

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 829 OF 2003

GRAM PANCHAYAT BHAGWATIPUR & OTHERS.
VERSUS
SHANKAR EKNATHRAO KARAD & OTHERS.

...

Advocate for Appellant : Mr V D Hon Senior Counsel i/b.
A V Hon

AGP for Respondents : Mr. S N Morampalle
Advocate for Respondents : Mr V D Salunke in WP

...

WITH

CA/8741/2016 IN FA/829/2003

HARIKISHAN YADAVRAO KHARDE
VERSUS
GRAM PANCHAYAT BHAGWATIPUR & OTHERS.

...

Mr S K Shinde Advocate for applicant.
Advocate for Respondent : Mr V D Hon Senior Counsel
i/b. A V Hon

AGP for Respondent : Mr. S N Morampalle
Advocate for Respondent : Mr V D Salunke

...

WITH

CA/15512/2016 IN FA/829/2003

BALASAHEB JAGANNATH DALE
VERSUS
GRAM PANCHAYAT BHAGWATIPUR & OTHERS.

...

Mr K M Gadve Patil Advocate for applicant.
Advocate for Respondent : Mr V D Hon Senior Counsel
i/b. A V Hon

AGP for Respondents : Mr. S N Morampalle
Advocate for Respondent 6 : Mr V D Salunke

...

WITH
WP/5037/2009

DATTATRAYA LOSJAMRAP KHARDE AND OTHERS.
VERSUS
HARIBHAU JIJABA KHARDE AND OTHERS

...

Mr V D Salunke Advocate for petitioners.
Mr V D Hon Senior Counsel i/b Mr A V Hon for
respondent no.13.
Mr S N Morampalle AGP for Respondent State.

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CORAM : V.K. JADHAV, J.
Dated: June 15, 2017

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PER COURT :-

1. Heard learned counsel for respective parties.
2. The learned counsel for the appellant submits that, during the pendency of the appeal, respondent no.2 died and he was impleaded as a party to the proceeding in the capacity as trustees and as such, there is no question of bringing his legal representatives on record.
3. In view of the above, delete name of respondent No.2-Vasantrao s/o Bhagwantrao Kharde from the array of respondents. Appellant to carry out said deletion forthwith.

4. Being aggrieved by the judgment and order dated 2.2.1996 passed by the 4th Additional District Judge, Ahmednagar, in Trust Application No.8/1992 the present appeal has been preferred.

5. Brief facts, giving rise to the present appeal are as follows :-

a] Village Bhagwatipur and Kolhar (Bk) are situated adjacent to each other and there are three temples namely Jagdamba Mandir, Vitthal Mandir and Mahadev Mandir situated in these two adjacent villages. There is some dispute about as to in which village these temples are exactly situated. However, the same is not the subject matter of the appeal and proceeding before the Court below and as such, I am not inclined to enter into said controversy.

b] There were three separate trusts for these three temples and as such, the respondents herein, who are presently no more, preferred an application bearing No.11/1989 before the Assistant Charity Commissioner,

Nasik Region, Nashik, under section 50-A (2) of the Maharashtra Public Trusts Act, 1950 for amalgamation of said three trusts by framing a common scheme after amalgamation. The learned Assistant Charity Commissioner by order dated 27.1.1992 allowed the said application and passed an order of amalgamation of said three trusts and further framed a common scheme as per annexure 'A' submitted alongwith said application No.11/1989. However, respondents herein/original applicants of application No.11/1989 preferred Trust Application No.8/1992 against certain clauses in the scheme framed by the Assistant Charity Commissioner after amalgamation of the said three trusts. The learned 4th Additional District Judge, Ahmednagar by its judgment and order dated 2.2.1996 in Trust Application No.8/1992 partly allowed the said application and in paragraph no.8 of the scheme directed addition by way of amendment to the effect that the trustees shall be from village Kolhar and further directed to delete paragraph no.11 of the scheme and instead of it following paragraph shall be added :-

“After the expiry of the term of five years, the trustees shall be selected by the Gramsabha of village Kolhar. The trustees or the persons interested in the Trust shall give the information of expiry of the term of the trustee to the Sarpanch or Up-Sarpanch of the village Kolhar, one month prior to the expiry of their term, who shall mention the subject of selection of the trustees in the meeting of the Gramsabha. The Gramsabha shall then select the trustees.”

c] The appellant no.1 herein is the Grampanchayat and appellant nos. 2 to 4 are the interested persons in the affairs of those three trusts. Being aggrieved by the said modification as directed by the 4th Additional District Judge, Ahmednagar, in the scheme annexure 'A' approved by the Assistant Charity Commissioner in original application No.11/1989 preferred this appeal.

6. The learned Senior counsel for the appellant submits that, those three temples are situated in the village Kolhar (Bk) and Bhagvatipur, which are situated adjacent to each other. In view of the same, there must be an equal representatives on the board of trustees from the said two villages or there should have been reasonable representatives on the board of trustees from

the said two villages. However, the learned 4th Additional District Judge, Ahmednagar, in its impugned order directed the amendment in paragraph no.8 of the scheme and accordingly addition has been made in the scheme to the effect that the trustees shall be from village Kolhar only. Learned Senior counsel for the appellant submits that, there are three temples and the large number of devotees from surrounding villages are used to visit said temples for Darshan purposes. Learned Senior counsel submits that, it would be just and proper if the number of trustees is increased from 11 to 15. Since these three temples are situated in these villages which are situated adjacent to each other, considering the population of village Kolhar, which is more than the population of village Bhagwatipur, it would be just and proper if eight of those trustees will be taken up from village Kolhar, whereas remaining 7 trustees would be from village Bhagwatipur. Learned Senior counsel submits that, 4th Additional District Judge, Ahmednagar, in its impugned order without assigning any reason, further directed that said trustees

shall be selected by the Gramsabha of village Kolhar. Learned Senior counsel submits that, as per the scheme framed by the Assistant Charity Commissioner, those trustees are required to be appointed by the Assistant Charity Commissioner only. Learned Senior counsel submits that, by way of this addition of giving discretion to the Gramsabha to select trustees would lead to unnecessary complications, confusions and chaos. Learned Senior counsel submits that, this pertains to the administration of the temples and by introducing the process of selection through Gramsabha, the learned District Judge had unnecessarily invited the politics and political interference in the process of selection. Learned Senior counsel submits that, so far as original scheme as approved by the learned Assistant Charity Commissioner is concerned, no procedure is prescribed for elections amongst the nominated trustees for the post of President, Vice President, Secretary and treasurer and also about their term. It would be therefore just and appropriate if those 15 trustees as appointed by the Assistant Charity Commissioner, in

their first meeting elect amongst themselves President, Vice President, Secretary and Treasurer and their term would be co-terminus with the term of the trustees.

7. During the pendency of this appeal, since the order passed by the learned District Judge is stayed by this Court, the learned Assistant Charity Commissioner by order dated 8.6.2009 appointed the Adhoc Committee to manage the affairs of the Trust. The petitioner Dattatraya Kharde and seven others have challenged the said order of appointment of Adhoc Committee by the Assistant Charity Commissioner by filing Writ Petition No.5037/2009. Learned counsel appearing for writ petitioners, on instructions, submits that the writ petitioners agree to the suggestions and submission made by the learned Senior Counsel on behalf of the appellants.

8. Learned counsel for the writ petitioner, however, submits that, if the process of selection of the trustees is entirely entrusted with the Assistant Charity

Commissioner, then, the Assistant Charity Commissioner, may be directed to invite the applications from the persons of the said two villages by publication of a notice and, after considering the educational qualification, antecedents and other relevant factors, make the appointments of the competent trustees to administer the affairs of the trust.

9. Mr Shinde, learned counsel appearing for the intervenor in civil application No.8741/2016 in FA 829/2003 and Mr Kishor M Patil in Civil application No.15512/2016 in FA 829/2003 also submits that, the intervenor, to whom they represent, also agree with the suggestions given by the counsel for the appellant, as aforesaid. Learned counsel, however, submits that, the said process of selecting the trustees shall be undertaken by the Assistant Charity Commissioner, as expeditiously as possible, preferably within a period of TWO MONTHS.

10. I have carefully gone through the order passed by

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the Assistant Charity Commissioner dated 27.1.1992 in application No.11/1989 and the impugned order passed by the Additional District Judge in Trust Application No.8/1992. There is no dispute about amalgamation of the said three trusts, however, there is dispute about certain clauses in the scheme framed and approved by the Assistant Charity Commissioner vide annexure 'A'. Further, the writ petitioners and intervenor also disputed the appointment of Adhoc Committee by the Assistant Charity Commissioner during the pendency of this appeal.

11. I find much substance in the submissions made on behalf of the appellant that the selection of the trustees should be undertaken by the Assistant Charity Commissioner alone, and, said trustees shall be from both the villages. It would also just and appropriate if the trustees are increased from 11 to 15 considering the large number of devotees visiting those three temples from the surrounding villages. Further, considering the population of those two villages, it would be just and

appropriate, if, eight trustees out of 15 trustees are from village Kolhar and remaining seven trustees are from the Bhagvatipur village. I do not find any justifiable reasons in the impugned order passed by the Additional District Judge, Ahmednagar, empowering the Gramsabha to select the trustees. It would be just and appropriate if the learned Assistant Charity Commissioner would be empowered to select and appoint trustees as stated above. The learned Assistant Charity Commissioner shall undertake said process by publishing a notice inviting the applications from the eligible persons from these two villages and after considering their educational qualifications, interest and antecedents appoint proper persons to administer the day to day affairs of the Trust.

12. In view of the above discussion, the impugned judgment and order passed by the learned Additional District Judge is liable to be quashed and set aside and the order passed by the Assistant Charity Commissioner in Application No.11/1989 required to be confirmed with

the modification, as discussed above. Hence, following order.

O R D E R

1. Appeal is hereby partly allowed. No costs.
2. The judgment and order passed by the 4th Additional District Judge, Ahmednagar dated 2.2.1996 in Trust Application No.8/1992 is hereby quashed and set aside.
3. The order dated 27.1.1992 passed by the Assistant Charity Commissioner, Nashik Region, Nashik in application No.11/1989 stands confirmed with the following modifications :-
 - a] In clause No.6 of the Scheme, "number of trustees would be '15' instead of '11' out of which eight (Eight) will be from village Kolhar (Bk) and 7 (seven) will be from Bhagwatipur village."
 - b] In clause No.7 of the Scheme, it shall be inserted that, in the first meeting of the nominated trustees election amongst selected/appointed trustees would be held by majority to the post of President, Vice

President, Secretary and Treasurer and their term would be co-terminus with the term of trustees.

4. The Assistant Charity Commissioner shall select and appoint the trustees in terms of the provisions of scheme as, expeditiously as possible, preferably within a period of TWO MONTHS from the date of receipt of this order.
5. In view of the above directions, nothing requires to be adjudicated in the writ petition and the same is also disposed off.
6. Pending civil applications seeking intervention in the matter also stand disposed of.
7. First appeal accordingly disposed of.

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(V.K. JADHAV, J.)

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