

AGK

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

WRIT PETITION NO.3439 OF 2025

Makbul Ahamad Mujawar ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

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WITH

WRIT PETITION NO.3440 OF 2025

Farid Nazim Mujawar ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.3442 OF 2025

Farid Nazim Mujawar ... Petitioner

V/s.

The Directorate of Archeology
and Museums & Ors. ... Respondents

WITH

WRIT PETITION NO.3444 OF 2025

Shabbir Arif Shaikh ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.3445 OF 2025

Abdulla Mahammad Mujawar ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.3446 OF 2025

Abdul Saleem Kaseem Malang ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

**WITH
WRIT PETITION NO.3453 OF 2025**

Sadika Nazim Muzawar ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Umakant Awate with Mr. Parth Rajput i/by Talekar
& Associates for the petitioner/s in all writ petitions.

Mr. O.A. Chandurkar, Additional G.P. with Smt. Gauri R.
Raghuwanshi, AGP for the State in WP Nos.
3439/2025, 3440/2025, 3442/2025, & 3453/2025.

Mr. O.A. Chandurkar, Additional G.P. with Smt. P.J.
Gavhane, AGP for the State in WP Nos.3444/2025,
3445/2025, & 3446/2025.

CORAM : AMIT BORKAR, J.

DATED : MARCH 6, 2025

P.C.:

1. The petitioners in the present batch of writ petitions assail the legality, propriety, and justifiability of the order dated 5th February 2025, issued by the Assistant Director (Archaeology), Pune Division, Pune. By the said order, the constructions raised by the petitioners have been declared illegal, and they have been directed to remove and demolish the same within a period of 30 days from the date of the order, failing which coercive action has been contemplated.

2. The petitioners, in support of their claim that the constructions pre-date the issuance of the Notification dated 27th January 1999, have placed on record various documents of statutory character, including entries in the voters' list, election identity cards, school leaving certificates, and 7/12 extracts. These documents, according to the petitioners, unequivocally establish the existence of the subject constructions well before the statutory embargo created by the said Notification. The contention, therefore, is that the impugned order proceeds on an erroneous premise by failing to take into consideration these crucial documents, which bear probative value in determining the temporal existence of the structures.

3. Upon a prima facie perusal of the impugned order, it prima facie emerges that the authorities under the Act have predicated their conclusion solely on the ground that the petitioners have failed to produce sanctioned building permissions or documents evincing regularization of the subject constructions. Prima facie the reasoning adopted by the authority appears to be one-sided, inasmuch as it does not take into account the documentary evidence submitted by the petitioners, nor does it examine whether such constructions existed prior to the issuance of the Notification under the Act.

4. Significantly, the site in question was notified under the relevant provisions of the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 (hereinafter referred to as "the Act") only on 27th January 1999. It was, therefore, incumbent upon the authorities to undertake a cogent and

reasoned inquiry to establish whether the subject structures had come into existence subsequent to the said date. It prima facie appears that Section 21 of the Act would be applicable only to those constructions which have been raised after the notification of the site under the Act. In the absence of a categorical adjudication to that effect, the mere assumption of illegality, without an examination of the relevant evidence, renders the impugned order susceptible to judicial scrutiny.

5. From the materials placed on record, and without making any conclusive determination at this stage, it prima facie appears that the constructions, which are held to be illegal by the impugned order, were in existence prior to 27th January 1999. The documentary evidence, which includes entries in public records, requires due consideration by the authorities in the course of arriving at their final conclusion. The impugned order does not indicate any objective assessment of this material, nor does it reflect any cogent reasoning demonstrating that the structures were erected after the notification date.

6. At this juncture, learned Assistant Government Pleader (AGP) submits that an opportunity may be granted to the State authorities to place on record material to demonstrate that the subject constructions were indeed raised after 27th January 1999. It is further submitted that the authorities may also be permitted to produce any other relevant documents which would indicate that the impugned action is legally tenable and in consonance with the provisions of the Act.

7. However, the impugned order directs the demolition of the structures within 30 days from its issuance, which period, as per the submissions made, expires tomorrow, i.e., 5th March 2025. In the circumstances, an irreparable situation would arise if the structures are demolished before the petitioners are afforded an effective opportunity to contest the findings recorded in the impugned order. The balance of convenience, therefore, lies in ensuring that no precipitative action is taken by the authorities, at least until the next date of hearing, so that the matter may be examined in its proper perspective after affording both parties as adequate opportunity to present their case.

8. In view of the foregoing, the matter shall **stand over to 18th March 2025** for further consideration. The respondents shall, in the meantime, file an affidavit placing on record such material as they seek to rely upon in support of their action.

9. Accordingly, it is directed that, till the 18th March 2025, the constructions, which are the subject matter of the present writ petitions, shall not be demolished.

(AMIT BORKAR, J.)