

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3362 OF 2025

Adam Ibrahim Mujawar & Anr ...Petitioners
Versus
State of Maharashtra through Principal Secretary ...Respondents
& Ors

Mr Sagheer A Khan, with Simran Rathod Tasmiya Siddiquie, Mohd
Daood Kha, Afsha Khan, Faisal Warsi & Aquil S Khan, i/b
Judicare Law Associates, for the Petitioners.
Mr AI Patel, Addl. GP, with YD Patil, AGP, for the Respondent-
State.

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CORAM **G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATED: **5 MARCH 2025**

PC:-

1. We have heard learned counsel for the parties for sometime on this petition. The challenge in this petition is primarily to an order dated 5 February 2025 passed by the Assistant Director (Archaeology) Division Office Pune, whereby the petitioner has been declared to be an unauthorised encroacher on government land and has been directed to demolish the constructions as undertaken by him within 30 days from the date of the said order, failing which the demolition would be undertaken by the Government Authorities

without any further notice. It is in these circumstances, the present petition is moved.

2. Learned Additional Government Pleader has drawn our attention to a batch of similar petitions, which are about ten in number and which are moved by the persons similarly placed before the learned Single Judge of this Court. Learned Single Judge has passed an ad-interim order dated 4 March 2025 on such petitions whereby granting interim protection till 18th March 2025.

3. In our view, it would be appropriate for the petitioner to file an appropriate petition assailing the order of 5 February 2025, which could be tagged along with said batch of petitions pending before the Learned Single Judge.

4. The learned counsel for the petitioner in making the prayer in the present petition has urged that, according to him, the issue raised in the petition, goes to the root of the jurisdiction of the Assistant Director (Archaeology) Division Office Pune/respondent no.3 in passing the impugned order, to contend that action has been taken by respondent no. 3 under the provisions of Section 21(2) of the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 (**“the Monuments Act”**). It is his submission that to assume jurisdiction to pass any orders under the said provisions, the necessary requirement in law would be for an appropriate declaration under Section 20 of the Monuments Act being protected site. It is his contention that there is no such notification in that

regard to the land on which the respondent has alleged encroachment on the part of the petitioner.

5. In our opinion, if this be the case, this is an issue which touches upon the jurisdiction of respondent no 3, who has passed the impugned order and which can be permitted to be urged by the petitioner in the proposed proceeding, which the petitioner intends to file assailing the order dated 5 February 2025.

6. We accordingly dispose of the petition with liberty to the petitioner to file an appropriate petition raising all contentions on the legality of the order dated 5 February 2025.

7. To enable the petitioner to do so, respondent is directed not to take any coercive action against the petitioner for a period of two weeks from today.

8. Needless to observe that the petitioner's challenge to the notification dated 27 January 1999 is kept open.

9. Disposed of. No costs.

(ADVAIT M. SETHNA, J)

(G. S. KULKARNI, J)