

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (L) NO.33563 OF 2022

Durga Parmeshwari Seva Mandal and Others ...Petitioners
vs.
Municipal Corporation of Greater Mumbai
and Others ...Respondents

Mr. Aniruddha Joshi a/w. Mr. Aseem Naphade, Ms. Divya Shetty
and Mr. Viral Thakkar i/b. L.J.Law, for the Petitioners.

Mr. Milind More, AGP, for Respondent Nos. 4 and 5.

Ms. Vandana Mahadik a/w. Ms. Oorja Dhond i/b. Mr. S.K. Sonawane,
for Respondent-BMC.

Mr. Amogh Singh a/w. Mr. Jeet Gandhi and Mr. Shivam Dubey i/b.
Mr. Uttam Shukla, for Respondent No. 6.

Mr. Sharad Bagul, Assistant Superintendent, Garden 'N' Ward and
Mr. S.M. Shinde, Assistant Engineer (Maintenance), 'N' Ward
present.

Mr. Mahesh Tambe, PSI and Mr. Bhaskar Kokre, PSI, Ghatkopar
police station present.

**CORAM : N. J. JAMADAR &
GAURI GODSE, JJ.
DATE : OCTOBER 27, 2022
(VACATION COURT)**

ORAL ORDER

1. Heard.
2. The learned counsel for respondent No. 1 - Municipal Corporation seeks leave to tender an affidavit in reply.

3. Leave granted.
4. Affidavit in reply is taken on record.
5. The learned counsel for respondent No. 6 also seeks leave to tender affidavit in reply.
6. Leave granted.
7. Affidavit in reply on behalf of respondent No.6 is taken on record.
8. The learned counsel for the petitioners seeks leave to tender an affidavit in rejoinder to the affidavit in reply filed on behalf of respondent No. 1.
9. Leave granted.
10. Affidavit in rejoinder is taken on record.
11. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties, heard finally at the stage of admission.
12. Shri Durga Parmeshwari Seva Mandal, the petitioner No. 1, is a society registered under the Societies Registration Act, 1860. The petitioner Nos. 2 and 3 are the President and Secretary of the petitioner No. 1.
13. The petitioners have invoked the writ jurisdiction of this Court being aggrieved by an order dated 18th October, 2022 passed by Assistant Commissioner, 'N' Ward, Municipal Corporation of Greater Mumbai- respondent No. 1 whereby the permission granted

to the petitioners vide communication dated 24th August, 2022 to organize the functions of Ganpati Immersion, Gauri Immersion, Navratri and Chhath Pooja was sought to be cancelled.

14. The petitioners have also assailed the permission granted by respondent No. 1 - Corporation to Atal Samajik Sanskruti Seva Pratisthan, the respondent No. 6, to organize the Chhath Pooja on 30th and 31st October, 2022 at the same premises i.e. Acharya Atre Maidan, situated at Pant Nagar, Ghatkopar (East), Mumbai, by an order of even date.

15. The substance of the petition is that pursuant to the permission granted by the Municipal Corporation on 24th August, 2022, the petitioners had moved for grant of necessary No Objection Certificate (NOC) from Traffic Department, Fire Brigade and the Local Police Station. The Traffic Police Department, Vikhroli Division, gave NOC on 16th October, 2022. The Senior Station Officer, Vikhroli Fire Station gave NOC on 17th October, 2022. However, in the meanwhile, by the impugned communication the respondent No. 1 cancelled permission purportedly on the premise that there was breach of terms and conditions subject to which permission was granted on 24th August, 2022. The impugned action

is alleged to be in violation of the principles of natural justice and mala fide as well.

16. An affidavit in reply is filed on behalf of respondent No. 3. The stand of the respondent-Corporation is that post grant of permission to the petitioners on 24th August, 2022, three more applications were received for organizing Chhath Pooja festival at Acharya Atre Maidan. Two of the applicants namely Dosti Group Seva Sahakari Sanstha and Guru Nanak Nagar Seva Sanstha of Ghatkopar did not pursue the application. However, M/s. Atal Samajik Sanskruti Seva Pratisthan, respondent No. 6, submitted the requisite NOC of local police station dated 17th October, 2022, Traffic police NOC dated 16th October, 2022 and Fire Brigade NOC dated 14th October, 2022 for processing their application for permission to organize the Chhath Pooja on 30th and 31st October, 2022. Since the petitioners could not produce the requisite NOCs till 18th October, 2022, a proposal was placed before Dy. Municipal Corporation, Zone- VI and thereafter the permission came to be granted to respondent No. 6 - Atal Samajik Sanskruti Seva Pratisthan to organize the Chhath Pooja festival. Consequently, the applications received from all other applicants were rejected and the said decision was communicated to all concerned.

17. An endeavour is made in the affidavit in reply to demonstrate that the petitioners produced the Traffic Police NOC dated 16th October, 2022 and Fire Brigade NOC dated 17th October, 2022, on 18th October, 2022 itself, and had not at all submitted the NOC of the local Police Station. Reference is made to the fact that, in the intervening period, the petitioners had, on 10th October, 2022, filed an application for allotment of an alternate premises i.e. General Arun Kumar Vaidya Ground, and by a subsequent communication dated 14th October, 2022, the said application came to be withdrawn.

18. An affidavit in reply is filed on behalf of respondent No. 6 as well. The respondent No. 6 has endeavoured to substantiate its claim for permission to organize Chatth Pooja festival at the subject premises and consequently justify the action of respondent No. 1-Corporation. The thrust of the resistance of respondent No. 6 is that respondent No. 6 had obtained all the NOCs before the NOCs were granted in favour of the petitioners. In fact, till date there is no NOC by the local Police Station in favour of the petitioners. The respondent No. 6 has also adverted to the fact that the petitioners had organized Ganpati Immersion and Navratri Festival on the subject premises in violation of the terms and conditions subject to

which the permission was granted on 24th August, 2018.

19. We have heard Mr. Aniruddha Joshi, learned counsel for the petitioners, Mr. Milind More, learned AGP, for Respondent Nos. 4 and 5, Ms. Oorja Dhond, learned counsel for Respondent-BMC and Mr. Amogh Singh, learned counsel for Respondent No. 6. With the assistance of the learned counsel for the parties, we have perused the pleadings and the documents on record.

20. In the backdrop of the limited nature of controversy, we do not deem it appropriate to delve deep into the thickets of facts. The moot question which crops up for consideration is, whether the respondent No. 1- Corporation was justified in revoking the permission granted to the petitioners by ascribing reason that there was breach of terms and conditions, during the currency of the permission, when the Chatth Pooja festival was to be organized after about 12 days of the said revocation and simultaneously grant permission to respondent No. 6 ?

21. First and foremost, from the perusal of the permission dated 24th August, 2022 it becomes abundantly clear that it was a composite permission for a number of festivals i.e. Ganpati

Immersion, Gauri Immersion, Navrati and Chatth Pooja. Secondly, there is no dispute over the permissibility of the user of the subject premises for Chatth Pooja festival. Thirdly, it is not the case that the activities proposed to be carried out at the subject premises were impermissible. At the hub of controversy is the entity to whom the permission to organize Chatth Pooja festival ought to have been granted ?

22. Evidently, the permission granted to the petitioners on 24th August, 2022 was for Chatth Pooja festival as well. Undoubtedly, the said permission was subject to, inter alia, obtaining the NOCs from concerned authorities. The parties are in unison on the point that 3 NOCs were principally required. First, NOC from the Traffic Department; second, from Fire Brigade, and third, from local Police Station.

23. It would be contextually relevant to note that, with reference to the permission sought by the petitioners to organize Chatth Pooja festival at the subject premises on 30th and 31st October, 2022, the respondent No. 3 addressed a communication on 14th October, 2022 to the jurisdictional Pant Nagar police station, Vikhroli Traffic Division and the Fire Officer, Fire Brigade, Vikhroli seeking their

opinion/NOC in respect of Chatth Pooja festival to be organized on the subject premises. On 16th October, 2022, the Traffic Police conveyed their no objection. The senior Station Officer, Vikhroli Fire Station gave no objection vide communication dated 17th October, 2022. We will deal with the aspect of NOC by Pant Nagar police a little later as that is in the realm of controversy.

24. It was urged on behalf of the Municipal Corporation that the permission granted by the Corporation on 24th August, 2022 was subject to obtaining NOC from the concerned authorities. Since those NOCs were not obtained well within time, the Corporation was justified in cancelling the permission. It would be imperative to note that the letter dated 24th August, 2022, which incorporates the terms and conditions of permission, in terms, does not prescribe the period before which such NOC should be in place. Admittedly, the Chatth Pooja is to be organized on 30th and 31st October, 2022. The Garden Department of the Municipal Corporation addressed a communication to the concerned authorities a fortnight before, i.e. on 14th October, 2022, soliciting their views/NOC. Within a couple of days, NOC was issued by the Fire Department and Traffic Department. In the backdrop of the aforesaid interval of time, in between the date of grant of NOC and the scheduled dates of the

Chatth Pooja festival, in our view, the stand of Corporation that permission was revoked as the NOCs were not obtained in time, does not merit countenance.

25. This leads us to the aspect of grant of permission to respondent No. 6 simultaneously with revocation of the permission granted to the petitioners. From the perusal of the documents annexed to the affidavit in reply of the Corporation, it becomes evident that a communication was addressed for grant of permission to organize the Chatth Pooja festival at the subject premises on 22nd August, 2022 purportedly by the local Municipal Councilor, to which a letter dated 23rd August, 2022 on behalf of respondent No. 6 appeared to have been annexed. Mr. Aniruddha Joshi, the learned counsel for the petitioners, would urge that to the communication dated 22nd August, 2022, the letter of respondent No. 6 dated 23rd August, 2022, could not have been annexed. It was further urged that there is no endorsement of receipt of said letter by the Corporation.

26. We do not propose to delve into the propriety of entertaining the application of respondent No. 6 in the manner it appears to have been processed by the Municipal Corporation. However, the fact

remains that as of 24th August, 2022 there was a composite permission granted in favour of the petitioners for holding the aforesaid festivals. It is the grievance of the petitioners that, before revoking the permission, no notice was given to the petitioners about the alleged breach of the terms and conditions and the permission was revoked in a most arbitrary manner.

27. A submission was made across the bar on behalf of respondents No. 1 and 6 as well that the petitioners had not complied with the terms and conditions subject to which the permission was granted while organizing the Ganesh Immersion and Navratri festival and that constituted a justifiable ground to cancel the permission. We are afraid, the documents on record do not advance the cause of the submission on behalf of the respondent Nos. 1 and 6. The impugned order is a bald one. There is an omnibus assertion that there was breach of terms and conditions. We have already noted that in the affidavit in reply as well the stated ground for revocation of the permission was that the NOCs were not procured well in time. We have also noted that having regard to the time lag, the said ground does not carry much conviction.

28. Mr. Singh, learned counsel for respondent No. 6, endeavoured

to impress upon the Court that respondent NO. 6 had obtained NOCs much prior in point of time than the petitioners. Had the issue been one of obtaining NOCs at a prior point of time only, different considerations would have come into play. The Court can not lose sight of the fact that permission was already granted in favour of the petitioners. The Garden Department of the Corporation moved the authorities for grant of NOCs. Two authorities had already granted NOCs in favour of the petitioners before the impugned order came to be passed.

29. This leads us to the aspect of absence of NOC of local Police Station. In the communication dated 15th October, 2022, Pant Nagar Police have informed Assistant Garden Superintendent, Municipal Corporation that since they had already granted NOC to respondent No. 6 to organize the Chatth Pooja festival on the subject premises, if permission is granted to the petitioners as well, at the very same premises, issue of law and order may arise. Evidently, the said communication does not reflect upon the relative merit of the claim of the petitioners to organize the Chatth Pooja festival from law and order perspective. The local police were justified in conveying that since they had already given NOC to respondent No. 6, it may lead to a law and order problem if NOC is also granted to the petitioners

to organize the festival at the very same premises. It does not, however, imply that Pant Nagar police refused to grant NOC.

30. We are, thus, confronted with a situation where the petitioners were already granted permission vide communication dated 24th August, 2022 and during the currency of the said permission, the respondent No. 1 simultaneously processed the application of the other claimants and eventually granted permission to respondent No. 6 by cancelling the permission granted to the petitioners, on the very day. In our considered view, the petitioners, after having obtained the necessary NOC from the concerned authorities, had the legitimate expectation of being allowed to organize the Chatth Pooja festival in terms of permission which was already granted on 24th August, 2022. The impugned order revoking the permission on the specious ground that there was breach of terms and conditions, without spelling out those breaches, can not be countenanced as it suffers from the vice of manifest arbitrariness and unreasonableness.

31. The endeavour on the part of the Municipal Corporation to demonstrate, in the affidavit in reply, that two NOCs were received by the Corporation on the very day on which the impugned order

came to be passed does not advance the cause of respondent No. 1, as neither a particular time was stipulated for obtaining NOC nor the time span was so short that the Corporation could presume a failure on the part of the petitioners to procure those NOCs. The consideration that the issue was not one of grant of initial permission but cancellation of permission already granted ought have weighed with the authorities. That could have been done for an objective reason of breach of terms and conditions. It could not have done by simply noting that there was breach of terms and conditions. In the face of grant of NOC by two of the authorities well before cancellation of permission, the respondent No.1's action can only be termed arbitrary and unreasonable.

32. In our view, the fact that on 10th October, 2022 the petitioners had applied for an alternate premises and subsequently withdrew the said application on 14th October, 2022 does not detract materially from the claim of the petitioners as there was already a permission granted by the respondent No. 1 on 24th August, 2022 for Chatth Pooja festival as well.

33. For the foregoing reasons, we are inclined to allow the petition.

34. The impugned order dated 18th October, 2022 cancelling the permission granted in favour of the petitioners stands quashed and set aside. Likewise, the order dated 18th October, 2022 granting permission in favour of respondent No. 6 stands quashed and set aside.

35. Senior Inspector of Police, Pant Nagar Police Station, Ghatkopar - respondent No. 5 shall take a decision on the communication dated 14th October, 2022 regarding grant of NOC to the petitioners on its own merits as expeditiously as possible.

36. It is however made clear that we have only tested the legality and correctness of the impugned orders and the petitioners shall be bound to comply with all the terms and conditions of the permission dated 24th August, 2022 and other conditions which have been / may be imposed by the Competent Authorities. We may not be understood to have condoned or approved any deviation.

37. Rule made absolute in aforesaid terms.

38. No costs.

39. All concerned to act on an authenticated copy of this order.

(GAURI GODSE, J.)

(N. J. JAMADAR, J.)