

Daily Order

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| CHIEF JUSTICE AND M.NAGAPRASANNA | WP 46839/2019 | 14/07/2020 | <p>Heard the learned counsel appearing for the petitioner, the learned counsel appearing for Bruhat Bengaluru Mahanagara Palike (for short 'BBMP') and the learned Senior Counsel appearing for the applicant in I.A No.3/2020.</p> <p>2. This writ petition has been filed inviting the attention of the Court to the failure of BBMP to demolish the unauthorized temple constructed on a footpath more particularly described in the petition.</p> <p>3. Perusal of the orders passed from time to time will show that BBMP had assured the Court to remove the illegal structure of the temple on the footpath. Perusal of the record will show that on 11th December 2019, Sri P.T. Prasanna Kumar, Assistant Executive Engineer, Jayanagar Sub-Division of BBMP has filed on record the notices issued by BBMP. He has stated that the structure of the temple is on a footpath. A status report was filed on 8th January 2020 recording that the Assistant Executive Engineer, BBMP has addressed a letter to the local police station on 6th January 2020. It is further recorded that as the police were unable to give protection, the demolition could not take place. There was an undertaking/assurance given in the memo dated 8th January 2020 by BBMP, assuring that BBMP will initiate demolition work with the assistance of the police.</p> <p>4. Till today, for one reason or the other, the illegal structure of the temple has not been removed notwithstanding the grant of time on several occasions. In fact, on 11th December</p> |

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| | | | <p>2019, an undertaking of BBMP was recorded that in terms of the order dated 17th February 2010 issued by the State Government that they will do the needful by demolishing the structure. The order dated 17th February 2010 was passed by the Government on the basis of the directions issued on 7th December 2009 by the Apex Court in the Special Leave to Appeal No.8519/2006. Notwithstanding the said assurance, till today, action has not been taken. Thereafter, on 28th January 2020, the learned Additional Government Advocate stated before the Court that the jurisdictional police will render necessary help, assistance and protection to the officers of BBMP for carrying out demolition on the date fixed by BBMP.</p> <p>5. On 4th March 2020, I.A.No.1/2020 was moved by the General Secretary of the Confederation of All Residents Welfare Association. In paragraph 2 of the order dated 4th March 2020, the statement of the General Secretary of Confederation of All Residents Welfare Association who was the applicant in I.A No.1/2020 was recorded that prior to 2009, a new structure had been erected.</p> <p>6. In paragraph 3 of the said order, this Court observed thus:</p> <p>“3. The applicant is a member of the Residents Welfare Association. As a citizen, the applicant should be interested in ensuring that all the structures in the area are constructed after obtaining due permission from BBMP. A residents’ Association cannot support the illegality especially, when the subject illegal construction carried out is on a footpath. The duty of the citizens is to assist the Authorities</p> |

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| | | | <p>like BBMP to ensure that no illegal constructions come up and the same are demolished. The footpaths are meant for walking by citizens and not for constructing temples. Therefore, I.A.No.1/2020 is rejected.”</p> <p>Paragraph No.5 of the said order reads thus:</p> <p>“5. We, therefore, direct the Officer In – charge of the jurisdictional police station to provide adequate police protection by deploying even the female constables at the site to ensure that BBMP performs its obligation by demolishing the illegal structure. The police protection shall be provided on the date mentioned by the officer of BBMP in his requisition addressed to the Officer In-charge of the jurisdictional police station. Compliance report shall be filed by BBMP by 27th March 2020.”</p> <p>7. The aforesaid orders of this Court have become final. Thereafter, for one reason or the other, the temple was not demolished by BBMP. Today, the learned counsel appearing for BBMP states that the demolition was fixed on 25th June 2020. However, the police could not give assistance / protection on that day. He submitted that without the assistance of the police, demolition could not have taken place as there was a likelihood of mass opposition. He states that thereafter, 6th July 2020 was fixed as the date of demolition. The demolition could not happen as the police assistance was not available. Therefore, he submits that a reasonable time may be granted as from tomorrow (15th July 2020), the city will be under lock- down.</p> <p>8. The learned counsel appearing for the</p> |

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| | | | <p>petitioner submits that for one reason or the other, the action of demolition has been postponed though a solemn undertaking has been given by BBMP.</p> <p>9. The learned Senior Counsel appearing for the applicant in I.A. No.3/2020 states that initially, the construction was not on a road or a footpath. As the road was widened, today it may be on the footpath. As can be seen from the photographs on record, the correctness of which is not disputed, the construction appears to be a new construction right on the footpath. Even assuming that such a construction is made prior to the cut-off date 29th September 2009 fixed by the Apex Court, the construction being on the footpath can never be protected especially, when in I.A.Nos.1/2020 and 3/2020, no material is placed on record to show that the construction has been made after obtaining the permission of the competent authority.</p> <p>10. The fundamental right under Article 25 of the Constitution of India does not extend to offering worship or prayers at each and every place. Surely, the fundamental right under Article 25 of the Constitution of India cannot be invoked for protecting an illegal structure of a temple which is on a footpath. The right to construct unauthorized temple and that also on a footpath cannot be said to be an essential part of any religion or religious practice which can be protected under Article 25 of the Constitution of India.</p> <p>11. We are, therefore, surprised to note that one after the other, applications are being filed by the</p> |

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| | | | <p>citizens. The duty of the citizens is to see that no illegal structure and especially, illegal religious structure comes up in their locality. But they want to protect a temple which has come up on a footpath. In fact, that was the precise observation made in paragraph 5 of the order dated 4th March 2020. If the intention of the applicants was really bona fide, long back, they could have applied for relocation of the temple from the footpath. But their intention appears to be to protect the illegality. We do not think that any god or religion will support an illegal religious structure which is on a footpath. A religious structure cannot become an obstacle on a footpath which is meant for walking. Even assuming that what is stated in the application is correct, at highest, the applicants will be justified in applying for relocation of the said temple. After one applications of the residents was rejected, this is the second application for intervention which cannot be entertained. In paragraph 6 of the application, it is claimed that the temple was in established in 1854. The photographs of the structure clearly show that the statement is false and the structure appears to be a newly constructed structure.</p> <p>12. Therefore, the application deserves to be rejected. But the applicants deserve to be saddled with exemplary costs.</p> <p>13. We, accordingly, direct the applicants to pay a sum of Rs.25,000/- to the Chief Minister's Covid-19 Relief Fund. A scanned copy of the receipt of payment of donation shall be forwarded to the Registrar (Judicial) of this Court within a period of six weeks from today.</p> |

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| | | | <p data-bbox="794 239 1498 394">14. Considering the fact that the City is under lockdown, we are not passing any adverse order against BBMP as of today while we remind BBMP of its legal obligations.</p> <p data-bbox="794 779 1498 852">15. For the time being, we adjourn this petition till 30th July 2020 in the morning session.</p> |

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