

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.526 OF 2014

Rajaram Sandu @ Ambadas (Sable)
Gurav, Age 57 years, Occu. Service,
R/o Vrindavan Colony, Old Jalna,
Taluka and District Jalna

..Petitioner

Versus

1. Dattatraya s/o Sandu Sable,
Age 49 years, Occu.Archak
and Agriculture R/o Rajur,
Taluka Bhokardan,
District Jalna

2. Ganesh s/o Uttamrao Sable,
Age 52 years, Occu. Archak
and Agriculture, R/o Rajur,
Taluka Bhokardan,
District Jalna

3. Devidas s/o Tatyarao Sable,
Age 52 years, Occu. Archak
and Agriculture, R/o Rajur,
Taluka Bhokardan,
District Jalna

4. Shri Sansthan Ganapati,
Rajur Trust, through its
President, Tahsildar,
Bhokardan, Taluka Bhokardan,
District Jalna

5. Assistant Charity Commissioner,
jalna, Taluka and Dist. Jalna

.. Respondents

Smt.Anjali Dube (Bajpai), Advocate for petitioner
Mr Hemant Surve, Advocate for respondents No.1 to 3
Mrs Y.M.Kshirsagar, A.G.P. for respondent No.5

CORAM : N.W. SAMBRE, J.

DATE : 4th March 2015

PER COURT

1. The respondent No.4-Trust bearing Registration No.A-95 (Jalna) is governed by the scheme modified lastly by order dated 25th February 1994. In the said scheme, a provision is made for the purpose of performing Pooja of deity by *Guravas* viz. Sandu Kashinath Sable, Devidas Tatyaraao Sable and Ganesh Uttamrao Sable and were entitled for 20% of the amount of offerings from the donation box in the light of Clause 8 (C) of the scheme. Said *Guravas* were appointed by the authority under the *suo moto* inquiry and have hardly anything to do with the internal administration of the Trust.

2. One of these *Guravas*, Sandu Kashinath Sable is reported to have expired on 16th December 2005, as such the said post felt vacant. Said Sandu was survived by sons namely Dattatraya, Rajaram @ Ambadas and other sons and daughters.

3. The son of Sandu namely Dattatraya, by an application claimed succession to the right of late Sandu qua the Trust in question and as such sought right of being appointed as Poojari being successor of his father. The said application Exh.12 came to be rejected on 24th February 2010 by the Assistant Charity Commissioner, Jalna in Inquiry No.15/2006 under Section 50-A (3) of the Bombay Public Trusts Act, 1950. The cause for rejection of the said application was absence of provision to the succession of Archaks i.e. *Guravas* in the scheme.

4. The another inquiry is initiated at the behest of one Ganesh Uttamrao Sable, Dattatraya Sandu Sable and Devidas Tatyaraao Sable

claiming therein that the Trust in its meeting dated 15th April 2011 nominated Dattatraya Sandu Sable after the death of his father Sandu Kashinath Sable, who expired on 16th December 2005.

5. The said proceedings is numbered as Inquiry No.8/2011.

6. The present petitioner claiming to be one of the legal heirs of Sandu, moved an application in the light of provisions of Section 73 of the Bombay Public Trusts Act seeking impleadment as party to the said inquiry proceedings. The said application is at Annexure "E" which is given Exhibit 17. In the said application, the petitioner claimed that he is elder son of late Archak Sandu and as such has interest in the Trust being legal heir of Archak and hence, prayed that he be permitted to intervene in the Inquiry by an application dated 10th May 2013.

7. The said application was resisted by all the other parties to the said inquiry and the learned Assistant Charity Commissioner, Jalna by his order dated 19th December 2013 has rejected the said application, as such the present petition.

8. The cause cited for rejection of the application for intervention by the Assistant Charity Commissioner is that, in the scheme framed under Inquiry No.6/1993 and Schedule-I, it is not provided that the vacant post of Archak will be filled in by hereditary. The Assistant Charity Commissioner was alive of the fact that the petitioner is not regularly attending the temple for worship of deity and also other rituals/festivals, hence, in view of provisions of Section 2 of the

Bombay Public Trusts Act rejected the application having noticed that the applicant is not the person having interest in the temple.

9. Smt.Dube, learned Counsel for the petitioner, while assailing the said order would urge that the intervention is sought in the matter having regard to the relation of the present petitioner with late Sandu. She would further urge that in the intervention, he has not claimed any right as a Trustee or participation in the Trust, however, all that is sought was right of audience in the inquiry proceedings. According to her, once the Assistant Charity Commissioner, having observed that the applicant is the legal representative of late Sandu and one of the legal representatives of Sandu is before the Assistant Charity Commissioner in the inquiry matter who is equally placed like that of present petitioner, the least that was expected was to grant right under Section 73-A of the Act.

10. Mr Surve, learned Counsel for respondents 1 to 3 would urge that the claim of the petitioner is rightly rejected. According to him, once the Assistant Charity Commissioner, having noticed that the applicant is not a person having interest in the temple, he cannot claim to be impleaded in the proceedings. According to him, in the light of scheme, the application is rightly rejected.

11. Having bestowed my thoughtful consideration to the issue sought to be canvassed before this Court, in the matter of rejection of application Exh.17, it is required to be noted that it is an admitted position on record that one of the applicants in Inquiry No.8/2011 pending on the file of Assistant Charity Commissioner is real brother

of the present petitioner. The applicant, as such is similarly placed as he is claiming his right of intervention being legal representative of late Archak Shri Sandu. It is also required to be noted that the applicant before the Assistant Charity Commissioner and the present petitioner, both holds heirship certificate under the Bombay Regulation being successor of late Sandu.

12. It is not in dispute that right of intervention gives right of audience to such intervenor. What is sought by way of intervention is right of audience.

13. In that view of the matter, the approach of the Assistant Charity Commissioner in not granting the application of the present petitioner on the ground that he is not a person interested, in my opinion, does call for interference. As such, the order impugned is not sustainable and same is liable to be quashed and set aside.

14. For the reasons stated herein above, the order dated 19th December 2013 passed by the Assistant Charity Commissioner, Jalna Region, Jalna below Exh.17 in Inquiry No.8/2011 is hereby quashed and set aside and the application Exh.17 stands granted.

15. Writ Petition is allowed in above terms.

(N.W. SAMBRE, J.)

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