



Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 24753 OF 2023

Shri Durga Parmeshwari Seva Mandal & Ors ...Petitioners
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr Aniruddha Joshi, *with Aseem Naphade, Viral Thakar, Gauri Mertha i/b LJ Law, for the Petitioners.*

Mr Purnima Kantharia, *with Kunal Waghmare i/b Sunil Sonawane, for the Respondent-BMC.*

Mr Amogh Singh, *with Rahul Arora, Jeet Gandhi, for Respondent No. 4.*

Mr Sachin Belder, *Assistant Engineer, 'N' Ward.*

Mr Sharad Bagul, *Assistant Superintendent of Garden, 'N' Ward.*

**CORAM G.S. Patel &
Kamal Khata, JJ.**

DATED: 8th September 2023

PC:-

1. Taken up out of turn since the Petitioners say there is grave urgency.

2. We are unable to see any merit in the Petition, especially since on instructions, Ms Kantharia makes a statement that the immersion pond at Acharya Atre Maidan at Pant Nagar, Ghatkopar (East), Mumbai 400 075 will be provisioned and made available by the Municipal Corporation itself for the forthcoming Ganpati immersion or *visarjan*. This is in the context of the refusal at Exhibit “L” at page 59 on 10th August 2023 to grant permission to the Petitioners to privately create an immersion pond.

3. Indeed, we find the approach of the MCGM to be entirely salutary. These are after all matters of civic and municipal administration and should not be left to private parties at all.

4. The complaint is that this refusal is selectively done to target the Petitioner No 1 Mandal at the instance of the 4th Respondent, a former corporator, who has made a representation (at page 31) to an Hon’ble Minister of the State Government.

5. If the allegation is one of the mala fides that is independently a ground to reject the Petition. But merely by pointing fingers at this or that corporator or minister does not substantiate a case nor does it provide a cause of action. We have no hesitation in holding that a corporator or minister, as part of the obligations of such an office to the electorate, is fully entitled to receiving and, if thought fit, acting on a representation made by any person. *Per se*, that cannot be objectionable. We disapprove entirely of this approach in writ petitions brought before us of simply naming or pointing to some politician to suggest that, axiomatically — i.e., because some

politician has acted in a certain manner — therefore, and necessarily, an administration action is actuated by malice or mala fides. In this case, for instance, the 4th Respondent made a representation to the Hon'ble Minister, Mr Mangal Prabhat Lodha (who is not joined to the Petition), and he, in turn, evidently asked the MCGM to look into the matter. This is no ground for interference.

6. What we are concerned with under Article 226 of the Constitution of India is judicial review of administrative action. It must therefore be shown that the impugned municipal action is somehow vulnerable either for a procedural irregularity or on account of being arbitrary, unreasonable or in violation of some fundamental or other legal right. No person, let alone a Mandal, has any fundamental — or any other — right to privately create an immersion pond in a public park maintained by the Municipal Corporation. That permission is required, and that this is in the discretion of the Municipal Corporation, is not just undeniable, but is not disputed. That is why the Petitioner applied for permission in the first place. The contention that because permission was granted in the past, therefore it must be granted for all time to come is one that has only to be stated to be rejected. Equally, the submission that the Petitioner is being allegedly 'singled out' is without merit. There is nothing in the Petition to show that others similarly placed have been granted permission; obviously, that cannot be. Considerations will vary from site to site, locality to locality, park to park and pond to pond. Each case must be considered on its own merits. There is no one-size-fits-all mantra to be adopted.

7. Indeed, even if the Municipal Corporation was to say that in a particular area no immersion pond could be permitted at all for reasons of civic administration (public health, hygiene, and so forth), we would not have been able to interfere. Private religious sentiments, no matter from what quarter they come, cannot prevail over the much wider concerns of civic governance.

8. We find nothing objectionable in the impugned order. Indeed, we endorse the stand of the Municipal Corporation, and the carefully calibrated statement Ms Kantharia is instructed to make. The impugned order meets the test of *Wednesbury* unreasonableness, for it is eminently reasonable and sensible. It also satisfies the doctrine of proportionality by striking the correct balance between a private demand and matters of civic governance.

9. The Petition is rejected. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)