

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6798 OF 2014

The Chairman,
Shri Tuljabhavani Temple Trust,
Tuljapur, Tq. Tuljapur,
Dist. Osmanabad

...PETITIONER
(Orig.Deft. No. 1)

VERSUS

1) Annasaheb S/o Tamappa Giram,
Age: 45 years, Occu: Business,
R/o Tuljapur, Tq. Tuljapur,
Dist. Osmanabad
(Orig. Plaintiff)

2) The President,
Shri Tuljabhavani Bakkal (Wani)
Palikar Pujari Mandal,
Tuljapur, Tq. Tuljapur,
Dist. Osmanabad
(Orig. Deft. No.2)

...RESPONDENTS

Mr P. V. Mandlik, Senior Counsel i/b Mr Amol Gandhi, Advocate for
petitioner;
Mr P. P. Kulkarni, Advocate for respondent No. 1

CORAM : N.W. SAMBRE, J.

**(Date of reserving the
order : 23rd February, 2015**

**Date of pronouncing the
order : 27th February, 2015)**

ORDER

By the instant writ petition, the petitioner/original defendant no.1, who is the Chairman of a public trust, challenges the legality and validity of the order dated 4th October, 2013, passed by Civil Judge Junior Division, Tuljapur, below Exh.8, in Regular Civil Suit No.287 of 2013.

2. The petitioner herein is original defendant no.1 to the above referred suit instituted by respondent no.1/plaintiff for declaration and perpetual injunction, claiming right of worship as a Pujari in Tuljabhavani temple, Tuljapur. It is claimed by the plaintiff that prior to him, his father and grandfather were working as Pujari in the said temple and as such, he gets right of worship by inheritance. In support of his contention, he has placed reliance on certain old documents, whereunder the name of the grandfather of the petitioner was included in the list prepared by the Nizam Administration and an intimation was given that their rights be got adjudicated from the competent Court *qua* claim for share in the donations received in the said temple.

3. It is claimed by respondent no.1 herein that on 26th September, 2013, the petitioner – trust has issued an advertisement disclosing its intention to issue bio-metric identity cards to the Pujaris for performing rituals in the temple. According to respondent no.1, his claim for issuance of bio-metric identity card was not considered and as such, he moved application Exh.8 in the aforesaid suit, styling the same to be under

section 151 of the Code of Civil Procedure for issuance of mandatory directions to the petitioner/defendant no.1 to issue him identity card of Pujari. The said prayer appears to be akin to the main prayer in the suit.

4. The application Exh.8 came to be objected to, by the petitioner herein by filing reply Exh.18 on two grounds; (1) that the object of issuance of identity card is to control malfunctioning/ill intentions of Pujaris and as such, the decision to issue bio-metric identity cards was taken. (2) The petitioner submits that unless the right of respondent no.1 herein as Pujari is established, he is not entitled for the relief claimed.

5. Mr Mandlik, learned Senior Counsel appearing on behalf of the petitioner urged that by the impugned order, the learned Trial Court has almost decreed the suit of respondent no.1, by directing the petitioner to issue bio-metric identity card to respondent no.1. In order to support his contention, he has taken me through the observations made by the learned Trial Court in the impugned order.

6. Mr Kulkarni, learned Counsel appearing on behalf of respondent no.1 would urge that what prompted the learned Trial Court to pass an order of issuance of bio-metric identity card in favour of respondent no.1/plaintiff is his earlier rights inherited from his forefathers which were brought to the notice of the learned Trial Court. According to him, the

name of Gangaram, late grandfather of respondent no.1 was included in the list at sr.no.181 of Shadar 51/1/1350 Fasli maintained by the Nizam, from which period his grandfather was performing the Puja in the said temple. He further urged that after his grandfather's death, his father late Tamappa had inherited the said right and after the death of Tamappa, the petitioner has inherited the said right. He further claims that since by birth he is carrying out the activity of performing Puja in the temple, he has every right to claim the relief and the same is rightly granted by the Trial Court. He further urged that there is no bar to the tenability of the suit even if the same is instituted against a public trust, as provided under sections 50 and 51 of the Bombay Public Trusts Act. He has relied on the judgment of the Apex Court in the matter of **Vinayaka Dev Idagunji vs. Shivram**, reported in **AIR (SC)-2005-0-3081** and the judgment of this Court in the matter of **Mahomed Hassan Samru vs. Peer Hazarath Diwanshah Dargah Trust & ors.**, reported in **2002 (6) Bom. C.R. 253**, so as to canvass that the suit instituted by respondent no.1 is very much tenable.

7. Having considered rival contentions of the parties, it is noticed that by the impugned order the learned Trial Court has decided two issues :—

(a) The objection raised by the petitioner as regards tenability of the suit is over-ruled; and

(b) The petitioner is ordered to issue bio-metric identity card to

respondent no.1/plaintiff.

8. So far as the findings recorded by the Trial Court as regards overruling the objection by defendant no.1 to the tenability of the suit in view of provisions of sections 50 and 51 of the Bombay Public Trusts Act is concerned, in my opinion, having regard to the law discussed in the impugned order, the learned Trial Court has rightly over-ruled the said objection as the claim in the suit is in relation to establishing the personal rights of the plaintiff against the trust, for carrying out daily rituals in the temple.

9. So far as the next contention as regards ordering issuance of bio-metric identity card to defendant no.1 is concerned, *prima facie* the said findings, in my opinion, are not sustainable. The perusal of the plaint reflects that the plaintiff has sought a declaration that he be declared as Pujari of Tuljabhavani Devi and it be further declared that he has every right to perform the rituals. An injunction is sought against the defendants restraining them from interfering with the right of the plaintiff in carrying out daily rituals of Tuljabhavani Devi as Pujari. Learned Trial Court has directed the petitioner to issue bio-metric identity card, which are issued to other Pujaris like that of respondent no.1. The learned Trial Court has, in fact, granted the final relief, thereby conferring a status of Pujari on him.

10. One more aspect of the matter of which note is required to be taken is that the father of respondent no.1 has expired on 4th March, 1961. In the present petition, respondent no.1 claims to be of 46 years of age. As such, if the said dates are taken into account, respondent no.1, at the time of death of his father must not have completed even one year of his age. Apart from that, there appears to be no continuity of right of Pujari in favour of respondent no.1 herein, from his grandfather in view of above fact of age of respondent no.1.

11. In that view of the matter, in my opinion, the learned Trial Court, particularly having regard to the scope of section 151 of the Code of Civil Procedure ought not to have passed the order directing issuance of biometric identity card in favour of respondent no.1 by way of interim arrangement during pendency of suit.

12. In the light of the foregoing discussion, the impugned order is not sustainable. I, therefore, pass the following order :-

The order dated 4th October, 2013, passed by Civil Judge Junior Division, Tuljapur, below Exh.8, in Regular Civil Suit No.287 of 2013, is quashed and set aside and said application stands dismissed with no order as to costs. However, finding to the extent of maintainability of suit is confirmed.

(7)

wp6798.14.

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

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