

ITEM NO.20

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 exemption from filing c/c of the impugned
judgment and permission to file additional documents and interim
relief and office report)

Date : 13/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Gopal Subramaniam, Sr. Adv.
Mr. Huzefa Ahmadi, Sr. Adv.
Mr. Faisal Farook, Adv.
Mr. Shubail Farook, Adv.
Mr. Kshitij Kumar, Adv.
Mr. Ranjan Dubey, Adv.
Mr. Talha Dabdil Rehman, Adv.
Mr. Zulnoor ahmed, Adv.
for Mrs. Priya Puri, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. The petitioner - Haji Ali Dargah Trust, has approached this Court, to impugn the order dated 10.02.2017, passed by the High Court of Judicature at Bombay (hereinafter referred to as the 'High Court'), in a petition filed under Article 226 of the Constitution of India, as a cause in public interest. The operative part of the impugned order is extracted hereinbelow:

"3. What we notice from the record is that though the respondent authorities admit that there

is illegal encroachment, but according to the respondent - Corporation, since it is in sea water land, the Collector is responsible to remove the said encroachment whereas, according to the Collector, the respondent - Corporation has to remove the said encroachment. Apparently, none of the authorities has taken any action though they are aware of the encroachment. The correspondence between the Municipal Commissioner and the Deputy Collector concerned shows that both the authorities are blaming one another saying that it is the responsibility of the other to remove the encroachment. However, we are of the opinion that Police assistance is also required for removal of encroachment on this approach road leading to Haji Ali Dargah. The total area may be within the control of the Collector since portion of sea water land is involved, however, the adjacent portion i.e. from the road boundary, it would come within the jurisdiction of the respondent - Corporation. The respondent - Corporation has also placed on record the nature of encroachment and how they are unable to remove it since the Collector is having jurisdiction over the area. In this view of the matter, we are of the opinion that both the Municipal Commissioner and the Collector shall form a Task Force and seek jurisdictional assistance of the Police concerned for removal of the encroachment.

4. In the above circumstances, we direct both the authorities to take proper course of action by forming Joint Task Force. The said Joint Task Force, with the assistance of the jurisdictional Police, shall remove the encroachment on the approach road to Haji Ali Dargah, strictly in accordance with the procedure contemplated. The entire exercise has to be completed within a period of three months from today."

(emphasis is ours)

In terms of the order passed by the High Court, the encroachments are liable to be removed by 09.05.2017.

2. It is necessary to notice, that the extent of the alleged encroachment is apparent from a notice issued by the Deputy Collector (E/R), dated 22.03.2017 (under section 50(3) of Maharashtra Land Revenue Act, 1966), wherein, consequent upon a

spot inspection , coupled with inputs obtained from the Google map, it was assessed that an area of approximately 908 square meters stood unauthorisedly encroached.

3. Mr. Gopal Subramaniam, learned senior advocate appearing for the petitioner - Haji Ali Dargah Trust, pointed out, that at the same location, there exists a functional mosque, which covers an area of about 171 square meters. It is submitted, that the above mosque has been with the petitioner - Trust, on lease, since 1931. It is contended, that the said lease is still valid and subsisting. He therefore vehemently contended, that the removal of encroachment should not extend to the area of the above mosque.

4. Learned counsel for the petitioner - Haji Ali Dargah Trust, made an offer to us, during the course of hearing (having obtained instructions from Mr. Usman Vanzara, one of the trustees of the Haji Ali Dargah Trust, who is present in Court in person), that the entire encroachment referred to in the notice issued by the Deputy Collector (E/R) dated 22.03.2017 be permitted to be removed by the Haji Ali Dargah Trust itself, except the area of 171 square meters, over which the mosque has been functional since 1931.

5. We place on record our appreciation, of the offer made by the petitioner before this Court. We hereby allow the petitioner - Haji Ali Dargah Trust, to remove all the remaining encroachments, besides an area of 171 square meters of the lease area, over which the mosque subsists. Mr. Gopal Subramaniam, learned senior advocate also states, that the removal of the encroachments will be to the satisfaction of the Joint Task Force, mentioned in the impugned

order. The petitioner - trust, has additionally assured this Court, that the entire encroachment shall be removed, on or before 08.05.2017.

6. We also consider it just and appropriate to direct, that no Court shall grant any injunction on the removal of the encroachments, as mentioned hereinabove. In case, any party is desirous of any modification of the instant order, it shall be open to such party to approach this Court, by moving an appropriate application, in this petition.

7. In view of the offer made by the learned counsel for the petitioner, for the time being, the Joint Task Force appointed by the High Court, is restrained from removing the encroachments, as directed by the High Court. And instead, the petitioner - Haji Ali Dargah Trust will remove the same, on or before 8.5.2017.

8. In addition to the above, liberty is granted to the petitioner - Haji Ali Dargah Trust, to place for the consideration of this Court, a beautification architectural plan, covering the area used for access to the Haji Ali Dargah, and the surroundings area, which will become available, after the removal of the encroachments.

9. Issue notice, returnable on 09.05.2017.

10. Liberty is granted to the learned counsel for the petitioner, to effect service on the respondents, through the learned counsel representing the parties concerned, before the High Court.

(Renuka Sadana)
Assistant Registrar

(Parveen Kumar)
AR-cum-PS