

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.17568 OF 2022**

**IN**

**WRIT PETITION NO.132 OF 2021**

Tanzimul Muslimin Society Sanpada, Navi Mumbai .. Applicant-Petitioner

Vs.

The Commissioner,

Navi Mumbai Municipal Corporation and Ors. .. Respondents

Mr. Sharique Nachan, with Ms. Tanzila Kazi and Mr. Amaan Khan, i/by  
Judicare Law Associate, for the Applicant-Petitioner.

Mr. Tejas Dande for Respondent No.1-Municipal Corporation.

Mr. R.D. Soni, with Mr. Sujay Gawade and Ms. Mudita Pawar, i/by Shree & Co.,  
for the Intervenor.

Dr. Birendra B. Saraf, Advocate General, with Mr. P.P. Kakade and Ms. M.P.  
Thakur, AGP for Respondent Nos.3 to 6-State.

**CORAM : A.S. CHANDURKAR &  
M.W. CHANDWANI, JJ**

**DATE : 21<sup>ST</sup> FEBRUARY, 2023.**

**ORAL ORDER : { Per A.S. Chandurkar, J. }**

1. In this Interim Application, preferred by the original petitioner in Writ  
Petition No.132 of 2021, the following prayers have been made :-

- (a). This Hon'ble Court be pleased to direct the Respondent No.3 to  
appoint a suitable officer as Nodal Officer or this Hon'ble Court  
itself be pleased to appoint any suitable officer from the

departments of the respondents as a Nodal Officer to facilitate the construction of the Masjid on the said Plot bearing No.17A, Sector 8, Navi Mumbai as per the approved plan in accordance with law.

- (b). This Hon'ble Court be pleased to direct the Respondent No.6 to provide police protection for the construction of the Masjid at the said Plot bearing No.17A, Sector 8, Navi Mumbai."

2. Writ Petition No.132 of 2021 was filed by the applicant raising a challenge to the communication dated 27<sup>th</sup> December 2018 issued by the Assistant Director, Town Planning, Navi Mumbai Municipal Corporation, by which the applicant was informed that though on 17<sup>th</sup> November 2018, building permission had been granted by the Municipal Corporation, a likelihood of a law and order situation could arise if the construction was undertaken by the applicant. Hence, the Municipal Corporation temporarily stayed the building permission granted by it on 17<sup>th</sup> November 2018. In addition, the applicant prayed that the State of Maharashtra be directed to appoint a suitable officer as a Nodal Officer to facilitate the construction of a Masjid as per the approved plan. The aforesaid writ petition was decided on 31<sup>st</sup> January 2022. The impugned communication dated 27<sup>th</sup> December 2018 came to be set aside by observing that if the Municipal Corporation apprehended any law and order situation, it could seek necessary assistance from the local police station in that regard. The writ petition was accordingly allowed. However, the

intervention application filed by Akhil Sanpada Sanskrutik Pratisthan came to be dismissed. By urging that the applicant, which was the original petitioner, was seeking implementation of the order dated 31<sup>st</sup> January 2022 passed in Writ Petition No.132 of 2021, this interim application has been filed.

3. The learned counsel for the applicant submitted that while allowing Writ Petition No.132 of 2021, this Court had set aside the communication dated 27<sup>th</sup> December 2018 issued by the Municipal Corporation. As a result, the temporary stay that was imposed on the building permission on 17<sup>th</sup> November 2018 stood vacated. It was thus incumbent upon the Commissioner of Police, Navi Mumbai to provide police protection for such construction. It was also the responsibility of the authorities and especially the State Government to appoint a Nodal Officer to facilitate construction of a Masjid on a Plot No.17A, Sector 8, Navi Mumbai as per the approved plan. Placing reliance on the decision of the Hon'ble Supreme Court in *K.A. Ansari and Anr. Vs. Indian Airlines Ltd.*<sup>1</sup> and the decision of the Division Bench of this Court in *Archana Nilesh Gore and Anr. (Applicant) in the matter between Archana Nilesh Gore and Anr. Vs. Municipal Corporation of Greater Mumbai and Ors.*<sup>2</sup>, it was urged that notwithstanding the fact that the writ petition had been disposed of, this Court could consider entertaining the interim application in the disposed of writ petition as the applicant was seeking directions in the furtherance of the order passed in the writ petition. According to learned counsel, if the interim application was not

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1 (2009) 2 SCC 164

2 2021 SCC OnLine Bom 12962

entertained, the applicant would be required to initiate fresh proceedings on account of inaction on the part of the authorities.

4. The learned Advocate General for the non-applicant nos.3 to 6 as well as the learned counsel appearing for the non-applicant no.1 joined issue and opposed the interim application on the ground that the relief sought in the interim application was not in furtherance of any directions issued in the writ petition, nor could it be said that the applicant was seeking implementation of the order passed therein. The issuance of the communication dated 14<sup>th</sup> April 2022 by the Police Authorities was justified for the reason that until certain factual aspects were verified by the said authority, further instructions could not be issued by that authority. The applicant had been called upon to submit relevant documents, on the basis of which further steps would be taken in the matter. It was thus urged that the interim application need not deserve consideration and the applicant could initiate appropriate proceedings for seeking the prayers made in the interim application.

5. The learned counsel appearing for the intervenor-Akhil Sanpada Sanskrutik Pratisthan submitted that the intervenors had filed Interim Application No.371 of 2022 seeking intervention in Writ Petition No.132 of 2021, had been dismissed by the Court on 31<sup>st</sup> January 2022 while disposing of the writ petition. That order was challenged by the intervenor by filing proceedings before the Hon'ble Supreme Court and by the order dated 9<sup>th</sup> May 2022, the Hon'ble Supreme Court held that rejection of the intervention

application was wrong. It was noted that the intervenor had challenged the building permission granted by the Competent Authority on 17<sup>th</sup> November 2018 by filing an appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966, (*for short "Act of 1966"*), which appeal was pending. A direction was issued that the proceedings pending before the State Government as well as before the Layout Committee would not be governed by the order passed in Writ Petition No.132 of 2021 on 31<sup>st</sup> January 2022. Despite that, the intervenor had not been impleaded in the present interim application and on that ground, the said application was liable to be rejected.

6. Having heard learned counsel for the parties and having duly considered the rival submissions, we are of the view that the interim application does not deserve consideration. At the outset, we may note that prayer clause (a) in the interim application is *ad verbatim* prayer clause (b) in the writ petition, which reads as under :-

“(b). This Hon’ble Court be pleased to issue a Writ of Mandamus or any other writ in the nature of Mandamus or any other appropriate and suitable writ, direction and pass an order under Article 226 of the Constitution of India, directing the respondent no.3 to appoint a suitable officer as Nodal Officer to facilitate the construction of Masjid on the said Plot as per the approved plan, in accordance with law.”

Prayer clause (b) having been sought for in the writ petition and the same not having been granted while deciding the writ petition implies that the

said prayer stands refused by this Court. A prayer which was made in the writ petition but not granted while disposing of the writ petition cannot be the subject matter of an interim application in the disposed of writ petition that is filed on the premise that the original petitioner seeks implementation of the directions issued in the writ petition. The remedy for seeking a prayer not granted in the writ petition would not be by way of an interim application in the disposed of writ petition. For that reason, prayer clause (a) in the interim application cannot be considered.

7. Coming to prayer clause (b) in the interim application, which pertains to a direction to be issued to the Commissioner of Police to provide police protection for construction of the Masjid, it is seen that while disposing of Writ Petition No.132 of 2021, this Court had observed that if the Municipal Corporation apprehends any law and order situation, it could write to the local police station, which could then provide necessary assistance so as to maintain the law and order. Accordingly, on 13<sup>th</sup> April 2022, the Assistant Director, Town Planning Department of the Municipal Corporation wrote to the Police Commissioner that the applicant had made an application to it in terms of the order passed in Writ Petition No.132 of 2021. Acting on that communication, the office of the Police Commissioner – the 6<sup>th</sup> respondent, on 14<sup>th</sup> April 2022, sought certain information from the Municipal Commissioner with a copy thereof to the applicant. This, according to the applicant, was not permissible and amounted to the Police Authorities sitting in appeal over the civil rights that

had accrued in favour of the applicant pursuant to the order passed in the writ petition. In other words, the applicant is aggrieved by issuance of the communication dated 14<sup>th</sup> April 2022 and has indicated that the said authority ought not to have required furnishing of the details that are mentioned in the communication dated 14<sup>th</sup> April 2022. It is thus apparent that if the applicant is aggrieved by the communication dated 14<sup>th</sup> April 2022 on the premise that the said authority was not justified in seeking such information, it would be necessary for the applicant to challenge that communication. As long as that communication operates, prayer clause (b) seeking direction to be issued to the respondent no.6 to provide police protection cannot be considered in the interim application that has been filed in a disposed of writ petition.

8. Perusal of the judgment of the Hon'ble Supreme Court in *K.A. Ansari and Anr. (Supra)* indicates that a direction was issued by the High Court holding the petitioners therein entitled to be posted on a post in equivalent scale that was held by them with a further direction to pay them arrears of pay and allowances, if they were posted on a post of higher grade. The learned Single Judge issued the directions, as sought for, in a miscellaneous application in the disposed of writ petition. In appeal, the Division Bench held that the miscellaneous application was not maintainable since the writ petition had been disposed of. The order passed on that application was set aside by the Division Bench. In challenge to the order of the Division Bench, the Hon'ble Supreme Court observed that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the Court to re-open the

proceedings by means of a miscellaneous application in respect of a matter which provides fresh cause of action. However, at the same time, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage as the order is couched in ambiguous or equivocal words. Since it was found that the miscellaneous application was filed for pursuing and getting implemented the relief granted in the writ petition, which was for placement in the appropriate grade, it was held that the miscellaneous application was maintainable. This decision has been followed in *Archana Niles Gore and Anr. (Supra)*.

As noted above, prayer clause (a) in the interim application cannot be granted since a similar prayer made in the writ petition was not granted when the writ petition was disposed of. As regards prayer clause (b), unless the communication dated 14<sup>th</sup> April 2022 issued by the 6<sup>th</sup> respondent is shown to have been erroneously issued, that relief cannot be granted. The prayers made in the interim application cannot be said to be the prayers made for clarification of the order or for implementing the relief granted in the writ petition. Such request for grant of police protection was under consideration of the 6<sup>th</sup> respondent and in that regard, factual information has been sought by it. If the petitioner is aggrieved by that communication, it would have to challenge the same, as entitlement to the same has not been decided in Writ Petition No.132 of 2021.

9. Another pertinent aspect that requires mention is that the applicant was

granted building permission on 17<sup>th</sup> November 2018 to undertake the construction of a Masjid. This building permission itself has been challenged by the intervenor by filing an appeal under Section 47 of the Act of 1966 before the State Government. It is stated that even today, the said proceedings are pending. Thus, unless the applicant is armed with building permission that has become final, the question of implementation of an order granting police protection with a view to implement the order granting building permission to construct Masjid cannot be considered in an interim application filed in a disposed of writ petition.

10. Thus, for aforesaid reasons, the Interim Application stands rejected. The applicant is at liberty to take such steps as are permissible in law for seeking redressal of its grievance. It is clarified that this Court has not examined the prayers made in the interim application on merits and the observations herein are only with a view to decide maintainability of the interim application.

[ M.W. CHANDWANI, J. ]

[ A.S. CHANDURKAR, J. ]