



This order is corrected as per speaking to the minutes of order dated 12.04.2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1026 OF 2023

Jumma Masjid Trust Committee Through Its President Altaf
Khan Nayyum Khan

VERSUS

The State of Maharashtra and others

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Advocate for the Petitioner : Mr. S.S. Kazi

Public Prosecutor for Respondents 1 to 5 and 7: Mr. A.B. Girase

Advocate for Respondent No.6 : Mr. V.R. Dhorde, a/w Mr. S.P.
Nimbalkar & Mr. S.S. Dudhane

Advocate for Respondent No.8 : Mr. N.E. Deshmukh

Advocate for Respondent No.9 : Mr. S.V. Dixit

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**CORAM : SANJAY A. DESHMUKH, J.
DATED : 4th APRIL, 2024.**

PER COURT :-

1. This writ petition is disposed of yesterday in view of the statement made by the learned advocate for the petitioner that the writ petition has become infructuous.

2. This Court vide order dated 18.07.2023, granted ad-interim relief in terms of prayer clause "C", which reads as under:-

“(C) Pending hearing and final disposal of this criminal writ petition, the execution and implementation of the impugned judgment and order dated 11.07.2023 passed by the learned District Collector, Jalgaon, and District Magistrate Jalgaon in proceeding No. JAMIN – 3 / 28 / COMPLAINT APPLICATION / 04 /

2023, be stayed and the respondent no.6 be directed to handover the key of Jumma Masjid to the petitioner forthwith.”

3. Thus, pending hearing and final disposal of this writ petition, the execution, implementation and operation of the impugned judgment and order dated 11.7.2023 was stayed. Respondent No.6 was directed to hand over the keys of Jumma Masjid to the petitioner. Now the question whether the said keys should be used continuously by the petitioner or not.

4. Learned advocate for the petitioner submitted that the petitioner is in possession of the said Survey No. 1100 wherein Jumma Masjid is situated. There, they are making prayers for five times in a day since 1860. He pointed out the map of the D.I.L.R. showing the city survey No. 1100 in which word Jumma Masjid is noted. He further pointed out that in the concluding part of the impugned order, it is held that the said property is protected under the provisions of Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960. It is further held that as per the directions of the Executive Magistrate dated 31.7.1995, the keys of the said building were handed over to the Chief Officer, Municipal Council, Erandol, district Jalgaon. It is also held that earlier to that the said building was handed over to the State Government. Learned advocate for the petitioner further pointed out the letter

dated 18.11.1954, sent by the Collector to the Archaeology department, in which it was mentioned that it is used as Jumma Masjid for religious purposes. Learned advocate has submitted two photographs, which are taken on record and marked as X-1 and X-2 for identification.

Learned advocate for the petitioner is relying upon the authority of the Hon'ble Supreme Court in the case of ***Joan Mascarenhas E D'Souza Vs. State of Goa and Ors., AIR Online 2023 BOM 716***, in which in para 20 and 24 held as under:-

"20. In the present case, there was no material before the District Magistrate placed by the Superintendent of Police to enable him to come to a conclusion that there was any situation of public order envisaged by the acts allegedly committed by the Petitioner, for passing prohibition orders under Section 144 of the Code. The reports placed before us, do not spell out any sufficient grounds to proceed under this section, much less, arm the District Magistrate with the jurisdictional facts to proceed to pass any prohibitory/preventive orders against the Petitioner.

24. In Commissioner of Police and Ors. v. Acharya, AIR 2004 SC 2984 (supra), whilst dealing with the question as to what would be the true meaning of professing, practicing and propagating religion, the Supreme Court has held thus:-

"85. Religion is a social system in the name of God laying down the code of conduct for the people in

society. Religion is a way of life in India and it is an unending discovery into the unknown world. People living in society have to follow some sort of religion. It is a social institution and society accepts religion in a form which it can easily practice. George Bernard Shaw stated, "There is nothing that people do not believe if only it be presented to them as science and nothing they will not disbelieve if it is presented to them as religion." Essentially, religion is based on "faith". Some critics say that religion interferes with science and faith. They say that religion leads to the growth of blind faith, magic, sorcery, human sacrifices, etc. No doubt, the history of religion shows some indications in this direction but both science and religion believe in faith. Faith in religion influences the temperament and attitude of the thinker. Ancient civilisation viz. the Indus Valley civilisation shows faith of people in Siva and Sakthi. The period of Indus Valley civilisation was fundamental religion and was as old as at least the Egyptian and Mesopotamian cultures. People worship Siva and the trishul (trident), the emblem of Siva which was engraved on several seals. People also worshipped stones, trees, animals and fire. Besides, worship of stones, trees, animals, etc. by the primitive religious tribes shows that animism viz. worship of trees, stones, animals was practised on the strong belief that they were abodes of spirits, good or evil. Modern Hinduism to some extent includes Indus Valley civilisation culture and religious faith. Lord Siva is worshipped in the form of linga. Many symbols have been used in Hindu literature. Different kinds of symbols and images have different sanctity. Baring of chest, arms and other parts of body represent the

weapons of symbols of Siva. Modern Hinduism has adopted and assimilated various religious beliefs of primitive tribes and people. The process of worship has undergone various changes from time to time.”

5. Learned advocate for the petitioner is further relying upon the judgment of the Hon'ble Supreme Court in the case of ***Gulam Abbas and others Vs. State of Uttar Pradesh and others, (1982) 1 Supreme Court Cases 71***, in which in para 27 it is held as under:-

“27. The entire basis of action under Section 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquility. Preservation of the public peace and tranquility is the primary function of the Government and the aforesaid power is conferred on the executive magistracy enabling it to perform that function effectively during emergent situations and as such it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts perfectly lawful in themselves, for, it is obvious that when there is a conflict between the public interest and private rights the former must prevail. It is further well settled that the section does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature or questions of title to properties or entitlements to rights but at the same time in cases where such

disputes or titles or entitlements to rights have already been adjudicated and have become the subject-matter of judicial pronouncements and decrees of civil courts of competent jurisdiction then in the exercise of his power under Section 144 he must have due regard to such established rights and subject of course to the paramount consideration of maintenance of public peace and tranquility the exercise of power must be in aid of those rights and against those who interfere with the-lawful exercise thereof and even in cases where there are no declared or established rights the power should not be exercised in a manner that would give material advantage to one party to the dispute over the other but in a fair manner ordinarily in defence of legal rights, if there be such and the lawful exercise thereof rather than in suppressing them. In other words, the Magistrate's action should be directed against the wrong-doer rather than the wronged. Furthermore, it would not be a proper exercise of discretion on the part of the Executive Magistrate to interfere with the lawful exercise of the right by a party on a consideration that those who threaten to interfere constitute a large majority and it would be more convenient for the administration to impose restrictions which would affect only a minor section of the community rather than prevent a larger section more vociferous and militant."

6. Learned advocate for the petitioner lastly submitted that the keys be retained with the petitioner as per the interim order passed by this Court.

7. Learned Public Prosecutor for the respondent authorities has strongly opposed the prayer of the petitioner and submitted that the petitioner now cannot retain the keys of the said building for that purpose. He is relying upon the judgment of the Hon'ble Supreme Court in the case of ***Ouseph Mathai and others Vs. M. Abdul Khadir, (2002) 1 SCC 319***, in which in para 13 it is observed as under:-

“13. Learned counsel appearing for the respondent-tenants submitted that as there was a stay regarding dispossession of the tenants, the tenants were justified in depositing the rent within one month after the dismissal of their petition under Article 227 of the Constitution of India. It is settled position of law that stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.”

8. Learned Public Prosecutor has also placed reliance on the judgment of the Hon'ble Supreme court in the case of ***Prem Chandra Agarwal and another Vs. Uttar Pradesh Financial Corporation and others, (2009) 11 SCC 479***, in which in para 3, it is held as under:-

“3. It is a well-settled principle that once a final order is passed, all the earlier interim orders merge into the final order, and the interim orders cease to exist. In this appeal, since the final order has been passed by the High Court, obviously all the interim orders passed by the High Court in the same writ petition cease to exist automatically. Consequently, any direction given in the interim order dated 24-4-2008 also ceases to exist. In view of the final order passed by the High Court, the impugned interim order and any direction therein have ceased to exist. The appeal has become infructuous and is, accordingly, dismissed.”

9. Learned Public Prosecutor has submitted the map of measurement carried out on 6.6.2023 regarding the property bearing city survey No.1100, which is taken on record and marked as Y-1 for identification. In the said map, the word “Jumma Masjid” is not written. Further, he pointed out that the words “Jumma Masjid” are written in English and all other contents are in Marathi language as pointed out by the learned advocate for the petitioner in the map at Exh.X-1.

10. Learned advocate for respondent No.6 submitted that as far as the possession of the disputed property is concerned, it is matter of evidence and this Court cannot enter into that aspect at this stage. The statutory right cannot be created by the said interim order.

11. Learned advocate for respondent No.8 submitted that it is the property registered with the Wakf Board.

12. Learned advocate for respondent No.9 submitted that it is an admitted fact that the writ petition becomes infructuous as the impugned order was for a limited period and therefore the writ petition is disposed of. He submitted that the keys were handed over to the petitioner as per the interim order passed by this court on 18.7.2023 and the said keys were accepted by the petitioner.

13. As far as the disputed issue as to right to possess and enjoy the disputed property is concerned, it is a matter of evidence and this court cannot decide that aspect. The interim order passed by this court directing to hand over the keys to the petitioner is now the fact in issue. As per the law laid down by the Hon'ble Supreme Court in the case of **Ouseph Mathai and others** cited (supra) that if the stay is granted by the Court that does not confer a right upon a party and it is granted always subject to the final result of the matter in the court. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection. Thus, by interim order no right can be created in favour of the petitioner.

14. As far as the ratio laid down in the authority of **Gulam Abbas and others** cited (supra) is concerned, it is regarding the main issue challenged in the writ petition about powers of the Executive Magistrate to adjudicate or decide disputes of civil nature or questions of title to properties or entitlements to rights. Therefore, it is not useful to the petitioner.

15. As far as the ratio laid down in **Joan Mascarenhas E D'Souza** cited (supra) is concerned, it is about the jurisdiction of the District Magistrate as to whether he can pass prohibitory or preventive order or not. Now there is very limited question before this court about continuation of the interim relief granted by this Court on 18.07.2023. This Court is not expected to decide as to whether any party is entitled or having right over the disputed property. Considering the principle of status quo ante, it would be proper to direct the petitioner to hand over the keys to the respondent No.6 as per the direction of the Sub Divisional Officer by an order dated 31.7.1995.

16. For the reasons stated above and the ratio laid down in the authority of **Ouseph Mathai and others** cited (supra), prayer of the petitioner cannot be allowed. In view of the same, the petitioner is directed to hand over the keys to respondent No.6 on or before 13.04.2024.

17. Learned advocate for the petitioner prays for stay to this order for a period of six weeks from today, as the petitioner is willing to challenge this order in the Hon'ble Supreme Court.

18. Learned Public Prosecutor has strongly objected the prayer of the petitioner. He submitted that this court has already granted one week time to hand over the keys to respondent No.6 Municipal Council. He further pointed out the judgment in the case of **Ouseph Mathai and others** cited (supra), in which it is observed that after the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

19. Considering the ratio laid down in the authority of **Ouseph Mathai and others** cited (supra) and the fact that the writ petition has become infructuous, it would not be proper to grant stay as prayed for by the learned advocate for the petitioner. Hence, the prayer of the learned advocate for the petitioner is rejected.

(SANJAY A. DESHMUKH, J.)

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