

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5935 OF 2022

Mr. Pawan Shamsundar Sarda and Ors.
(Vs.)
State of Maharashtra and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Rahul Bhangde, Advocate for the petitioners.
Ms N.P. Mehta, AGP for respondent Nos.1, 2, 3 and
5/State.
Shri J.B. Kasat, Advocate for respondent Nos.4-a and 4-b.
Shri M.V.Samarth, Senior Advocate assisted by Shri C.M. Samarth,
Advocate for respondent No.6.

**CORAM : S. B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 26.09.2022.

CIVIL APPLICATION NO. 2156/2022

1. Heard.
2. Shri Atul Sabnis, Senior Police Inspector,
Police Station Sitabuldi Nagpur, Branch is personally
present before this Court.
3. A copy of the order passed by him on
24.09.2022 has been filed on record alongwith

application seeking amendment of the writ petition filed by the petitioners.

4. Amendment application is allowed.

5. Amendments be carried out forthwith. The civil application stands disposed of, accordingly.

WRIT PETITION NO. 5935 OF 2022

1. Heard.

2. We have perused the order dated 24/09/2022.

3. The last condition of the order which is about the order being made subject to final result of this petition shows that Senior Police Inspector was well aware of pendency of this petition and this Court being seized of the matter, when he passed the order. Shri M.V. Samarth, learned Senior Advocate submits that the order has been made subject to final result of this petition. As we have already gone through the order, we are quite well aware of the condition so mentioned in

the order. We, therefore, put a question to learned Senior Advocate as to why he, by interjecting in the midst of dictation of this order, pointed out this fact. His answer is that he has only pointed out this condition and nothing more. We feel that the petitioners are supporting this order. This is the reason why the petitioners are reminding this Court of the said condition, though we have already gone through the order. The order is nothing short of interfering with the administration of justice by this Court and therefore, the association i.e. respondent No.6 must not do anything which would amount to aggravating the interference with the administration of justice being made by the Senior Police Inspector.

4. Meanwhile learned GP Shri A. M. Deshpande, on instructions, submits that the senior Police Inspector would withdraw the order.

5. The statement is accepted and we treat this order as withdrawn by him. Now we shall proceed to hear the matter finally.

6. We have heard this matter further, there being an urgency involved in the whole issue. After all

celebration of Devi Navratra Festival has commenced from today and from evening of this day and on wards, for nine nights, there would be celebration of the festival in various ways. Performance of '*Dandiya*' and '*Garba*' is one of the traditional ways of celebrating the festival and it is considered by a large section of Hindu religion to be the best way of expressing their devotion in its fullest form to the presiding deity of Navratra Festival.

7. Presiding deity may have different names such as *Ambamata*, *Durgadevi*, *Kali*, *Uma*, *Bhairavi*, *Bhuvaneshwari* and so on. But, these are only outwardly manifestations, as perceived by a devotee, of the underlying fundamental energy called "*Shakti*". In Hindu pantheon '*Shakti*' is considered to be so essential that without it no one can attain the '*Truth*' or '*Shivam*' or '*Brahmah*' or '*Moksha*' or '*Supreme Reality*' '*Salvation*' also called freedom from the cycle of birth and rebirth. Sri M the revered Indian spiritual Guru explaining the significance of Shakti has said thus:

"Shakti is most important because Shivam cannot be touched without the activation of the Shakti, without the 'Havan Kund' ("Holifire pit"), no homa can be done".

So, in 'Devi Navratra Festival' what is worshipped for nine nights is a form of '*Shakti*'. The worship to goddess of Shakti is effective only when it is done with one pointed attention, without any hesitation, without any disturbance of mind coming from the atmosphere around us and without causing any disturbance to others. Therefore, a question would arise – Whether one pointed worship and devotion to the presiding deity of 'Navratra Festival' is possible if the celebration is noisy or is done in a manner as to cause annoyance and disturbance to others. There would be an incidental question – Whether such celebration can be done in breach of the Rule declaring the area to be a silence zone? Let us now make an attempt to answer this question.

8. The answer to first question is an obvious 'no'. No offering of one pointed worship and devotion to the presiding deity of Navratra festival is possible unless there is full concentration of mind, all energies of body and mind are focused on nothing but the deity and there is gradual shading of once own identity till the realisation of the supreme reality or the truth. This State of being is described in 'Mandukya Upanishad' as, "it is the cessation of all phenomena; it is all peace, all bliss

and non dual”. Such a State can be attained in various ways but one can choose to begin his spiritual journey through worship of the deity and expression of his devotion to the deity with attention on nothing but on the deity only. Obviously, therefore, a true devotee would like to express his devotion and offer his worship to the deity without receiving any disturbance of any kind from the outside world and he himself would not cause any disturbance to others in his worship and expression of devotion to the deity or otherwise there would be a fear of deviating from his object of worship and devotion. If any act of worship by a devotee causes annoyance or disturbance to others, there would be a possibility of rebounding action of same disturbance or even greater disturbance from others. It then follows that every offering of worship and devotion to the presiding deity of Navratra festival must be done with great care and a devotee must ensure that by his or her actions, the discipline and sanctity of the festival are not sacrificed. What is to be sacrificed by the devotee is his/her own indiscretion and indiscipline.

9. To answer the second question, it is necessary to consider rival arguments. Shri Rahul Bhangde, learned counsel for the petitioners has invited our attention to the law declared by the Division Bench of

this Court in the case of *Dr. Mahesh Vijay Bedekar Vs. State of Maharashtra* reported in *2016 SCC OnLine Bom 9422* wherein, a view has been taken that there is no need for declaration of any public place as a silence zone, when the hospital or the educational institution or both are situated within 100 meters, from such a place. The law declared by this Court further shows that in silence zones, use of any sound amplifiers or playing of any music or beating of drums or tom-tom or blowing a horn either musical or pressure, or trumpet or playing any sound instrument is not permissible.

10. Of course, after declaration of such a law by the Co-ordinate Bench of this Court at Mumbai the Noise Pollution (Regulation and Control) Rules, 2000 (for short “the Rules of 2000”) were amended by the State and a proviso was inserted to the effect that an area shall not fall under silence area or zone category, unless notified by the State Government in accordance with sub-rule (2) of Rule 3 of the Rules of 2000.

11. This amended portion of the State Rules has been stayed by Full Bench of this Court specially constituted for adjudicating upon this very issue by the Hon’ble the Chief Justice in the case of *Ajay Marathe Vs.*

Union of India and others reported in 2018 (4) Mh.L.J.

70. The Full Bench has granted interim stay to the effect and operation of the amended portion of the Rules of 2000.

12. So, the position obtaining today is that in silence zones there cannot be playing of any loudspeaker or public address system/musical system and even beating of drums or tom- tom or blowing of horns etc. This position answers the second question posed by us effectively. Now, we shall consider the fact-situation of this case in the light of the arguments advanced and applicable law.

13. Shri Samarth, learned Senior Counsel for the petitioners submits, relying upon the case of ***Vinayak Yashvant Sanap Vs. State of Maharashtra and others (Public Interest Litigation (L) No.29467 of 2022) decided on 23.09.2022***, that Navratra festival is a religious function and the State Government can permit the organising of a function of religious nature under Section 37-A of the Maharashtra Regional and Town Planning Act, 1966 (for short, "Act of 1966"). There can be no two opinions about the proposition of law propounded in the case of *Vinayak Yashvant Sanap*

(supra). There can also be no second opinion about the fact that Devi Navratra is indeed a religious festival. There is also no doubt about the fact that a playground involved in this petition can be permitted to be a venue for celebrating Navratra festival. But, the question involved in this petition also requires an answer from the view point of restrictions applicable to silence zones, which was not the issue involved in the case of *Vinayak Yashvant Sanap* (supra). In that case the objection was that permission granted under Section 37-A of the Act of 1966 in respect of temporary change of user of the playground should not be of a kind where the organizers generate profits by utilizing the playgrounds. Such is not the issue here, as it was turned out after hearing both sides. The basic issue involved in this petition is of prohibition upon use of music or sound system or playing of musical or percussion instruments while celebrating a religious festival in a silence zone, which issue was not involved in the case of *Vinayak Yashvant Sanap* (supra) and therefore, for answering the issue involved here, the said case of *Vinayak Yashvant Sanap* (supra) would not render any assistance to us. Now, let us go to the facts of this case.

14. In this case, the facts established on record show that the venue of Navratra festival, where *Dandiya* and *Garba* are going to be performed is a playground of

Mor Hindi Upper Primary School, Educational Institution and it shares common compound wall with hospital of Dr. Arneja. So, the position obtaining today, as cleared by the order of the Full Bench granting interim relief, is that the venue of this performance is a silence zone and therefore, all the restrictions and prohibitions as contained in Rule 3(5), as it stood originally before amendment would apply to the facts of this case all the consequences of violation of those prohibitions as provided under Rule 6 of the Rules of 2000 would also follow. That means, no *Dandiya* and *Garba* performances can be permitted without imposing the prohibitions contained in said Rule. This is all the more so because Association i.e. respondent No.6 has already admitted that the venue has a common compound wall with Dr. Arneja's Hospital.

15. There is another aspect of this case, which needs consideration by us. It appears that similar complaints were made by the residents of the area in the past and the respondent No.6 responding to these grievances executed and signed a memorandum of understanding with these petitioners. This memorandum of understanding is signed on 27/09/2019 and for the sake of convenience it is reproduced below:-

**Memorandum of Understanding
27.09.2019, Ramdaspath, Nagpur.**

Party No: 1 Organisers, Ramdaspath Plot Owners Association

Party No: 2 Pawan Sarda, Rahul Dalmia

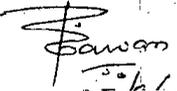
Event: Crazy Dandia (Garba) 2019

Venue: Sheshrao Wankhede Hindi Mor School, Ramdaspath

Considering the practical circumstances & logistical difficulties of the organisers along with a heartfelt request from organisers, the party no 2 has accepted it under the following terms & conditions.

1. The complaint & objection raised by party no:2 against the event & venue remains in effect.
2. The event in the year 2019 will be the last ever program with loudspeaker/dj/music system usage to be held at the venue by the party no 1.
3. Next program if & when organized will be held at a distant & different venue.
4. The event will close at 10pm sharp on each day of event, including the last couple of days.
5. The traffic will be managed by the organisers in best way to ease congestion & hassel for residents.
6. The loudspeaker/dj/music system will be operating below the specified limits of noise pollution control regulations In case of violation the permission stands cancelled.
7. The event is being allowed this year as one off & last gesture of social support & mutual trust. If any of the conditions are violated, the part no 1 assures to cancel the event immediately.
8. This MoU will be abiding on all future members & bodies formed by or of the association.
9. All the concerned persons have signed the document on the next/page on this 2 page document.

Day

H. A. Bagga   
Pawan Sarda
Rahul Dalmia

- 19 -

SIGNATURE

Hiran Boggia
President

(Member of Ramdaspath Association)

Pawan
27/02/19

Mr. PAWAN SARDA

(RESIDENTS)

Sunil Prayag
Secretary

(Member of Ramdaspath Association)

Rahul 27/9/19

Mr. RAHUL DALMIYA

(RESIDENTS)

WITNESS

Member of Ramdaspath Association

1) SHAILENDRA Agrawal *Shailendra*

2) Ramesh Chhabra *Ramesh Chhabra*

3) Premod Gupta *Premod*

4) VISHAL Dhanantay *Vishal Dhanantay*

5) Sanjay P. Sawi *Sanjay P. Sawi*

6) Prakash Hedra

7) Jiti Sarda

8)

T.C
Ramesh Chhabra

16. It could be seen from the signatories to the memorandum of understanding that it was signed and executed between the petitioners on the one hand and the organizers of the festival i.e. Ramdaspath Plot Owners and Residents Association on the other hand. It has been signed not only by the petitioners but also by the President and Secretary of the Association i.e. respondent No.6. It also bears signatures of at least eight members of Ramdaspath Plot Owners and Residents Association. Therefore, there is no gain saying in making an argument that this memorandum of understanding does not bind the members of Ramdaspath Plot Owners and Residents. This conclusion is further fortified by the fact that this year, the application for grant of permission to play the music system, of-course, subject to noise limits, was made by the President of this Association, who was the signatory to the memorandum of understanding. If such a memorandum of understanding had been arrived at between the petitioners and the members of plot owners association and residents, the terms and conditions of the memorandum of understanding ought to have been honoured by both parties. At least this year, it appears that these conditions of the agreement are not being honoured by the respondent No.6, one of the signatories to this memorandum of understanding.

17. This memorandum of understanding, we must say, at the cost of repetition, is binding on both the parties and that would mean that the members of Ramdaspath Plot Owners and Residents Association cannot celebrate Navaratra festival with *Dandiya* and *Garba* performances on the background of any music in breach of Rule 3(5) of the Rules of 2000. But, that does not mean that there can be no celebration altogether. *Dandiya* and *Garba* performances being intrinsic part of a religious celebration can still be performed in purely traditional and religious way, which do not contemplate use of modern gadgets like, music system, loudspeakers, DJ sound and the like. In addition, such celebration would also have to be consistent with provisions made in Rule 3(5) of the Rules of 2000, it being done in a silence zone.

18. Accordingly, for the time being, we grant permission to respondent No.6 to engage in *Dandiya* and *Garba* performances in a traditional and purely religious way without using any loud musical instruments or drums or tom-tom or sound system or D.J. system or the like.

19. The respondent No.6 shall strictly abide by its commitments made in the MOU dated 27/09/2019.

20. With this, we see no purpose in keeping this petition pending. The Writ Petition stands **disposed of**.

21. Learned Senior Advocate Shri M.V. Samarth makes a prayer for granting stay to the effect and operation of the order.

22. The prayer is opposed by learned counsel for the petitioners. Since we have not prohibited the respondent No.6 from celebrating Navratra Festival altogether and have permitted respondent No.6 to celebrate this Navratra in a traditional and purely religious way, we do not think any prejudice has been caused to the petitioner and so there is no need to accede to the request. The prayer is, therefore, rejected.

JUDGE

JUDGE