



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION (ST) NO.21468 OF 2025
IN
WRIT PETITION NO.6607 OF 2024

Gazi Salauddin Rehmatulla Hoole

... Applicant
(Original Respondent No.3)

IN THE MATTER BETWEEN

New Shree Swami Samartha Borivade & Anr.

... Petitioners.

V/s.

Thane Municipal Corporation & Ors.

... Respondents.

Mr. Rajiv Patil, Senior Advocate a/w. Adv. Siddharth A. Mehta, Adv. Harshada Shrikhande, Adv. Vaibhav for the Applicant in IAST/21468/2025 and for Respondent No.3 in WP/6607/2024.

Mr. Kunal Dwarkadas a/w. Adv. Karan Bhide, Adv. S.C. Mahimtura, Adv. Nilesh Tated, Adv. Ishaan Zaveri i/by M/s. Mahimtura and Company for the Petitioner in WP/6607/2024 and for Respondent in IAST/21468/2025.

Mr. R.S. Apte, Senior Advocate a/w. Adv. Mandar Limaye, Adv. Juilee Joshi for the Respondent No.1-TMC.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.

DATED : 9th July, 2025.

Order (Per Kamal Khata, J.):

1) The present application is preferred by the Applicant

seeking recall of the Judgment dated 30th April 2025, passed by this Court in the present Writ Petition.

2) Mr. Rajiv Patil, learned senior Advocate for the Applicant submits that, this Application is in pursuance of the Supreme Court Order dated 17th June, 2025 whereby the Supreme Court has granted liberty to the Applicant to avail an appropriate legal remedy including filing of an Application before this Court seeking recall of the Judgment dated 30th April, 2025.

2.1) He submits that, this Court passed the impugned Judgment dated 30th April 2025 overlooking the fact that the Civil Judge was pleased to dismiss the Regular Civil Suit No.318 of 2002 by its Judgment dated 5th April, 2025. Thus, the directions passed by this Court in paragraph No.12(a), 12(c) and 12(d) would stand vitiated by virtue of the Judgment in the Regular Civil Suit No.318 of 2002. He contended that, the Petitioners endeavor to suppress the dismissal of the Suit. The Applicant, however, by his Affidavit dated 29th April 2025 had placed on record the Judgment dated 5th April 2025 amongst other documents.

2.2) Mr. Patil contends that, in the Judgment dated 5th April 2025, the learned Civil Judge refers to the Maharashtra State Gazettes, Thane District, 1882, that was republished in 1982. That Gazettes contains the directory of villages and towns in Thane

District including Borivade where the remaining structure/ Dargah is situated. He submitted that, the directory shows the existence of structure in the year 1882. This structure was obviously prior to the formation of the Respondent No.1. He submits that, even on a bare perusal of the records and findings of the Judgment dated 5th April 2025, it can be ascertained that, the structure was in existence since 1882. Based on these observations of the learned Civil Judge, Thane, there was no question of seeking any permission from the Respondent-Authority. Therefore, this Court could not have directed the Respondent No.1 to carry out demolition of the remaining structure without affording an opportunity to the Applicant under the provisions of the Maharashtra Municipal Corporations Act, 1949 ('MMC Act').

2.3) He then drew our attention to the observation in the Judgment that considered the Sale Deed dated 17th June, 1982 between the Petitioner and the erstwhile owners. He submitted that, the Sale Deed categorically mentioned about the existence of a structure on the land. He accordingly submitted that, this clause in the sale deed clearly would prove that a structure/ Dargah was standing on the land prior to 1982. He then relied upon the 7/12 extract of the year 1989 with regard to the said land wherein the Dargah is shown to be in the land. On this basis, he submitted that, it

would show that the structure is existing on the land since the inception. He however acceded to the fact that, the 7/12 extracts reflect the possession of the Petitioner on the land except the Dargah.

2.4) Mr. Patil then relies upon the Application dated 27th July 1990 to the Assistant Charity Commissioner, Thane for registration of the Applicant-Trust. He submits that, in the Application the said structure/Dargah has been shown as the property of the Trust. He submits that, there was a Public Notice issued dated 27th July 1990 that was issued by the Assistant Charity Commissioner calling for objections against registering the Respondent No.3-Trust. However, no objections were received by the Assistant Charity Commissioner and subsequently the Registration Certificate was granted to the Respondent No.3 on 30th August 1980. Apart from this, he relies upon the contents of the letter dated 9th January 2020 of the Superintendent of Police to submit that, this structure is standing on the land at least from the year 1970 and it falls under the jurisdiction of Kapurbawadi Police Station, Thane. He relies upon the Judgment of the Supreme Court in the case *Muni Suvrat-Swami Jain S.M.P. Sangh vs. Arun Nathuram Gaikwad & Ors.* reported in 2006 8 SCC 590 to submit that the Respondent No.1 has failed to adhere to the provisions of the Mumbai Municipal Corporation ('MMC') without applying its mind solely on the basis of a third party report and

consequently declared that the additional structure of 17,610.02 sq. ft. is required to be demolished. According to him, without affording an opportunity to be heard this structure cannot be demolished.

2.5) Mr. Patil submitted that, the reliance of the Respondent No.1 on the report from the Town Development Officer dated 29th April 2025 regarding grant of permission for construction finding that, no permission was granted for their construction could not have been done and the Respondent No.1 ought to have taken up and exercise to verify the area declared and then declare as to whether it was illegal only through a Competent Authority of Respondent No.1. He further submitted that, the Respondent No.1 had initially carried out an inspection to determine the encroachment on the land and by the Inspection Report dated 1st January 2025 had observed that 3,600 sq. ft. structure was found to be illegal. He submitted that, the Respondent No.1 could not have made a statement that, there was an additional illegal structure admeasuring 17,610.02 sq. ft. in contradiction of its Inspection Report. Based on the aforesaid grounds, Mr. Patil submits that, the Order dated 30th April 2025 deserves to be recalled and the Writ Petition deserves to be reconsidered on its own merits.

3) Mr. Apte, learned Senior Advocate appearing on behalf of the Respondent No.1-Corporation relied upon the Affidavit dated 9th

July, 2025 filed by Sona Shivaji Kale to submit that, the ADTP, City Development Department, Thane Municipal Corporation ('TMC') had addressed a letter dated 29th April 2025 clearly indicating that, there was no permission granted to the Trust for construction of an area admeasuring 17,610.02 sq. ft. in the records of its Department. Pursuant to the dismissal of the Regular Civil Suit No.318 of 2002, the Respondent No.1 had issued a Notice dated 5th June 2025 calling upon the Applicants to produce documents regarding the sanction of this structure. However, no documents were produced by the Applicant pursuant to the Notice. In pursuant thereof, they took steps for taking adequate police protection for demolition that was scheduled to take place from 9th June 2025 to 13th June 2025.

3.1) He submitted that, the Senior Police Inspector, Kasarwadavli Police Station, imposed various conditions on the Corporation to ensure there is no law-and-order situation. He submitted that, in view of these conditions they could not carry out the demolition. In the meantime, the Applicant approached the Supreme Court who directed a status quo be maintained for a period of 10 days from the date of the Order dated 17th June, 2025. This Order was extended by the High Court when the matter came up on 27th June 2025. Whereby the High Court directed filing of the reply and indicating as to whether the structure was an offending

structure.

3.2) He therefore submitted that, the entire structure of 17,610.02 sq. ft. is an entirely illegal structure and is constructed without any permission whatsoever. He further submitted that, the Corporation would take necessary steps to complete the demolition within a period of 4 weeks from the date of this Order.

4) Mr. Kunal Dwarkadas, learned Advocate appearing on behalf of the Petitioners submitted that, the Respondent No.1 was delaying the demolition and consequently the compliance with the Orders of this Court. The excuses set out in the Affidavit with regard to the conditions imposed by the Police Authorities is yet another ruse to protect the illegal structure. He pointed out from the Affidavit of 9th July 2025 filed by the Respondent No1-Corporation that, admittedly the entire structure was illegal and that there was no permission whatsoever or any sanction granted for the construction of this entire structure. He further submitted that, the 7/12 extract entry pointed out by the Applicants counsel was not regarding this part of the land but some other land. He accordingly submitted that, the structures ought to be completely demolished at the earliest.

5) We have heard all the counsel and also perused the Application.

6) At the outset we find that, the Applicants have simply

taken a chance and successfully delayed the compliance with the Orders of this Court. It is evident that, they have not been able to produce a single piece of evidence to suggest that there was any structure owned or possessed by the Trust. The only contention raised by the Applicant is that, when they issued a Public Notice through the Charity Commissioner claiming ownership of the structure as a Dargah, there were no objections taken by anybody. The Trust being certified was therefore declared as the owner of the structure. This in our view can never be the basis of ownership of any structure on anybody's land. The Applicants have not produced any document whatsoever to show ownership of the land or the structure at all. In our view, they have encroached upon the land and claimed rights on a structure that was never theirs.

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.

6.2) The other contention of Mr. Patil that they were not heard is also incorrect. The Affidavit indicates that, after the Order dated 5th 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 (i) 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.

6.3) The other contention that, there was a structure on the Petitioner's land as could be seen in the Sale Deed has no consequence inasmuch as the Applicants have failed to prove by any evidence whatsoever that, the structure was per se a Dargah and that it belonged to them prior to it being the land being purchased by the Petitioners. It is also not their case that they were the erstwhile owners of the land. It is also not their case that they are the owners by adverse possession. It is inconceivable for this Court to recall Orders based on a mere plea that the Respondent No.1 has not verified the construction through a Competent Authority. It does not lie in the mouth of the Applicant who has taken no effort or steps for construction even for a square foot to suggest that the Respondent

No.1 has not verified from the Competent Authority. Such defense cannot give right to an Applicant to claim protection or continuation of a thoroughly illegal structure. It is not that it is a structure of 17,610.02 sq. ft. The Applicants have failed to prove that they had even obtained sanction for even one square foot. That be the case this Court cannot protect such illegalities. We have set out the decisions of the Supreme Court in our Judgment and we are bound to follow it. In view of the aforesaid, we see no reason to recall our Order.

6.4) The suppression of the dismissal of the Suit would have no bearing on the illegality of the Applicant structure. The dismissal of the Suit does not prove that the land belongs to the Applicant. It also does not prove that they were in fact the owners of the erstwhile structure in the sale deed of the land to the Petitioners. In these circumstances, by virtue of a dismissal of a Suit of the plaintiff against the Defendant does not confirm any right on the Defendant either on the structure or on the land. The Applicant must independently prove the right to the structure as well as the land to in order that the Court would direct protection of the structure. In view of the aforesaid, the structure deserves to be demolished at the earliest and in any event within a period of two weeks from the date of the uploading of this order on the official website of the Bombay High Court.

7) In our view, the Applicants have neither paid any consideration for acquisition of the land nor have taken any permission for constructing the structure. It is clearly a usurpation of rights based on a mere Notice publication by the Assistant Charity Commissioner. We find no merit in the contention of Mr. Patil that, by virtue of a Public Notice by the Assistant Charity Commissioner, one can claim ownership of structures and lands and thereby preempt the rightful owners from claiming the right to their property or objecting to illegal constructions being done on their property. We are unable to accept that a mob fury and the mere footfalls of people on a particular piece of land based on an assertion that, this is a Dargah can prove that it is a legal structure. This is a classic case of a usurpation of the land and such a method and for such a usurpation, the Court cannot grant its imprimatur. The reliance placed on the Judgment dated 5th April 2025 passed by the Joint Civil Judge Senior Division at Thane clearly holds that, the Plaintiff has proved that the Defendants have encroached upon the Suit land. It has also proved its ownership over the Suit property. The Judgment also clearly shows that the Defendants have failed to prove their title to the suit land either by a conveyance or by adverse possession. Interestingly, the Judgment observed that, the contention of the Applicant was that the present Writ Petition was regarding a different property and not the same as Dargah. Therefore, the

Applicant has himself admitted that the Dargah pointed out in the Government Gazette of the year 1982 is on a different property and not on the property for which the Writ Petition was filed and Orders were passed.

8) In view of the above, Interim Application is dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)