

THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.  
APPELLATE SIDE JURISDICTION

**FIRST APPEAL NO. 2270 OF 2016**

- 1] Anil S/o Madhukarrao Garge,  
Age: 58 Years, Occ: Business,  
R/o: Old Ausa Road, Latur.
- 2] Manav Vikas Shikshan Prasarak  
Mandal, Latur. (Through President,  
Sow. Anusaya Shripati Bhole).

**... APPELLANTS  
(Orig. Applicants)**

**VERSUS**

- 1] Sow. Kamalbai @ Vimalbai  
W/o Shivaji Jadhav,  
Age : 48 years, Occ: Household,  
R/o. Ghansargaon, Tq. Renapur,  
Dist. Latur.
- 2] Rajaram S/o Khanderao Katrale,  
Age : 71 years, Occ: Pensioner,  
R/o. Block No.10, Basveshwar Colny,  
Ausa Road, Latur.
- 3] Rangnath Tukaram, Chaugule,  
**Died** Through his L.Rs.
- 3-a] Smt. Rupabai W/o Rangnath Chaugule,  
Age 61 years, Occ: Household,
- 3-b] Uma @ Umesh S/o Rangnath Chaugule,  
Age 39 years, Occ: Business.
- 3-c] Rahul S/o Rangnath Chaugule,  
Age 36 years, Occ: Business.

All R/o: Deepjyoti Nagar, Latur,  
Tq. & Dist. Latur.

- 3-d] Sow. Asha W/o Vijay Bhosale,  
Age 34 years, Occ: Household,  
R/o. Kalmatha, Tq. Aura, Dist. Latur.
- 3-e] Sow. Sangeeta W/o Ramesh Bhole,  
Age 36 years, Occ: Household,  
R/o: Deepjyoti Nagar, Latur,  
Tq. & Dist. Latur.
- 4] Vinayak S/o Babji Jadhav,  
Age 50 years, Occ: Labour,  
R/o. Bhatangali, Tq. & Dist. Latur.
- 5] Shivaji S/o Vamanrao Joshi,  
Age: 48 years, Occ: Business,  
R/o: Tuljabhavani Nagar, New  
Railway Station Road, Latur.
- 6] Shramjivi Magasvargiya Sahakari Gruhs  
Nirman Society, Through Chief Promoter  
Shivaji Vamanrao Joshi,  
R/o: Tuljabhavani Nagar, New  
Railway Station Road, Latur.
- 7] Deputy Charity Commissioner,  
Latur, Tq. & Dist. Latur.
- 8] Joint Charity Commissioner,  
Latur, Tq. & Dist. Latur.

**... RESPONDENTS**  
**(Orig. Non applicants)**

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Mr. Ganesh V. Mohekar, Advocate for the Appellants.

Mr. R. B. Deshmukh, Advocate for Respondent Nos.1 & 2.

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**CORAM : P. R. BORA, J.**  
**DATE : 19<sup>th</sup> July, 2016.**

**ORAL JUDGMENT:**

. Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, the matter is taken up for final disposal.

2 The present appeal is directed against the judgment and order passed by the learned District Judge, Latur in Miscellaneous Appeal (Trust) No.252 of 2008 on 21<sup>st</sup> April, 2011, whereby the learned District Judge has confirmed the order dated 22<sup>nd</sup> September, 2008 passed by the learned Joint Charity Commissioner in Appeal No.10 of 2008. In the present appeal, both the aforesaid orders are challenged.

3 The facts, which are relevant for decision of the present appeal are thus:

A housing society by name Shramjivi Magasvargiya Sahakari Gruh Nirman Society was formed at Latur. One Shivaji Vamanrao Joshi was the Chief Promoter of the said Society. For the aforesaid housing society, 81 Ares land was purchased out of Survey No.57 (Gat No.119) situated at Mouje Arvi, District Latur. The said

land was jointly purchased in the names of five persons. The said land was divided into residential plots. 28 such plots were laid and were allotted amongst 28 members of the said housing society. While dividing said land into the residential plots, 16 Ares land was left as open space. According to the contention of the Appellants, all the 28 members of the proposed co-operative housing society unanimously resolved to gift the said 16 Ares land to the Appellant No.2 – Trust namely Manav Vikas Shikshan Prasarak Mandal, Latur. It is the further contention of the Appellants that said Shivaji Vamanrao Joshi was authorized by the members of the said housing society to execute the gift deed of said 16 Ares land in favour of Appellant No.2 – Trust. It is the further contention of the Appellants that accordingly, such gift deed was executed. After execution of the said gift deed in its favour, Appellant No.2 – Trust filed an application to the Assistant Charity Commissioner for declaring the aforesaid property to be the Trust property and to take entry of the said property in Schedule I of Appellant No.2 – Trust as the property of said Trust. The learned Assistant Charity Commissioner after receiving such an application, conducted an inquiry as contemplated under Section 21 of the Bombay Public Trust Act, now the Maharashtra Public Trust Act

(hereinafter referred to as “the Trust Act”) and allowed the application so filed by Appellant No.2 – Trust and directed the subject property to be recorded in Schedule I as the property of the said Trust. The present Respondents challenged the aforesaid decision of the Assistant Charity Commissioner by filing an appeal under Section 70 of the Trust Act before the Joint Charity Commissioner, Latur. The learned Joint Charity Commissioner vide order passed on 22<sup>nd</sup> September, 2008 allowed the said appeal (Appeal No.10 of 2008) and set aside the order passed by the Assistant Charity Commissioner. The judgment and order passed by the Joint Charity Commissioner was assailed by the present Appellants by filing Miscellaneous Appeal (Trust) No.252 of 2008, under Section 72 of the Trust Act before the District Judge, Latur. The learned District Judge, Latur vide judgment and order passed on 21<sup>st</sup> April, 2011, dismissed the said application and thereby confirmed the order passed by the learned Joint Charity Commissioner. Aggrieved by, the present appeal is filed.

4           Shri Mohekar, learned counsel for the Appellants submitted that the portion of 16 Ares land was duly gifted to Appellant No.2 – Trust vide registered gift deed and the learned Assistant Charity Commissioner had rightly held the said property to be the

property of Appellant No.2 – Trust. The learned counsel submitted that the Joint Charity Commissioner has erroneously set aside the order passed by the Assistant Charity Commissioner and the learned District Judge also adopting a too technical approach has confirmed the order passed by the Joint Charity Commissioner. The learned counsel submitted that the learned Joint Charity Commissioner as well as the learned District Judge have overlooked the evidence adduced by the present Appellants showing that all 28 members of the proposed co-operative housing society had unanimously resolved to gift 16 Ares portion of the land in favour of Appellant No.2 – Trust and has accordingly authorized Shivaji Vamanrao Joshi to execute the gift deed in favour of Appellant No.2 – Trust. The learned counsel submitted that at present also the subject property is in possession of Appellant No.2 – Trust, a building is constructed thereon and a primary as well as secondary school is being run in the said building. The learned counsel submitted that the present Respondents were estopped from taking any contrary stand and object to the execution of the gift deed in favour of Appellant No.2 – Trust, when these Respondents had unanimously resolved to gift said 16 Ares portion of land to Appellant No.2 – Trust. The learned counsel, therefore,

prayed for setting aside the orders passed by the learned Joint Charity Commissioner as well as the learned District Judge and consequently to confirm the order passed by the Assistant Charity Commissioner on 24<sup>th</sup> January, 2008 in Change Report No.40 of 1994.

5           Shri R. B. Deshmukh, learned counsel for the Respondents supported the impugned judgments. The learned counsel submitted that the learned Joint Charity Commissioner as well as the learned District Judge have passed well reasoned orders and no interference is required in the said orders. He, therefore, prayed for dismissal of the appeal.

6           After having heard the arguments of the learned counsel appearing for the respective parties and after having perused the impugned judgments and the material placed on record by the respective parties, it does not appear to me that any interference is required in the impugned judgments and orders. The learned Joint Charity Commissioner and the learned District Judge both have recorded a concurrent finding that the gift deed executed by Shri Shivaji Vamanrao Joshi in favour of Appellant No.2 – Trust pertaining to 16 Ares land cannot be held to be a valid gift and consequently, the

property in question cannot be declared to be a property of Appellant No.2 – Trust.

7           It is not in dispute that the land admeasuring 81 Ares was purchased on 18<sup>th</sup> November, 1988 jointly by Shri Shivaji Vamanrao Joshi and other four in their joint names. It is further not in dispute that the aforesaid land was purchased for constructing residences by forming a co-operative housing society named as Shramjivi Magasvargiya Sahakari Gruh Nirman Society. It is the case of present Appellants that the aforesaid 81 Ares land was divided into residential plots and 28 of such plots were allotted amongst 28 members of the proposed co-operative housing society. It is the further case of Appellants that after having allotted 28 plots to 28 members of the co-operative housing society, 16 Ares land, which was kept as open space while preparing the residential layout, was resolved to be gifted to Appellant No.2 – Trust. As was argued by Shri Mohekar, learned counsel for the Appellants all 28 members have unanimously resolved and thereby authorized Shri Shivaji Vamanrao Joshi to execute the deed of gift pertaining to said 16 Ares land in favour of Appellant No.2 – Trust, and accordingly, the said gift deed was executed. In background of the aforesaid facts, it was the

contention of Shri Mohekar that the Respondents are estopped from taking a plea that there was no valid authorization in favour of Shri Shivaji Vamanrao Joshi for executing the gift deed in favour of Appellant No.2 – Trust.

8           From the material on record, the argument so advanced by Shri Mohekar cannot be accepted. As has been observed by the learned Joint Charity Commissioner as well as the learned District Judge, the Appellants i.e. original Plaintiffs have failed in proving authorization in the name of Shri Shivaji Vamanrao Joshi to gift 16 Ares open space in favour of Appellant No.2 – Trust. Though it is the contention of the Appellants that the members of the housing society had resolved to gift the open space admeasuring 16 Ares to Appellant No.2 – Trust, in fact the said open space was not the property of the proposed co-operative housing society. The said property was standing in the joint names of five persons, who had purchased the said property on 18<sup>th</sup> November, 1988. Thus, the property, which was not owned by the proposed co-operative housing society, could not have been gifted by the members of the said co-operative housing society. The material on record further reveals that said Shramjivi Magasvargiya Sahakari Gruh Nirman Society did not come into

existence. The material on record further shows that the said proposed co-operative housing society was ultimately dissolved in the meeting held on 28<sup>th</sup> June, 1992 by the members, who had decided to form the said co-operative housing society. The alleged gift deed is executed on 3<sup>rd</sup> April, 1993. It is thus evident that on the date of execution of the said gift deed, the said proposed co-operative housing society was not in existence. In view of the fact that the said proposed co-operative housing society could not be registered, the question of said society possessing any property does not arise. The said property cannot be said to be a property of said co-operative housing society and consequently, the so called members of the said proposed co-operative housing society were not having any right or authority to resolve to gift the said property and pass any resolution giving authorization to any one of the member to execute the gift deed of the said property. The learned Joint Charity Commissioner and the learned District Judge both have, therefore, held that the gift deed executed by Shri Shivaji Vamanrao Joshi in favour of Appellant No.2 – Trust on the strength of authorization given by the members of the proposed co-operative housing society cannot be held to be a valid gift.

9           In the above circumstances, it does not appear to me that the learned Joint Charity Commissioner and the learned District Judge have committed any error in passing the impugned orders. No interference is, therefore, required in both the orders impugned in the present appeal. In the result, the following order :

**ORDER**

The appeal stands dismissed without any  
order as to the costs.

**[ P. R. BORA, J. ]**

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