

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

**CIVIL APPLICATION NO.11024 OF 2022
IN
PUBLIC INTEREST LITIGATION NO.113 OF 2018**

**MASJID BHAJI MANDI
VERSUS
ARYA SAMAJ AND OTHERS**

**WITH
PUBLIC INTEREST LITIGATION NO.113 OF 2018**

**ARYA SAMAJ JALNA THROUGH PRADHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Applicant : Ms.Pradnya S. Talekar i/by Talekar
and Associates

GP for Respondents 1 to 4/State : Shri D.R. Kale

Advocate for the original PIL Petitioner : Shri A.T. Jadhavar

Advocate for Respondents 6 and 7 in PIL : Shri N.E.Deshmukh

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**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 27th January, 2023

Per Court :-

1. By this Civil Application, the applicant (Masjid Bhaji Mandi) prays for intervention in the P.I.L.. It is contended that the PIL petitioner is Arya Samaj, Jalna, which seeks directions to remove the purported unauthorized construction of the mosque over CTS No.5942 situated at Kadrabad, Jalna. The applicant claims that such prayer put forth in the PIL would

directly affect the present applicant. The orders that would be passed by this Court in the PIL with regard to the said Masjid, would surely affect the applicant.

2. It is further contended that under the garb of branding the mosque as being unauthorizedly constructed, the PIL petitioner desires that the mosque be demolished. The mosque at issue was constructed more than 100 years ago and is said to be recognized as ‘waqf’, meaning a religious dedication in Islamic religion. The copy of the Sanad issued by the Nizam Government in 1930 in Urdu language, has been translated in English and is placed on record.

3. The applicant further submits that an inquiry and survey of the waqf were conducted on 14.07.1960, whereas the applicant waqf institution was shown to be the registered waqf governed by the Muslim Panch. Copy of the proforma of furnishing of information regarding inquiry and survey of waqf as well as the plan issued by the Superintendent of the Estate, is also placed on record.

4. It is further submitted that the applicant Masjid bears reference at Sr.No.269 in the Government gazette of waqfs published in 1973 (wrongly mentioned as 1895). The PR card is issued in the name of the applicant waqf in the year 1985 as is seen from the PR card of CTS No.5942, as well as the order

issued under Section 133 of the Maharashtra Land Revenue Code, 1966, by the District Inspector of Land Records.

5. It is further submitted that the applicant Masjid was registered as the waqf under the Waqf Act, 1995 and the certificate of registration was issued by the competent authority on 04.06.2010. The Muslim Panch/ managing body was also appointed pursuant to the registration.

6. On the basis of the above pleadings, further details are then adverted to in paragraphs 11 to 16 in the application. Based on such pleadings, the applicant submits that if any order is passed by this Court in the PIL, the same would directly affect the rights of the intervention applicant. As such, it would be apparent that the applicant will have to be heard before any order affecting it's right is passed by this Court.

7. The learned advocate for the PIL petitioner has strenuously opposed the application contending that such documents are placed before the Court, which have no significance and need not be considered. The applicant is drawing the attention of the Court to a different controversy, which is not the subject matter of the PIL. Though the learned advocate has strenuously prayed for rejection of the Civil Application, he agrees that the order passed by this Court with regard to the Masjid is likely to affect the Masjid and all those

who have rights over the said property.

8. The learned Chief Government Pleader has relied upon the affidavit in reply filed by the Resident Deputy Collector Shri Keshav Netke, dated 29.08.2022 and submits that the Petition for Special Leave to Appeal (Civil) No.8519/2006 was considered by the Honourable Supreme Court and after certain orders were passed, the State Government issued the Government Resolution dated 05.05.2011. By way of a policy, the District Level Committee was formed. Above such committee, the State Level committee was formed. The reports of the District Level Committee are forwarded to the State Level Committee. The local authorities realised that the Masjid was wrongly categorised as encroachment or illegal structure after noticing that the foundation of the structure and one floor constructed thereon, is a private property. The construction of the first floor appears to be a deviation from the permissible limits of construction. As such, without proper inquiry, the entire Masjid cannot be demolished on the ground that whole structure is illegal and/or is erected on the government land.

9. Respondent Nos.6 and 7/Waqf Board have filed the affidavit in reply contending that the intervention applicant is appointed by the Board as the Managing Committee over the masjid property. It is also submitted that if this Court proceeds to

direct the demolition of the Masjid, at least the ground floor and original structure existing on private land, is likely to be affected and in that situation, the order would be passed without hearing the intervention applicant. It is, therefore, canvassed that the application be allowed.

10. In view of the above, we find that the intervention applicant does have an arguable case. If it so happens that, when the PIL is taken to a logical end and it then turns out that the Masjid at issue is not an encroachment on the government land, but the original structure stands on a privately owned land, that the intervention applicant will then have to be permitted to be arrayed and this would set the clock backwards. In these circumstances, there is no harm in allowing the application for intervention. Eventually, if it turns out that the participation of the present applicant was a vexatious and frivolous attempt to delay the proceedings, this Court can deal with the said situation and impose exemplary costs on the Applicant.

11. In view of the above, this Civil Application is allowed. The petitioner is directed to add the intervention applicant as respondent No.8. Addition be carried out forthwith.

PIL No.113 of 2018

12. Issue notice to the added respondent No.8.

Ms.Talekar, the learned advocate, waives service of notice on behalf of respondent No.8 and seeks time of two weeks to file a reply. As such, let such reply be filed on or before 15.02.2023.

13. List the PIL petition on 22.02.2023 at 04:30 PM.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)