

S.R.JOSHI

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

WRIT PETITION NO.6051 OF 2019

- | | | |
|---|-------------------------------------|-------------------|
| 1 | Yunus Hussain Maniyar |] |
| | Age: years, Indian Inhabitant |] |
| 2 | Sufiya Yunus Maniyar |] |
| | Age: years, Indian Inhabitant |] |
| | both presently R/at. P. O. Anjenvel |] |
| | Taluka – Guhagar, Dist.Ratnagiri |] .. Petitioners. |

v/s.

- | | | |
|---|---|-------------------|
| 1 | State of Maharashtra |] |
| | through the office of the Govt. Pleader |] |
| | High Court (A.S.), Mumbai, representing |] |
| | the office of the Tourism and Cultural |] |
| | Affairs Department, Mantralaya, Dist. |] |
| | Ratnagiri. |] |
| 2 | The Collector, Dist. Ratnagiri |] |
| | having office at Ratnagiri, State of |] |
| | Maharashtra. |] |
| 3 | The Tahsildar, Guhagar, |] |
| | Dist. Ratnagiri, State of Maharashtra. |] |
| 4 | The Director, |] |
| | Archives & Historical Monuments |] |
| | State of Maharashtra, having office at |] |
| | Fort, St. George Compound of St. George |] |
| | Hospital, Near CST, Mumbai 400 001. |] |
| 5 | Archaeological Officer, |] |
| | State of Maharashtra, Thiba Palace, |] |
| | Ratnagiri. |] .. Respondents. |

Ms. Reshma Nair i/b. Mr. Devmani J. Shukla, for the Petitioners.

Ms. P. J. Gavhane, AGP for Respondent-State.

**CORAM: G. S. KULKARNI &
 FIRDOSH P. POONIWALLA, JJ.**
DATED: 13th MARCH, 2024

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ORAL JUDGEMENT (Per FIRDOSH P. POONIWALLA,J.):-

This Petition has been filed under Article 226 of the Constitution of India, seeking the following reliefs:-

“(b) For a writ or an order in the nature of a writ, quashing and setting aside the impugned Notification dated 20.8.2016 (Exhibit “F” hereto) by declaring the same as bad and illegal under the law;

(b-1):-For an writ or an order in the nature of writ directing the Respondents to amend the impugned notification dated 20.08.2016 (Exh. “F” hereto) and thereby incorporate the name of the Petitioner No.2 as owner of Gat No.83 replacing and substituting the name of Kadir Husen Manyar;

(c):- For a writ or an order in the nature of a writ, directing the Respondent No.2 to direct local police to provide adequate protection and assistance if called upon by the Petitioners to protect their properties viz. Survey/ Gad Nos. 82 and 83 situate at Anjanwel, Taluka Guhagar, Dist. Ratnagiri.”

2 By a registered Agreement/ Conveyance Deed dated 7th January, 1987, Petitioner No.1 acquired all right, title and interest in the land bearing Gat No.82 situated at Anjanwel, Taluka Guhagar, District – Ratnagiri. Further, by a registered Agreement/ Conveyance Deed dated 17th July, 2008, Petitioner No.2 acquired all the right, title and interest in land bearing Gat No. 83, situate at Anjanwel, Taluka Guhagar, District – Ratnagiri.

3 On 4th November, 2009, Respondent No.1 issued a Notice in exercise of powers under Section 4(1) of the Maharashtra Ancient Monuments & Archaeological Sites and Remains Act, 1960 (“the Act”), inviting objections from the public at large, including the Petitioners, to the proposal of the Government to declare certain lands and structures mentioned therein, which included the said Gat Nos. 82 & 83, as protected monuments.

4 By a representation dated 1st December, 2010, the Petitioners recorded their objections to the said Notice dated 4th November, 2009 issued by Respondent No.1.

5 Thereafter, Respondent No.1 issued a Notification dated 20th August, 2016, in exercise of powers under Section 4(3) of the Act, declaring various properties mentioned therein as protected monuments for protection of the monument named Gopalgad Fort. The said Notification also included Gat Nos. 82 & 83. Hence, by the said Notification, Gat Nos. 82 & 83 were declared as protected monuments under the Act.

6 It is the case of the Petitioners that the said Notification dated 20th August, 2016, which is impugned in the present Petition, does not consider various objections raised by the Petitioners in their representation dated 1st December, 2010. It is also the case of the Petitioners that the lapse of a period of 7 years between the issuance of the said Notice dated 4th November, 2009 and the impugned Notification dated 20th August, 2016 was, *prima facie*, indicative of non-consideration of the objections received by Respondent No.1. It is further the case of the Petitioners that the Petitioners' properties, i.e. Gat Nos. 82 & 83, ought not to have been included in the said impugned Notification dated 20th August, 2016 as the Gopalgad Fort, i.e., the concerned monument, was located on property bearing Gat No.85 only and not on Gat Nos. 82 & 83. This seems to be the primary case of the Petitioners.

7 The Respondents have filed an Affidavit dated 10th December, 2021, wherein they have disputed the aforesaid contention of the Petitioners. It is the case of the Respondents that, as a matter of fact, the actual area on which the Gopalgad Fort is situated included Gat Nos. 82 & 83. It is stated that the fortification wall of Gopalgad Fort is around Gat Nos. 82 & 83,

whereas Gat Nos. 84 & 85 are the lands adjacent to the fortification wall and are a part of the fort area where remains of the fort are lying.

8 We have heard the learned Counsel for the parties and perused the documents on record. From the submissions of the parties, it is very clear that there is a factual dispute between the Petitioners and the Respondents as to whether the Gopalgad Fort is situated in Gat Nos. 82 & 83 owned by the Petitioners. It is the Petitioners' case that it is not so situated, whilst, on the other hand, it is the case of the Respondents that the fortification wall of Gopalgad Fort is around Gat Nos. 82 & 83. This clearly shows that the present Petition raises disputed questions of fact.

9 In these circumstances, on such issue, this Writ Petition under Article 226 of the Constitution of India would not be maintainable.

10 However, we find from the record that the Petitioners have made a representation dated 1st December, 2020 to the Respondents. Considering the same, we are of the opinion that the Writ Petition needs to be disposed of by directing the Respondents to decide the Petitioner's representation dated 1st December, 2020. Further, if the Petitioners are desirous of filing a further representation objecting to the impugned Notification dated 20th August, 2016, we permit them to do so. In the event of such a further representation being filed, the Respondents shall decide the same in accordance with law.

11 In the light of the aforesaid discussion and for the aforesaid reasons, we hereby pass the following orders:-

- (i) The Respondents are directed to decide in accordance with law the representation dated 1st December, 2010 and any other representation that the Petitioners may make objecting to the said impugned Notification dated 20th August, 2016, after giving an opportunity of

hearing to the Petitioners, and by passing a reasoned order, within a period of six weeks from the date of intimation of this order;

- (ii) Writ Petition is disposed of in the aforesaid terms;
- (iii) In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)