

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****OS-WP-LD-VC-259-2020**

Ankit Hirji Vora ... Petitioners

Versus

Union of India and others ... Respondents

WITH**OS-WP-LD-VC-271-2020**Shree Trustee Atma Kamal Labdhisurishwarji Jain
Gyanmandir Trust and another ... Petitioners

Versus

The State of Maharashtra and others ... Respondents

.....

Mr. Prakash Shah alongwith Mr. Jas Sanghavi, instructed by Mr. Durgaprasad Poojary for the Petitioner in WP-259-2020.

Mr. Prafulla B. Shah alongwith Ms. Gunjan Shah instructed by Mr. Kayval Shah for the Petitioner in WP-271-2020.

Ms. P.H. Kantharia, GP and Ms. Geeta Shastri, Addl. GP for the State.

Mr. Anil C. Singh, ASG alongwith Mr. Aditya Thakkar, Mr. D.P. Singh for Respondent No.1.

.....

CORAM : S.J. KATHAWALLA AND**MADHAV J. JAMDAR, JJ.****DATED : AUGUST 13, 2020.****P.C. :-**

1. By the above two Petitions, the Petitioners abovenamed seek directions against the Respondent No.1 – State of Maharashtra; Respondent No.2 – The Chief Secretary, Department of Revenue and Forests, Disaster Management, Relief and

Rehabilitation and the Respondent No.3 – the Municipal Commissioner, Municipal Corporation of Greater Mumbai, to allow the members of the Jain Community to visit the Jain Temples and to perform prayers/puja thereat.

2. On 11th August, 2020, the Petitioners moved for urgent reliefs in the above Writ Petitions to the extent that they should be allowed to visit Jain Temples and to perform prayers/puja during the holy period of ‘Paryushan’ i.e. from 15th August, 2020 upto 23rd August, 2020. On that day, the Petitioners had submitted through their Advocates that though on 30th May, 2020, the Government of India, Ministry of Home Affairs (‘MHA’) had already issued an order to open the religious places/places of worship for the public on and from 8th June, 2020 and though the Government of India, Ministry of Health and Family Welfare on 4th June, 2020, also issued “*SOP on preventive measures to contain spread of COVID-19 in religious places/places of worship*”, the Government of Maharashtra whilst allowing opening of spas, gyms, beauty parlours, barber shops, liquor shops, malls, market complexes, etc., and also allowing certain number of persons to attend marriage gatherings and funeral ceremonies with some restrictions, are till date not allowing the members of the public to visit religious places/places of worship.

3. After noting some of the submissions of the Petitioners, this Court by its Order dated 11th August, 2020, noted in paragraph 3 as under :-

“3. *In view of the above submissions we pass the following order :*

(i) The Petitioners are allowed to forthwith submit their representations to the Secretary, Disaster Management in this regard.

(ii) The Secretary, Disaster Management shall consider the representation of the Petitioners/members of the Jain Community and after considering the same, more particularly, the submission of the Petitioners that if the malls and market places, barber shops, spas, saloons, beauty parlours, liquor shops etc. can be operated with certain restrictions, why the Jain devotees should not be allowed to visit the places of worship to offer prayers and/or to perform rituals with similar restrictions, submit its say to this Court on 13th August, 2020. Stand over to 13th August, 2020.”

4. Pursuant to the said Order dated 11th August, 2020, the Secretary, Disaster Management, Relief and Rehabilitation, has submitted his say to this Court, wherein he has interalia recorded as under :

4.1 That as on 11th August, 2020, the total population affected by COVID-19 in the State of Maharashtra is **5,35,601** and the total number of deaths registered on account of COVID-19 is **18,306**. Out of these, in Mumbai alone, the total number of infected cases have been found to be **1,25,224** and in Mumbai City, Mumbai Suburban District, Thane, Palghar and Raigad District, which are part of the Mumbai Metropolitan Region Area ('MMR Area'), the number of infected cases is **272,104** and the total number of deaths registered on account of COVID-19 is **10962**. In Pune District, the total number of infected cases have been found to be **1,16,646**, and the total number of deaths registered on account of COVID-19 is **2824**.

4.2 That the above figures clearly show that the State of Maharashtra is amongst the most affected States in India.

4.3 That the State of Maharashtra has been adopting and emphasizing various precautionary measures to contain the spread of the infection based on the suggestions given by the experts, including avoiding over crowding at any given place, be it streets, halls or transport facilities such as cars, buses and trains.

4.4 That though the Government of India has with effect from 8th June, 2020, allowed opening of religious places/ places of worship for public, for which a separate Standard Operating Procedure has been issued, the Government of India has in all its orders, consistently and consciously mentioned that, *“States/UTs based on their assessment of the situation, may prohibit certain activities outside the containment zones or impose such restrictions as deemed necessary.”*

4.5 In so far as the State of Maharashtra is concerned, looking at the prevailing position, both in urban and rural areas, a conscious policy decision is taken to continue with the closure of all places of worship and not to permit any religious congregations, without any exception.

4.6 That since the time the restrictions were imposed, till date the restrictions have been followed, be it Gudhi Padava, Shree Ram Navami, Hanuman Jayanti, Mahaveer Jayanti, Easter Sunday, Buddha Pornima, Akshay Trutiya, Ramadan Eid, Vat Pornima, Various Dindis to Pandharpur, Ashadhi Ekadashi, Guru Pornima, Nag Panchami, Bakari Eid, All Shravan Somwars (Monday), Raksha Bandhan,

Gokulashtami and Dahi Handi.

4.7 That, infact a Writ Petition was filed before this Court by Warkari Seva Sangh to allow the Members of the Seva Sangh to carry padukas of Sant Dyaneshwar to Pandharpur for performing the rituals of Ashadi Ekadashi by following the conditions that may be imposed by the Respondents. This Court vide its reasoned Order dated 30th June, 2020 was pleased to dismiss the same.

4.8 That as regards the question put forth by the Petitioners, that if malls and market places, barber shops, spas, saloons, beauty parlours, liquor shops etc., are allowed to be operated, why the members of the public should not be allowed to visit places of worship to offer prayers and/or to perform rituals with similar restrictions, it is to be borne in mind that it is impossible to monitor the strict observance of such conditions in places of worship.

4.9 That a very classic and recent example of the danger in opening of temples is to be seen in the opening of the Tirumala Tirupati Balaji Temple in Andhra Pradesh. The opening of the said Temple has opened floodgates for coronavirus infections. As many as 743 employees of the Tirupati Temple have tested positive for COVID-19.

4.10 That if the urgent reliefs sought by the Petitioner is granted, similar applications will follow for the ensuing religious festivals such as Anant Chaturdashi, Navratri etc. and numerous other religious festivals of various religions, castes, and communities, which will result in spread of COVID-19 in huge numbers.

4.11 That in view of the aforestated reasons and taking into consideration the

situation and the prevailing circumstances in the State of Maharashtra and more particularly in Mumbai City and the Mumbai Metropolitan Region and Pune City, it is not possible to accede to the request made in the representations under consideration requesting permission to open Jain Temples between 15th August, 2020 till 23rd August, 2020.

5. In view of the above facts and figures placed before the Court by the Secretary, Disaster Management, Relief and Rehabilitation and the reasons given by the said Secretary, some of which are set out hereinabove, whilst we appreciate the religious fervour of the members of the Jain Community, who are seeking access to the places of worship for spiritual advancement/activities and also being sensitive to the fact that great inconvenience is caused to various sections of the people in the State due to the various restrictions imposed, we are of the view that the members of the public should appreciate that the Centre as well as the State Government, who despite being over burdened, have left no stone unturned in taking all possible measures to safeguard the public health of its citizens, and that the said restrictions are imposed in their larger interest. Keeping in mind that maintenance of public health is of paramount importance and the peculiar pandemic that has gripped the world and taken a huge toll in our country, in terms of the number of lives lost, we are inclined to agree with the reasons given by the Secretary, Disaster Management, Relief and Rehabilitation for not opening places of worship/temples to the members of the public at this stage. Before parting with this Order, we would once again reiterate that it is

the duty of every right thinking person at this stage to balance their religious duties with public duty, and their responsibility towards the rest of mankind. In this regard, we again repeat what we have already told the Petitioners at the time of hearing, that “God is within us” and “God is everywhere”.

6. For all the above reasons, with great reluctance we are not inclined to grant urgent reliefs to the Petitioners, namely to offer prayers/puja in the temples / places of worship during the ‘Paryushan’ period. However, we are not disposing off the Writ Petitions and are placing the same “for Directions” on 7th September, 2020 keeping in mind that the present situation restrictions are in force only upto 31st August, 2020.

Stand over to 7th September, 2020.

(MADHAV J. JAMDAR, J.)

(S.J.KATHAWALLA, J.)