

Sequeira

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

***CIVIL APPLICATION NO. 924 OF 2015
in
SECOND APPEAL NO. 1347 OF 2004***

Anil Shamrao Kadam. .. Applicant / Org.Resp.

In the matter between

Government of Maharashtra & anr. .. Appellants

Vs.

Shri Baneshwar Mahadeo Deosthan,
Pune & ors. .. Respondents

Mr.Sanjiv Sawant, for the Applicant and org. Respondent.
Ms.Anamika Malhotra - Assistant Government Pleader, for org.
Appellants.

***CORAM : N.M.Jamdar, J.
Friday, 5 August 2016.***

P.C. :

The Civil Application is filed for a direction to the Respondent-State of Maharashtra to deposit the amount collected by the Respondent towards entry charges and to restrain Respondent from collecting the entry charges and parking charges.

2. As regards the parking charges are concerned, at present no parking charges are being levied and therefore, this issue does not arise.

3. As regards the entry charges are concerned, Mr.Sawant the learned counsel for the Applicant, submitted that the Appellants-original Respondents have succeeded in both the Courts and it is declared that the original Appellants are not owners of the property including the area where the entry charges are being levied by the State. Mr.Sawant submitted that without seeking any permission from this Court, the Respondents are levying entry charges in respect of the property owned by the Applicant-original Respondents and therefore, directions as sought for be given.

4. Pursuant to the orders passed, two affidavits have been filed by the Respondents. Affidavit dated 27 July 2016 is filed by the Forest Officer, Nasrapur. It is placed on record that an amount of ₹ 10 is charged as an entry fee. Receipts have been placed on record which indicate that they are entry fees for the garden stated to be maintained. The details have been given in the reply which state that the monthly collection is approximately ₹ 75,000 to ₹ 1,25,000 and this amount is spent on maintenance of the garden. It is stated that therefore, it is not possible to pay any amount to the Trust and the Trust receives independent income. In addition, the learned AGP has submitted that the declaration of ownership of the Applicant is not final and the Appeal is pending.

5. Considering the calculations which have been placed on record and the reason for collecting the charge of maintenance of garden, the request of Mr.Sawant to pay some part to the Trust, does not appear to be practically possible as the amount collected is not very large. It cannot be denied that the Respondent-State has to maintain the garden which is frequented by visitors to the area. At the same time, the fact that both the Courts have concurrently held in favour of the Applicant cannot be lost sight of.

6. In the circumstances, it will be appropriate to direct the Respondent-State to maintain monthly account of the amount so collected and the amount so collected will be subject to the further orders to be passed in this Appeal. The representative of the Applicant will be entitled to inspect the said account. The Respondent-State is directed to maintain monthly account as regards the entry charges and permit representative of the Applicant to take inspection thereof periodically in respect of the said account. The collection of the entire charges will be subject to the further orders to be passed in the Second Appeal. The Civil Application is accordingly disposed of as above.

(N.M.Jamdar, J.)