



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1026 OF 2023

JUMMA MASJID TRUST COMMITTEE THROUGH ITS PRESIDENT
ALTAF KHAN NAYYUM KHAN

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. V. D. Hon, Senior
Advocate i/by Mr. S. S. Kazi

P.P. for Respondent Nos. 1 to 5 and 7: Mr. D. R. Kale

Advocate for Respondent No. 8 : Mr. N. E. Deshmukh

Advocate for Respondent No. 9 : Mr. V. J. Dixit, Senior

Advocate i/by Mr. S. V. Dixit and Dipesh Pande

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CORAM : R.M. JOSHI, J

DATE : JULY 18, 2023

PER COURT :

1. This Petition is moved for interim relief by the Petitioner with the contention that the District Magistrate has committed error in passing the impugned order dated 11th July, 2023 without giving opportunity to the Petitioner to put-forth their case.

2. Mr. V. D. Hon, learned Senior Counsel for the Petitioner, states that perusal of the impugned order shows that without recording any findings about the likely breach of peace, the impugned order has been passed by invoking provisions of Sections 144 and 145

of Cr.P.C. It is argued that unless such findings are recorded, it is not open for the District Magistrate to pass such order. In order to support these amongst other submissions, various documents are relied on.

3. Mr. D. R. Kale, learned P.P., opposed the Petition with the contention that in fact the proceedings are instituted under the provisions of Bombay Government Premises (Eviction) Act, 1955 (for short '**the Act**') on the basis of complaint made by the Respondent No. 9 herein. It is submitted that for the purpose of invoking Sections 144 of Cr.P.C there is no need of any report to be made to the District Magistrate and that such powers can be exercised even *suo moto*. It is contended that during hearing of proceeding under Act, such powers are *suo moto* invoked. By referring to the order in question, it is tried to be argued that in the operative part of the order apprehension of breach of public peace is clearly spelt-out and therefore, this is not the case for grant of stay to the said order.

4. Mr. V. J. Dixit, learned Senior Counsel appearing for Respondent No. 9, submitted that this is

a case of encroachment on the Government property. According to him, this Court cannot entertain such Petition at this stage as this is ad-interim order and proceedings are still pending before the District Magistrate. He placed reliance on judgments Dr. M. Ismail Faruqui Etc V. Union of India and Others, AIR 1995 SC 605 & Ishtiaq Hussain Farooqui Vs. State of U.P. and Others, AIR 1988 SC 93, in order to argue that in such cases it is not advisable to interfere into the order as jurisdiction of the District Magistrate as for the purpose of maintaining law and order situation such orders may be essential.

5. Mr. N. E. Deshmukh, learned Counsel for the Respondent No. 8 - Waqf Board, also raised grievance in respect of impugned order by stating that without giving opportunity to the Board the order came to be passed.

6. Maintainability of the Petition is also challenged by contending that there is remedy made available by Section 144(4) and (5) of Cr.P.C. against impugned order.

7. Since the issue of maintainability of the Petition is raised, this Court find it appropriate at least to record *prima facie* findings thereon. Perusal of the relevant provisions do not show that any appeal is provided against interim order passed by District Magistrate under Section 144(1) of Cr.P.C. The remedy of filing an application before the same authority or before the State Government for alteration of the order cannot be equated with an Appeal. Hence, *prima facie* this Court finds that for want of efficacious remedy Petition is tenable and hence, there is no substance in the objection raised regarding maintainability of the Petition.

8. *Prima facie* perusal of the order impugned shows that there is no finding recorded about the Authority being satisfied that there is likelihood of breach of peace on account of alleged dispute. Even if the contention of learned P.P. is accepted that in the operative part of the order there is mention about law and order situation, apparently there is no apprehension spelt-out of any likelihood of causing breach of peace. Section 144 of Cr.P.C no doubt

provides the powers to the District Magistrate even to take *suo moto* action, however, existence of likelihood of causing of disturbance of public peace or tranquility is *sine qua non* to assume such power. In *prima facie* opinion of this Court for want of such findings being recorded makes impugned order vulnerable and not sustainable in law.

9. Having regard to these facts and circumstances, it is fit case to stay the impugned order. Hence, the order:

O R D E R

- (i) Issue notice to the Respondent No. 6, returnable on 01st August, 2023.
- (ii) Mr. D. R. Kale, P.P. waives service of notice on behalf of Respondent Nos. 1 to 5 and 7. Mr. N. E. Deshmukh waives service of notice on behalf of Respondent No. 8. Mr. S. V. Dixit waives service of notice on behalf of Respondent No. 9.
- (iii) There would be ad-interim relief in terms of prayer clause 'C', which is reproduced as under:
 - (C) Pending hearing and final disposal of this criminal writ petition, the execution and implementation of the impugned judgment and order dated 11.07.2023 passed by the learned District Collector, Jalgaon and District Magistrate Jalgaon in proceeding No. JAMIN-3/28/COMPLAINT APPLICATION/04/2023, be

stayed and the respondent no.6 be directed to handover the key of Jumma Masjid to the petitioner forthwith.

(R.M. JOSHI, J.)

Malani