

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

**WRIT PETITION NO. 6607 OF 2024**

New Shree Swami Samartha Borivade  
Housing Company Private Limited & Anr. ... Petitioners  
versus  
Thane Municipal Corporation & Ors. ... Respondents

...  
Mr.Kunal Dwarkadas with Mr.Karan Bhide, Mr.Nilesh Tated and  
Mr.Ishaan Zaveri i/b. M/s. Mahimtura and Company for the Petitioners.  
Mr.Ram Apte, Senior Advocate i/b. Mr.Madar Limaye for the Respondent  
– Municipal Corporation.  
Mr.Siddharth A. Mehta with Ms.Harshada Shrikhande and Mr.Vaibhav for  
Respondent Nos. 3, 5 and 7.

...

**CORAM : RAVINDRA V. GHUGE &  
ASHWIN D. BHOBE, JJ.**

**DATE : OCTOBER 10, 2025**

**P.C:**

1. Mr. Siddharth Mehta, the learned Advocate for Respondent Nos. 3, 5, and 7, has informed us that the tomb in the Dargah has been protected by the Civil Court vide order dated 5<sup>th</sup> April, 2025 in Regular Civil Suit No. 318 of 2002. However, the learned Advocate representing the Petitioners has drawn our attention to the order passed by the learned Predecessor Bench [Coram: A.S.Gadkari and Kamal Khata, JJ.] dated 9<sup>th</sup>

July, 2025 on Interim Application (St.) No. 21468 of 2022. He specifically refers to paragraph no. 6.1, which reads as under:

*“6.1) It is settled law that, a person who asserts a particular fact must prove it. He cannot rely upon the defenses of the other party to claim rights. The existence of a structure in a 7/12 extract cannot be evidence of anything whatsoever. Entry in the 7/12 extract cannot and does not prove anything as such. Admittedly, there is no permission taken by the Applicants for even a one single square feet of construction. Admittedly, the so-called structure has been increased to a humongous structure of more than 20,000 sq. ft. Such a party in our view cannot claim any equities. A party coming to a Court must come with clean hands. He must state and produce all facts and documents on record to prove his ownership as well as the permissions taken for construction of a structure. He cannot seek protection based on entries in 7/12 extracts and the existence of some structure which he claims to be a Dargah. The claim of a structure being a Dargah must be proved by the Applicant in appropriate proceedings before the jurisdictional Civil Court. There is nothing produced to prove that this was a Dargah prior to their being registered as a charitable institution and being the owner of this structure.”*

2. Though the learned Advocate, Mr. Mehta, did not apprise us of this fact, nor of the fact that his client had approached the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos. 20715–20716 of 2025, for challenging the above-mentioned order of this Court, we have been informed that the said SLP was dismissed on 31<sup>st</sup> July, 2025.

3. The learned Advocate for the Petitioners draws our attention to paragraph 6.2 of the said order dated 9<sup>th</sup> July 2025, which reads thus:

*“6.2) The other contention of Mr. Patil that they were not heard is also incorrect. The Affidavit indicates that, after the Order dated 5<sup>th</sup> April 2025, a Notice was issued by the Respondent No.1 on 5th June, 2025 calling upon the Applicants to produce documents regarding the sanction or permissions obtained by the Applicants for construction of the structure. There was no response to this Notice. Thus, it cannot be contended by the Applicants that they were not given an opportunity by the Respondent No.1. Besides this, in our Order dated 10th March 2025, this Court had observed that, the pursuant to the Notice dated 6th January 2025 under section 260(1) (2) of the MMC Act a hearing was held on 22nd January 2025 before the Assistant Commissioner, Majiwada-Manpada Ward Committee. Even at that stage, there were no documents evincing permission produced by the Applicants. Thus, resulting in an Order dated 27th January 2025 declaring the writ structure to be entirely unauthorized and with directions to remove it as recorded in our Order, due procedure was followed by the Respondent No.1. The Applicants have entirely failed in proving (1) that, they own the land or (ii) they have taken permissions from the Municipal Authorities to construct even a square inch on the land. In our view therefore, the Applicants have no right over the structure now constructed illegally or even the structure on the Petitioner's land.”*

4. It is now canvassed by Adv Mehta on behalf of the Trust that when the Predecessor Bench passed the order on 9<sup>th</sup> July 2025, it referred only to the Dargah and never intended to include the Tomb while drawing its conclusions about illegal structures, in paragraphs 6.1 and 6.2.

5. In light of the above submission, it is contended by the Trust, beyond what is reflected in the order before us, that the learned Predecessor Bench had no intention to include the Tomb, while concluding that the Trust cannot claim any right over even a square inch of the land, and that any structure thereon cannot be permitted to continue on the Petitioners' land.

6. In view of these comments and contentions by the Trust, at a stage when the matter now pertains to compliance of the directions set out in the order dated 9<sup>th</sup> July, 2025, it would be appropriate for such comments/contentions to be made before the same Bench.

7. Therefore, we grant liberty to the Petitioners to file an appropriate precipe seeking an order from The Hon'ble The Chief Justice of the Bombay High Court to place the matter before the same Bench that passed the order dated 9<sup>th</sup> July, 2025.

**(ASHWIN D. BHOBE, J.)**

**(RAVINDRA V. GHUGE, J.)**