

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 449 OF 1999
WITH
CIVIL APPLICATION NO. 9951 OF 2013

Rameshchandra s/o. Bhikulal Pujari,
R/o. Jalna, Taluka and District Jalna.**Appellant.**

Versus

Principal, Regional Police Training
School, Jalna, Taluka and Dist. Jalna.**Respondent.**

WITH
SECOND APPEAL NO. 699 OF 2004
WITH
CIVIL APPLICATION NO. 9952 OF 2013

Rameshchandra s/o. Bhikulal Pujari,
R/o. Jalna, Age 50 years,
Occu. Priest, Durgadevi Temple,
Sadar Bazar, Jalna, Taluka and District Jalna.**Appellant.**

Versus

The Principal,
Regional Police Training School,
Jalna, Taluka and Dist. Jalna.**Respondent.**

Mr. D.V. Soman, Advocate for appellant.
Mr. V.D. Sapkal, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 9th September, 2015.

JUDGMENT :

1. The first proceeding is filed to challenge the decision of District Court given in a proceeding filed under section 72 of

the Bombay Public Trust Act and also the decision of Joint Charity Commissioner by which it is held that the trust of Goddess Durga-Devi Temple has only 615.7 Sq. Mtrs. land in Survey No. 259 and the remaining portion belongs to the Government. The second proceeding is filed to challenge the decision of the first appellate Court by which the first appellant has set aside the judgment and decree of Regular Civil Suit No. 84/1984 filed in respect of the same agricultural land which was pending before Civil Judge, Senior Division, Jalna. The relief of injunction was also claimed by the present appellant in the suit and it was granted, but the said decision is set aside by the first appellate Court. The Courts below have held in both the proceedings that plaintiff - trust has failed to prove that temple owns entire area of aforesaid land. Both the sides are heard.

2. On the basis of rival contentions made in the appeal memo and the submissions made by the learned counsels for appellant and respondent, following substantial questions of law are formulated :-

- (i) Whether the Courts below have failed to consider the relevant oral and documentary evidence showing long standing possession of plaintiff over the entire area of the suit land.

(ii) Whether the Courts below have failed to consider the scheme framed in the past of the trust in which the property was shown as property of trust.

(iii) Whether the Courts below could not have presumed that the property belongs to Government.

(iv) Whether the trust has been using the open space for annual festival of Dasara and Yatra of Jalna showing that it has been in the use of temple only.

(v) Whether the Civil Court has committed error in holding that there is bar of provision of Order XXIII, Rule 1 (4) of C.P.C. to entertain R.C.S. No. 84/1984.

3. The record of inquiry started under the Bombay Public Trust Act, 1950 bearing No. 150/63 shows that when application was made by the present appellant for registration of the trust, he had not shown any immovable property as the property of the trust. It was informed that the temple has movable property worth Rs. 100/- and it was specifically mentioned that there was no immovable property belonging to temple. In view of this information supplied, the first order was made by the Assistant Charity Commissioner on 17.1.1964 and

the trust was registered accordingly. It appears that the police training school came in picture in 1981 when it realized that by giving vague information to the trust office, the appellant was trying to grab the Government property and particularly, Survey No. 259. So, the objection was taken by the police training school and *suo-moto* revision was entertained by Deputy Charity Commissioner. The aforesaid order of Assistant Charity Commissioner was set aside and the matter was remanded back. It appears that after remand of the matter, the Assistant Charity Commissioner placed reliance on oral evidence given by the appellant and held that appellant was in possession of area of 2 Acres 35 Gunta of Survey No. 259. The Assistant Charity Commissioner has observed that it was the property of temple. This decision was set aside by the Joint Charity Commissioner in Appeal No. 15/1987 and after measuring the property covered by the temple, the appellant authority held that the temple has the space of 615.7 Sq. Mtrs. It was also given number in city survey record. This decision was challenged by the present appellant by filing application No. 10/1991 in District Court, but the District Court has dismissed the proceeding. Similarly, the respondent/ police training school had challenged the decision of Joint Charity Commissioner by filing proceeding No. 11/1991, but that proceeding is also dismissed by the District Court. Thus, it

appears that there is findings of the authority created under the Bombay Public Trust Act that space of 615.7 Sq. Mtrs is occupied by the temple and that space only can be treated as the property of temple. In the record considered by the trust office, there is one document like so called grant made for making construction, but that document is also not supporting the case of appellant that the entire area of the land was given. Even if it is accepted as it is, it can be said that the land was belonging to the then ruler and some space for making construction was given.

4. The record of R.C.S. No. 84/1984 and the appeal filed against it shows that the record which was produced before the Assistant Charity Commissioner, was also produced before the Civil Court. The District Court has held that the appellant is not the owner of Survey No. 259 and so, there is no question of giving relief of injunction or declaration. It is also held that the suit was not tenable as previous suit bearing No. 213/1981 filed for similar relief was withdrawn by the present appellant unconditionally, without taking prior permission of the Court for filing the new proceeding. This finding is in accordance with the provision of Order XXIII, Rule 1 (4) of C.P.C.

5. The appellant has examined many witnesses, but the aforesaid record and particularly, the first application given before the Assistant Charity Commissioner shows that it was never the case of the present appellant that area more than the area covered by the temple was owned by the temple trust. In 7/12 extract, the existence of temple is shown. But on the basis of this entry, it cannot be said that the temple was the owner of 2 Acre 35 Gunta portion. There are other entries also. The record available shows that at different times, different contentions were made by the appellant. The appellant had gone to the extent of claiming area of 12-13 Acre portion and in that application, it was contended that 2 Acre 35 Gunta land was being used for holding and arranging fair on the occasion of Navratri festival.

6. It appears that the police training school has come with the case that the temple was constructed by persons of army of the then ruler and that was done in the year 1901-1902. In any case, it is not disputed that the temple has been in existence for many years. On the basis of this circumstance, inference is not possible that the temple is owner of area of 2 Acres 35 Gunta land. There is revenue record of the year 1954-1955 and even in the so called grant document, it is mentioned

that the space belongs to the then ruler. In the revenue record, the land is shown to be owned by the Government. Thus, the previous record of the appellant and the revenue record is not consistent with the case of appellant. In view of these circumstances, all the aforesaid substantial questions of law are answered against the appellant.

7. During arguments, the learned counsel for appellant submitted that as the temple is in existence and the devotees visit the temple during the period of Navratri festival, some concession needs to be given and the aforesaid space needs to be allowed to be used for that purpose. Such contention cannot be accepted and no order of such nature can be made by the Court as that will be putting restrictions forever on the use of the land against the owner, Government. In that case, the land will not be available to any kind of use to the Government. In view of this circumstances, it can be said that only the Government can decide as to whether at any time or for any purpose, some concession can be given. Thus, no relief whatsoever can be granted in favour of the appellant.

8. Reliance was placed on following reported cases vis.
2003 (2) ALL MR 1035 [Bashir Abbas Kudale and Ors. Vs.

Shri. Mahadeo, the main deity of Intemele and Ors.], 2001 (3) Bom.C.R. 33 [Mahibubi Abdul Aziz & Ors. Vs. Sayed Abdul Majid & Ors.], 2001 (2) Mh.L.J. 512 [Mahibubi Abdul Aziz and Ors. Vs. Sayed Abdul Majid and Ors.] and 1994 (3) Bom.C.R. 60 [Abaji Daulata Yadav, since deceased by his heirs and Ors. Vs. Dhondiram Jagedevrao Yadav and Ors.]. The facts and circumstances of each and every case are always different.

9. In the result, both the appeals are dismissed. Civil Applications are disposed of.

[T.V. NALAWADE, J.]

SSC/