

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 3RD DAY OF APRIL 2017

BEFORE

THE HON'BLE MR. JUSTICE S.N. SATYANARAYANA

M.F.A.NO.2424/2006 (BPT)

BETWEEN:

MALLARI S/O. RAMCHANDRA NIMBALKAR
AGED ABOUT 63 YEARS, OCC: AGRICULTURE
R/AT JALAPUR, TQ: RAIBAG
DIST: BELGAUM

... APPELLANT.

(BY SRI ANTHONY R. RODRIGUES, ADVOCATE, FOR
SRI RAMACHANDRA A MALI, ADVOCATE.)

AND:

1. LAXMAN RAJU PUJARI
AGED MAJOR
2. MARUTHI PARSHURAM PUJARI
AGED MAJOR
3. RAJU SADASHIV PUJARI
AGED MAJOR
4. APPASAHEB B CHOUGULE
AGED MAJOR
5. MARUTHI DHONDIBA GOOSARWADE
AGED MAJOR

6. RAMAKANTH RAMCHANDRA PUJARI
AGED MAJOR
7. UDAY RAMACHANDRA PUJARI
AGED MAJOR
8. SUMITRABAI PARASHRAM PUJARI
AGED MAJOR
9. PRAKASH PARASHRAM PUJARI
AGED MAJOR

ALL ARE R/O. JALALPUR, TQ: RAIBAG
DIST: BELGAUM

10. STATE OR KARNATAKA
R/B ITS SECRETARY
DEPT. OF MUZARAI & HINDU RELIGIOUS
INSTITUTION & CHARITABLE ENDOWMENTS,
A.V.ROAD, CHAMARAJPET, BANGALORE-18

... RESPONDENTS.

(BY SRI SHIVAKUMAR S BADAWADAGI, ADVOCATE,
FOR R.1;
R.2, R.4 TO R.8 AND R.9 – NOTICE SERVED;
R.3 – APPEAL DISMISSED VIDE ORDER DATED
21.2.2011;
SRI RAVIKUMAR D. GOKAKAR, ADVOCATE, FOR R.7;
SRI RAVI V. HOSAMANI, GOVERNMENT ADVOCATE FOR
R.10.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED
UNDER SECTION 72 (4) OF THE BOMBAY PUBLIC
TRUSTS ACT, 1950, PRAYING TO SET ASIDE THE
ORDER DATED 8.11.2005, PASSED IN
MISC.APPLICATION NO.96/2001, ON THE FILE OF THE
II ADDL.DISTRICT JUDGE, BELGAUM, CONFIRMING
THE ORDER DATED 19.5.2001, PASSED IN APPEAL
NO.15/1997, BY THE CHARITY COMMISSIONER,
BELGAUM, THEREBY REVERSING THE ORDER DATED
21.6.1997, MADE IN INQ.NO.277/1994, BY THE
ASSISTANT CHARITY COMMISSIONER, BELGAUM,
ETC.,.

THIS APPEAL COMING ON FOR FURTHER ARGUMENTS ON ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is by applicant in Inquiry No.277/1994, before the Assistant Charity Commissioner, Belagavi, which was initiated by him under section 18 of the Bombay Public Trust Act, 1950.

2. The proceedings in Inquiry No.277/1994 is by residents of Jalalpur village claiming that the Yallamma Devi Temple situated in the said village on property bearing No.201 of Jalalpur village, Raibag taluk, Belagavi district is the property belonging to public trust. According to them all the residents of Jalalpur village and also other persons who are devotees of Yallamma Devi Temple have a right to seek a trust being formed with proper representation of devotees and temple

priest in the managing committee of the said trust.

3. The said application was opposed by 6th respondent in the said application by name Laxman Ramu Pujari. It is seen that simultaneously two other applications were filed, out of which one is by a person namely Raju Sadashiv Pujari, which is registered in Inquiry No.419/1994 and another by a person namely Ramachandra Kashappa Pujari, which is registered in Inquiry No.38/1995. Incidentally the applicant in Inquiry No.38/1995 is 5th respondent in the first Inquiry initiated in Inquiry No.277/1994.

4. Pausing for a moment at this stage, it is necessary to bring on record that there was already a litigation with reference to the said temple and with reference to the manner as to the performance of pooja in the temple should be

carried out, in O.S.No.43/1982, on the file of the Munsiff Court, Raibag. That was a suit for permanent injunction with reference to the right of performing pooja and as well as being in possession of the temple, which was filed by the applicant in Inquiry No.38/1995 against the 6th respondent Laxman Ramu Pujari in Inquiry No.277/1994. As could be seen, the said suit came to be dismissed by judgment dated 31.3.1986, which was subject matter of Regular Appeal in R.A.No.14/1986, on the file of Civil Judge, Gokak, wherein the appellant Ramachandra Kashappa Pujari was able to get the requisite order of permanent injunction against Laxman Ramu Pujari.

5. The defendant Laxman Ramu Pujari and others preferred a second appeal in RSA No.729/1986, on the file of this Court, which came to be disposed of by judgment dated

20.9.1990 wherein the judgment in the appeal by Ramachandra Kashappa Pujari was set aside and the property namely Yallamma Devi Temple which was said to be standing on the property bearing No.201 was held to be the property belonging to the family of poojaris who are conducting pooja of the said temple from generations.

6. In the said judgment at paragraph No.5, the coordinate bench of this Court has stated as under:

5. There is also no dispute that the property is not a trust property, either public or private. Neither of the properties have referred to any endowment. There is also no evidence to show that the property was debottar in the sense that there is any dedication to the Deity by any person. There is some evidence to indicate that later on villagers have offered lands to the temple. In the absence of any evidence to show that either a debottar or a trust or

a Math came into existence at any point of time, the case must proceed on the basis that the ancestors of the plaintiff and defendants were performing pooja in the temple and had acquired such a right to perform pooja and appropriate the offerings.

7. This judgment in RSA as stated supra is rendered on 20.9.1990 and as could be seen from the records the three Inquiries, which are initiated in Inquiry Nos.277/1994, 419/1994 and 38/1995 are subsequent to the judgment of co-ordinate bench of this Court observing the status of Yallamma Devi Temple with reference to its identification as neither public nor private trust, where the co-ordinate bench has categorically declared that it is neither public nor private trust but it is the temple which is run by the family of poojaries hereditarily to which both the plaintiff and defendant in O.S.No.43/1982

belong and none of them can claim exclusive right to conduct pooja of the said temple. At the same time in paragraph No.4 it was categorically observed that all the offerings that are given to the deity are taken by the family of poojaries for the benefit of the family, thereby indicating that no one of them has absolute right to any of these including the property on which the temple is standing.

8. In this background, what is required to be considered is the finding of the Assistant Charity Commissioner, who has decided the application filed before him under Section 18 of the Bombay Public Trust Act, 1950. What calls for interference by this Court has already passed through several proceedings from the order of Assistant Charity Commissioner to that of Charity Commissioner, thereafter before the District Court and resting with this appeal in this Court.

Therefore sequentially this Court would like to go into the matter commencing from the applications filed under Section 18 of the Bombay Public Trust Act, 1950, by three persons.

9. The first of which is by the appellant herein in Inquiry No.277/1994 followed by the 2nd application in Inquiry No.419/1994 by Raju Sadashiv Pujari another member of the family of the hereditary poojaries of Yallamma Devi Temple and third one by Ramachandra Kashappa Pujari yet another member of the very same hereditary poojari family. The assistant charity commissioner based on several material placed before him in the form of oral and documentary evidence proceeded to frame 14 points for consideration and has given opinion on them with reference to the right of applicant in Inquiry No.277/1994 seeking to recognize the Yallamma Devi Temple as property belonging to public trust and then to form the

committee of trustees for the so called non existent trust.

10. In the other two Inquiries, basically they were in the nature of seeking adjudication of their right with reference to perform pooja interse between the other members of the hereditary poojaris families. In the said two applications though the applicants stated that they are hereditary poojaris, there is an attempt on their part to lien in support of the application filed in Inquiry No.277/1994 in giving an impression that there is a trust in existence and that they are also willing to be the trustees.

11. What is surprising is, the application in Inquiry No.38/1995, which is by the author of earlier litigation in O.S.No.43/1982, which he initiated for the relief of permanent injunction claiming himself to be the exclusive poojari of Yallamma Devi Temple. The records would

indicate that he failed miserably to secure an order in those lines which has reached up to this Court in RSA No.729/1986, wherein a coordinate bench of this Court categorically held that there is no trust either private or public is in existence with reference to aforesaid temple which is well within the knowledge of applicant in Inquiry No.38/1995.

12. Here what is seen is his dishonesty in not bringing the same to the notice of Assistant Charity Commissioner, instead projecting as if he is in support of the temple being recognized as a charitable trust and a committee being formed to oversee the functions of the temple in which he wanted a place as trustee i.e., after having failed to succeed in getting exclusive ownership over the temple. This dishonesty is not seen by the Assistant Charity Commissioner while deciding point No.1 and concluded in the common order

dated 21.6.1997 rendered on all the three applications the finding at the fag end of paragraph No.14 reads as under:

Xxx ..xxxx..xxx...xxx I am of the considered opinion that there is no force in the contention of the Opponent No.6 that the Temple is a private property. As regards ancient temple there is a presumption that it is a public Trust even though no specific evidence is available regarding its endowment. Hence, I hold that in view of the said presumption available, the temple in question is a public Trust and it exists. Accordingly, the point No.1 is answered in Affirmative.

13. In the light of this finding on first point he continued to answer the remaining 13 points in support of the application in Inquiry No.277/1994 and thereby holding that there is a trust, which finding is diametrically opposite to the view taken

by the coordinate bench of this Court in RSA No.729/1986. What is disturbing is a party to the said RSA having participated in the proceedings and after suffering an order against him has deliberately suppressed the same before the Assistant Charity Commissioner and has prevailed upon him to pass such an order which is apparently inconsistent with the finding already given by coordinate bench of this Court.

14. Be that as it may, now coming to the second round of litigation which are in Appeal No.13/1997, which is filed by 6th respondent in Inquiry No.277/1994 and Appeal No.15/1997, which is filed by the applicant Raju Sadashiv Pujari and another person in Inquiry No.419/1994. They challenged the order of Charity Commissioner in these two appeals which subsequently came to be disposed of by order dated 19.5.2001, wherein the Charity

Commissioner allowed the Appeal No.13/1997, which was filed by Laxman Ramu Pujari and dismissed the Appeal No.15/1997, which was filed by Raju Sadashiv Pujari and another.

15. As against the common judgment dated 19.5.2001, Miscellaneous Application came to be filed by the applicant in Inquiry No.277/1994 before the II Addl. District Court, Belagavi, in Misc.Application No.96/2001, which was under Section 72(1) of the Bombay Public trust Act and simultaneously one more appeal is filed by the applicant in Inquiry No.419/1994 Raju Sadashiv Pujari and another in Misc.Application No.95/2001 under the said provision of law.

16. These two miscellaneous appeals i.e., Misc.Application Nos.96 and 95 of 2001 were heard by the District Court and came to be dismissed by judgment dated 8.11.2005. The applicant in Inquiry No.419/1994 accepted his

defeat after successfully losing three rounds of litigation in Inquiry No.419/1994, Appeal No.15/1997 and thereafter in Misc.Application No.95/2011. However the applicant in Inquiry No.277/1994, who succeeded only for the first time before the Assistant Charity Commissioner, continued to pursue his grievance against the temple and other members of the family of priests in filing this miscellaneous first appeal in MFA No.2424/2006, which is filed under Section 72(4) of the Bombay Public Trust Act, 1950.

17. When this matter came up for admission, the learned counsel appearing for both the parties requested this Court to secure the entire records in Inquiry No.277, 419 of 1994 and 38 of 1995 and other records to go into the same and thereafter to decide this appeal at the stage of admission itself, in view of the fact that this matter is pending consideration before various

Courts from 1994 itself. Accordingly the records were secured and this matter was heard.

18. While hearing this matter, this Court noticed that the beginning of these litigation is not in the application filed under section 18 of the Bombay Public Trust Act, 1950, seeking enquiry into status of the temple which was commenced in 1994. But it is continued from the earlier round of litigation in O.S.No.43/1982 which was commenced by the applicant in Inquiry No.38/1995, who lost a bitter fight with other members of his family to gain supremacy over others and also absolute right of control over the temple and its activities. He having miserably failed in securing favourable order and having lost his litigation in RSA No.729/1986, which was disposed of by judgment dated 20.9.1990 has supported the case of applicant in Inquiry No.277/1994.

19. What could be seen from the records available here is that Yallamma Devi Temple in Jalalpur village is one of the oldest temples of the region. The records would indicate that the temple belongs to the family of poojaries and that the property on which the temple is standing also belongs to the family, thereby indicating that it is a private temple owned by a family who were allowed to perform pooja through the lineal descendents of that family. It is seen that some of the descendents in the said family are none other than the applicants in Inquiry No.419/1994 and 38/1995 and also 6th respondent in Inquiry No.277/1994. How and in what manner they are required to conduct pooja is not defined in any proceedings. However what is decided in O.S.No.43/1982 is the nature of the temple and its title with the members of the family of poojaries who are hereditarily conducting pooja of the said temple.

20. As could be seen from the discussion supra as on the day the inquiry was initiated before the Assistant Charity Commissioner there was already a judgment passed in RSA No.729/1986, where at paragraph No.5, the coordinate bench of this Court has already held that the temple in question is neither a private trust nor a public trust and has further categorically declared that it is a private property belonging to the family of poojaries who are performing pooja in the said temple from time immemorial and what is required to be seen is the right to perform pooja is available to all the members of the family who are living in the original poojaries family.

21. In this background when there is already a categorical finding, how the Assistant Charity Commissioner could sit in judgment over the same after lapse of a period of 7 long years

after the judgment by coordinate bench of this Court, to hold that the said temple is a public trust does not stand to reason. Merely because the temple is an old temple, it cannot be presumed that a trust is created for management of the same. In fact there is nothing on record to demonstrate that there was such material available to arrive at a decision to hold that the said temple is a public trust. The finding of the Assistant Charity Commissioner is without any basis except on his own presumption which has no support of either pleadings and oral or documentary evidence in any of the earlier proceedings to substantiate the same.

22. Therefore when the said common order passed by the Assistant Charity Commissioner in all the three Inquiries by its report dated 21.6.1997 was taken up in appeal before the Charity Commissioner, the same is rightly set

aside by him in reversing the finding given in Inquiry No.277/1994 which is confirmed by District Court in appeal filed under Section 70(1) of the Bombay Public Trust Act, 1950, by its judgment dated 8.11.2005.

23. In that view of the matter, this Court after going through the entire material available on record find that no grounds are made out by the applicant in Inquiry No.277/1994 to challenge the successive findings of the Charity Commissioner in Appeal Nos.13 and 15 of 1997 and that of the District Court in Misc.Application Nos.95 and 96 of 2001, to be disturbed in this appeal filed under Section 72(4) of the Bombay Public Trust Act, 1950. Accordingly this appeal is dismissed without any order as to costs.

24. The learned Government advocate Sri Ravi Hosamani appearing for the Government in

this appeal is permitted to take back all the original records which are produced by him.

Sd/-
JUDGE

Mrk/-