

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

FIRST APPEAL NO. 42 OF 2017

Devi Mahadeo Mandir Trust,
Kesarsingpura, Aurangabad
(A public religious trust
bearing Registration No.
PTR A-1226/1963)
through its Trustees -

- 1] Milind Manikrao Dolare,
age 40 years, occ. Service,
R/o Kesarsingpura, Aurangabad,
- 2] Mukund Manikrao Dolare,
age 38 years, occ. Pujari,
R/o Kesarsingpura, Aurangabad,
- 3] Umesh Madhavrao Dolare,
age 43 years, occ. business,
R/o Kesarsingpura, Aurangabad,
- 4] Uday Madhavrao Dolare,
age 49 years, occ. Service,
R/o Kesarsingpura, Aurangabad,
- 5] Mahesh Manikrao Dolare,
age 42 years, occ. Service,
R/o Kesarsingpura,
Aurangabad,

... Appellants
Orig.Plaintiffs

VERSUS

- 1] Mukundwadi Coop. Hosing
Society Ltd.,
Kesarsingpura, Aurangabad,
through its Chairman -
Shri S.S.Ahire, Advocate
R/o 'Saptashring', Plot No.2,

Abhinandan Housing Society,
Ikheda, Paithan Road,
Aurangabad.

AND

Through its Secretary
Shri Sopan Pawar
R/o 'Deochhaya', A-62,
New Shantiniketan Colony,
Aurangabad,

2] Charity Commissioner,
through Joint Charity
Commissioner office,
Kranti Chowk, Aurangabad,

3] Municipal Corporation,
Aurangabad, through its
Commissioner,

4] MSEDCL (Maharashtra State
Electricity Distribution
Company Ltd.) Jubilee Park,
Aurangabad

... Respondents
Orig.Defendants

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Mr. S.V.Adwant, advocate for the appellant
Mr. P.F.Patni, advocate for respondent no.1

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CORAM : K.L.WADANE, J.

Reserved on : 10.8.2017
Pronouncement on : 16.8.2017

ORAL JUDGMENT :

Heard Mr. S.V.Adwant, learned counsel
appearing for the appellants and Mr. P.F.Patni,

learned counsel appearing for respondent no.1. With their consent, the present appeal is taken up for final hearing at the admission stage.

2. Appellant no.1 is a religious public trust registered under the provisions of the Maharashtra Public Trusts Act.

3. Survey No.15 to the extent of 3 acres 6 gunthas, situated at Kesarsingpura, Aurangabad is dedicated to the temple and is a trust property. It is recorded in Schedule I of the register of Public Trust. Appellant/Trust filed Trust Suit No. 4 of 2010 against the defendants therein before the District Court, Aurangabad for cancellation of lease deed, dated 28.3.1973 and for recovery of possession of the trust property. Defendant no.1 caused appearance in the suit and filed its say and written statement. The learned District Judge framed issue of jurisdiction, which was tried as a preliminary issue. Upon hearing the parties, the learned District Judge, Aurangabad has passed an

order, dated 8.11.2016 and the suit is dismissed for want of jurisdiction. Hence, the present appeal.

4. Mr. Adwant, learned counsel appearing for the appellants submitted that the suit was filed by the trust itself against the person in possession on the basis of lease. He further submitted that erstwhile trustees have executed a lease in favour of defendants and it was without permission of the Charity Commissioner under Section 36 of the Maharashtra Public Trusts Act. Mr. Adwant, learned counsel further submitted that since the trust itself is a plaintiff, therefore, consent as required under Section 51 of the Maharashtra Public Trusts Act is not at all required.

5. As against this, the learned counsel appearing for the respondent/defendant submitted that since the suit was filed by the trustees, the permission as contemplated under Sections 50 and 51 of the Maharashtra Public Trusts Act is required,

and therefore, the learned District Judge has rightly decided that it has no jurisdiction to try the suit.

6. Considering the submissions of both the sides, a very short point arises for my consideration i.e. whether the prior consent of the Charity Commissioner is required to institute the suit ?

7. Learned counsel appearing for the respondent has relied upon the observations in the case of **Vidarbha Kshatriya Mali Shikshan Sanstha, by its President Shri Wasudeorao Dattaji Sonar vs Mahatma Fuley Shikshan Samiti, Amravati, through its President Ruprao Bhimrao Yawale**, reported in **1986 Mh.L.J. 773**, wherein it is observed that, "Section 50 of the Bombay Public Trusts Act does not contemplate the suit which is to be filed by a person for enforcing his own right. In such a case the suit by a Public Trust for enforcing its civil rights is not barred by Section 50 of the Bombay

Public Trusts Act. Such a suit has to be filed in the ordinary forum under the Civil Procedure Code and is not required to be instituted in the Court as defined in Section 2(4) of the Bombay Public Trusts Act. The expression, 'court' as defined in Section 2(4) only deals with the suits which are filed under the provisions of the Bombay Public Trusts Act and has no applicability to suits other than those prescribed thereunder. Suit is not barred by the first proviso to Section 50 of the Act because in its contextual interpretation and read in the light of the substantive provision can only bar a suit which is contemplated by the substantive provision."

Relying upon the aforesaid observations, the learned counsel for respondent argued that the suit, instituted in the District Court i.e. a court within the meaning of Section 2(4) of the Maharashtra Public Trusts Act, is not maintainable. The appellants/plaintiffs have to file a suit in ordinary forum i.e. before the Civil Court and if at all the plaintiffs / appellants want

to file their suit in the Court as contemplated under Section 2 (4) of the Maharashtra Public Trusts Act, then prior permission/consent of the Charity Commissioner is must.

8. Mr. Adwant, learned counsel appearing for the appellants has pointed out that the observations in the case of **Vidarbha Kshatriya Mali Shikshan Sanstha** (supra) have already been overruled by the Division Bench of this Court in the case of **Amirchand Tulsiram Gupta and others vs Vasant Dhanaji Patil and others** reported in **1992 Mh.L.J. 275**. I have gone through the observations in the case of **Amirchand Tulsiram Gupta**, wherein it is specifically observed as follows : -

" 6. The Bombay Public Trusts Act, 1950 was enacted to regulate and to make better provision for administration of public religious and charitable trusts in the State of Bombay. The plaintiffs are the trustees of a charitable trust registered under this Act. Section 50 of the Act deals with the topic "suits by or against or relating to public trusts or trustees or other", and inter alia provides that where a direction or decree is required to recover the possession of a property belonging to a

public trust from a trustee, ex-trustee, alliance, trespasser or any other person, including a person holding adversely to the public trust, the Charity Commissioner may institute a suit in the Court within the local limits of whose jurisdiction the subject matter of the Trust is situated. The section provides that apart from the Charity Commissioner two or more persons having the interest and having obtained consent in writing of the Charity Commissioner can institute the suit and seek reliefs which are set out in the section. Section 51 of the Act provides that if person having an interest in any public trust intends to file a suit of the nature specified in Section 50, then such person shall apply to the Charity Commissioner in writing for his consent. The Charity Commissioner in writing for his consent. The Charity Commissioner may grant or refuse consent depending upon the satisfaction of the existence of a prima facie case. The contesting defendants urged before the trial Judge that consent under sections 50 and 51 of the Public Trusts Act is a condition precedent for institution of the suit by the trustees for recovery of possession against the trespassers or a person claiming adversely to the interest of the trust and failure to obtain consent must result in dismissal of the suit. The contention was met by the plaintiffs by relying upon two decisions of this Court reported in 63 Bom.L.R. 312, **Gurusiddappa Tipanna Muger** v. **Miraj Education Society**, **Miraj**, and 69 Bom.L.R. 472, **Rajgopal Raghunathdas Somani** v. **Ramchandra Hajarimal Jhavar**. The alter decision is of a Division Bench and follows the

earlier decision recorded by the Single Judge. The Division Bench held that the trustee is the legal owner of the trust property and enjoys all the rights inherent in a natural owner of a property and can sue to recover trust property, and Section 50 cannot apply as a bar to the substantive rights of the trustee to institute suit. The Division Bench further held that the provisions of section 92 of the Code of Civil Procedure are analogous to the provisions of Section 50 and the separate right of a trustee de hors the provisions of Section 50 to file a suit for protection of trust properties cannot be disputed. The Division Bench there upon held that provisions of Section 50 are not restrictive but cumulative and it only entitles a person having an interest to sue and does not prohibit any suit being field by trustees of a public trust. The Division Bench then observed :

" The trustee who is in the position of a legal owner of property can sue to recover the property from persons who are in occupation without any right, title or interest without obtaining any previous sanction from the Charity Commissioner". "

On perusal of the afore said observations, it appears that the observations in the case of **Vidarbha Kshatriya Mali Shikshan Sanstha** have been overruled and it is specifically observed that the trustee who is in the position of a legal owner of property can sue to recover the property from

persons who are in occupation without any right, title or interest without obtaining previous sanction from the Charity Commissioner.

9. Mr. Adwant, learned counsel further relied upon the observations in the case of **Gafoor Ali Hussain vs Ram Mahadik and others**, reported in **2001 (1) ALL MR 153**, wherein it is observed as follows :-

“ In fact this controversy has been resolved by a Division Bench of this Court in the case of **Amirchand Tulsiram Gupta and others vs Vasant Dhanaji Patil and others**. Mr. Salunkhe and Mr. Kadam, learned Counsel appearing for the respondents referred me to that judgment which considers the earlier judgments of the Supreme Court as well as this High Court on this point and holds that the trustee is the legal owner of the property and enjoys all the rights inherent in a natural owner of property and can sue to recover trust property. Section 50 cannot apply as a bar to the substantive right of the trustee to institute suit. No permission under section 51 is necessary in such a case. In view of the above clear position, the learned Judge of the City Civil Court was right in taking the view that the suit was maintainable and the consent of the Charity Commissioner was not necessary as a condition precedent.”

10. In the present case also, the plaintiffs/appellants have instituted suit for cancellation of lease deed executed by erstwhile trustees. Therefore, the appellants can sue the defendants without prior permission of the Charity Commissioner, as observed by the Division Bench of this Court. On perusal of the reasons recorded by the learned District Judge, it appears that the observations in the case of **Vidarbha Kshatriya Mali Shikshan Sanstha** were brought to the notice of learned District Judge, however subsequent development and law laid down in **Amirchand Gupta's** case was not brought to the notice of the learned District Judge.

11. In view of the clear cut provision of law, as referred above, I am of the opinion that the learned District Judge has jurisdiction to try and decide the suit between the parties and consent of Charity Commissioner as required under Section 51 of the Maharashtra Public Trusts Act is not at all required. Therefore, the impugned order needs to

be set aside.

12. Hence, the following order.

(i) The appeal is allowed.

(ii) The order passed below Exh.1 by the learned District Judge-5, Aurangabad, dated 5.11.2016 is hereby quashed and set aside.

(iii) The learned District Judge, Aurangabad to decide the suit on its own merits, in accordance with law.

(K.L.WADANE, J.)

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