

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

**WRIT PETITION NO.1972 OF 2023
WITH
INTERIM APPLICATION NO.10620 OF 2024**

Ayub Usman Kagadi and Ors. .. Petitioners

Versus

The State of Maharashtra and Ors. .. Respondents

**WITH
INTERIM APPLICATION NO.13376 OF 2024
IN
WRIT PETITION NO.1972 OF 2023**

Shivsahyagiri Foundation Kini
Thr. Its Kolhapur District Head
Vishal B. Patil .. Applicant

In the matter between

Ayub Usman Kagadi and Ors. .. Petitioners

Versus

The State of Maharashtra and Ors. .. Respondents

Mr. S.D.Talekar a/w Ms.Madhavi Ayyappan, Advocate i/b M/s.Talekar and Associates for the Petitioners.

Mr. S.Gorwadkar, Sr.Counsel a/w Mr.Amey Mahadik, Mr.Shrirang Katneshwarkar, Ms.Manjiri Parasnis, Mr.Rutvik Joshi and Mr.Akshay Deshmukh, Advocate for the Applicant

*Dr.Birendra Saraf, Advocate General a/w Mr.P.P.Kakade, G.P.,
Mr.S.D.Vyas, Addl. G.P. & Mr.Manish Pabale, A.G.P. for Respondent /
State.*

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**
DATE: SEPTEMBER 30, 2024

P. C.

1. The above Writ Petition challenges the Order dated 7th December 2022, issued by Respondent No.4. Under this Order, Respondent No.3 was directed to *inter alia* remove the encroachments in the protected area of the Vishalgad Monument. Challenge is also laid to the Notice / Order dated 13th December 2022, issued by Respondent No.3 directing the Petitioners to demolish their structures.

2. When this matter had come up on 16th February, 2023, it was directed that no coercive action or any action of demolition is to be taken against the Petitioners and the impugned Notices of Eviction / Demolition was stayed. It is an admitted fact before us that the structures which form the subject matter of the present Petition, have not been demolished either before or after the Order dated 16th February 2023.

3. Dr.Saraf, the learned Advocate General appearing on behalf of the Respondents submitted that though the Notices / Orders dated 13th December 2022 could be construed as Orders, to put an end to the controversy, he submitted that the same be treated as Show Cause Notices issued to the Petitioners. On these Show Cause Notices (Page 131 to 143 of the Paper Book), each of the Petitioners in the present Petition would be entitled to file a Reply/Additional Reply, and also be given a personal hearing before any final Order of demolition, if any, is passed.

4. The learned Advocate General has further stated that a reasoned Order will be passed in case of each of the Petitioners. If for any reason, the reasoned Order is adverse to the Petitioners, or any of them, then the same would not be acted upon for a period of two weeks from the date of service of the said Order, was the statement made by the learned Advocate General.

5. Having heard Mr.Talekar, the learned Advocate appearing on behalf of the Petitioners, and Dr.Saraf, the learned Advocate General appearing on behalf of the Respondents, and in the peculiar facts and circumstances of the present case, we dispose of the above Writ Petition by passing the following Order:

- a. The Notices dated 13th December 2022 (Page 131 to 143) shall be treated as Show Cause Notices issued to the persons mentioned in the said Notice.
- b. These persons shall be entitled to file a Reply / Additional Reply to the Show Cause Notices (if they so desire). This Reply / Additional Reply shall be filed within a period of two weeks from today.
- c. After the Reply/Additional Reply is filed, Respondent No.3 shall give a personal hearing to each of the Show Cause Noticees mentioned in the respective Notices dated 13th December 2022.
- d. After the hearing is given, the Respondent No.3 shall pass a reasoned Order. If for any reason, the Order passed by Respondent No.3 is adverse to the Noticees, or any of them, the same shall not be acted upon for a period of four weeks from the date of service of the Order.

e. The Noticees will be entitled to raise all contentions against the Show Cause Notices issued to them, including that Applications for regularisation of their respective structures, if any, are pending before the Collector / Respondent No.4.

f. It is needless to clarify that unless this entire process is completed, structures of the Petitioners or the structures mentioned in the Notices annexed at Page 131 to 143 of the paper book shall not be demolished.

6. It is made clear that in the event the Orders passed by Respondent No.3 are adverse to any of the Noticees, they are also at that time, free to challenge the Notification dated 27th January 1999, issued under Section 4 of the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960.

7. Writ Petition is disposed of in the aforesaid terms. However, there shall be no Order as to costs.

8. We may hasten to add that we have not opined on the merits of the matter as to whether the structures which form the subject matter of the

present Petition are legal or otherwise. That will be decided by the concerned authority (Respondent No.3) after following the procedure laid down in this Order.

9. In light of the disposal of the Petition, nothing survives in any of the Interim Applications therein, and the same are disposed of accordingly.

10. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]