

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

WRIT PETITION (L) NO. 10152 OF 2021

Juma Masjid of Bombay Trust ... Petitioner
Versus
State of Maharashtra and Ors. ... Respondents

Mr. M. A. Vaid a/w Ms. Shagufa Ansari, Ms. Vidhya Seth i/by
M/s.Vaid and Associates for the Petitioner.

Ms. Jyoti Chavan, AGP for the Respondent No.1-State.

**CORAM: R. D. DHANUKA AND
V. G. BISHT, JJ.**

**DATE : 14th APRIL, 2021.
(Through Video Conference)**

P.C. :-

1. Papers are allowed to be produced at 12:30 p.m.
2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a Writ of Mandamus directing the respondents to allow Muslims to offer 5 times prayer and Taraweeh namaz at mosque situated at 46, Janjekar Street, Mumbai – 400 002 from 14th April, 2021 till end of Ramzaan adhering social distancing and SOP's in force.
3. In view of the extreme urgency, we have allowed the production of papers at 12:30 p.m.

4. Mrs. Chavan, learned AGP for the respondent no.1-State states that the papers of the writ petition are served at mid-night and the notice of mentioning the matter was issued at 11:30 p.m. We have however heard the learned counsel for the petitioner and the learned AGP for the respondent no.1.

5. The petitioner claims to be a Public Trust registered under the Bombay Trust Act and also under Wakf Act, 1995. It is the case of the petitioner that the subject mosque is spread over 1 acre and that at a time on a normal day 7000 people offer namaaz which shows that it is quite spacious and all the SOP's meant to break the chain of Covid can be very easily followed and adhered to under supervision of local police as may be required.

6. Learned counsel for the petitioner submits that Holy month of Ramzaan is starting from today. It is during the month of Holy Ramzaan that the Muslim religion obligates Muslims to observe fast for 30 days alongwith 5 times prayers and also to pray Taravi or prayer in congregation (jamaat) which is considered to have more social and spiritual benefit than praying by oneself. It is submitted by the learned counsel that the petitioner be permitted to offer prayers 5 times at the said mosque from 14th April, 2021 till the end of Ramzaan. He submits that all the persons who would offer such prayers would adhere to social distancing and SOP's in force.

7. Learned counsel for the petitioner submits that by the Government Order dated 13th April, 2021, the State of Maharashtra has

directed that all the Religious places of Worship to remain closed w.e.f. 14th April, 2021 till 1st May, 2021.

8. In the Writ Petition, the petitioner has also invoked the provisions of Article 25 of the Constitution of India.

9. Learned counsel for the petitioner invited our attention to the order dated 12th April, 2021 passed by the **Delhi High Court in Writ Petition (CRL) No. 421 of 2021** in case of **Delhi Waqf Board v/s. Government of NCT of Delhi and Anr.** and would submit that the Delhi High Court by the said order dted 12th April, 2021 has permitted the petitioners therein to offer prayers during the month of Ramzaan on various conditions and by providing safeguards. He submits that the petition in this case also may be permitted to offer prayers as prayed on similar terms as enforced by the Delhi High Court by the order dated 12th April, 2021.

10. Mrs. Chavan, learned AGP for the respondent no.1-State, on the other hand, submits that in Maharashtra as on today there are more than 65,000 covid cases. In Mumbai itself there are more than 11,000 active covid cases. She submits that considering this critical situation prevailing in the State of Maharashtra and more particularly in Mumbai, the State of Maharashtra has already issued an order “Break the Chain”. She submits that considering the prevailing situation in the State, the State Government has rightly considered that all Religious places of Worship to remain closed till 7:00 a.m. on 1st May, 2021 w.e.f. 8:00 p.m. on 14th April, 2021. She submits that the said

restrictions applies to the members of all the Community and following whichever religion they follow. She submits that no case is made out for invoking Article 25 of the Constitution of India. This Court has rejected permission in past for such religious ceremonies.

11. A perusal of the order dated 13th April, 2021 issued by the Government of Maharashtra under the provisions of Disaster Management Act, 2005 would show that the State Government having been satisfied that the State of Maharashtra is threatened with the spread of Covid-19 virus, and therefore it is imperative to take certain emergency measures to prevent and contain the spread of virus.

12. The Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897 read with other powers found it expedient to enforce various measures throughout the State from 8:00 p.m. on 14th April, 2021 till 7:00 a.m. on 1st May, 2021 to break the chain of transmission.

13. A perusal of the said order indicates that the State of Maharashtra has already enforced night curfew under Section 144 of the IPC and have restricted all activities except the activities falling under essential category specified therein. The State Government has also banned all religious, social, cultural or political functions of any kind during this period. In paragraph 7 of the said order, the State Government had made it clear that the Religious places of Worship to remain closed. All the personnel engaged in the service of the place of Worship shall continue to perform their duties though no outside visitor

shall be allowed.

14. In our view, these restrictions imposed by the State Government in the said order dated 13th April, 2021 have been imposed after considering the prevailing circumstances and various other pros and cons.

15. This Court in a judgment delivered on 27th November, 2020 in case of ***Dhananjay Mohan Deshmukh and Ors. v/s. The Sub-Divisional Officer, Igatpuri-Trimbakeshwar Sub-Division, Nashik and Ors.*** in Writ Petition (Stamp) No. 96664 of 2020 had considered a petition seeking permission to carry out age old tradition of Rath yatra of Lord Trimbakeshwar on the occasion of Tripurari Pournima Rath Yatra which was scheduled on 29th November, 2020. The submission of the petitioner in that case was that all the 12 Jyotirlingas have deep sanctity in all the people belonging to Hindu religion all over India. Trimbakeshwar temple is one of the such temples. The said Rath Yatra was being held for more than 5 decades. The request of the petitioner in that case was to permit only two priests to pull the bullock-cart even by imposing sealing of the entire locality for 24 hours prior to the date of procession.

16. This Court after adverting to various orders passed by this Court and the Hon'ble Supreme Court dismissed the said Writ Petition. This Court held that Article 25 of the Constitution of India though permits all persons equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion, the same is subject to

public order, morality and health. This Court held that such congregation which is apprehended by the State, if such permission is granted, it is likely that it would seriously affect the public order and health. If such permission is granted, it would violate the condition imposed under Article 25 of the Constitution of India.

17. This Court adverted to the order passed by this Court in case of ***Warkari Seva Sangh and Anr/ v/s. The State of Maharashtra*** refusing permission to carry out Ashadhi Ekadashi Wari/Yatra which tradition was being followed uninterruptedly for last 800 years, considering the ground reality and factum of ongoing pandemic situation. This Court also considered the order passed by the Delhi High Court in case of ***Durga Jan Seva Trust v/s. Government of NCT of Delhi*** where permission was applied for performing Chhat Puja which is a major religious festival celebrated by the people of Bihar and Eastern U.P. on an annual basis. The Delhi High Court held that the petitioner should have been alive of the situation before approaching the Court for such a relief. While religious sentiments of all sections of the society must be respected, the right to life and health of the public at large cannot be sacrificed at the altar of a right to celebrate a festival, however, significant it may be for a particular community. This Court accepted the views expressed by the Delhi High Court in the said judgment. The principles laid down by this Court and the Delhi High Court applies to the facts of this case.

18. Insofar as the order dated 12th April, 2021 passed by the learned Single Judge of Delhi High Court in case of ***Delhi Waqf Board v/s.***

Government of NCT of Delhi and Anr. is concerned, a perusal of the said order clearly indicates that the Union of India had agreed for allowing the petitioners therein to offer prayers subject to following covid norms. In our view, Mr. Chavan, learned AGP for the respondent no.1-State is right in her submission that the said order passed by Delhi High Court cannot be considered as a precedent in this case. Considering the prevailing situation and the ground reality prevailing in the State of Maharashtra, we cannot permit the petitioner to perform any prayers in the said mosque in violation of the order dated 13th April, 2013 issued by the Government of Maharashtra which is issued in public interest and for safety of all the residents of Maharashtra. In our view, offering of prayers only in the mosque as sought by the petitioner cannot be considered, in view of the ongoing critical covid situation which is serious in nature.

19. In our view, the petition is devoid of merits and is accordingly dismissed.

20. There shall be no order as to costs.

[V. G. BISHT, J.]

[R. D. DHANUKA, J.]