



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

WRIT PETITION (LODGING) NO.27028 OF 2025

Sanjay Shirke,]
Adult, Indian Inhabitant,]
R/at 54, Ridge Road,]
South Ridge Building, 2nd Floor,]
Malabar Hill, Mumbai – 400 006.].. Petitioner

Versus

1. Brihanmumbai Municipal Corporation,]
Through the Assistant Commissioner,]
'D' Ward, Nana Chowk, Mumbai-400007.]
2. The State of Maharashtra,]
Through the Principal Secretary,]
Urban Development Department,]
Mantralaya, Mumbai – 400032.]
3. Maharashtra Pollution Control Board,]
Through its Member Secretary, Avinash Dhakne,]
Having office at Kalpataru Point, 2nd - 4th Floor,]
Opp. PVR Cinema, Sion Circle,]
Sion (East), Mumbai – 400022.]
Email – ms@mpcb.gov.in]
4. The Senior Inspector of Police,]
Malabar Hill Police Station, Mumbai – 400006.].. Respondents

Mr. Bhavesh Thakur with Mr. Yashpal Thakur and Mr. Mukund Pandya, Advocates for the Petitioner.

Ms. Oorja Dhond, i/by Ms. Komal R. Punjabi, Advocates for Respondent No.1-BMC.

Dr. Birendra Saraf, Advocate General, with Ms. Purnima Kantharia, Government Pleader and Ms. Jyoti Chavan, Additional Government Pleader for Respondent Nos.2 and 4.

Ms. Jaya Bagwe, Advocate for Respondent No.3.

Mr. Sachin Mahajan, Sub-Engineer (Maintenance), 'D' Ward, is present.

Dr. Mayur Thakare, Assistant Archaeologist, Directorate of Archaeology and Museums, Government of Maharashtra, is present.

Mr. Sujit Bade, Police Inspector, Malabar Hills Police Station, is present.

**CORAM : SHREE CHANDRASHEKHAR, ACJ. &
AARTI A. SATHE, J.**

DATE : 4TH SEPTEMBER 2025.

Per, Shree Chandrashekhar, ACJ.

Aggrieved by the guidelines issued by the Maharashtra Pollution Control Board (in short, MPCB) on 26th August 2025 prohibiting immersion of eco-friendly idols in the natural water bodies, particularly, at Banganga Talao, the petitioner has filed this writ petition under Article 226 of the Constitution of India.

2. The petitioner has made manifold prayers in this writ petition, such as, (a) issue a Writ of Certiorari quashing and setting aside the SOP dated 26th August 2025 issued by the BMC (respondent no.-1) and letter/communication dated 26th August 2025 issued by the MPCB (respondent no.-3) insofar as they restrict immersion of eco-friendly idols in natural water bodies; (b) issue a Writ of Mandamus directing the respondents to allow immersion of eco-friendly idols in Banganga Talao and other natural water bodies in accordance with tradition, State Government guidelines and binding judicial orders; (c) issue directions restraining the respondents, their servants and agents including police personnel from interfering with the rights of devotees to immerse eco-friendly idols in Banganga; (d) pending the hearing and till final disposal of the present petition, this Hon'ble Court be pleased to stay the effect and operation of letter/communication and SOP dated 26th August 2025 issued by the respondent nos.-1 and 3 to the extent they restrict immersion of eco-friendly idols in natural water bodies; (e) initiate appropriate disciplinary proceedings against the respondent officials who misinterpreted the law and wrongfully obstructed devotees on 28th

August 2025; (f) pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the respondent no.-4 not to take any coercive or penal steps against the petitioner; (g) grant the ad-interim reliefs in terms of prayers (d); (f) grant costs of this petition and (h) Pass such other order(s) as this Hon'ble Court may deem fit in the interest of justice.

3. The petitioner states that he is a resident of Malabar Hills in Mumbai and a devotee of Lord Ganesh. He further states that several devotees like him who are the residents of Walkeshwar and adjoining areas had been performing immersions of eco-friendly idols of Lord Ganesh at Banganga Talao in the past. However, by issuing guidelines dated 26th August 2025, the MPCB has put unreasonable restrictions on his fundamental rights guaranteed under Articles 14, 19(1), 25 and 26 of the Constitution of India. In that context, the petitioner refers to a decision in *“Modern Dental College v. State of Madhya Pradesh”* (2016) 7 SCC 353 whereunder the Hon'ble Supreme Court observed that the restrictions on exercise of the fundamental rights must be proportionate to the object sought to be achieved. The learned counsel for the petitioner refers to the order dated 24th July 2025 passed in Public Interest Litigation No.96 of 2024 titled *“Rohit Manohar Joshi & Ors. v. State of Maharashtra & Ors.”* and submits that the guidelines issued by this Court under paragraph no.7 have been misconstrued by the respondent-MPCB and by issuing the guidelines dated 26th August 2025 the Authority has overreached the order passed by this Court. The learned counsel for the petitioner would refer to the decision in *“Union of India v. Kamlakshi Finance Corporation Ltd.”* 1992 Supp (1) SCC 443 to put forth the submission that through an administrative order the respondent-Authority could not have issued the guidelines in

contravention to the order dated 24th July 2025. The submission made on behalf of the petitioner is that the guidelines under order dated 24th July 2025 were issued by this Court based on the report of two Expert Committees and as the discussions in the said order would indicate there was no debate before the Court as regards prohibition on immersion of eco-friendly idols in the natural water bodies. The learned counsel for the petitioner further submits that the order dated 26th August 2025 does not provide any reason and, therefore, warrants interference of this Court. Per contra, the learned Advocate General for the State of Maharashtra has opposed the prayers made in this writ petition and submitted that the MPCB by issuing the guidelines dated 26th August 2025 intended to encourage the general people to use artificial ponds for immersion of all kinds of idols and in any event the petitioner has no absolute fundamental right to seek permission for immersion of eco-friendly idols in Banganga Talao.

4. By the order dated 24th July 2025, this Court issued certain directions by way of ad-interim measure in view of the Ganpati festival starting from 27th August 2025. One of the guidelines issued by this Court was to the effect that the State Government was required to amend the guidelines dated 24th July 2025 permitting the immersion of idols exceeding the height of 6 ft. in natural water bodies and all idols below the height of 6 ft. are required to be immersed in artificial water tanks. The learned counsel for the petitioner would, however, submit that these guidelines as contained under Clause (i) to paragraph no.10 should be read in the context of the discussions made in the order dated 24th July 2025 and that would demonstrate that the said guidelines should remain confined to Plaster of Paris idols and not to the eco-friendly idols.

5. In the first place, we would indicate that the pollution laws regime provide wide powers to the MPCB and other Authorities under these enactments. The submission that the guidelines issued by this Court vide order dated 24th July 2025 have been misinterpreted by the MPCB and was, in fact, an attempt to overreach this Court's order cannot be accepted. The MPCB's powers to issue guidelines or additional guidelines cannot be challenged on such spacious plea. The right to clean air and clean water has attained the status of fundamental right of every citizen. It is too well settled that when the Court is faced with an issue regarding enforcement of an individual right, may be the fundamental right of a citizen, it should always be in the mind of the Court that some hardship to an individual or a mere infraction of the right of an individual shall not be a ground to entertain the writ petition. The larger public issues and interests of the general public would outweigh the concerns of the individual citizen.

6. The exercise of powers under Article 226 of the Constitution of India shall be limited to the issues pertaining to public law and not the private rights domain. This writ petition, in fact, lacks foundational facts so as to exercise powers under Article 226 of the Constitution of India. There is no data provided by the petitioner as to the number of persons and the time since when they had been performing immersion of Lord Ganesh at Banganga Talao. We may indicate that the aforementioned factual aspect is the reason that we are not inviting any reply affidavit by the respondents. In our opinion, this is not a duty cast on the Authority of the MPCB to give a reason for the order passed in connection to the guidelines issued for immersion of the eco-friendly idols. The conduct of the Authority under the MPCB has also been criticized by the learned counsel for the petitioner on the

ground that it is only on the eve of the day of the immersion of Lord Ganesh that the order dated 26th August 2025 was passed but we are not inclined to accept this submission for the reason that the issuance of guidelines dated 26th August 2025 is *bona fide* and in the interest of general public. Though an objection is sought to be taken on the ground that Banganga Talao is declared as heritage monument under the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 and there is no permission granted by the Archaeological Department, we are not inclined to advert to this issue and would close the proceedings in this writ petition without any interference with the guidelines issued by the MPCB on 26th August 2025 and the related order dated 26th August 2025.

7. Writ Petition (Lodging) No.27028 of 2025 is dismissed.

[AARTI A. SATHE, J.]

[ACTING CHIEF JUSTICE]