

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8609 OF 2014

Anant Ganpat Chikate and ors.).. Petitioners.

V/s

Shri Vitthal Rukmini Devsthan Trust).. Respondents.

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Mr Deepak Gupte, for petitioner.

Mr Rahul Kadam, for respondents No. 1 to 13.

Mr S.D. Rayrikar, A.P.P., for the respondents No.14 to 16.

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CORAM : M.S. SONAK, J.

DATE : JANUARY 12, 2015

P.C.

1] Rule. With the consent of and at the request of Learned Counsel for the parties, Rule is made returnable forthwith.

2] In the Maha Lok Adalat held on 16 September, 2012, of which Deputy Charity Commissioner was one of the panel members, order dated 16 September, 2012 came to be made, which recorded that petitioner remained present in person and that he has already filed Affidavit at Exhibit 14 saying that he has no objection to register the trust in question. In view of such no objection, the direction was issued in the matter of registration of trust in question.

3] It is the case of the petitioner that he had at no point of

time given any such consent and further had never filed Affidavit at Exhibit 14 or otherwise indicating that he has no objection to the registration of the trust. In order to redress such grievance, the petitioner preferred an appeal before the Joint Charity Commissioner, Pune Region, who has by impugned order dismissed the appeal on the ground of maintainability.

4] This Court on 22 December, 2014 made the following order :-

“The first petitioner claims to be the hereditary vahivatdar by virtue of a Sanad dated 9 November, 1853 of Vithal Rukmini Devasthan, Takli Haji, Tal Shirur, Dist. Pune and the property at Gat No.630 admeasuring about 19 Hector 76 Acre. It is the case of the Petitioners that Petitioner Nos. 2 and 3 have been cultivating the property on behalf of the Petitioner No.1 since 2010. It is the case of the Petitioners that by the impugned order a trust has been registered in respect of the Devasthan and the land. The grievance of the Petitioners is that the impugned order is solely based on an affidavit purportedly filed by the Petitioners, which is at Exh.14 of the record before the Deputy Charity Commissioner and the Lok Adalat which passed the impugned order, allegedly confirming that the Petitioners had no objection to register the trust. This Court, by its order dated 11 December, 2014, after hearing Counsel for parties, had directed the original record of the proceedings to be produced before this Court. Accordingly, the record has been produced before this Court. The record indicates that there is no affidavit filed by the Petitioners either at Exhibit 14 or any other exhibit. What is at Exhibit 14 is the affidavit filed by Respondent No.13. Learned Counsel for Respondent Nos. 1 to 13 submits that the original affidavit filed by the Petitioner is not available now in the record. Anyway, this matter will have to be considered in the light of the record before the Trial Court and the rival contentions of the parties. Place this petition for admission 12 January, 2015, in the

meantime parties shall maintain status-quo in respect of the property of the Devasthan.”

5] As noted above, the Learned Counsel for the respondent Nos. 1 to 3 has submitted that the original Affidavit alleged to have been filed by the petitioner is not available on record.

6] The record also indicate that there is no Affidavit either at Exhibit 14 or otherwise, purportedly filed by the petitioner indicating his no objection to the registration of trust on record. The Learned Counsel for the respondent Nos. 1 to 3 contends that such Affidavit was filed, but the same has been removed from the record. As observed in the earlier order, the matter will be considered in the light of record, unless the respondent Nos. 1 to 3 are in a position to establish with cogent material that such Affidavit had indeed been filed and record now has been tampered with.

7] In the circumstances, the fact that Deputy Charity Commissioner was one of the panel members of the Maha Lok Adalat when the order dated 16 September, 2014 was made, is strictly speaking not relevant. Based upon the order dated 16 September, 2014, the Deputy Charity Commissioner shall have to make a formal order in the matter of petitioner's objection to the registration of the trust in question. It is only proper that the Deputy Charity Commissioner before making any final order in the matter of disposal of the petitioner's objection to the registration of the trust, hears the

petitioner interalia on the ground whether the petitioner had indeed given up his objection to the registration of the trust. For this purpose, this very petition filed by the petitioner may be treated as petitioner's objection to the making of any order in terms of the order dated 16 September, 2012 made by Maha Lok Adalat. Upon consideration thereof, as also the records and contentions of the respondent Nos. 1 to 3, the Deputy Charity Commissioner to take proper decision in the matter. The respondents too shall have to be heard in support of their plea that such affidavit recording no objection had been filed by the petitioner.

8] Until the Deputy Charity Commissioner takes proper decision in the matter, the interim order made by this court by its order dated 22.12.2014 will continue. In case, the Deputy Charity Commissioner chooses to decide against the petitioner, then the interim order made by this Court by order dated 22 December, 2014 shall continue for the period of four weeks from the date of making an order by the Deputy Charity Commissioner.

9] This Court has not examined the rival contentions of the parties on its merits and it is expected that the Deputy Charity Commissioner shall consider and decide the matter in accordance with law, uninfluenced by any prima facie observations that may have been made by this Court.

10] The Deputy Charity Commissioner shall make endeavour

to dispose off the matter expeditiously, in any case, within a period of four months from today.

11] All the parties to co-operate for expeditious disposal of the matter before the Charity Commissioner. The parties agree to appear before the Deputy Charity Commissioner on 19 January, 2015 @ 11.00 a.m. to obtain directions with regards to further date and proceeding.

12] Rule is made absolute to the aforesaid extent.

13] There shall be no order as to costs.

14] Parties to act on the authenticated copy of this order.

(M.S. SONAK, J.)