



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

WRIT PETITION (L) NO. 3364 OF 2024

Javed Shaikh

... Petitioner

Versus

State of Maharashtra & Ors.

... Respondents

None for the petitioner.

Mrs. Jyoti Chavan, Addl. G.P. for respondent nos. 1,2, 3, 5, 8, 9 & 10.

Mr. Sagar Patil for MCGM.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 31 January, 2024

P.C.

1. The petitioner, who is a resident in the vicinity of Chansawali Dargah, Niti Road, Powai, Andheri (East), Mumbai is before the Court in the present proceedings, making a grievance in regard to what he alleges as an illegal setup of "a fair" which is not limited to stalls but also having huge high raised swings, giant wheel etc. which are stated to be installed at the risk of life of the citizens residing in the vicinity thereby infringing their rights guaranteed under Article 21 of the Constitution of India.

2. The petitioner has stated that the Municipal Corporation of Greater Mumbai has issued a Circular dated 2 November, 2015 prescribing conditions in issuing permission to a fair/live events, which is not limited to obtaining permission of the said authority, but requiring the concerned persons involved in conducting/participating in such fairs to file separate applications for NOC

to be obtained from various departments like health department and other authorities, necessary for organizing a fair/live event. It is his contention that the fair in question has stalls, high rise swings, which are illegally installed without obtaining permission/NOC as mandated by rules. He has also made a grievance in regard to the noise pollution as also serious concern in regard to the food articles being sold at the stalls requiring permission for such activity and urgent attention of the Food Authorities.

3. The contention of the petitioner is that a detailed representation in this regard was made by him on 14 January, 2024 addressed to Additional Chief Secretary (Home Department), The Municipal Commissioner, Joint Commissioner of Police (Traffic Police), The Assistant Municipal Commissioner, Deputy Chief Fire Officer, Deputy Commissioner of Police (Zone-X), The Senior Inspector of Police, Powai Police Station and the Food and Safety. These authorities have acknowledged the receipt of the said representation, however, the grievance of the petitioner is that despite receipt of such representation, no steps whatsoever are taken to address any of the petitioner's grievances.

4. The petitioner has also raised concern that "any open space" which is not designated as a place for holding such public fairs, whether the authorities would be correct in granting such permissions to hold such public events. The

petitioner has annexed at Exhibit C the photographs including photographs of dangerous walls in the vicinity which in the event of an unfortunate collapse would endanger human life. There are also photographs of the high metal wings and a large giant wheel at page nos. 51 and 52 in regard to which it is the petitioner's contention that there is no verification of their mechanical quality and which according to the petitioner is a matter of serious concern on human safety for those who would use the said facilities, which would include innocent children. He has raised a grievance that there has to be certification of such installment being mechanically fit and safe to be permitted for use in such fairs.

5. In our view, there are seminal issues raised in this petition. We may observe that in the earlier times such fairs/festivals were traditionally organized in the local areas in small proportions during festive seasons, however, over the years the magnitude of these fairs, which used to be small and manageable, has undergone a massive change, now involving lots of commercial activities on all fronts. Also, the numbers of people visiting such fairs have exponentially increased.

6. In our opinion, such changed scenario of these fairs would certainly involve better control, administration and management, inasmuch as, there would be serious issues of safety of the visitors from the point of view of children / visitors using different equipments installed by the persons whose credentials/origin a common man may not know. Also there would be

concerns of safety of food available at the stalls, which may be large in number. There would also be issues of over crowding, fire, hygiene, noise pollution and other disturbances adversely affecting the peaceful living of the residents in the vicinity, as contended by the petitioner which itself would be a fundamental right.

7. Thus, what would be the nature of the administration, management and control of such fairs / events at the hands of the authorities like the Municipal Corporation, State Government, Police Authorities and any other authorities on such issues, as also in regard to certifying the use of such large mechanical equipments at the “fun fair”, would be a matter of serious concern.

8. There is another concern, namely, as to whether some public lanes, roads which are not designated places for large “fun fairs” or any recreational activity of such nature, can at all be permitted to be used for such large fairs and events, and/or whether they can be permitted, in a restrictive manner, with appropriate safeguards and control, so as to not break the traditional celebration of such fun fairs. As to what would be the regime of such safeguards would also be required to be specified and known to the public at large.

9. These are the issues which are involved in the present petition. The authorities therefore need to respond to the petition. We, accordingly, issue notice to the respondents, returnable on **14 February, 2024 (H.O.B.)**.

10. In the meantime, we direct the authorities to whom the representation is addressed, to consider the representation and place on record their respective affidavits in regard to the individual/specific role such authorities would play in according permission and/or control of such fairs. The Municipal Commissioner is directed to immediately have the response from the concerned officers of the respective ward, on the issue as to whether any rules and regulations including under the Health Department of the Municipal Corporation are being followed and whether permissions are granted for setting up such stalls, as also in respect of various machinery items installed at the fairs.

11. All these issues, in our opinion, would be crucial, considering that “precaution is better than cure”. Thus, all precautions before hand are required to be taken without any untoward incident waiting to happen, leaving no scope for a complain against the official machinery.

12. Let appropriate reply affidavit in this regard be also placed on record on or before the returnable date.

13. Parties to act on the authenticated copy of the order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)