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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

LD-VC-46/2020

Pradeep Gandhi & Ors

..Petitioners.

Vs

State of Maharashtra & Anr

..Respondents.

WITH

LD-VC-IA-1 of 2020

IN

LD-VC-46 of 2020

The Jumma Masjid of Bombay

Trust

..Applicant.

Vs

Pradeep Gandhi & Ors

..Original Petitioners.

And

State of Maharashtra & Anr

..Respondents.

WITH

LD-VC-IA-2/2020

IN

LD-VC-46 of 2020

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The Navpada Masjid Bandra & Santacruz

Golibar Dargah Trust

..Applicant

Vs

Pradeep Gandhi & Ors

..Orig.Petitioners.

And

State of Maharashtra & Anr

..Respondents.

Mr. Amogh Singh a/with D.P. Singh for the Petitioners.

Mr. M.A.Vaid a/with Ms. Vidya Shet a/with Ms. S. Ansari i/by
Vaid and Associates for Applicant in LDVC IA 1/2020.

Mr. Dharam Jumanji a/with :Pratap Nimbalkar i/by PMN &
Associates for Applicant in LDVC IA/2/2020.

Mrs. P.H. Kantharia, G.P. with Ms. Geeta Shastri, Addl.G.P.
a/with Kedar Dighe, AGP for Respondent-State.

Mr. A.Y. Sakhare, Sr. Counsel a/with Ms. Yamuna Parekh for
Respdt-MCGM.

CORAM : B. P. COLABAWALLA, J.

DATED :- 27th April, 2020.

(Through Video Conference)

P.C. :-

1 The above Petition has been filed by a resident of
Bandra, Mumbai seeking a direction against the Respondents to

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restrain the burial of dead bodies of deceased persons who were infected with COVID-19 in Muslim Cemeteries situated at Bandra (West) Mumbai, namely, Khoja Sunnat Jammāt Kabrastan, Bandra and Khoja Isna Ashari Jammāt Kabrastan, Bandra (West), Mumbai. Ad-interim relief is also sought in terms of this prayer.

2 I have heard the learned Counsel for the parties for some length. There are two Circulars issued by the BMC dated 30th March, 2020 and 9th April, 2020 under which burial of dead bodies is permitted in cemeteries that have been notified by the BMC. The Government of India through the Ministry of Health and Family Welfare has also issued guidelines for dead body management during the current COVID-19 pandemic. These guidelines clearly state that there is unlikely to be an increased risk of COVID infection from a dead body to health workers or family members who follow standard precautions while handling the dead body. These guidelines further contemplate the burial of the deceased persons and how the

same is to be handled is also set out in the said guidelines. This being the case, I do not think that there can be any ad-interim relief granted in the present petition directing any authority from restraining any person from burying their deceased.

3 It is however made clear that the family members of the deceased as well as of the civic authorities shall strictly comply with the Circular issued by the BMC dated 9th April, 2020 as well as the guidelines issued by the Government of India dated 15th March, 2020 on dead body management. If there are any locks that have been put on the burial grounds the same shall be broken open by the BMC officers with the help of police assistance, if necessary, to enable the family members of the deceased to carry out the last rites of the deceased, but in strict compliance with the guidelines issued by the BMC and the Government of India referred to hereinabove.

4 Considering that the above matter has been heard via Video Conferencing due to the COVID-19 pandemic, it will not

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presently be possible to sign a copy of this order. In these circumstances, this order will be digitally signed by the Personal Secretary of this Court and all concerned parties including the police machinery are directed to act on the digitally signed copy of this order. They will act on production of a copy sent by fax and/or email. The Application for ad-interim reliefs is accordingly disposed of.

(B.P. COLABAWALLA, J.)

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ABOUT LAW

Radhakishan
S. Ladda

Digitally signed
by Radhakishan
S. Ladda
Date:
2020.04.28
19:59:44 +0530

IN THE SUPREME COURT OF INDIA

[ORDER XXI RULE 3(1) (a)]
 CIVIL APPELLATE JURISDICTION
 SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2020

(Arising out of the Impugned Judgment & Interim Order dated 27.04.2020 passed by the High Court of Judicature at Bombay in WP Temporary Case No. LC-VC-46/2020)

WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:

POSITION OF PARTIES

	In the High Court	In this Hon'ble Court
1. Pradeep Gandhi,	Petitioner No. 1	Petitioner No. 1

VERSUS

1. State of Maharashtra, represented by Secretary, Department of Home having its office at Mantralaya, Madam Cama Road, Hutatma Rajguru Square, Nariman Point, Mumbai – 400 032, through the Standing Counsel, Supreme Court	Respondent No. 1	Contesting Respondent No.1
2. Municipal Corporation of Greater Mumbai, A Body Corporate Constituted under the Mumbai Municipal Corporation Act, 1888, having its office at Mahapalika Bhavan, Mahapalika Marg, Opp. C.S.T., Fort, Mumbai 400 001	Respondent No. 2	Contesting Respondent No. 2
3.	Petitioner No. 2	Proforma Respondent No. 3

4.

Petitioner No.
3

Proforma
Respondent No.
4

5.

Petitioner No.
3

Proforma
Respondent No.
5

**PETITION UNDER SECTION 136 OF THE CONSTITUTION OF
INDIA AGAINST THE IMPUGNED JUDGMENT & INTERIM
ORDER DATED 27.04.2020 PASSED BY THE HIGH COURT AT
BOMBAY IN WP TEMPORARY CASE NO. LC-VC-46/2020**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Special Leave Petition to Appeal of the Petitioner above named is against the Impugned Judgment & Interim Order dated 27.04.2020 passed by the High Court of Judicature at Bombay in WP Temporary Case No. LC-VC-46/2020. The High Court has erroneously refused to grant any interim stay on the burial of the bodies of the patients due to covid-19 virus at the subject cemeteries situated at H/W Ward Konkani Muslim Cemetery No. 80, Khoja Sunnat Jamat Kabrastan Bandra West and KhojaIsna Ashari Jammatt Kabrastan Bandra West. Consequently, in the

absence of any interim protection the Petitioners writ petition would be infructuous as the burial process will continue and irreversible damage would be caused to the neighbouring area if the covid-19 virus spreads due to the infected buried bodies.

- 1b. In the cause title, Respondent No. 1, i.e. State of Maharashtra was represented by the “Government Pleader, Original Side, High Court of Bombay” before the High Court. However, for the sake of convenience and propriety, before this Hon’ble Court the State of Maharashtra has been represented by the Standing Counsel.

- 1A. That the Petitioner submits that against the impugned judgment & orders, LPA or Writ Appeal does not lie.

2. **QUESTIONS OF LAW:**

- A. WHETHER the High Court erred in not granting interim stay of burial of dead bodies of patients infected with Covid-19 in the subject cemeteries, as it would cause irreparable damage to the Petitioner’s neighbourhood.
- B. WHETHER in the extraordinary facts and situation, the right to health of the individuals in the Petitioner’s neighbourhood adjacent to the subject cemeteries ought to over ride the right to burial of the deceased.
- C. WHETHER there is a right to burial at a particular place and cemetery, when there are safer alternative available.

3. **DECLARATION IN TERMS OF RULE 3(2)**

The Petitioner states that no other petition seeking leave to Appeal has been filed by the Petitioner against the Impugned Judgment &

Interim Order dated 27.04.2020 passed by the High Court of Judicature at Bombay in WP Temporary Case No. LC-VC-46/2020.

4. **DECLARATION IN TERMS OF RULE 5**

The Annexures P-1 to P-5 produced along with Special Leave Petition are true copies of the records of the Courts below and forms part of the record of the Courts below against whose order the leave to appeal is sought for in this Petition.

5. **GROUND:**

The Special Leave to Appeal is sought for on the following amongst other grounds:-

- A. The present special leave petition arises out of the Impugned Judgment dated 27.04.2020 passed by the Hon'ble High Court, wherein it has refused to grant interim stay of the burial of the bodies of deceased who have died due to the Covid-19 virus in the subject cemeteries situated at H/W Ward Konkani Muslim Cemetery No. 80, Khoja Sunnat Jamat Kabrastan Bandra West and Khoja Isna Ashari Jammatt Kabrastan Bandra West. Consequently, in the absence of any interim protection the Petitioners' writ petition would be infructuous as the burial process will continue and irreversible damage would be caused to the neighbouring area if the covid-19 virus spreads due to the infected buried bodies.
- B. The SLP Petitioner along with Proforma Respondent Nos. 3, 4 and 5 herein (who were writ petitioners before the High

Court), are residents of the area adjacent to the subject cemeteries. This area is one of the most densely populated areas in the city of Mumbai, having a population of about 3,30,000 people with a density per kilometer of almost 29,000 people. The subject three cemeteries are interconnected and are immediately next to Petitioners residence. The cemeteries are surrounded by residential colonies and falls in the heart of Bandra West.

- C. Importantly, the Respondent No. 1 State, had originally issued a Circular dated 30.03.2020 directing that all Covid-19 infected deceased should be cremated and not buried, to avoid the risk of spreading of infection. However, due to undisclosed reasons, the Respondent No. 1 State modified this Circular, and issued the impugned Circular dated 9.04.2020, permitting burial to take place in 20 notified cemeteries, which included the subject cemeteries (at Serial Nos. 9, 10 and 11).
- D. The SLP Petitioner had filed the present writ petition before the High Court to prevent the burial of Covid-19 patients in the subject cemeteries, due to the potential catastrophe that could fall upon the residents of the densely populated areas adjacent to the said cemeteries.
- E. It is respectfully subjected that there are several cemeteries in Mumbai which are not densely populated like the one

situated in the Aarey Colony, Goregaon East (Serial No. 14 and 15 of the impugned Circular).

F. Notably, since the time the original Circular dated 30.03.2020 was issued, the number of covid-19 positive cases has gone up exponentially. The following dates and figures speaks for itself: -

S. No.	Date	Number of positive Covid-19 cases in Maharashtra
1.	30.03.2020- Date of the original Circular directing cremation of all bodies.	198
2.	9.04.2020- Impugned Circular permitting burial	946
3.	27.04.2020- Current situation	8,068

G. It is respectfully submitted that the present unprecedented health situation ought to take precedence over the religious rights of the deceased’s family members seeking to bury the deceased at the subject cemeteries. In the context of shifting of graves of muslims vis a vis their right to religion under Article 25 and 26 of the Constitution, this Hon’ble Court has consistently reiterated the fact that such right must be subject to public order and health of the larger community. Reliance in this regard is placed on the cases of *Gulam Abbas v. State of U.P.*, (1984) 1 SCC 81 and *Mohd. Hamid v. Badi Masjid Trust*, (2011) 13 SCC 61.

H. It is submitted that across the world the different government has advised on cremating the body of deceased who have died due to Covid-19 infection. It is submitted that there is

no study or research to say with certainty that the infection would not spread from the buried infected bodies through the soil and underground water to the neighboring areas. It is further submitted that even though there may be no scientific basis to the contrary, it is precautionary in nature and imperative to be “safe rather than sorry” in extraordinary times such as the present situation where there is no cure to the disease.

- I. In view of the above, it is respectfully submitted that the Petitioners have a legitimate fear of the spread of the covid-19 virus through the soil to the nearby populace, if the infected bodies are buried in the subject cemeteries. If at all the burial cannot be avoided due to religious and personal reasons, then the same ought to take place at the cemeteries near area which are less populated.

6. **GROUND FOR INTERIM RELIEF:**

It is submitted that the three subject cemeteries is in close proximity to a densely populated area, which is the Petitioner's neighbourhood. There is a high chance of contamination and spread of the deadly covid-19 disease through the soil and underground water if the burial of Covid-19 patient is permitted in the subject premises. It is submitted that if immediate stay of such burial is not granted the Petitioner will suffer irreparable damage and the infection would spread resulting in an irreversible situation. The

balance of convenience overwhelmingly tilts in favour of the Petitioner.

The Petitioner has a strong prima facie case and grave prejudice and irreparable harm will be caused to the Petitioner if the burial process of covid-19 patients is not stayed in the subject cemeteries, pending the adjudication of the present Special Leave Petition.

In view of the above submissions, it is respectfully submitted that this Hon'ble Court may stay the operation of the impugned order, pending the present Special Leave Petition.

7. **MAIN PRAYER**

It is, therefore, most respectfully prayed that Your Lordships may graciously be pleased to: -

- A. GRANT Special Leave to appeal against the Impugned Judgment & Interim Order dated 27.04.2020 passed by the High Court of Judicature at Bombay in WP Temporary Case No. LC-VC-46/2020; and/or
- B. PASS such further or other orders as this Hon'ble Court may deem fit and proper.

8. **PRAYER FOR INTERIM RELIEF:**

It is, therefore, most respectfully prayed that Your Lordships may graciously be pleased to: -

- a) STAY the operation of the Impugned Judgment & Interim Order dated 27.04.2020 passed by the High Court of

Judicature at Bombay in WP Temporary Case No. LC-VC-46/2020, pending the disposal of present Special Leave Petition;

- b) STAY the burial process at the subject cemeteries situated at (1) H/W Ward Konkani Muslim Cemetery No. 80, (2) Khoja Sunnat Jamat Kabrastan Bandra West and (3) Khojalsna Ashari Jammatt Kabrastan Bandra West, pending the disposal of present Special Leave Petition;
- c) PASS such further or other orders as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

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FILED BY

(UDAYADITYA BANERJEE)
ADVOCATE FOR THE PETITIONER

DRAWN ON: 27.04.2020

FILED ON : 28.04.2020

NEW DELHI