

OUT TODAY

ITEM NO.2

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).10133/2017

(Arising out of impugned final judgment and order dated 10/02/2017
in PIL No.10/2016 passed by the High Court of Bombay)

HAJI ALI DARGAH TRUST

Petitioner(s)

VERSUS

SAHAYAK, A SOCIO LEGAL AND EDUCATIONAL FORUM AND ORS. Respondent(s)

(With appln.(s) for permission to file additional documents and
interim relief and office report)

Date : 09/05/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUDFor Petitioner(s) Mr.Raju Ramachandran, Sr.Adv.
Mr.Huzefa Ahmadi, Sr.Adv.
Mr.Faisal Farook, Adv.
Mr.Shubail Farook, Adv.
Mrs. Priya Puri, Adv.
Mr.Ranjay Dubey, Adv.
Mr.Ishwar Mohanty, Adv.
Mr.Kshitij Kumar, Adv.
Mr.Swatantra Rai, Adv.For Respondent(s) Mr.Nishant R.Katneshwarkar, Adv.
Mr.Arpit Rai, Adv.Mr.Ashish Wad, Adv.
Mr.P.V.Naik, Adv.
Mrs.Jayashree Wad, Adv.
Ms.Paromita Majumdar, Adv.
Ms.Sukriti Jaggi, Adv.
For M/s. J. S. Wad & Co., Adv.Upon hearing the counsel the Court made the following
O R D E R

1. Heard learned counsel for the rival parties.
2. The instant order be read in continuation of the motion

bench order dated 13.04.2017. The petitioner - Haji Ali Dargah Trust has filed an 'affidavit of compliance' dated 08.05.2017, wherein it is submitted as under:

3. It is submitted that pursuant to passing of the said Resolution, the petitioner-Trust faced substantial obstacles and resistance from several parties. Notwithstanding the same, in the over-all interest of beautification of the entire area and with the intention of complying with the order dated 13.04.2017 passed by this Hon'ble Court, the petitioner-Trust proceeded to implement the said resolution to wit it informed the Assistant Commissioner of Police, Tardeo Division as well as officials of the Municipal Corporation of Greater Mumbai vide letters dated 25.04.2017 and 01.05.2017 that it shall be initiating the process of removing unauthorized structures and encroachments on the approach road leading to the Haji Ali Dargah at 0900 hrs on 03.05.2017 and requested them to be present to witness the same in compliance with the orders of the Hon'ble Supreme Court of India and to ensure safety and security. Thereafter, on the morning of 03.05.2017, in the presence of Shri Nagesh Jadhav, ACP, Tardeo Division and Shri Milind Vhatkar, Assistant Engineer and Shri Nikhil Ghatge, Junior Engineer of G/South Ward, Municipal Corporation of Greater Mumbai, a structure ad-measuring 70X30 feet was identified by the officials of the Municipal Corporation of Greater Mumbai which was alleged to be an encroachment vide their earlier Notice dated 06.05.2014 (this notice was the subject matter of the Public Interest Litigation being PIL No. 10 of 2016 filed by the respondent No. 1 before the Bombay High Court). Pursuant to such identification, the said structure was demolished to the satisfaction of the officials of the Municipal Corporation of Greater Mumbai in compliance with the order dated 13.04.2017 passed by this Hon'ble Court in the present Special Leave Petition being SLP (Civil) No. 10133 of 2017. The petitioner-Trust also carried out removal of encroachment on the approach road and foreshore land leading to Haji Ali Dargah. In total, the petitioner-Trust successfully removed encroachment of approximately 2,279 square meters and the demolition and encroachment removal work went on till 21.30 hrs on 03.05.2017 after which all the debris was removed from the site forthwith to prevent any fall out in to the sea which could have affected the ecological balance of the bay in the sea. In this context, it is pertinent to state that the Notice dated 22.03.2017

issued by the respondent-authority spoke of 908 square meters of foreshore land which was alleged to have been encroached by the petitioner-Trust. It is submitted that the petitioner-Trust has since demolished 904.64 square meters of foreshore land on 03.05.2017. A Copy of the letter dated 25.04.2017 is annexed herewith and marked as "Annexure P-2". A copy of the letter dated 01.05.2017 is annexed herewith and marked as "Annexure P-3".

4. That on 04.05.2017, the petitioner-Trust submitted a letter of compliance before the Assistant Commissioner, G/South Ward, Municipal Corporation of Greater Mumbai informing him that it had duly complied with the Notice dated 06.05.2014 issued under Section 354A of the Bombay Municipal Corporation Act. Pursuant to the said exercise being conducted, the petitioner-trust prepared a record of proceedings and submitted the same before the Tardeo Police Station, the Assistant Commissioner, G/South Ward, Municipal Corporation of Greater Mumbai and Collector/Deputy Collector (E&R), Mumbai.

A Copy of the letter of compliance dated 04.05.2017 submitted before the Assistant Commissioner, G/South Ward, Municipal Corporation of Greater Mumbai is annexed herewith and marked as "Annexure P-4".

The said record of proceedings dated 05.05.2017 as well as photographs showing the position before and after removal of encroachment are annexed hereto and marked as "Annexure P-5".

5. In the light of what have been stated hereinabove, the petitioner submits that even though the area mentioned in the notice dated 22.03.2017 issued by the Deputy Collector (E&R) has not been fully identified, the petitioner of its own accord with a view to comply with the order passed by this Hon'ble Court, proceeded to demolish all encroachments identified by it and its respectful submission is that the petitioner-Trust has substantially removed the encroachments in compliance with the order passed by this Hon'ble Court on 14.03.2017. However, there are certain portions (approximately 500 square meters) which are in possession of certain third parties over which the petitioner does not have any control and the same are either by way of license given by the Corporation or by way of Order of Injunction passed by a Competent Court of Law. It may, however, be pertinent to state that some third parties have been persuaded by the petitioner to voluntarily vacate the premises in the interest of the overall beautification of the area. The petitioner, therefore, is fully intent in augmenting the suggestion of this Hon'ble

Court for overall beautification of this entire area in the interest of the Dargah and is submitting a beautification plan as directed by the order dated 13.04.2017. A copy of the Beautification Plan is annexed herewith and marked as "Annexure P-6".

3. We place on record our appreciation for the endeavours of the petitioner - Haji Ali Dargah Trust, in complying with the undertaking given to this Court on 13.04.2017. We also place on record our appreciation of the team of counsel, who appeared on behalf of the petitioner - Haji Ali Dargah Trust. We are informed, that they provided valuable legal inputs to the petitioner from time to time.

4. A perusal of the factual position depicted in paragraph 5 of the 'affidavit of compliance' reveals, that encroachments on approximately 500 square meters have not been removed.

5. In view of the above, we consider it just and appropriate to direct, that the Joint Task Force, constituted by the High Court, to associate with itself, representatives of the CRZ, as also, representatives of the petitioner - Haji Ali Dargah Trust, to verify the factual position pertaining to the removal of encroachments, depicted in the 'affidavit of compliance'. The said verification will be carried out within one week from today, through an inspection, on a date and time of mutual convenience. A report thereof shall be furnished to this Court before the next date of hearing.

6. Insofar as, the area of approximately 500 square meters, over which the encroachments still remain is concerned, we are of the view, that the encroachers should be granted four weeks' time

from today (which would expire on 06.06.2017) to remove the said encroachments on their own. We hope and expect, that the petitioner - Haji Ali Dargah Trust will continue its good work, in persuading the remaining encroachers, to remove them voluntarily. Any encroachment, which remains after the expiry of the period referred to above, shall be removed by the Task Force, constituted by the High Court. The instant process of removal of encroachments shall commence with effect from 10.06.2017, and shall be completed by 30.06.2017.

7. In the meantime, the Municipal Corporation, Mumbai, will take into consideration the beautification plan submitted by the petitioner - Haji Ali Dargah Trust (along with the 'affidavit of compliance'). It shall be open to the Municipal Corporation, Mumbai to accept the said beautification plan, as it is, or to make alteration therein, as may be considered suitable. The Municipal Corporation, Mumbai, may even substitute the same by an alternative beautification plan. In carrying out the above exercise, we are of the view, that the Municipal Corporation, Mumbai, will be well advised to associate some well-known urban heritage architects, and include in the said team, a member of the community concerned, so that the essential religious sentiments are kept in mind. We hope and expect, that the final beautification plan will be placed on the record of this Court on or before 30.06.2017.

8. Post for hearing on 03.07.2017.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
ASSISTANT REGISTRAR

