

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

WRIT PETITION (L) NO.30175 OF 2022

1. The Shiv Sena)
a registered Political party)
having its address at Shivsena)
Central Office, Shivsena Bhavan)
1st Floor, Ganesh Gadkari Chowk,)
Dadar (West), Mumbai - 400 028)
through Mr.Anil Desai)
aged 64 yrs. Secretary Shiv Sena)

2. Mr.Anil Desai)
aged 64 yrs. Secretary Shiv Sena)
having address at Shivsena)
Central Office, Shivsena Bhavan)
1st Floor, Ganesh Gadkari Chowk,)
Dadar (West), Mumbai - 400 028)

.. Petitioners

Versus

1. Municipal Corporation of)
Greater Mumbai)
Head office at Mahanagar Palika Marg)
Mumbai – 400 001.)

2. Municipal Corporation)
Head office at Mahanagar Palika Marg)
Mumbai – 400 001.)

3. Assistant Municipal Corporation)
G/North Ward, Municipal Corporation)
for Greater Mumbai,)
Dadar, Mumbai – 400 028.)

.. Respondents

WITH

INTERIM APPLICATION (L) NO.30406 OF 2022
IN
WRIT PETITION (L) NO.30175 OF 2022

Sada Sarvankar,)
Adult of Mumbai, Indian Inhabitant)
Member of Maharashtra Legislative)
Assembly, State of Maharashtra)
and Member of Shiv Sena)
having his office at Hendre Castle,)
D.S. Babrekar Marg, Gokhale Road,)
North, Dadar (West),)
Mumbai – 400 028.) .. Applicant

In the matter between

1. The Shiv Sena)
a registered Political party)
having its address at Shivsena)
Central Office, Shivsena Bhavan)
1st Floor, Ganesh Gadkari Chowk,)
Dadar (West), Mumbai - 400 028)
through Mr.Anil Desai)
aged 64 yrs. Secretary Shiv Sena)

2. Mr.Anil Desai)
aged 64 yrs. Secretary Shiv Sena)
having address at Shivsena)
Central Office, Shivsena Bhavan)
1st Floor, Ganesh Gadkari Chowk,)
Dadar (West), Mumbai - 400 028) .. Petitioners

Versus

1. Municipal Corporation of)
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Mumbai – 400 001.)

2. Municipal Corporation)
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Mumbai – 400 001.)

3. Assistant Municipal Corporation)
G/North Ward, Municipal Corporation)
for Greater Mumbai,)
Dadar, Mumbai – 400 028.) .. Respondents

Mr. Aspi Chinoy, Senior Advocate along with Mr. Joel Carlos for the Petitioner.

Dr. Milind Sathe, Senior Advocate along with Mr. A. Y. Sakhare, Senior Advocate along with Ms. Oorja Dhond and Mr. Sandeep Patil i/by Mr. S. K. Sonawane for the Respondent Nos. 1 to 3 – M.C.G.M.

Mr. Janak Dwarkadas, Senior Advocate along with Mr. Zal Andhyarujina, Senior Advocate along with Mr. Aurup Dasgupta, Ms. Rishika Harish, Ms. Sonam Ghiya and Aishah Shekhani i/by M/s. Jhangiani Narula and Associates for the Intervenor Applicant in IAL/30406/2022.

Mr. Prashant Sapkate, Assistant Commissioner, G/North ward present.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**
DATE : 23rd September 2022

ORAL JUDGMENT (per R.D. Dhanuka, J.) :-

. Rule. Dr. Sathe, learned Senior Counsel waives service for the respondents . By consent of parties, the petition is heard forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of mandamus against the respondents to grant permission to the petitioners for holding Dussehra Melawa at Shivaji Park on 5th October 2022.

3. During the pendency of this petition, the Municipal Corporation passed an order on 21st September 2022 rejecting the application filed by the petitioners as well as the application filed by the applicant in Interim Application (L) No.30406 of 2022.

4. We shall first dispose off the interim application filed by the applicant Shri Sada Sarvankar who seeks impleadment in this petition on the ground that the petitioners have alleged to have made various incorrect statements in the petition and have suppressed various facts about the pendency of various proceedings on the issue as to who is the real Shiv Sena before the Election Commission of India as well as before the Hon'ble Supreme Court and the orders passed therein.

5. Mr. Dwarkadas, learned senior counsel for the applicant invited our attention to the averments made in the writ petition filed by the petitioners contending that the petitioner no.1 is the real Shiv Sena. He also invited our attention to the grounds raised in paragraphs (h) and (i) to the petition, stating that the applicant in the interim application has left the Shiv Sena party recently and is not a 'local MLA of the Shiv Sena'. He invited our attention to various proceedings before the Election Commission of India and the orders passed therein as well as the orders

passed by the Hon'ble Supreme Court of India in the rival proceedings filed by Shri Uddhav Thackeray and Shri Eknath Shinde.

6. It is submitted by the learned senior counsel that the petitioners ought to have disclosed in the writ petition itself that the issue between two rivals as to who is the real Shiv Sena is pending before the Election Commission of India as well as before the Hon'ble Supreme Court of India. Since these crucial facts were suppressed by the petitioners, no relief can be granted to the petitioners in this petition.

7. Mr. Chinoy, learned senior counsel for the petitioners, on the other hand, opposes this interim application and states that the application filed by the petitioners is not rejected on the ground that the petitioner no.1 is not the real Shiv Sena or that the applicant in the interim application is a member of the real Shiv Sena.

8. In our view, since the proceedings on the issue as to who is the real Shiv Sena is pending before the Election Commission of India as well as the Hon'ble Supreme Court of India and in view of the fact that the application filed by the petitioners for seeking permission to hold Dussehra Melawa is not rejected on the ground that the petitioner no.1 is

not the real Shiv Sena, we are not inclined to accept the submission of Mr. Dwarkadas, learned senior counsel for the applicant that the Petitioners have suppressed any facts. It is not in dispute that till date, the applicant has not impugned the order passed by the Municipal Corporation and the same is only impugned by the petitioners. Be that as it may those issues are not germane to the issues involved in this Petition. In our view, the applicant has thus no locus to intervene in this petition. The interim application filed by Shri Sada Sarvankar is accordingly rejected. This Court cannot decide the issues which are pending before the Election Commission and the Supreme Court.

9. We shall now deal with the arguments advanced by the parties in the writ petition.

10. It is the case of the petitioners that in the year 1966, Shiv Sena was formed and was registered on 19th October 1989 as a political party by the Election Commission of India under Section 29A of the representation of the People Act, 1950.

11. The State Government has issued Government Resolution dated 20th January 2016 thereby granting approval to, the grant of

permission to use the ground at Shivaji Park, Dadar every year for various events including Dussehra Melawa for a period of 7 days in a year.

12. Mr. Chinoy, learned senior counsel for the petitioners vehemently urged that the petitioner no.1 has been applying for permission for holding such Dussehra Melawa since 1966 till date, except for 2 years during the Covid period and have been permitted to hold such Melawa. He submitted that, the State Government itself has permitted holding of Dussehra Melawa by its Government Resolution dated 20th January 2016. It is submitted by the learned senior counsel that by virtue of such permission having been granted to hold such Dussehra Melawa since 1966 as a matter of convention, the Municipal Corporation could not have rejected the applications filed by the petitioners.

13. Learned senior counsel invited our attention to the impugned order dated 21st September 2022 passed by the Deputy Municipal Commissioner, Zone-2 and submitted that the reasons recorded by the Deputy Municipal Commissioner while rejecting the application filed by the petitioners are two-fold i.e. (i) As both the opposing applicants have applied for permission for holding Dussehra Melawa at the Chhatrapati

Shri Shivaji Park ground, Dadar, the grant of the permission to either of the applicant would lead to a probability of a serious law and order situation in the sensitive Shivaji Park area and (ii) there is a likelihood of law and order situation. Reliance is placed on the report of the Deputy Commissioner of Police dated 21st September 2022.

14. It is submitted by the learned senior counsel that the reasons recorded by the Deputy Municipal Commissioner are without application of mind and totally perverse. He submitted that merely because there is an application made by the applicant, that could not be a ground for rejecting the application made by the petitioners who are granted permission from the year 1966.

15. In so far as the second reason recorded by the Deputy Municipal Commissioner, that there is likelihood of law and order situation, he submitted that since last several decades, such rallies/ Melawas have been held without there being any grievance of law and order situation. The Police has to take necessary steps to avoid any such law and order situation. Learned senior counsel submitted that if the permission is granted to the petitioners, the Petitioners would take all necessary precautions to avoid law and order situation.

16. Per contra, Dr. Sathe, learned senior counsel for the Municipal Corporation vehemently urged that there is no statutory right conferred on the petitioners, to be granted, such permission to hold such Dussehra Melawa. The petitioners have not disclosed any legal injury caused to them by virtue of the impugned order rejecting the application filed by the petitioners.

17. It is vehemently urged by Dr. Sathe, that the local police station brought to the notice of the Municipal Corporation about the rift between both the parties that created tension in locality. It is submitted that in view of such incidents brought to the notice of the Municipal Corporation, when the Corporation received the applications from the petitioners as well as the applicant, the Municipal Corporation sought the report from the local police station. He invited our attention to the applications filed by the petitioners as well as the applicant in interim application and the correspondence exchanged between the Municipal Corporation and the local police station.

18. It is submitted that on 21st September 2022, the Senior Police Inspector, Shivaji Park Police Station informed the Corporation that in view of there being two applications, there is likely to be a law and order

situation. He submitted that the report submitted by the concerned police station was rightly taken into consideration by the Municipal Corporation while rejecting the applications filed by not only by the petitioners but also by the applicant. He submitted that the powers of judicial review of this Court are very limited. He submitted that the local police station having pointed out their apprehension of likelihood of law and order situation, this Court cannot express its own opinion contrary to the report of the police station.

19. Learned senior counsel invited our attention to some of the applications made by both the parties in past and submitted that on few occasions three applications were received by the Municipal Corporation for seeking permission to hold Dussehra Melawa. After taking consent of two applicants out of three applicants, the permission was granted by the Municipal Corporation in favour of one applicant.

20. Learned senior counsel submitted that the petitioners had already given up their right, if any, to apply for such permission by making a statement before this Court in earlier litigation.

21. Learned senior counsel invited our attention to various

grounds raised by the petitioners and more particularly the grounds (h) and (i) of the petition. Learned senior counsel placed reliance on the following judgments :-

- (i) Judgment of Supreme Court in case of ***Railway Board Representing the Union of India Vs. Niranjan Singh, 1969 (1) SCC 502*** (paragraphs 9 & 12);
- (ii) Judgment of the Supreme Court in case of ***Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad & Anr., (1973) 1 SCC 227*** (paragraphs 32 & 35);
- (iii) Unreported order passed by this Court on 8th October 2013 in case of ***Wecom Trust & Ors. Vs. The Union of India & Ors.*** in Notice of Motion (L) No. 477 of 2013 in Public Interest Litigation No. 116 of 2009;
- (iv) Unreported order passed by this Court on 15th October 2012 in case of ***Wecom Trust & Ors. Vs. The Union of India & Ors.*** in Notice of Motion No.355 of 2012 in Public Interest Litigation (WP) No.116 of 2009;
- (v) Judgment of the Supreme Court in case of ***State of Karnataka & Anr. Vs. Dr. Praveen Bhai Thogadia, (2004) 4 SCC 684*** (paragraphs 6 & 7);
- (vi) Judgment of Supreme Court in case of ***Jayrajbhai Jayantibhai Patel Vs. Anilbhai Nathubhai Patel & Ors., (2006) 8 SCC 200*** (paragraphs 15 & 18);
- (vii) Judgment of Supreme Court in case of ***U.P. State Road Transport Corporation and Anr. Vs. Mohd. Ismail & Ors., (1991) 3 SCC 239*** (paragraph 12).

22. Mr. Chinoy learned senior counsel for the petitioners in rejoinder submitted that till 2016, the petitioners had been granted such permission to hold Dussehra Melawa according to tradition. Since 2016, the said Shivaji Park ground was specifically earmarked in the Government Resolution for holding Dussehra Melawa and permission had been granted.

23. In so far as, the personal right of the petitioners to seek such permission from the Municipal Corporation to hold Dussehra Melawa is concerned, it is submitted that, in view of tradition and convention, and in view of the petitioners having carried out such Dussehra Melawa at Shivaji Park ground for several decades since 1966, the Municipal Corporation could not have refused to grant such permission on such flimsy ground of there being a law and order situation, as it is the duty of the police authorities to take such steps as necessary as they have taken in the past. He submitted that the Municipal Corporation has not rejected the application filed by the petitioners on the ground that the petitioners did not have any statutory right to apply for such permission.

24. Prior to 2016, the permission had been granted by the Municipal Corporation to the Petitioners for holding Dussehra Melawa.

Several proceedings came to be filed in this Court from time to time for seeking permission from this Court for holding various functions/processions at Shivaji Park ground. Our attention is already invited by Dr. Sathe, learned senior counsel for the Corporation in this regard.

25. A perusal of the Government Resolution dated 20th January 2016 indicates that the State Government has approved the permission for the use of the ground at Shivaji Park for various events for a total period of 45 days in a year, including Dussehra Melawa, Jagannath Rathyatra, Marathi Bhasha Din, Gudi Padva etc. festivals for a period of 7 days.

26. It is not in dispute that the petitioners had applied for permission to hold Dussehra Melawa first. We have perused the applications filed by the petitioners on 22nd August 2022 and 26th August 2022 and the applicant's application filed on 30th August 2022. Since there was no response to these applications filed by the petitioners, the petitioners filed this petition on 20th September 2022 for various reliefs. This Court granted circulation in this matter upon mentioning by the learned counsel for the petitioners for 21st September 2022.

27. We shall now deal with the conduct of the Municipal

Corporation as to how the Corporation has dealt with the applications filed by the petitioners.

28. On 21st September 2022, the Municipal Corporation addressed a letter to the Senior Police Inspector, Shivaji Park Police Station, Mumbai informing that two applications were received by the Municipal Corporation, one from the petitioners and the another from Shri Sada Sarvankar for holding Dussehra Melawa on 5th October 2022.

29. A perusal of the acknowledgment of the said letter indicates that the same was delivered to Shivaji Park Police Station at 18.10 hrs. on 21st September 2022 i.e., after the service of the papers and proceedings of the present writ petition upon the legal department of the Municipal Corporation by the petitioners. On the same day, on 21st September 2022, the Senior Police Inspector wrote a letter to the Deputy Municipal Commissioner, Zone-II stating that in view of there being two applications for seeking permission for holding Dussehra Melawa in the sensitive Shivaji Park area, no permission could be granted. During the course of the arguments, upon raising a query with Dr. Sathe, learned senior counsel for the petitioners as to when the said report from police was received by the Municipal Corporation, we were informed that the

report was received on the same day late evening.

30. Our attention is invited to the internal noting dated 21st September 2022 by the learned senior counsel for the Corporation in support of the submission that on the basis of the report submitted by the local police station, the Municipal Corporation decided to reject both the applications i.e. the application made by the petitioners and the application made by the applicant in interim application. On 21st September 2022 itself, the Deputy Municipal Commissioner passed an order rejecting the applications filed by the petitioners.

31. Learned senior counsel for the Corporation could not justify as to why the applications were not decided by the Municipal Corporation during the period between 22nd August 2022 and 21st September 2022 though Dusshera is approaching soon. Upon a query being raised, Dr. Sathe, stated that time taken in deciding the applications between 22nd August 2022 and 21st September 2022 is immaterial. We are not impressed with this argument advanced by Dr. Sathe, learned senior counsel for the Corporation. The report itself was called for by the Municipal Corporation after the service of the papers and proceedings of the writ petition upon the legal department of the Municipal Corporation

by the petitioners after more than four weeks. The sequence of events as narrated aforesaid would clearly indicate that after the petition was served, the local police station was asked to submit a report, and the Municipal Corporation took a decision and issued a letter of rejection based on such report all in a matter of few hours, on the same day. The Municipal Corporation was conscious of the fact that, the petitioners had applied for permission to hold the Dusshera Melawa, the Corporation could have obtained a report from the local police station immediately upon the receipt of the applications filed by the petitioners and need not have waited till the present petition was served on them. In our view, this unjustified manner of taking decision, is certainly not a *bona fide* decision of the Municipal Corporation.

32. In so far as the judgment of the Supreme Court in the case of ***Railway Board Representing the Union of India (supra)*** relied upon by Dr. Sathe, is concerned, the issue before the Supreme Court was whether the railway employees could have held a meeting in the railway premises or not. In that context, the Supreme Court held that the railway employees did not have right to hold any meeting within the railway premises including the open ground. This proposition of law is not in dispute. In this case, the petitioners have applied for permission for holding Dussehra

Melawa at Shivaji Park which has been permitted by the State Government in the Government Resolution dated 20th January 2016.

33. Section 37A was inserted by the Maharashtra Regional and Town Planning Act, 1966 w.e.f. 6th August 1997. The words “religious functions and public meetings” were substituted for the words “and religious functions” by Mah. 43 of 2014 dated 29th December 2014. The judgment of the Supreme Court in case of ***Railway Board Representing the Union of India (supra)*** relied upon by Dr. Sathe, would not advance the case of the Municipal Corporation. Similarly, the judgment of the Supreme Court in case of ***Himat Lal K. Shah (supra)*** was in respect of the power of the Commissioner of Police to prohibit/regulate Members of Assemblies and processions on a public street or public place etc. The said judgment is also clearly distinguishable on facts. In this case the Petitioners had applied well in advance so as to enable the police to take all necessary measures and the place is notified by the Government for holding this festivity. In our view a power to regulate does not normally include the power to prohibit and consequently this judgement would not assist the case of the Municipal Corporation but advance the case of the Petitioners.

34. In so far as the order passed by this Court on 8th October 2013 in case of **Wecom Trust & Ors. (supra)** relied upon by Dr. Sathe, is concerned, the paragraph 8 would clearly indicate that the applicant, in that matter, had submitted that the applicant was not asserting a right to organize political rally at Shivaji Park, but the applicant had confined his prayer for organizing the Annual Dusshera Function at Shivaji Park. There is no substance in the submission of the learned senior counsel for the Corporation that the petitioners had given up, on their right, if any, to apply for permission in future for organizing Annual Dusshera Function at Shivaji Park by making such statement. The order passed by this Court in case of **Wecom Trust & Ors. (supra)** relied upon by Dr. Sathe, would not advance the case of the Municipal Corporation.

35. In so far as judgment of the Supreme Court in the case of **State of Karnataka & Anr. Vs. Dr. Praveen Bhai Thogadia (supra)** relied upon by Dr. Sathe is concerned, it is held by the Supreme Court that Courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities. It is also held by the Supreme Court in the said judgment that unless there was a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned or that

such authority was shown to act at the behest of those in power, or with ulterior motives the Court has an ample power to interfere with those situations.

36. In our view, the impugned order passed by the Municipal Corporation clearly shows abuse of its power whilst rejecting the applications filed by the petitioners merely on the grounds that there was another application filed by the applicant and on that account there will be a law and order situation. It is not the case of the Municipal Corporation, that in the past several decades, there was any law and order situation while conducting the Dussehra Melawa by the Petitioners.

37. Be that as it may, Mr. Chinoy, learned senior counsel for the petitioners has made a statement before this Court that the Petitioners will not create a situation which would lead to law and order situation if permission is granted by this Court to the petitioners to hold such Dussehra Melawa at Shivaji Park ground. Statement made by the learned senior counsel for the petitioners is accepted. Judgment of the Supreme Court in the case of ***State of Karnataka & Anr. Vs. Dr. Praveen Bhai Thogadia (supra)*** thus would not assist the case of the Municipal Corporation.

38. In so far as the judgment of the Supreme Court in the case of ***Jayrajbhai Jayantibhai Patel (supra)*** relied upon by Dr. Sathe, the Supreme Court had considered the power of judicial review. It is held that the Court can exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India. The power of judicial review is not intended to assume a supervisory role. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. The Supreme Court also held in the said judgment that when the Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless trite that the scope of judicial review is limited to the deficiency in the decision- making process and not the decision. We are satisfied that in this case, the Municipal Corporation has misused its powers by its decision of refusing the application for granting permission on a flimsy ground and that to, after a period of four weeks from the date of receipt of the application and close to the Dusshera festival. Judgment of the Supreme Court in the case of ***Jayrajbhai Jayantibhai Patel (supra)*** thus would not assist the case of the Municipal Corporation.

39. In our view, the petitioners have thus made out a case for

interference with, the impugned order passed by the Municipal Corporation rejecting the grant of permission. The Government Resolution dated 20th January 2016 indicates that the permission can be granted by imposing various conditions prescribed in the said Government Resolution. Needless to say, that the petitioners will have to comply with those conditions prescribed in the said Government Resolution dated 20th January 2016.

40. We accordingly pass the following order :-

- (i) The order dated 21st September 2022 passed by the Municipal Corporation rejecting the application filed by the petitioners is quashed and set aside.
- (ii) The applications dated 22nd August 2022 and 26th August 2022 filed by the petitioners for seeking permission to hold Dussehra Melawa at Shivaji Park on 5th October 2022 and for preparation during the period between 2nd October 2022 and 6th October 2022 are allowed on the condition that the petitioners will have to comply with the conditions prescribed in the Government Resolution dated 20th January 2016.
- (iii) The petitioners will have to maintain law and order while holding Dussehra Melawa on the dates for which the permission was sought by the petitioners.

- (iv) The local police station is directed to depute sufficient numbers of police officers/constables at the site on those days.
- (v) The concerned police station would also be at liberty to have video recording of the entire function at the cost of the petitioners.
- (vi) The petitioner shall co-operate with the police officers in carrying out the order passed by this Court during the period when the Dussehra Melawa would be held by the petitioners.
- (vii) If it is found that the petitioners were responsible for any law and order situation or if it is found that the petitioners commit any violation of the conditions prescribed in Government Resolution dated 20th January 2016, the same would be the ground while considering the application, if any, that would be made by the petitioners in future.
- (viii) The Municipal Corporation is directed to grant permission to the petitioners on the basis of operative part of this order by 11.00 a.m. on 26th September 2022.
- (ix) Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly.
- (x) Interim application made by the applicant is rejected.
- (xi) Parties to act on the authenticated copy of the operative part of this order.

KAMAL KHATA, J.

R.D. DHANUKA, J.