



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

WRIT PETITION NO.2627 OF 2014

1.	Smt. Shaila Madhukar Gore Indian Inhabitant, Aged 64 years, Housewife, residing at 176, Vaidya Wadi, Thakurdwar Road, Mumbai - 400002		
2.	Sanjay Anant Mervekar Indian Inhabitant, Aged 53 years, 68/86M Harkuwarbai Chawl, Girgaum, Mumbai -400 002		
3.	Pravinchandra D. Dhotre, Indian Inhabitant, Aged 53 years, Photo Express Studio, 174, Dr. Baba Saheb Jaykar Marg, Vaidya Wadi, Thakurdwar Road, Mumbai – 400 002		
4.	Anand Sitaram Mali, Indian Inhabitant, Aged – 52 years, 184, Thakurdwar Road, Mumbai – 400002	 Petitioners
	Versus		
1	Union of India through Secretary Ministry of Culture-502-C, Shastri Bhawan, New Delhi – 110115		
2	The State of Maharashtra, Mantralaya, Mumbai		

3	The Commissioner, Municipal Corporation of Greater Mumbai, BMC Office VT, Mumbai		
4	Director Archaeological Survey of India (ASI), Janpath, New Delhi - 110011		
5	Director, Directorate of Archaeological & Museums, ST George Hospital Compound, Fort, Mumbai - 400001		
6	The Commissioner of Police, Office of the Commissioner of Police, Crawford Market, Mumbai		
7	The Senior Inspector of Police, V.P.Marg Police Station, Mumbai		
8	The Collector of Mumbai City, Mumbai		
9	M/s. Kushalraj Land Developers Pvt. Ltd., Builders and Land Developers having their office at 275, Mapla Mahal, J.S.S. Road, Girgaum, Mumbai - 400004		
10	Vaidyawadi Rahiwasi Sahakari Society (Proposed) Through their Advocate Tushar A. Goradia, having his office at Chamber 12, 3 rd Floor, Bell Building, Near Bombay Stores, Sir. P.M. Road, Fort, Mumbai - 400001		
11	Bhairav Kothari Realtors LLP,		

269/277, Mapla Mahal, JSS Road, Girgaum, Mumbai Respondents
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**WITH
NOTICE OF MOTION NO. 43 OF 2017
(For appointment of Court Receiver)
IN
WRIT PETITION NO.2627 OF 2014
WITH
INTERIM APPLICATION NO. 1677 OF 2019
(for expeditious hearing)
IN
WRIT PETITION 2627 OF 2014
WITH
NOTICE OF MOTION NO. 296 OF 2018
(by Respondent No.10 for expeditious hearing)
IN
WRIT PETITION 2627 OF 2014
WITH
INTERIM APPLICATION NO. 16 OF 2020
(by 3rd party for his appointment as the next friend and
kin of the deity)
IN
WRIT PETITION 2627 OF 2014**

Mr. S. K. Halwasia with Mrs. S. S. Halwasia a/w Ms. Pranati B. Mehra a/w Mr. KRCV Seshachalam, Mr. M. M. Nasir Ali i/by M/s. Halwasia & Co. for the Petitioners

Mr. Amol Raut i/by Manoj Mhatre for the Applicant in IA No.16/2020

Mr. Ramchandra Apte Senior Adv. a/w Mr. Y. R. Mishra and Mr. N. R. Prajapati, Mr.Saurabh B Mishra for UOI Respondent No.1

Mr. Abhay L Patki Additional Government Pleader for Respondent Nos. 2 & 6 to 8 (State of Maharashtra)

Mr. Narayan Bubna a/w Ms. R. M. Hajare & Mr. Sagar Patil i/b Mr. Sunil Sonawane for MCGM

Mr. Karl Tamboly a/w Mr. Adil Parsurampuriah and Ms. Zalak Mody i/b A and P Partners for Respondent No.9

Ms. Nishi Doshi a/w Mr. Pranav Nair i/b Parinam Law Associates for Respondent No.10

Mr. Anil V. Anturkar Senior Advocate i/b Mr. Shubham Misar for Respondent No.11

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & ARIF S. DOCTOR, J.

**RESERVED ON : DECEMBER 5, 2023
PRONOUNCED ON : DECEMBER 12, 2023**

JUDGMENT (PER : CHIEF JUSTICE)

(A) Background Facts:

- (i) Prayers in the Writ Petition**
- (ii) Submissions on behalf of the Petitioners**
- (iii) Contentions of the Respondents**

1. Heard the learned Counsel representing the respective parties and perused the records available before us on this writ petition.

2. Invoking our writ jurisdiction under Article 226 of the Constitution of India this petition in public interest has been filed by the Petitioners expressing their concern about protection and preservation of Vithal – Rukumai/Rukhmini Temple, Vaidyawadi, Thakurdwar, Girgaum, Mumbai claiming that it is an ancient temple which is over 200 years old and thus, the same needs to

be protected as a monument of historical importance. The petition has been filed with further assertion that the temple is associated with historical events. It has been submitted by the learned Counsel representing the Petitioners Mr. Halwasia that between 1888 and 1897 AD, Chaffekar Brothers, the revered freedom fighters used to visit the temple and even organized their activities from there. Mr. Halwasia also stated that other freedom fighters such as Lokmanya Bal Gangadhar Tilak and Mahadev Govind Ranade and many others used to visit the temple and in various books of history the temple has been mentioned as an ancient temple. Mr. Halwasia further stated that one such book was published in the year 1900 authored by K. Raghunathji alias late K. R. Navalkar and further that various British records also make mention of the said temple having been frequently visited by freedom fighters.

3. Further averment made in the petition is that the temple is located at cadastral survey number No.313 of Girgaum Division which according to the Petitioners is reserved for "welfare centre and parking lot" and that some private person has purchased the land comprising CTS No.313 and 314 and intends to carry out redevelopment work.

4. Various other averments have also been made by the Petitioners in the Writ Petition in their zeal to establish that the temple is an ancient temple and hence it should be protected as a monument of historical importance. In this regard, it has been stated by the Petitioners that there is some stone carving (Shilalekh) which shows that in the year 1773 the land over which the temple exists was purchased by one Jankubai wife of Vitthal Palaji/Pillaji who renovated the temple and dedicated the same for religious activities. It has also been stated that the temple consists of four walls enclosing 600 sq.ft. with roof and a dome. Further submission is that inside the temple building there is a small Girbhagraha in the area of 120 sq.ft. and inside this Girbhagraha deities viz. Vitthal and Rukumai are installed. It is also submitted that the idol of Vitthal is having a height of 2'2" which is made of rare black stone, whereas height of the idol of Rukumai is 1'10" carved in black stone and that both the idols are ancient. It has also been stated that in the room outside Girbhagraha, there is a statue of Maruti (Hanuman) which is also ancient and that the door of Girbhagraha is made of stone carvings of Ganpati which also is ancient. Describing the temple further, it has been stated that outside the Girbhagraha there

exists a hall where devotees can sit and hold satsangs and puja. Submission further is that outside the temple building there are two ancient stone pillars measuring 15' each which contain ancient carvings and that between the two stone pillars and the temple there is a Chabuttra admeasuring 30' x 20' enclosing an open area of about 600 sq.ft. where earlier, devotees used to sit for religious activities. Mr. Halwasia representing the Petitioners has further submitted that some anti-social elements, however, have been obstructing the public from conducting puja and other religious rites and that the Petitioners have been approaching various authorities of the State of Maharashtra as also the authorities of the Municipal Corporation of Greater Mumbai (hereinafter referred to as the **MCGM**) to take adequate and appropriate steps for considering the temple to be a monument of historical importance which according to the Petitioners is 200 years old and is being sought to be demolished unlawfully. It has also been argued on behalf of the Petitioners that Article 49 of the Constitution of India obligates the State to protect every monument.

5. In the light of the aforesaid submissions, it has been prayed that Respondents be directed to appoint an expert

committee to make an inquiry in relation to the temple so as to protect the same in accordance with the guidelines and rules laid down by the Government under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as the **1958 Act**) as well as the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 (hereinafter referred to as the **1960 Act**) and the Rules made thereunder. Further prayer made in the Writ Petition is that the temple be declared to be a protected monument and thus it be protected in accordance with law. The Petitioners have also prayed that appropriate directions be issued to stop all construction activities within the radius of 2 kms and such other area which may cause any damage or degeneration of the temple.

6. After filing of the Writ Petition, by way of an amendment certain other prayers have been added, whereby the Petitioners have prayed that preservation and conservation of the temple and related structures may be directed to be done deeming it to be a historical monument by the authorities concerned and further that the temple may be listed as a heritage structure under the provisions of the Heritage Regulations of Greater

Mumbai, 1995 (hereinafter referred to as the **Heritage Regulations of 1995**) under the Development Control Regulations (hereinafter referred to as the **DCR**). These prayers have been added subsequent to filing of the Writ Petition on the basis of some recommendations of a committee appointed by this court and accordingly another prayer made in the Writ Petition is that the Respondents may be directed to search the temple plaque and also that necessary directions may be issued so that provisions of Places of Worship (Special Provisions) Act, 1991 are not violated. It has also been prayed that the Court may declare that the beneficiaries of religious endowments are the worshipers and that in case the Court comes to a conclusion that the temple does not belong to Respondent No.9 and that it is a temple, a suitable agency be appointed to protect the temple and maintain its entity as a public temple.

7. By making the aforesaid assertions and prayers, the Petitioners, thus, primarily seek a declaration that the temple site in question, which is known as Vitthal Rukumai temple, is a monument of historical importance which does not belong to any private entity and hence directions may be issued not only for its protection and preservation but also for appointment of an

agency for running the affairs of the temple and declaring that Respondent No.9 is not the owner either of the temple properties or the land over which it is situated.

8. Mr. Anil V. Anturkar, learned Senior Advocate representing Respondent No.11 has, however submitted that that till date there is no declaration of the temple site either as "ancient monument" under the provisions of 1958 Act nor has it been declared as "ancient and historical monument" under the provisions of 1960 Act. He has further stated that under the relevant DCR the temple site in question has never been declared either as "heritage site" or "natural heritage site". Submission, thus, is that the Petitioners, by filing this Petition is attempting to call upon the Court to enter into an arena which, otherwise, is the preserve of the authorities under the statutory provisions contained in the 1958 Act and 1960 Act and the relevant DCR. Mr. Anturkar, learned Senior Advocate has further argued that the Writ Petition has been filed with *mala fide* intention and only with a view to stall the redevelopment project on account of vested interest. He has further argued that unless and until the 1958 Act, 1960 Act or relevant DCR recognizes the temple in question as an "ancient monument" or

as an “ancient historical monument” or as a “heritage site”, it will not be permissible for the Court to issue any such direction as has been prayed for. His submission is that the land over which the temple site exists, which is the subject matter of this Writ Petition, in fact, is a part of a development agreement and the only attempt by the Petitioners by instituting this Petition, seemingly in public interest, is to stall the project for extraneous reasons.

9. Supporting the submissions advanced by Mr. Anturkar, learned Senior Advocate, Mr. Karl Tamboly, learned Counsel representing Respondent No.9 has also submitted that the Petitioners lack *bona fide* to institute this Petition. He has relied upon the law as laid down by the Hon’ble Supreme Court in the case of ***State of Jharkhand Vs. Shiv Shankar Sharma & Ors.***¹ wherein it has been clearly observed that what is of crucial significance in a PIL is the *bona fide* of the Petitioner who files the PIL and that it is an extremely relevant consideration which should be examined by the Court at the very threshold and also that this has to be done irrespective of the apparently high

¹ (SLP(C) 10622-10623 of 2022 and SLP (C) 11364-11365 of 2022) decided on 7th November 2022

public cause being sought to be espoused in the PIL.

10. Mr. Tamboly, relying upon the judgment of the High Court of Delhi in the case of ***Rajeev Suri Vs. Archaeological Survey of India & Ors.***² has submitted that it is for the authorities under various enactments who are legally entrusted to take a decision and declare as to whether a particular site is an ancient monument or heritage site and that it is not for the Court to go into such questions and prayers for such declaration.

11. Mr. Tamboly has also stated that Petitioner No.1 Smt. Shaila Madhukar Gore, along with others, has instituted a suit bearing L.C. Suit No.1593 of 2015 in the Bombay City Civil Court, Mumbai in respect of the property which is the subject matter of this Writ Petition wherein it has been prayed by Petitioner No.1 that a declaration be made that the Plaintiff's possession in respect of the 1st and 2nd floor, numbered as Room No.3 and 3-A Building No.176 situate at one corner of land bearing C.S.No.313, Vaidya Wadi, B.J. Marg, Thakurdwar, Mumbai – 400 002 are protected under the M.R.C. Act 1999 and that the orders dated 28th April 2011 and 26th June 2015 passed u/s. 95-A of MHADA Act to vacate are illegal and *mala fide*.

2 2019 SCC OnLine Del 7227

12. On the basis of these submissions, it has thus, been argued by Mr. Tamboly that the instant Writ Petition cannot be said to have been filed with *bona fide* intentions and hence, it is liable to be dismissed on this ground alone.

13. The affidavit filed by the Director, Directorate of Archaeological and Museum, State of Maharashtra, clearly states that the Writ Petition is misconceived and it does not disclose any cause of action so far as the Ministry of Cultural Affairs and Tourism and the Directorate of Archeology and Museums, State of Maharashtra are concerned. In the said affidavit it has been observed that the temple was built in the year 1851 AD by the family of one Vithal Palaji and that the temple is built in a traditional style of architecture prevalent in Konkan region in late medieval and modern period and further that the temple stands on privately owned land. The affidavit further states that the temple had become dilapidated by the year 2006-2007 and therefore, work of renovation was undertaken by the local residents. The Director of Archeology and Museum, State of Maharashtra in his affidavit has further stated that a new temple has been constructed by a developer where idols of Vithal and

Rukhmini/Rukumai could be shifted for worship.

14. It is to be noted that a categorical submission has been made by the Director of Archaeological and Museum, State of Maharashtra in the aforesaid affidavit that as per the provisions of the 1960 Act the temple has not been declared as State protected monument and also that the temple has lost its historical and architectural context on account of renovation done in the year 2007 by the local residents. It has also been stated in this affidavit that the temple is not an ancient monument declared as a protected structure by the Government of India under the 1958 Act and therefore, the temple is neither Central protected monument nor a State protected monument. The Director has also stated that the ancient stone carving (Shilalekh) as asserted by the Petitioners recording that the temple was constructed in the year 1773 Shaka by Vithal Palaji/Pillaji and Late and Jankubai is not to be seen in the temple at present.

15. An Affidavit in Reply has been filed by the Assistant Superintending Archaeologist, Archaeological Survey of India, wherein it has been stated that the temple has not been

declared to be of national importance by the Central Government and therefore the provisions of the 1958 Act shall have no application. It has also been stated in the said Affidavit that the temple has undergone a lot of modernization, renovations and alterations and therefore, it is not possible for the Archaeological Survey of India (**ASI**) to recommend to declare the said temple as monument of national importance. The ASI in its affidavit has however stated that it supports safeguarding the temple and the idols kept in the temple premises.

(B) Developments during pendency of the Writ Petition:

16. Having examined the submissions made by the learned Counsel for the respective parties and the stand taken by the parties, we will now narrate certain developments which took place during pendency of the Writ Petition.

17. This Court passed an order on 21st January 2015 noticing the Affidavit in Reply filed by the State wherein it has been stated that the temple does not have any ancient antiquities, as claimed by the Petitioners and that the temple is not a State protected monument. It also took note of a report dated 1st December 2014 prepared by the Technical Assistant and Coordinator of Archaeological Department of the State of

Maharashtra wherein it was stated that the temple is not worth protection due to loss of its historical and archaeological value. The Court further made an observation that the report of the Archaeological Department of the State of Maharashtra is biased and found it necessary to constitute a committee to consider whether the temple is a historical or archaeological monument which needs to be protected. After seeking willingness from the proposed members of the Committee, the Court, vide its order dated 4th March 2015 appointed a committee comprising of the following members:

- i. Dr. A. P. Jamsandekar, Former Director, Archaeological Department.
- ii. Mr. Rajan Jayakar, Advocate.
- iii. Prof. Gurunath Dalvi, President, The Indian Institute of Architects.
- iv. Mr. Sadashiv Gorakshkar, Director (Retd.) Prince of Wales Museum, Mumbai.
- v. Mr. Mahendra I. Sethna, Senior Advocate.
- vi. Dr. G. B. Deglurkar, Pune.
- vii. Ms. Abha Narain Labha, Conservation Architect.

18. The Court referred the following questions for consideration of the Committee:

- (1) Whether Vitthal Rakhumai temple is required to be preserved and protected as a place of historical, archaeological and heritage interest ?
- (2) If 'yes' in what manner and by what measures the Vitthal Rakhumai temple could be preserved and conserved?

19. A report dated 27th January 2016 was, thus, submitted by Mr. Rajan Jayakar, one of the members of the committee constituted by the Court, who in his report recorded that the temple appears to be more than 100 years old and that the temple is required to be preserved, protected and restored since it would fall within the definition of "ancient and historical monument" under Section 2(1) of the 1960 Act as a structure of historical interest existing for more than 100 years. The said member of the committee also suggested some measures for repair, restoration, preservation and conservation of the temple as well.

20. A second report by another member of the said Committee, Mr. Sadashiv Gorakshkar, dated 1st February 2016 has also been submitted, wherein he has stated that temple is required to be preserved and protected and that for preservation of the temple, appropriate steps need to be worked out in detail with the help of experts.

21. Mr. M. I. Sethna, Senior Advocate, one of the members of the committee constituted by the Court also submitted a report on 11th February 2016 stating therein that the temple should be

protected as a place of historical, archaeological and heritage interest and also suggested that a technical team of architects should be requested to work out a detail solution for preservation and conservation of the temple.

22. The Court, vide order dated 14th June 2017 constituted another committee comprising of Mr. Rajan Jayakar, Ms. Abha Narain Lamba and Mr. Atul Bhargava, which was directed to visit the site and suggest measures required for protecting and preserving the temple during monsoon. It appears that joint inspection by the three committee members could not take place however Mr. Rajan Jayakar, one of the members of the committee visited the site and submitted his report dated 10th July 2017 suggesting certain measures which are required to be taken to protect the temple during monsoon. In view of these reports the Writ Petition was amended and certain prayers were added in the Writ Petition seeking direction to the Respondents that the temple site may be preserved and conserved and also that the temple be declared as historical and ancient monument and further that accepting the recommendations of the committee the Respondents be directed to list the temple as a heritage structure under the provisions of the Heritage

Regulations 1995 and the DCR.

(C) Issue for consideration of the Court:

23. From the pleadings of the respective parties available on record and the arguments made by the learned Counsel representing respective parties, in our opinion, the question which falls for our consideration is, as to whether in absence of the declaration of the temple site in question either as (i) "ancient monument" under 1958 Act, or (ii) as "ancient and historical monument" under 1960 Act, or (iii) as a "heritage site" under the DCR, the prayer for issuing direction for protection of the site as a monument of historical important can be granted?

(D) Analysis:

24. It is true that Article 49 of the Constitution of India which falls in Part IV (Directive Principles of State Policy) of the Constitution of India obligates the State to protect every monument or place or object of historical or artistic interests. However, the said provision in the same breath also provides that the State has the obligation to protect those monuments or places or objects of artistic or historical interest which are declared as such by or under law made by the Parliament, to be of national importance. Thus, the obligation cast on the State to protect such monuments or places or objects to be of national

importance from disfigurement, destruction or spoliation etc. is only in relation to those which are declared as such by or under the law made by the Parliament.

25. The Parliament has enacted the Ancient Monuments and Archaeological Sites and Remains Act 1958 (Act No.24 of 1958) with an object of providing for preservation of ancient and historical monuments and archaeological sites and remains of national importance and also for regulation of archaeological excavations and for protection of sculptures, carvings and other like objects. Prior to enactment of Act No.24 of 1958, the field was covered by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 and the Ancient Monuments Preservation Act, 1904, both of which, however, stand repealed by virtue of operation of Section 39 of the 1958 Act.

26. The phrase "ancient monument" has been defined under Section 2(a) of the 1958 Act to mean any structure or monument, or any place, or cave, or rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one

hundred years and includes remains of certain ancient monuments and various other sites. Section 2(a) of the 1958 Act is extracted hereunder:

2(a) "ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

- (i) the remains of an ancient monument,*
- (ii) the site of an ancient monument,*
- (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and*
- (iv) the means of access to, and convenient inspection of an ancient monument;*

(b) "antiquity" includes-

- (i) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship,*
- (ii) any article, object or thing detached from a building or cave,*
- (iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages,*
- (iv) any article, object or thing of historical interest, and*
- (v) any article, object or thing declared by the Central Government by notification in the Official Gazette, to be an antiquity for the purposes of this Act, which has been in existence for not less than one hundred years;*

27. What is noticeable here is that any structure or erection or monument or sculpture or inscription etc., as given in Section

2(a) of 1958 Act, will qualify to be an ancient monument if it has been in existence for not less than hundred years but only when such a monument or structure or inscription etc. are of (i) historical, (ii) archaeological and (iii) artistic interest.

28. Section 3 of the 1958 Act also defines certain ancient monuments to be deemed to be of national importance. Section 3 of the 1958 Act is quoted hereunder:

3. Certain ancient monuments, etc., deemed to be of national importance.

"All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, or by section 126 of the States Reorganization Act, 1956, to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act."

29. It is to be seen, from a perusal of the afore quoted provision of Section 3 of 1958 Act, that for any ancient monument to be deemed to be of national importance, there has to be a declaration either under the 1951 Act or under the States Reorganization Act, 1956.

30. Section 4 of the 1958 Act empowers the Central

Government to declare ancient monuments etc. to be of national importance. Section 4 of 1958 reads as under:

"4. Power of Central Government to declare ancient monuments, etc. to be of national importance:

(1) Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains; as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act."

31. Thus, section 4 empowers the Central Government to declare an ancient monument to be of national importance if it is of the opinion that any ancient monument or archaeological site

and remains not included in Section 3 is of national importance on forming such an opinion. The procedure for forming such an opinion is that two months' notice is published in the Official Gazette revealing the intention of the Central Government to declare such ancient monument or archaeological site and remains to be of national important inviting objections to such intended declaration. Sub Section (3) provides that after considering the objections, if any, the Central Government may declare, by Notification in the official gazette, such an ancient monument / archaeological site and remains to be of national importance. Sub Section (4) provides that the Notification published under Sub Section (3) shall be conclusive evidence of the fact that ancient monument or archaeological site and remains is of national importance for the purposes of the said Act.

32. Thus, if protection and preservation measures etc. are sought in respect of any ancient structure or site under 1958 Act, it has either to be an ancient monument of national importance under Section 3 or it has to be declared as such under the provisions of Section 4. The scheme of 1958 Act provides for various measures for protecting and preserving the

ancient monuments and prohibition etc in the area surrounding such sites.

33. However, for operation of 1958 Act, as is clear from the scheme of the said Act itself, there has to be a declaration either under Section 4 of the Act or the monument or the site should have already been declared as such under the provisions of the 1951 Act, as provided by Section 3 of 1958 Act.

34. So far as subject matter of the instant Writ Petition is concerned, there is nothing on record which can establish that it is an ancient monument of national importance under Section 3 of the 1958 Act. Learned Counsel representing the Petitioners has also not been able to establish that there is any declaration in terms of Section 4 of 1958 Act in respect of the temple site in question to be an ancient monument of national importance.

35. Accordingly, in view of the temple site in question having not been declared as an ancient monument of national importance under Section 4 of the 1958 Act and further having not been included as an ancient monument or site of national importance in terms of Section 3 of the 1958 Act, any direction

sought by the Petitioners for protection and preservation of the site in question under the provisions of 1958 Act, in our opinion, would be impermissible.

36. Apart from 1958 Act, another statutory regime operating in the field of preservation of ancient and historical monuments and records and archaeological sites and remains (other than those declared to be of national importance) in the State of Maharashtra is the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 (Act XII of 1961).

37. Section 2(1) of 1960 Act defines ancient and historical monument to mean any structure, erection and monument or cave or rock sculpture etc. which is of historical, archaeological or artistic interest and which has been in existence for not less than fifty years.

38. Section 2(1) of 1960 Act is quoted hereunder:

2(1). "ancient and historical monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than fifty years, and includes-

(a) The remains of such monument,

- (b) *The site of such monument,*
- (c) *Such portion of land adjoining the site of such monument as may be required for fencing or covering in or otherwise preserving the monument, and*
- (d) *The means of access to, and from, and convenient inspection of, such monument.*

39. Section 3 of 1960 Act provides that ancient and historical monument in the State of Maharashtra declared as such before commencement of 1960 Act shall also be deemed to be protected monument for the purpose of the said Act. Section 4 of 1960 Act empowers the State Government to declare any ancient and historical monument to be protected monument. Section 3 and 4 of 1960 Act are also quoted hereunder:

3. Certain ancient and historical monuments deemed to be protected monuments

"All ancient and historical monuments in the State of Maharashtra, which before the commencement of this Act have been declared by or under the Ancient Monuments Preservation Act to be protected monuments, and have not been declared by or under any law made by Parliament to be of national importance, shall be deemed to be protected monuments for the purposes of this Act."

"4. Power of State Government to declare ancient and historical monuments to be protected monuments

(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 of protected monument for the purposes of this Act."

40. The 1960 Act also contains a statutory scheme for preservation of protected monuments by the authorities of the State Government. It is noteworthy that the scheme of 1958 Act, which is a Central enactment and that of 1960 Act, which is a State enactment are akin to each other or in *pari materia*. Sub Section (4) of Section 4 of 1960 Act also provides that notification published under sub section (3), unless withdrawn, shall be the conclusive evidence of the fact that ancient and historical monument is a protected monument for the purpose of

the said Act.

41. Thus, as in the case of central enactment, anyone seeking protection under 1960 Act in respect of an ancient monument or site, has to get a declaration under Section 4 or such historical monument has to be enlisted in terms of the provisions of Section 3 of 1960 Act. In absence of any site either falling within section 3 or Section 4 of 1960 Act, the statutory protection as per the said Act, in our opinion, will not be available.

42. In the Writ Petition, we do not find any material whatsoever to conclude that the temple site in question is a protected monument either in terms of Section 3 or in terms of Section 4 of 1960 Act and hence in absence thereof any protection sought by the Petitioners for protection of the temple site under the provisions of 1960 Act is also not permissible.

43. Apart from the statutory provisions contained in 1958 Act and 1960 Act, there is yet another statutory provision in the form of Development Control and Promotion Regulations for Greater Mumbai which makes several provisions for conservation of heritage sites and their declaration etc. In the said

Regulations, 'heritage' has been defined to mean the area within the boundary / extent of heritage building / precinct / natural area included in the heritage list and shown as such on the map. Regulations further provide that a list of heritage places and heritage precincts shall be prepared by the Corporation and also that even a heritage conservation fund shall be created. Thus, in the Development Control and Promotion Regulations also there exists a mechanism for conservation and preservation of heritage sites, however for seeking protection of such statutory mechanism available under the Regulations, the site needs to be listed as a heritage sites, in the heritage list and should be shown on the map.

44. The Regulations provide that a list of heritage buildings and heritage precincts may be supplemented, altered, deleted or modified from time to time by Government on receipt of proposals from the Municipal Commissioner or by the Government, *suo-motu*, provided that objections and suggestions from the public are invited and considered by the Municipal Commissioner and/or by the Government of Maharashtra. Regulations further provide any draft list which is published and is pending for approval of the Government of

Maharashtra, shall in the interim period, be deemed to be part of the heritage list. The relevant provision in the Regulations is quoted hereunder:

"Preparation of list of Heritage Buildings and Heritage Precincts:

The said heritage list to which this Regulation applies shall not form part of this Regulation for the purpose of Sections 37 and 46 of the MR & TP Act, 1966. This List may be supplemented, altered, deleted or modified from time to time by Government on receipt of proposals from the Commissioner or by the Government suo-motu, provided that objections and suggestions from the public be invited and duly considered by the Commissioner and/or by GoM before notification.

Provided that any draft list which is published and pending for the approval of GoM shall, in the interim period, be deemed to be part of the heritage list and provisions of this regulation shall be applicable to the said draft list."

45. We do not find any document on record which may establish that the temple site in question has been included in the list of heritage sites or precincts or places under the DCR. In absence of inclusion of temple site in the list of heritage sites, the protection as available under the said Regulations can also not be extended in the instant case.

46. Learned Counsel for the Petitioners has heavily relied upon the judgment in the case of ***Rajeev Mankotia Vs. Secretary to***

the President of India³ and has submitted that as per the dictum of Hon'ble Supreme Court laid down in the said judgment, all ancient and historical monuments and all archaeological sites etc. shall be deemed to be ancient and historical monuments or archaeological sites and remains of national importance and shall be so declared if they exist for a century and further that same will be the situation in case of monument of State importance covered under the State Act. His submission is that in view of this judgment, since the temple site in question is of more than 100 years, therefore, it qualifies and it is deemed to be a historical monument of National / State importance.

47. While we have considered the aforesaid submission, we may, however, only observe that the judgment in the case of **Rajeev Mankotia (supra)** does not come to the rescue of the Petitioners in this case in absence of declaration under Sections 3 and 4 of both the Central enactment (158 Act) and State enactment (1960 Act). In absence of any declaration, protection under the said enactments, in our opinion, is not available.

³ 1997(10) SCC 441

(E) Conclusions:

48. Having noticed the statutory provisions / mechanisms / schemes available for protection and preservation of ancient / historical / heritage sites and monuments we are unable to grant the prayers in this Writ Petition in absence of declaration or inclusion of the temple site in question as an ancient monument of National / State importance or as a heritage site. However, what we also find from a perusal of various reports which have been submitted pursuant to certain orders passed by this Court in the instant matter is that certain recommendations have been made and need has been felt to preserve the temple site. What startles the Court is that no efforts by the Petitioners have been made to seek declaration of the temple site either as a historical and ancient monument or its inclusion in the list of Heritage Buildings and Heritage Precincts under the aforementioned statutory provisions. If the Petitioners seek any protection and preservation to be provided to the temple site by the State authorities or its instrumentalities, or authorities of Central Government or authorities of MCGM, the temple site needs to be first considered for declaration to be an ancient / historical / heritage site or monument either under Section 4 of the 1958

Act by the Central Government or under Section 4 of the 1960 Act by the State Government or under the provisions of the DCR by the authorities of the MCGM.

(F) Directions:

49. We, thus, permit the Petitioners to approach the appropriate authority / authorities in the Central Government / State Government / MCGM seeking a declaration of the temple site in question as an ancient and historical monument of National / State importance or for its inclusion in the list of heritage buildings and heritage precincts. The Petitioners will move appropriate representation / application to the appropriate authority / authorities concerned within a fortnight from today. In case the Petitioners move the authority / authorities concerned under this order, prayer of the Petitioners shall be considered and appropriate decision shall be taken strictly in accordance with the extant law and the rules applicable thereto. The decision on the representation / application to be preferred by the Petitioners under this order shall be taken by the authority / authorities concerned positively within a period of six months from the date such an application is received. The prayer of the Petitioners, if made, shall be decided by the authority

concerned uninfluenced by any observation, whatsoever, made by us in this judgment.

50. Having regard to the nature of dispute / issue raised in this Petition and also in the light of the discussions made in the preceding paragraphs of this judgment, we find it appropriate to direct that till decision under this order is taken by the authority / authorities concerned, the parties to the petition shall maintain *status quo* on the spot as it exists today. We, however, provide that in case the Petitioners fail to approach authority / authorities concerned under this order within the time stipulated by way of making an appropriate application / representation, the benefit of this order shall not be available to them. We direct accordingly.

51. At this juncture, Shri Anturkar, learned Senior Advocate representing Respondent No.11 and Shir Tamboly, learned Counsel representing Respondent No.9 have submitted that in the light of the judgments of the Hon'ble Supreme Court in the case of (i) ***Manish S. Pardasani (M/s. wine Kornder) and Ors. Vs. Inspector State Excise, P-1, Division Mumbai (Suburbs) and Ors.***⁴ (ii) ***The State of Orissa Vs. Madan***
4 (2019) 2 SCC 660

Gopal Rungta⁵ and the judgment dated 22nd September 2022 passed by a coordinate bench of this Court in the case of **Pramod Premchand Oswal Vs. The Pune Municipal Corporation (PIL No.109 of 2022)**, if no relief to the Petitioners is being granted since the Petitioners are being relegated to seek remedy under the statutory mechanisms as discussed above, any order for maintenance of *status quo* may not be passed. We have considered the said arguments raised by Shri Anturkar, learned Senior Advocate and Shri Tamboly, however, we find that in the case of **Manish S. Pardasani (supra)**, the Hon'ble Supreme Court was considering a judgment passed by this Court in the case of **Manish S. Pardasani Vs. State Excise, 2018 SCC OnLine Bom 3163**, whereby this Court had directed the Commissioner, State Excise to decide the appeals filed against the order of the Collector (Excise) whereby the Collector (Excise) had directed de-sealing of the shops of the license holders on certain conditions. This Court, while directing the Commissioner, State Excise to decide the appeal filed by the Superintendent of State Excise against the order passed by the Collector (Excise), had also issued directions in anticipation to the effect that if the Commissioner

5 AIR 1952 SCC 12

State Excise passes any order adverse to the licensees then such order should not be given effect to by State authorities for a period of four weeks. It is in these circumstances that Hon'ble Supreme Court has rendered the judgment in the case of **Manish S. Pardasani (supra)** and has observed that this Court ought not to have issued directions of this nature.

So far as the judgment in the case of **Madan Gopal Rungta (supra)** is concerned, the Hon'ble Supreme Court has observed in the facts of the said case that Article 226 of the Constitution of India cannot be used for the purposes of giving interim order as final relief. Hon'ble Supreme Court has further observed that directions by High Court could not have been issued to circumvent the provisions of Section 80 of the Code of Civil Procedure, 1908 which was not within the scope of Article 226 of the Constitution of India. In this case Hon'ble Supreme Court has further observed that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of the rights in the proceedings. Thus, the judgment in the case of **Madan Rungta (supra)**, in our opinion does not come to the aid of Shri Anturkar, learned Senior Advocate and Shri Tamboly, for the reason that in

the instant case, an interim order for maintenance of *status quo* has been in operation since 9th September 2014 and further that we are only directing consideration of the temple site in question for being declared as an ancient historical monument of State/National importance or as a heritage building or heritage precinct. In case redevelopment is permitted and ultimately the authorities either of the Central Government or the State Government or of Municipal Corporation of Greater Mumbai form an opinion to declare the temple site as a monument / site of State / National importance or a heritage building / precinct, the subject matter of such consideration, by the time final decision under this order is taken, shall get extinguished. As far as the judgment of coordinate bench of this Court in the case of **Pramod Premchand Oswal (supra)** is concerned, it is to be noticed that the said judgment was rendered in a matter of tender, wherein the Writ Petitioner was granted liberty to approach the Administrator of Pune Municipal Corporation for redressal of his grievances and the prayer made in such situation by the Writ Petitioner before the Court was that tender process may not be carried forward till one week of communication of Administrator's decision on the representation / objection. This

judgment also does not help Shri. Anturkar and Shri. Tamboly.

52. The reason as to why we have issued the directions for maintenance of *status quo* till decision by the authority / authorities under 1958 Act / 1960 Act or under the Development Control Regulations is taken under this order on the representation / application to be preferred by the Petitioners, have already been given above. We may reiterate that it is a case where, in the facts, the subject matter of dispute needs to be preserved till decision by the authority concerned is taken. Otherwise, the very purpose of applying for seeking declaration of the temple site as an ancient, historical monument of State / National importance or as a heritage site shall get defeated. Thus, submissions in this regard by Shri Anturkar, learned Senior Advocate and Shri Tamboly, learned Advocate merit rejection, which are hereby rejected.

53. The Writ Petition stands disposed in the aforesaid terms.

54. In the facts of the case, there will be no order as to costs.

55. All pending applications shall stand disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

Basavraj

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