



Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO. 1857 OF 2024

**SATYEN KAPADIA,**  
Age: 54 years, Occupation: Business off  
Mumbai, Indian Inhabitant, residing at, 37  
Usha Kiran, 15 Carmichael Road,  
Mumbai 400 026.

...PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**  
through the Government Pleader,  
Original Side, High Court, Bombay
- 2. THE CHIEF MINISTER,**  
**GOVERNMENT OF**  
**MAHARASHTRA,**  
6th Floor, Mantralaya,  
Mumbai 400 032.
- 3. MUNICIPAL CORPORATION OF**  
**GREATER MUMBAI (MCGM),**  
Municipal Building, Head Office,  
Mahanagar Palika Marg, Fort,  
Mumbai 400 001.
- 4. THE MUNICIPAL**  
**COMMISSIONER GREATER**  
**MUMBAI,**  
Municipal Corporation of Greater  
Mumbai, Mahapalika Marg,  
Mumbai 400 001.

SHEPHALI  
SANJAY  
MORMARE

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5. **ROYAL WESTERN INDIA TURF CLUB LTD,**  
a company incorporated under the Indian Companies Act, 1913, with its office at Mahalakshmi Racecourse, Mumbai 400 034.

...**RESPONDENTS**

**WITH**

**WRIT PETITION (L) NO. 2168 OF 2024**

**ZORU BHATHENA,**  
Age: 48 years  
Occupation: Business,  
Indian Inhabitant residing at T-149  
Meherabad, Azad Road, Juhu Koliwada,  
Mumbai 400 049.

...**PETITIONER**

~ **VERSUS** ~

1. **THE STATE OF MAHARASHTRA,**  
through the Government Pleader,  
Original Side, High Court, Bombay
2. **THE CHIEF MINISTER,  
GOVERNMENT OF  
MAHARASHTRA,**  
6th Floor, Mantralaya,  
Mumbai 400 032.
3. **MUNICIPAL CORPORATION OF  
GREATER MUMBAI (MCGM),**  
Municipal Building, Head Office,  
Mahanagar Palika Marg, Fort,  
Mumbai 400 001.

4. **THE MUNICIPAL COMMISSIONER GREATER MUMBAI,**  
Municipal Corporation of Greater Mumbai, Mahapalika marg,  
Mumbai 400 001.
5. **ROYAL WESTERN INDIA TURF CLUB LTD,**  
a company incorporated under the Indian Companies Act, 1913, with its office at Mahalakshmi Racecourse,  
Mumbai 400 034.

... **RESPONDENTS**

**WITH**

**WRIT PETITION (L) NO. 2400 OF 2024**

1. **DINSHAW RUSI MEHTA,**  
Rusi Mehta Building,  
3rd Floor, 49A Bhulabhai Desai Road,  
Mumbai 400 026.
2. **HORMUZ D MEHTA,**  
Spenta, 5th Floor, Malabar Hill,  
Mumbai 400 006.
3. **DARAYUS D MEHTA,**  
Mohammedbhoy Mansion,  
Kemps Corner, Hughes Road,  
Mumbai 400 007.

... **PETITIONERS**

~ **VERSUS** ~

1. **THE STATE OF MAHARASHTRA,**  
through the Government Pleader,  
Original Side, High Court, Bombay

2. **THE CHIEF MINISTER,  
GOVERNMENT OF  
MAHARASHTRA,  
6th Floor, Mantralaya,  
Mumbai 400 032.**
3. **MUNICIPAL CORPORATION OF  
GREATER MUMBAI (MCGM),  
Municipal Building, Head Office,  
Mahanagar Palika Marg, Fort,  
Mumbai 400 001.**
4. **THE MUNICIPAL  
COMMISSIONER GREATER  
MUMBAI,  
Municipal Corporation of Greater  
Mumbai, Mahapalika marg,  
Mumbai 400 001.**
5. **ROYAL WESTERN INDIA TURF  
CLUB LTD,  
a company incorporated under the  
Indian Companies Act, 1913, with its  
office at Mahalakshmi Racecourse,  
Mumbai 400 034.**

... RESPONDENTS

#### APPEARANCES

**FOR THE PETITIONER  
IN WPL/1857/2024 &  
WOK/2168/2024**

**Mr Janak Dwarkadas, Senior  
Advocate, with Navroz  
Seervai, Senior Advocate,  
Dinyar Madon, Senior  
Advocate, Shyam Mehta,  
Senior Advocate, Sharan  
Jagtiani, Senior Advocate,  
Kunal Dwarkadas, Rishika  
Harish, Aditya Bapat, Suraj  
Iyer & Gauri Joshi, i/b Ganesh  
& Co.**

**FOR THE PETITIONER  
IN WPL/2400/2024**

**Mr Ravi Kadam, Senior Advocate,**  
*with Zal Andhyarujina,  
Senior Advocate, Cyrus  
Ardeshir & Ziyad Madon, i/b  
Zain AK Najam-Es-Sani.*

**FOR RESPONDENT-  
STATE IN ALL MATTERS**

**Dr Birendra Saraf, Advocate  
General, with PH Kantharia,  
GP, Jyoti Chavan, Addl. GP &  
Jay Sanklecha.**

**FOR RESPONDENT -  
MCGM IN  
WPL/2400/2024**

**Mr Harish Salve, Senior Advocate,**  
*with Chirag Shah, Utsav  
Trivedi, Joel Carlos & Rupali  
Adhate, i/b Sunil Sonawane.*

**FOR RESPONDENT -  
MCGM IN  
WPL/1857/2024**

**Mr Mukul Rohatgi, Senior  
Advocate, with Anil Singh,  
Senior Advocate, Ranjit  
Thorat, Senior Advocate,  
with Chirag Shah, Utsav  
Trivedi, Devanshi Popat, Muthu  
Thangathurai, Joel Carlos &  
Rupali Adhate, i/b Sunil  
Sonawane.**

**FOR RESPONDENT -  
MCGM IN  
WPL/2168/2024**

**Mr Mukul Rohatgi, Senior  
Advocate, with Chirag Shah,  
Utsav Trivedi, Devanshi Popat,  
Muthu Thangathurai, Joel  
Carlos & Rupali Adhate, i/b  
Sunil Sonawane.**

**FOR RESPONDENT NO.  
5, RWITC, IN ALL  
MATTERS**

**Mr Tushad Cooper, Senior  
Advocate, with Hrushi  
Narvekar, Sameer Tapia,  
Siddhi Doshi & Rohan Marathe,  
i/b ALMT Legal.**

**PRESENT IN PERSON**

**Mr Swapnil Mundhe**, *Sub-Engineer  
(Estate Department), G/S  
Ward.*

**Mr Ulhas Deo**, *Assistant Engineer  
(Estate Department), G/S Ward.*

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**CORAM : G.S.Patel &  
Kamal Khata, JJ.**

**DATED : 25th January 2024**

**ORAL JUDGMENT (Per GS Patel J):-**

1. Yesterday, when these three Petitions were before us what transpired fell well within that delicious expression of a 'kerfuffle', because it was argued that at least two of these Petitions were not within our roster assignment. That issue is now resolved by an administrative direction, which now assigns all three matters to our Bench. There may still be arguments to be made on maintainability, merits, locus and so on but those are for another day.

2. A brief description of these three matters will be necessary but they share two things in common. All three Petitions are most identical in terms of their prayers, the annexures, most of the averments, and even the font.

3. They also deal with the same subject matter and that is the famous Racecourse at Mahalaxmi, Mumbai. This is a vast tract of land of 211 acres just off Hornby Vellard. Most of the land is owned by the State Government. Part is owned by the Municipal

Corporation of Greater Mumbai (“**MCGM**”). For the longest time, it has had almost no built constructions other than viewing stands, a club house, stables, and a restaurant or two. Parts of the area (though not all) are publicly accessible. There are restrictions on racing days and during racing hours. By this we only mean that there is no entrance fee (no one requires membership to visit the Racecourse area for a walk). The stables, the members’ enclosure and other areas are not open to the public.

4. The challenge in the Petition is essentially to a 6th December 2023 communication. We have to find a neutral word to describe this because the Petitioners say it is an ‘order’ from the highest level, i.e., the Hon’ble the Chief Minister, which it directs that a meeting be held by the Royal Western India Turf Club (“**RWITC**”) (of which one group of Petitioners are members) to hold a Special General Meeting to consider various terms and conditions for a renewal of a lease that expired in 2013. The earlier lease was for the entirety of this area. The proposal is for a much reduced area. Other terms and conditions are to be voted on by the RWITC in a special meeting. There is also a mention in this communication of 6th December 2023 of the lands not proposed to be covered by a lease renewal being taken up for something described as an ‘international theme park/public garden’. Nobody at this stage is able to tell us what an ‘international theme park’ is or even looks like. But that, too, may not matter much today. The apprehension in all three Petitions is that the land which is not brought into a renewed lease or some portion of this excluded area will be taken up for ‘development’. That expression has a wide connotation in planning law. Land that is permanently appropriated under statute as an

Existing Open Space (“EOS”) is, the Petitioners apprehend, likely to be diverted to built forms. This, it is argued, violates the fundamental rights of the individual Petitioners and is also contended to be against the public interest.

5. Before us, there are two or three issues even today. First, it is clear to us that in exercise of our jurisdiction under Article 226 of the Constitution of India we cannot possibly issue a mandamus to the executive to take a decision *in a particular manner*. Correspondingly, we cannot possibly direct the executive *not* to decide that which is within its remit to decide. The question of the terms of the lease and matters such as the area, the duration, who gets to decide life membership, where the club house should be, where the stables should be shifted and what the cost of the new stables should be are not, we believe, matters that should concern a writ court. These concerns are at odds and cannot be conflated with the other concerns regarding the preservation of open spaces and the town and country planning process in regard to the utilisation or preservation of existing open spaces. Mr Dwarkadas for one of the Petitioners maintains that there is a case to be made out on legitimate expectations. We shall see.

6. For our purposes today what is relevant is the statement that Dr Saraf, the learned Advocate General, is instructed to make no matter what the wording of the 6th December 2023 communication. He states on instructions that the 6th December 2023 communication is not *in itself* a decision. It records that a proposal has been made. Where that proposal emanated from is not relevant.



That proposal required a decision to be taken by the RWITC because it was once the lessee (at least until 2013), of the entirety of this land. Many things are possible, Dr Saraf submits. The proposal may not even be approved by RWITC. It may be approved but the ultimate decision is yet to be taken by the State Government when approved by RWITC. That decision of either the RWITC or of the State Government cannot be forestalled by a Writ Court under Article 226 of the Constitution of India. Indeed, he submits, even if the proposal is passed by the General Body of the RWITC the decision that the Government may take is still entirely at large. The Government has not committed, Dr Saraf says, to renewing the lease on the terms that are contained in the 6th December 2023 communication. It is for this reason that Dr Saraf maintains that all three Petitions are entirely premature at this stage. He is joined in this submission by Mr Salve, Mr Rohatgi and Mr Singh for the MCGM.

7. We are not inclined to pre-empt the decisions that may be taken by the General Body of the RWITC or by the State Government.

8. Mr Seervai for the Petitioner in Writ Petition (L) No. 2168 of 2024 maintains that since there are allegations of a certain stripe in these Petitions, the mere statement of the Advocate General will not suffice. He relies on the decisions of the Supreme Court in *CS Rowjee v State of Andhra Pradesh & Ors*,<sup>1</sup> a decision by a five Judge Bench of the Supreme Court. The case involved allegations of *mala*

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1 AIR 1964 SCC 962.

*fides* or improper motives on the part of persons in authority and the Supreme Court said that persons and authorities should place on record their version or denials. Reliance is also placed on the decision of the Supreme Court in *RP Kapur & Ors v Sardar Pratap Singh Kairon & Ors*, in which serious allegations were made against the chief minister.<sup>2</sup> The Supreme Court held that an affidavit was necessary clarifying his stand against those allegations. As against this, Dr Saraf relies on the decisions of the Supreme Court itself in *Joginder Singh Wasu v State of Punjab*,<sup>3</sup> and of a full Bench of this Court in *DR Patil v State of Maharashtra & Ors*.<sup>4</sup>

9. We do not believe that Mr Seervai's submission can be accepted in a universal or general sense. For it is also the duty of the Court to see the nature of the averments and allegations made. It can hardly be suggested that by the mere making of an allegation with nothing further, the authority of the foremost law officer to make a statement that binds the Government is thoroughly eroded. We have not expressed a view on the allegations of mala fides. We decline to do so today. The Petitioners' allegations will not force an affidavit to be filed and render insufficient the statement on instructions of the Advocate-General. It is only when the Court finds those allegations to have heft (not merely when they are made) that the dicta in *Rowjee* or *Kairon* will operate. In both decisions, there was an express finding returned that the allegations were

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2 AIR 1961 SC 1117.

3 (1994) 1 SCC 184.

4 2010 (1) Mh LJ 765; 2009 SCC OnLine Bom 2022; (2010) 1 AIR Bom R 781.

indeed serious, i.e., that left unanswered on merits, they might well have been accepted. We are nowhere near that stage today.

10. We will not do our Advocate General the discourtesy of disregarding the statement he makes today. We accept his submission that the statement he makes is on instructions at the highest levels. That is enough for us and nothing further be said in the matter.

11. Mr Kadam for the Petitioner in Writ Petition (L) No. 2400 of 2024 attempted a submission that the RWITC General Meeting should not be held at all, and that e-voting should not be permitted. There are many difficulties in accepting this submission. Although Mr Kadam says that even a dispute between a member and the club of a which is the member which is maintainable in a Writ Petition under Article 226, we have our greatest reservations about this. In any case, the statement by Dr Saraf will sufficiently cover this aspect of the matter as well. We do not even know today what the result of that Extraordinary General Meeting will be or how the voting will take place. Members may have their own views. They will express them, and the results will speak for themselves.

12. We are not staying the RWITC meeting or the e-voting.

13. We are also not preventing the State Government from taking an appropriate decision in such manner and for such reasons as it deems fit.

14. The question is whether these Petitions should now be disposed of or be kept pending. The Petitioners of course say that the Petitions should be kept pending. The Respondents say otherwise.

15. There has already been enough difficulty in getting these Petitions tagged together and assigned. We also see no reason why three-volume Petitions should be disposed if they are likely to be filed again, though that is an outcome that today we cannot possibly predict. No harm is going to be caused to either side if these Petitions are simply kept pending but this is clearly on the understanding that the pendency of these Petitions will not affect the decision-making process either way. We are not to be understood as having rejected the Petitioners' submissions nor having rejected the proposal by the RWITC nor having accepted nor rejected anything stated in the 6th December 2023 communication.

16. All contentions are expressly kept at large irrespective of the pendency of these Petitions. We clarify that the only reason to keep these Petitions pending is, quite literally, for administrative convenience and nothing further so far as this Court is concerned. We have expressed no view on the rival contentions on merits at this stage.

17. We are also unable to fix any particular date within which the State Government must take a decision one way or the other. Indeed, if we might be permitted the liberty, its decision may well be not to take any decision at all.

18. Accordingly, we cannot possibly fix the next date, but we grant liberty to any of the parties before us to apply.

19. The administrative order by the Hon'ble the Chief Justice requires the Registry to check the Petitions for filing defects. We are told that this has been done. We require those filing defects to be cured or addressed at the earliest possible and in any event before the matters are listed again before the Court.

**(Kamal Khata, J)**

**(G. S. Patel, J)**