

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9968 OF 2024

Maqbul Ahmed Mujawar & Ors. .. Petitioners

Versus

The State of Maharashtra and Ors. .. Respondents

WITH
INTERIM APPLICATION NO.11937 OF 2024
IN
WRIT PETITION NO.1972 OF 2023

Nazim Ahmad Mujawar & Ors. .. Applicants

In the matter between

Maqbul Ahmed Mujawar .. Petitioner

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 Petitioner.

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 Communications dated 7th December 2022, issued by Respondent No.4 under which Respondent No.3 was directed *inter alia* to remove the encroachment in the protected area of the Vishalgad Monument. Challenge is laid to the Notice / Order dated 13th December 2022, issued by Respondent No.3 directing the Petitioners to remove their structures.

2. It is an admitted fact before us that as far as the structures of Petitioner Nos.1 to 5 are concerned, these structures are not demolished. According to the learned Advocate General, the structures of Petitioner No.3 is partially demolished. According to the Petitioners as far as the structures of Petitioner Nos.6 is concerned, the structure is commercial structure and 75% of it is demolished. According to the State, it is fully demolished. As far as the structure of Petitioner Nos.7 is concerned, the structure was also commercial structure and is completely demolished. As far as the structures of Petitioner Nos.8 is concerned, the State has filed an Affidavit dated 18th September 2024 in which the details of the structures of Petitioner Nos.8 and the action taken in respect of those structures is set out.

3. Dr.Saraf, the learned Advocate General appearing on behalf of the Respondents submitted that though the Notice / Order dated 13th December 2022 is being construed by the Petitioners as an Order, to put an end to the controversy, the same should be treated as Show Cause Notices issued to the Petitioners. On such Show Cause Notices issued to the Petitioners (Page 149 to 161 of the Paper Book), each of the Petitioners in the present Petition will be entitled to file a Reply, if not already filed, 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 Petitions.

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 149 to 161) 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 the date of uploading of this order.
- c. After the Reply is filed, the Respondent No.3 shall give a personal hearing to each of the Noticees mentioned in their respective Notices dated 13th December 2022.
- d. After the hearing is given, the Respondent No.3 shall pass a reasoned Order. As far as these Petitioners are concerned, it is directed that whatever is the status of the structures as on today, the same shall be maintained and will continue for a period of four weeks from the date of service of the order, if the same is adverse to any of the Petitioners.

e. As far as the structures that are already demolished are concerned, depending upon the Order passed by the Collector, the Petitioners may adopt appropriate proceedings in that regard.

f. The Petitioners will be entitled to raise all contentions against the Notices, during filing of their Reply/Additional Reply, as well as Notices served during the personal hearing given to them before Respondent No.3, including as regards their Applications for regularization of their respective structures, if any, are pending before the Collector / Respondent No.4.

g. It is also clarified that in the event, if the Orders are adverse to any of the Petitioners, 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.

h. It is needless to clarify that unless this entire process is completed, the status of the structures of the Petitioners or the

structures mentioned in the Notices annexed at Page 149 to 161 of the paper books shall be maintained as at present.

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

j. 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 after following the procedure laid down in this Order.

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

6. 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.]