



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.7121 OF 2023
WITH
I.A. NO. 12953 OF 2023
IN
WRIT PETITION NO.7121 OF 2023**

ANJALI TUSHAR ASWALE
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Date: 2024.06.15 23:05:03 +0530

Hajrat Peer Malik Rehan Mira
Saheb Dargah, Vishalgad ..Petitioner

Versus

The State of Maharashtra
& Others ..Respondents.

**WITH
I.A. NO.7133 OF 2024
IN**

WRIT PETITION NO.7121 OF 2023

Prakash T. Belawade ..Applicant

Versus

The State of Maharashtra
& Others ..Respondents.

**WITH
WRIT PETITION NO.7132 OF 2024
IN
WRIT PETITION NO.7121 OF 2023**

Omkar A. Magdum ..Petitioner

Versus

Hajrat Peer Malik Rehan Mira
Saheb Dargah, Vishalgad ..Respondent

**WITH
WRIT PETITION (ST.)NO.16583 OF 2023**

Manoj K. Bhosale
& Others ..Petitioners

Versus

The State of Maharashtra
& Others ..Respondents.

WITH
I.A. NO.7135 OF 2024
IN
WRIT PETITION (L) NO.16583 OF 2023

Omkar A. Magdum

.. Petitioner

Versus

Manoj K. Bhosale
& Others

.. Respondents

Adv. S. B. Talekar with Ms. Madhuri Ayyappan i/b. Talekar & Associates, for the Petitioner in W P No. 7121 of 2023.

Adv. Vaibhav Ugle with Mr. Roshan Chavan, for the Petitioner in WP (St.)No.16853 of 2023.

Adv. Ms. S. D. Vyas, Addl. G. P. with Mr. Y. D. Patil, AGP, for the Respondent-State in WP No. 7121 of 2023.

Adv. Ms. S. D. Vyas, Addl. G. P. with Mr. Y. D. Patil, AGP, for the Respondent-State in WP (St.)No. 16583 of 2023.

Adv. Shridhar Patil, for Respondent Nos. 7 & 8 in WP No.7121 of 2023 and for Respondent Nos. 6 & 7 in WP (St.) No.16583 of 2023 appeared through VC.

Adv. Sanjeev Gorwadkar, Sr. Advocate with Mr. Shrirang Katneshwarkar, Mr. Ameya Mahadik, Ms. Manjiri Parasnis with Mr. Rutvik Joshi, Shashank Dueby, for the Intervene in IA no. 7135 of 2024 in WP (St.) No. 16583 of 2024 and IA No. 7132 of 2024 in WP No. 7121 of 2023.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: JUNE 14, 2024

P. C.

The above Writ Petitions are filed, challenging various communications issued by the Director of Archaeology and Museums, Bombay, as well as the Superintendent of Police, Kolhapur and the Chief Executive Officer Zilla Parishad, Kolhapur. To put it in a nutshell these communications seek to ban slaughtering of animals and birds at Vishalgad, Taluka Sahuwadi, District Kolhapur.

2 The justification for the alleged ban in these communications appears to be that slaughtering of animals is taking place in the Vishalgad protected monument, and as per Rule 8 (c) of the *Maharashtra Ancient Monuments and Archaeological Sites and Remains Rules, 1962* [for short the “**1962 Rules**”], there is prohibition to cook and consume food in the premises of a protected monument. Slaughtering of animals is a part of the process of cooking food and, therefore, the same is prohibited. The other justification in the said communications is that the High Court of Bombay (At Aurangabad) has strictly prohibited the slaughter of animals and birds in the name of God and Goddesses at any public place, vide its judgment and order dated 23rd July 1998 passed in Writ Petition No. 5157 of 1996.

3 The above Writ Petitions have been moved urgently before us today because Bakri Eid is on Monday i.e. 17th June 2024, and by virtue of this ban, no sacrifices of animals can take place on Bakri Eid. It is for this limited purpose that we have taken up this Writ Petition to consider whether interim relief ought to be granted in both the above Writ Petitions.

4 Ms. Vyas, the learned AGP appearing on behalf of the State, submitted that the impugned communications are fully justified as they are not only supported by the provisions of the *Maharashtra Ancient and Monuments and Archaeological Sites and Remains Act, 1960* [for short the “**Monuments Act, 1960**”] but also the *1962 Rules*. In this regard, she brought to our attention Rule 8 which prohibits certain acts within the protected monuments. She submitted that Rule 8 stipulates that no person shall, within the protected monument, *inter alia*, cook or consume food, except in areas, if any, permitted to be used for that purpose, by the Director or by the Archaeological Officer. She submitted that the slaughtering of animals is basically a process by which eventually that animal would be consumed for food, and which is expressly barred under Rule 8(c). She, therefore submitted that there was no justification in granting any interim relief to the Petitioners.

5 We have heard the parties at some length on this limited aspect. To consider whether the arguments of Ms. Vyas hold any substance, it would be necessary to refer to certain provisions of the *Monuments Act, 1960* as well as the *1962 Rules*. Section 2 of the *Monuments Act, 1960* is the definitions section and Section 2(10) of the said Act defines the words ‘*protected area*’ to mean any Archaeological site and villages which is declared to be as ‘*protected area*’ by or under the Act. Similarly, the words ‘*protected monument*’ are also defined in Section 2(11) of the said Act, to mean an Ancient and Historical Monument which is deemed to be or declared to be a protected monument by or under the law. Section 4 of the Act deals with the Government issuing a Notification, declaring a particular monument as a protected monument and reads thus:-

“4. (1) Where the State Government is of opinion that any ancient and historical monument not included in section 3 and not declared by or under any law made by Parliament to be of national importance, should be a protected monument, it may, by notification in the Official Gazette, give two months’ notice of its intention to declare such monument to be a protected monument; and a copy of every such notification shall be affixed in a conspicuous place near the monument.

(2) Any person interested in any such monument may, within two months of the issue of the notification, object to the declaration of the monument to be a protected monument.

(3) On the expiry of the said period of two months, the State Government may, after considering the objections (if any), received by it, declare by notification in the Official Gazette the ancient and historical monument to be a protected monument.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn by the State Government, be conclusive evidence of the fact that the ancient and historical monument to which it relates is a protected monument for the purpose of this Act.”

6 Rule 8 of the *1962 Rules*, and on which a heavy reliance is placed by Ms. Vyas, reads thus:-

“8. Prohibition of certain acts within monuments.—No person shall within a protected monument,—

- (a) do any act which causes or is likely to cause damage or injury to any part of the monument; or
- (b) discharge any fire-arms; or
- (c) ***cook or consume food except in areas, if any, permitted to be used for that purpose by the Director or an Archaeological Officer***; or
- (d) hawk or sell any goods or wares or canvass any customer for such goods or wares or display any advertisement in any form or show a visitor round for monetary consideration except under the authority of, or under and in accordance with the conditions of a licence granted by, an archaeological officer; or
- (e) beg for alms; or
- (f) violate any practice, usage or custom applicable to or observed in the monument; or
- (g) bring, for any purpose other than the maintenance of the monument,—
 - (i) any animal or,
 - (ii) any vehicle except in areas reserved for the parking thereof.”

(emphasis supplied)

7 As can be seen from the said Rule, there is a prohibition of certain actions within a “protected monument”. Cooking and consumption of food is one of the prohibitions in a “protected monument”. In other words, as per Rules 8(c), except with the prior permission of the Director or the Archaeological Officer, cooking and consumption of food in the protected monument, is barred. The question is whether the area in which the Petitioners seek to slaughter their animals is within the “protected monument”. If it is, then Ms. Vyas is correct in her submission that no slaughtering can take place. If, on the other hand, it does not fall within the “protected monument”, then clearly Rule 8(c), and consequently the provisions as set out therein, can have no application.

8 For this purpose, it would be relevant to see the Notification that is issued, declaring the Vishalgad Fort as a “protected monument”. This Notification is dated 27th January 1999. This Notification records that the social welfare, cultural and sports department, vide its Notification dated 8th January 1997 had given two months’ notice of its intention to declare the Ancient and Historical Monument specified the schedule appended thereto to be a protected monument as required under sub-section (1) of Section 4. Since no objection had been received for making such a declaration, it declares the said monument as a “protected monument”. The name of the

monument is also mentioned in the schedule as “Vishalgad”. In the said schedule, it is also mentioned that total protected area is 333 acres and 19 gunthas.

9 Relying upon this notification, Ms. Vyas would contend that the entire Vishalgad Fort along with 333 acres and 19 gunthas is a “protected monument” and, therefore, slaughtering cannot be permitted. This argument seems attractive at first blush but on a closer scrutiny, at least, *prima facie*, we are unable to agree with Ms. Vyas. As mentioned earlier, the *Monuments Act, 1960* itself makes a distinction between what is a “protected area” and what is a “protected monument”. On perusing this notification, at least, *prima facie*, we are of the view that the “protected monument” is the Vishalgad Fort and not the entire area. The protected area around the protected monument is what is the protected area, and which can be found in the schedule to the said notification which clearly states that total area to be protected is 333 acres and 19 gunthas.

10 We must state that in fact this is also the understanding of the Assistant Director, Department of Archaeology, Pune, who has filed an Affidavit before us. In paragraph 3 of the Additional Affidavit in Reply filed on behalf of Respondent Nos. 1 and 2, dated 21st March 2024, the Deponent,

namely – Assistant Director, Department of Archaeology, Pune, clearly states that the notice, namely, the communication at Exh. ‘G’, is general in nature and which was placed in the protected area of the “protected monument”. In other words, even the Deponent of this Affidavit has made a clear distinction between the “protected area” and the “protected monument”.

11 This apart, there is yet another reason why we find the argument of Ms. Vyas, at least, *prima facie*, to be without merit. It is not in dispute that in the protected area, namely, 333 acres 19 gunthas, there are about 575 people and about 107 families residing in Vishalgad. This is stated in the Affidavit in Reply of Respondent Nos. 7 & 8. If we were to hold that the entire area of 333 acres and 19 gunthas was the “protected monument”, then under Rule 8(c), these 107 families, admittedly residing within the area of 333 acres 19 gunthas, would not be allowed either to cook or consume food. This would effectively mean that these 107 families would either have to starve or go outside their homes (beyond 333 acres 19 gunthas) and cook and consume their food. This interpretation would be absurd to say the least. We, therefore, find that the reliance placed on Rule 8(c) to issue the impugned communications, at least, *prima facie*, holds no substance. Rule 8(c) only applies to prohibition of certain acts in a “protected monument” and not in the “protected area”. We must also note that the said Notification was issued

in January 1999 and since then slaughter activities have been carried on by the Petitioners, till the impugned communications were issued in February 2023. For 24 years, the authorities did not think that the slaughter being carried on by the Petitioners was either in violation of the *Monuments Act, 1960* or the *1962 Rules*.

12 Looking at the totality of the facts and circumstances of the case, we are of the opinion that at least for the festival of Bakri Eid which is on 17th June 2024, and Urus which is till 21st June 2024, the slaughtering of animals by the Petitioners can be permitted. However, we make it clear that the actual killing or sacrifices of animals or birds shall only take place in the closed premises at Gat No. 19 which is a private land owned by Shri Mubarak Usman Mujawar. The killing of animals and birds certainly should not be done in an open place or in a public place. Mr. Talekar, the learned Counsel appearing on behalf of the Petitioner in Writ Petition no. 7121 of 2013 and Mr. Vaibhav Ugle, the learned Counsel appearing for the Petitioner in Writ Petition (L) No. 16583 of 2023 have both stated to the Court and assured the Court that the slaughtering of animals and birds will be done in closed premises on Gat No. 19 and in any event, shall not be in an open place or public place. The said assurance is accepted as an undertaking given to the Court.

13 We may also clarify that the interim relief granted by this order, is only for relieving the Petitioner from the ban imposed by the impugned communications. If any other permission is required by any other law, the same will have to be obtained by the Petitioner. If they fail to do so, they will face the consequences thereto.

14 Since the pleadings are complete, we now place the above Writ Petition for final hearing on 11th July 2024.

15 It is needless to clarify that the observations made in this order are only prima facie and will not bind the Court whilst deciding the matter finally.

16 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]