

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO.10133 OF 2017

HAJI ALI DARGAH TRUST

PETITIONER(S)

VERSUS

SAHAYAK, A SOCIO LEGAL AND
EDUCATIONAL FORUM & OTHERS

RESPONDENT(S)

O R D E R

We have heard learned counsel for the petitioner-Trust and learned standing counsel for respondent No.1-State; learned counsel appearing for respondent Nos.2 to 4; and learned counsel for respondent Nos.5 and 6-Corporation as well as learned senior counsel for the impleading Applicant.

2. During the course of submissions, it was brought to our notice that the impugned order dated 10.02.2017 passed by the Division Bench of the High Court in Public Interest Litigation No.10 of 2016 has been given effect to inasmuch as it has been recorded by this Court by order dated 03.07.2017 to the following effect:

"SLP(C) No.10133 of 2017:

1. Mr. Ashok Haribhau Mundhe, Deputy Collector (Encroachment/Removal) is present in Court in-person. It is his contention, that in terms of the impugned order passed by the High Court, the removable encroachment was the one expressed in the notice dated

22.3.2017, issued by the Deputy Collector (E/R), Colaba, Mumbai.

2. During the course of hearing, learned counsel representing the Haji Ali Dargah Trust acknowledged the above position, and affirmed, that the removable encroachment is the same as was depicted in the notice dated 22.3.2017, which measures 908 square meters. It was further submitted, that the petitioner-Haji Ali Dargah Trust, had no objection to the removal of the encroachment in terms of the above notice dated 22.3.2017.

3. In view of the above, the Deputy Collector (E/R) present in Court in-person, is directed to remove the above encroachment, within the period of two weeks, whereby, the entire encroached area of 908 square metre, as has been depicted in the notice dated 22.3.2017, shall be cleared.

4. List after two weeks.

5. Mr. Ashok Haribhau Mundhe is directed to remain present in the Court on the next date of hearing, with a clear understanding, that serious consequences will follow in case the above directions are not complied with

I.A.No.43446/2017:

1. We find no justification to grant any injunction in favour of the applicants because they are not able to establish their right to the foreshore land over which they have possession. They are, accordingly, hereby directed to clear the encroachment forthwith, failing which they shall be forceably evicted therefrom, in continuation of the order passed by this Court on 9.5.2017, and the encroachment shall be cleared. 2. In view of the above, we find no justification to implead the applicants and, as such, the instant application for impleadment is dismissed."

3. It was also brought to our notice by learned senior

counsel appearing for the impleading applicant that this Court *vide* order dated 13.04.2017 (in Paragraph 6) had directed that any party desirous of any modification of the order passed on the said date to approach only this Court by moving an appropriate application in this petition.

4. For ease of reference, order dated 13.04.2017 (containing paragraph 6) also is extracted as under:

"1. The petitioner - Haji Ali Dargah Trust, has approached this Court, to impugn the order dated 10.02.2017, passed by the High Court of Judicature at Bombay (hereinafter referred to as the 'High Court'), in a petition filed under Article 226 of the Constitution of India, as a cause in public interest. The operative part of the impugned order is extracted hereinbelow:

"3. What we notice from the record is that though the respondent authorities admit that there is illegal encroachment, but according to the respondent - Corporation, since it is in sea water land, the Collector is responsible to remove the said encroachment whereas, according to the Collector, the respondent - Corporation has to remove the said encroachment. Apparently, none of the authorities has taken any action though they are aware of the encroachment. The correspondence between the Municipal Commissioner and the Deputy Collector concerned shows that both the authorities are blaming one another saying that it is the responsibility of the other to remove the encroachment. However, we are of the opinion that Police assistance is also required for removal of encroachment on this approach road leading to Haji Ali Dargah. The total area may be within the control of the Collector since portion of sea water land is involved, however, the adjacent portion i.e. from the road boundary, it would come within the jurisdiction of the respondent - Corporation. The respondent

- Corporation has also placed on record the nature of encroachment and how they are unable to remove it since the Collector is having jurisdiction over the area. In this view of the matter, we are of the opinion that both the Municipal Commissioner and the Collector shall form a Task Force and seek jurisdictional assistance of the Police concerned for removal of the encroachment. 4. In the above circumstances, we direct both the authorities to take proper course of action by forming Joint Task Force. The said Joint Task Force, with the assistance of the jurisdictional Police, shall remove the encroachment on the approach road to Haji Ali Dargah, strictly in accordance with the procedure contemplated. The entire exercise has to be completed within a period of three months from today." (emphasis is ours)

In terms of the order passed by the High Court, the encroachments are liable to be removed by 09.05.2017.

2. It is necessary to notice, that the extent of the alleged encroachment is apparent from a notice issued by the Deputy Collector (E/R), dated 22.03.2017 (under section 50(3) of Maharashtra Land Revenue Act, 1966), wherein, consequent upon a spot inspection, coupled with inputs obtained from the Google map, it was assessed that an area of approximately 908 square meters stood unauthorisedly encroached.

3. Mr. Gopal Subramaniam, learned senior advocate appearing for the petitioner - Haji Ali Dargah Trust, pointed out, that at the same location, there exists a functional mosque, which covers an area of about 171 square meters. It is submitted, that the above mosque has been with the petitioner - Trust, on lease, since 1931. It is contended, that the said lease is still valid and subsisting. He therefore vehemently contended, that the removal of encroachment should not extend to the area of the above mosque.

4. Learned counsel for the petitioner - Haji Ali Dargah

Trust, made an offer to us, during the course of hearing (having obtained instructions from Mr. Usman Vanzara, one of the trustees of the Haji Ali Dargah Trust, who is present in Court in person), that the entire encroachment referred to in the notice issued by the Deputy Collector (E/R) dated 22.03.2017 be permitted to be removed by the Haji Ali Dargah Trust itself, except the area of 171 square meters, over which the mosque has been functional since 1931.

5. We place on record our appreciation, of the offer made by the petitioner before this Court. We hereby allow the petitioner - Haji Ali Dargah Trust, to remove all the remaining encroachments, besides an area of 171 square meters of the lease area, over which the mosque subsists. Mr. Gopal Subramaniam, learned senior advocate also states, that the removal of the encroachments will be to the satisfaction of the Joint Task Force, mentioned in the impugned 4 order. The petitioner - trust, has additionally assured this Court, that the entire encroachment shall be removed, on or before 08.05.2017.

6. We also consider it just and appropriate to direct, that no Court shall grant any injunction on the removal of the encroachments, as mentioned hereinabove. In case, any party is desirous of any modification of the instant order, it shall be open to such party to approach this Court, by moving an appropriate application, in this petition.

7. In view of the offer made by the learned counsel for the petitioner, for the time being, the Joint Task Force appointed by the High Court, is restrained from removing the encroachments, as directed by the High Court. And instead, the petitioner - Haji Ali Dargah Trust will remove the same, on or before 8.5.2017.

8. In addition to the above, liberty is granted to the petitioner - Haji Ali Dargah Trust, to place for the consideration of this Court, a beautification architectural plan, covering the area used for access to the Haji Ali Dargah, and the surroundings area, which will become available, after the removal of the

encroachments.

9. Issue notice, returnable on 09.05.2017.

10. Liberty is granted to the learned counsel for the petitioner, to effect service on the respondents, through the learned counsel representing the parties concerned, before the High Court."

5. On a perusal of the said order, we note that a direction was issued to remove all the remaining encroachments to the satisfaction of the Joint Task Force mentioned in the impugned order within a period of three months from the date of the impugned order.

6. Learned senior counsel for the impleading applicant submitted that the said party was constrained to approach this Court in view of what has been stated in paragraph 6 of the aforesaid order.

7. Since we find that the impugned order has been given effect to, we do not find it necessary to entertain this Special Leave Petition any further.

8. In the circumstances, we dispose of this Special Leave Petition by reserving liberty to the petitioner herein as well as to the impleading applicant to seek reliefs before the appropriate forum in accordance with law.

9. At this stage, learned counsel for the petitioner submitted that the interim order dated 14.07.2017 passed by this Court indicating that the removal of the encroachment of the Kinara Mosque shall avail a final decision by the State Government (on the application for regularisation preferred by the Kinara Mosque) may continue until a final decision on the representation for regularisation is taken.

10. For ease of reference, the order dated 14.07.2017 is extracted as under:

"1. Taken on board.

2. We have heard learned counsel for the rival parties, including Mr.A.Sharan, learned senior counsel representing the Kinara Mosque, and Mr. Raju Ramachandran, learned senior counsel representing the Haji Ali Dargah Trust. It is submitted on their behalf, that the Kinara Mosque has filed an application for regularisation of their construction, and that, the demolition of the Kinara Mosque should be stayed till the above application for regularisation is decided. Mr.Nishant R.Katneshwarkar, learned State counsel acknowledges, that an application for regularisation of the construction on the Kinara Mosque is pending consideration before the State Government.

3. It is the joint request of the learned counsel for the rival parties, that the application for regularisation be decided by the State of Maharashtra, within one week from today. Learned counsel for all the above-mentioned parties conceded to this Court, that the order passed by the State Government shall not be contested, and shall be given effect to, even if the request for regularisation is rejected. Even in the above eventuality, it is acknowledged, that the Haji Ali Dargah Trust as also the Kinara Mosque, will by themselves, remove the encroaching structure.

4. In view of the above, the interim order passed on 03.07.2017 is modified to the extent, that the removal

of the, encroachment of the will await a final decision by the State Government (on the application for regularisation, preferred by the Kinara Mosque). The State Government will take a final decision on the representation for regularisation, within one week from today.

5. Needless to mention, that the order initiating the removal of the encroaching structure, was preferred by the Mumbai Municipal Corporation, and as such, it will be imperative for the State Government to afford an opportunity of hearing to the Mumbai Municipal Corporation, before any final order is passed on application for regularisation.

6. The application is disposed of, in the above terms."

11. Learned standing counsel for the respondent(s)-State submitted that a decision would be taken on the said representation as expeditiously as possible.

12. It appears that there is no final decision taken as on date with regard to the regularisation of the Kinara Mosque.

13. In the circumstances, we reserve liberty to the petitioner-Trust to take steps for seeking regularisation of the said Mosque in accordance with law either by filing a fresh application before the State Government or reviving the earlier application made to the State Government by issuance of a reminder.

14. The State Government shall take a decision on the said application in accordance with law and as expeditiously as possible and preferably within a period of six months from the date a copy of this order is available.

15. The State Government is also at liberty to coordinate with the Central Government in case the Central Government also has a role in taking the said decision.

16. With the above observations, this Special Leave Petition is disposed of.

All pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 17, 2026.

ITEM NO.21

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S).
10133/2017

[ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 10-02-2017 IN PIL NO. 10/2016 PASSED BY THE HIGH COURT OF JUDICATURE AT BOMBAY]

HAJI ALI DARGAH TRUST

PETITIONER

VERSUS

SAHAYAK, A SOCIO LEGAL AND
EDUCATIONAL FORUM & ORS.

RESPONDENTS

IA NO. 113568/2018 - APPLICATION FOR SUBSTITUTION
IA NO. 56545/2017 - APPROPRIATE ORDERS/DIRECTIONS
IA NO. 98742/2017 - CLARIFICATION/DIRECTION
IA NO. 43452/2017 - EXEMPTION FROM FILING O.T.
IA NO. 26300/2018 - EXEMPTION FROM FILING O.T.
IA NO. 63025/2017 - EXTENSION OF TIME
IA NO. 43446/2017 - INTERVENTION/IMPLEADMENT
IA NO. 26291/2018 - INTERVENTION/IMPLEADMENT
IA NO. 57189/2017 - MODIFICATION
IA NO. 43447/2017 - MODIFICATION
IA NO. 26299/2018 - MODIFICATION
IA NO. 2/2017 - PERMISSION TO FILE ANNEXURES
IA NO. 27566/2018 - STAY APPLICATION

Date : 17-09-2026 This matter was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) : Mr. Shubail Farook, Adv.
Mrs. Priya Puri, AOR
Mr. Sharad Kumar Puri, Adv.
Ms. Riya Dogra, Adv.

For Respondent(s) : Mr. Venkita Subramoniam T.R, AOR

Mr. Aditya Pande, AOR
Mr. Bharat Bagla, Adv.

Mr. Arunima Das, Adv.

M/S. J S Wad And Co, AOR
Mr. Ashish Wad, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Manoj Wad, Adv.
Ms. Swati Arya, Adv.
Mr. Deepanshu Verma, Adv.

Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Shrirang B. Varma, Adv.
Mr. Aditya Krishna, Adv.
Ms. Sushmita Pandey, Adv.
Ms. Arunima Das, Adv.
Mr. Ashwin Arun Hirulkar, Adv.
Ms. Kunika Bansal, Adv.
Mr. Bharat Bagla, Adv.
Mr. Arunima Das, Adv.

Mr. A. Radhakrishnan, AOR
Mr. G.S.Bala Rao, Adv.
Mr. Dinesh Kumar Mudgal, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. Anupam Kumar, Adv.
Mr. Amit Kumar Chawl, Adv.
Mr. Akhileshwar Jha, Adv.

Ms. Abha R. Sharma, AOR
Mr. Vinay Navare, Sr. Adv.
Mr. Satyjeet Kumar, Adv.

Mr. Sandeep Sudhakar Deshmukh, AOR
Mr. Nishant Sharma, Adv.
Mr. Ankur Savadikar, Adv.
Mr. Kartik Sharma, Adv.

Mr. Atul Babasaheb Dakh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Application (IA No.26291 of 2018) seeking
impleadment of the impleadment applicant-Mohammad
Abdul Shaikh, is allowed.

Application (IA NO.113568 of 2018) seeking substitution of the original impleading applicant-Mohammad Abdul Shaikh is allowed.

Amended memo of parties to be incorporated.

Special Leave Petition is disposed of in terms of the signed order, which is placed on file.

All pending application(s) including impleadment application(s), if any, shall stand disposed of.

(B. LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

(DIVYA BABBAR)
COURT MASTER (NSH)