023 whereby the permission granted to him to set up the shops, show land etc. has been cancelled on two counts:

- i) In a meeting held under the Chairmanship of the respondent No.2 - Collector dated 16.01.2023 it was decided not to set up any shops, show land etc. in the premises nearby to the premises of the Wakf Board during the period of Urs.

- ii) The condition No.(i) subject to which the permission was granted was not fulfilled.

3. It appears that the petitioner was granted permission by the respondent No.4 Commissioner on 02.01.2023 for setting up temporary stalls etc. on the earmarked premises during the period of Urs from 30.01.2023 to 16.02.2023 subject to certain conditions.

4. Since the impugned communication cancels the permission by referring to a resolution passed in the meeting dated 16.01.2023, we have minutely perused the minutes placed on record regarding which there is no dispute. Conspicuously, we do not find that any such resolution preventing setting up of any shops beyond the premises of Wakf Board was passed.

5. Pertinently, even after such minutes were recorded on 16.01.2023 and the impugned communication was issued on 22.01.2023, there is another correspondence which is placed on record to demonstrate that as has been the practice and convention in the previous years, pursuant to the permission granted by the respondent No.4 - Municipal Commissioner, the petitioner seems to have applied to the office of the Collector and the Collector in turn by the communication dated 25.01.2023 addressed to all the authorities of various government departments and even the Municipal Commissioner has requested to grant no objection certificates after due inquiry. It becomes, therefore, conspicuously clear that had there been any resolution preventing setting up of this commercial premises for temporary period ever passed there was no reason why the office of the

Collector would have taken these steps of writing to all these authorities and even the respondent Municipal Commissioner for issuance of no objection certificate. The first ground, therefor, for revoking the permission by the impugned communication by referring to the resolution in the meeting dated 16.01.2023 falls to the ground.

6. However, simultaneously, it is to be noted that by the impugned communication, the other ground which is being relied upon for cancelling the permission is non-compliance with the term/condition No.1 in the permission dated 02.01.2023 under which the petitioner was under obligation to obtain necessary permission from the police administration and all other departments.

7. It may be a fact that conventionally, as a practice the persons who have been allotted permission during previous Urs period to set up the stalls were writing to the Tahsildar or the Collector, who in turn used to write to the authorities and solicit no objection certificates. The fact remains that, though such a course apparently has been followed even in the current year in view of the communication dated 25.01.2023, admittedly, as of now there is no such 'No Objection Certificate'. When the licence/permission was granted subject to a condition of obtaining such 'No Objection Certificate', the second ground on which the impugned order is passed cannot be said to be wholly illegal or unsustainable irrespective of the *bona fides* of the petitioner and his stand referring to the previous practice.

8. In view of such peculiar circumstances, though the ground No.

(i) for cancellation of the impugned order is not sustainable, the second ground would sustain. Needless to state, if the petitioner is able to obtain the 'No Objection Certificates', the respondent Municipal Commissioner can reconsider his request of revival of permission.

9. The writ petition is dismissed.

10. Parties to act on the authenticated copy of this order.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)