IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION No. 73 of 2015
WITH
CIVIL APPLICATION No. 1087 of 2017
WITH
CIVIL APPLICATION No. 1137 of 2019
WITH
CIVIL APPLICATION No. 2526 of 2019
IN
PUBLIC INTEREST LITIGATION No. 73 of 2015

1. Bijayabai W/o Sambhaji Kapse,
age 60 years occup. household, agriculture,
social work & Sarpanch
R/o village Nimbgaon Wagha Tal. Nagar Dist. Ahmednagar

2. Shivaji S/o Dhondiba Jadhav,
age 50 years occup. agriculture R/o as above.

...**Petitioners**

Versus

1. The State of Maharashtra
through : The Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.

2. The State Minister
for Revenue, Rehabilitation & Assistance work,
Mantralaya, Mumbai

3. The Collector,
Ahmednagar District Ahmednagar

4. Balu S/o Ganpat Gurav,
age years occupation nil
R/o Nimbgaon Wagha Taluka & Dist. Ahmednagar

5. Kisan S/o Thakaji Satpute,
age 32 years occup. service & Agri.
R/o Sonewadi road, Kedgaon, Ahmednagar
Taluka & Dist. Ahmednagar

...Respondents

Mr. N.L. Jadhav, Advocate for petitioners
Mr. K.N. Lokhande, Asstt. Govt. Pleader for Respts. No. 1 to 3
Mr. A.N. Sabnis, Advocate for respondent No.4
Mr. R.R. Mantri, Advocate for respondent No.5
Mr. Ajit Kale, Advocate for intervener

CORAM : PRASANNA B. VARALE
AND
AVINASH G. GHAROTE, JJ.
DATE : 4th September, 2019

ORAL JUDGMENT: (Per : Avinash G. Gharote, J.)

1. By this so called public interest litigation, the petitioners seek issuance of writ of certiorari in terms of prayer clause (B), which is quoted as under :

> **"**(B) By issuing writ of certiorari praying that the impugned order dated 06/09/2014 passed by the Minister for Revenue and Rehabilitation, Maharashtra State, thereby cancelling the exemption from revenue to the *Deosthan* land situated at Nimbgaon Wagha Gat No. 123 adm.3H.71 R, be quashed and set aside and consequentially the sale deed bearing No. 72/15 dated 31/12/2014 executed by respondent No.4 in favour of respondent No.5 may kindly be quashed and set aside.**"**

2. By order dated July 16, 2019, the issue of maintainability of the present public interest litigation was kept open for consideration.

3. Petitioner No.1 claims to be *Sarpanch* of village Nimbgaon Wagha Taluka and Dist. Ahemadnagar and petitioner No.2 claims to be the resident of the same village. It is the contention of the petitioners that the land in survey No. 123 situated at Nimbgaon Wagha to the extent of 3H.71R was Devi *Inam* land and the *Mandir* is old constructed in the year 1630. It is further contended that the *Inam* was declared long back. The Revenue record since 1930-31 shows name of *Bhagwati Devi* and the same was permanently exempted from land revenue, in the light of which there was a bar for its transfer by virtue of the provisions of Section 8 of the Exemption from Land Revenue Act, 1863. It is further contended that the petitioners are vigilant citizens to protect the interest of the residents/devotees of *Bhagwati Devi* and have filed the petition in public interest.

4. It is further contended that respondent No.4 Balu Ganpatrao Gurav, whose forefathers were the recorded occupants of the land in the revenue records, had applied to the Respondent No.2, requesting for deletion of entry of *Inam* Class 3, in respect of land of Gat No.123, in the revenue records, in pursuance to which the respondent No.2 vide order dated 06/09/2014 had directed withdrawal of the exemption from revenue and deletion of the entry of *Devasthan Inam* Class 3,

consequent to which, respondent No.4 had executed a sale deed of part of the land in favour of respondent No. 5. Thus, the order of the respondent No.3 dated 06/09/2014 as well as the consequent sale deed dated 31/12/2014 is being challenged by way of present petition, which is styled as a public interest litigation.

5. At the outset, Mr N.L. Jadhav, learned Counsel for the petitioners, was called upon to address the Court on the issue of locus of the petitioners to file the present petition and demonstrate the public interest in the matter of challenge to the order dated 06/09/2014, as passed by respondent No.2 and the consequent sale deed dated 31/12/2014. It is contended by Mr. Jadhav that the petitioners are whistle-blowers, apart from being devotees of *Bhagwati Devi*, for whose temple the land of Gat No. 123 was earmarked and, thus, claimed that they have locus to file the present petition. Mr. Jadhav placed reliance upon the case of ***Janata Dal Vs. H.S. Choudhary, AIR 1993 SC 892,*** specifically paragraphs No.96 to 108, ***Mehsana District Central Co-operative Bank Limited Vs. State of Gujarat and others, (2004) 2 SCC 463*** and ***Mst. Kanchanaiya Vs. Shiv Ram and others, AIR 1992 SC 1239***, to buttress his claim that the petitioners had locus to file the present petition in public interest.

6. Mr. R.R. Mantri, learned Counsel for respondent No. 5, vehemently opposed the plea of locus as raised by the learned Counsel for the petitioners. He invited our attention to the order of respondent No.2 dated 06/09/2014, in which itself it has been stated that the permission for withdrawal for exemption from revenue and deletion of the *Devi Inam* entry was sought on the ground that the land of Gat No. 123 was near Ahmednagar city, and was under threat of encroachment, so also, the temple of *Shri Bhagwati Devi* was very old and funds were required for its renovation and additional construction, which could be obtained by sale of the same, which funds could be used for renovation and additional construction of the temple. He further pointed out that pursuant to the order dated 06/09/2014 passed by respondent No.2, the son of petitioner No.1, namely, Arun Sambhaji Kapse, had on 10/03/2015 got a sale deed in respect of portion of the land Gat No. 123, executed in his favour from respondent No.4 in which the consideration was shown as Rs. 4,30,000/-. He further invited our attention to this sale deed dated 10/03/2015 to point out that the order of the respondent No.2 dated 06/09/2014 formed a part and parcel of this sale deed. He further invited our attention to Exh. 'D' filed by the petitioners alongwith the petition, which is a sale deed dated 31/12/2014 executed by respondent No.4 in favour of

respondent No.5, in which on the receipt it has been stated that the said document was presented before the Sub-Registrar by Arun Sambhaji Kapse, the son of petitioner No.1. He further invited our attention to Exh.'G', an application filed by the '*Shree Devi Mandir Devasthan Trust*" for its registration under the provisions of the Bombay Public Trusts Act, in which Arun Sambhaji Kapse, son of petitioner No.1, was shown as the president. He also invited our attention to the order passed by the Deputy Charity Commissioner, Ahmednagar, in inquiry No. 989/2014 in the matter of proposed public trust '*Shree Devi Mandir Devasthan Trust*' and the order as passed thereupon dated 29/08/2016, whereby the land of Gat No. 708 of Nimbgaon Wagha was directed to be recorded in schedule 1 of P.T.R. as the property of the trust and the prayer for recording the land of Gat No. 123 in the name of the trust was rejected, which rejection was based upon a consent for its deletion as reflected from a pursis at Exh. 33 as filed in those proceedings for registration of the trust by deleting property Gat No. 124, which pursis was filed by the proposed trust. He further brought our attention to affidavit filed by respondent No.4 dated October 2015, wherein in paragraph No.2, it has been specifically stated that petitioner No.1 was illiterate and while she was *Sarpanch,* all works were looked-after by her son Arun Sambhaji Kapse and that petitioner

No.1 was the natural mother of Shri Arun Sambhaji Kapse and both of them reside jointly and form a joint family. It is further contended in paragraph No. 3 of this affidavit that the son of petitioner No.1 under threat had got the sale deed dated 10/03/2015 in respect of a portion of land of Gat No. 123 executed in his favour. There is no counter-affidavit on the part of the petitioners, denying the joint residence of petitioner No.1 and her son, Arun Sambhaji Kapse. It was, thus, submitted that the petition was at the behest of Arun Sambhaji Kapse and the petitioners, thus, lacked not only locus but also bonafides.

7. The learned Government Pleader Mr K.N. Lokhande, learned Counsel Mr. A.N. Sabnis, appearing for respondent No.4 supported the arguments advanced by learned Counsel Mr R.R. Mantri.

8. Faced with this, Mr N.L. Jadhav, learned counsel for the petitioners, invited our attention to C.A. No. 1137 of 2019, whereby the petitioners had sought for amendment by adding the said Arun Sambhaji Kapse as respondent and seeking to amend the petition by raising a challenge to the sale deed dated 10/03/2015 in favour of Arun Sambhaji Kapse as well as to the judgment dated 29/08/2016 passed by the Deputy Charity Commissioner, Ahemadnagar, in inquiry No. 989/2014.

9. We have given our anxious consideration to the arguments of the learned Counsel and have perused the entire record with their assistance. We find that the petitioners lack locus as well as there is no public interest involved in the present petition. This is so for the following reasons:

(a) The relationship between petitioner No.1 as well as the said Arun Sambhaji Kapse of mother and son, is not disputed.

(b) The joint residence of petitioner No.1 as well as the said Arun Sambhaji Kapse her son is also not disputed.

(c) The execution and registration of the sale deed dated 10/03/2015 by respondent No. 4 in favour of Arun Sambhaji Kapse in respect of a portion of Gat No. 123 is also not disputed, in which sale deed, the impugned order of respondent No.2 dt. 06/09/2014 is annexed and is made a part of the sale deed.

(d) The presentation of the sale deed dated 31/12/2014 by Arun Sambhaji Kapse is also not disputed, which is in fact, a sale deed filed by the petitioners alongwith the petition at Exh. D/page No. 43.

(e) The formation of a proposed trust '*Shree Devi Mandir Devasthan Trust*" of which the son of petitioner No.1, Arun Sambhaji Kapse, is shown as the president, is also not disputed.

(f) The judgment passed by the Deputy Charity Commissioner, A'Nagr, in Inquiry No. 989/2014, in which son of petitioner No.1, Arun Sambhaji Kapse, was the applicant, is also not disputed, in which judgment, by pursis at Exh. 33, the applicant therein, requested that the trust be registered by deleting the property Gat No. 123.

The above position categorically demonstrates that when the present petition was filed on 01/07/2015, the petitioners were aware of the position as stated in (a), (b), (d) (e) & (f) above, which is reflected from the documents annexed to the petition itself, in-spite of which, they chose not to array the said Arun Sambhaji Kapse as a respondent or for that matter to make any averments in respect of the sale deed executed in his favour dt. 10/03/2015 challenging the same. In light of the fact that petitioner No.1 is claimed to be an illiterate lady and is in joint residence with Arun Sambhaji Kapse, which position has not been controverted by petitioner No.1, the bonafides of the petitioners clearly become suspect. On the one hand, they are aware that the son of petitioner No.1 has derived benefits from the impugned order dt. 06/09/2014 as passed by the respondent No.2, as without it, the sale deed dated 10/03/2015 could not have been registered in his favour, however, on the other hand, they suppress this fact in the petition and challenge the order of the respondent No.2 dated 06/09/2014 and the consequent sale deed in favour of respondent No.5 dated 31/12/2014 alone. The absence of bonafides on the part of the petitioners goes to the very root of the matter and directly affects their locus to lay the challenge as raised in the petition. The judgment in the case of ***Janata Dal Vs. H.S. Choudhary, AIR 1993 SC 892*** does not help the petitioners, as in paragraphs No. 96 to 108 of the same judgment the Hon'ble Supreme Court has sounded a Red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without interest or concern except for personal gain or private profit or other oblique consideration. In the light of conspectus of facts stated above, the observations of the Hon'ble Apex Court in paragraphs No. 96 to 108 in the above judgment are clearly attracted. The proposition as enunciated by the Hon'ble Apex Court in ***Mehsana District Central Co-operative Bank Ltd. and others Vs. State of Gujarat and others (2004) 2 SCC 463*** is also of no assistance to the petitioners, in light of the fact that the son of petitioner No.1 was a beneficiary of the impugned order of the respondent No.2 dated 06/09/2014, which has been suppressed by them in the petition. In so far as the the judgment in ***Mst. Kanchanaiya and others Vs. Shiv Ram and others, AIR 1992 SC 1239*** is concerned, the same was considering the specific language of Section 13 of the Kawaid Maufidaran and the petitioners have failed to point out that the provisions of the

Exemptions From Land Revenue Act of 1863 were in *pari materia* to Section 13 of the Kawaid Maufidaran and, thus, is of no assistance to the petitioners.

10. The filing of Civil Application No. 1137 of 2019, on 07/01/2019 by the petitioners at this stage to raise a purported challenge to the sale deed dated 10/03/2015 in favour of said Arun Sambhaji Kapse can only be said to be an afterthought, to try to wriggle out of the situation, which the petitioners find themselves, consequent to the sale deed dated 10/03/2015 being placed on record by the respondent No. 4 alongwith his affidavit dated 16/01/2016.

11. The factual position enumerated above further categorically demonstrates that there is no public interest involved. The record further reveals that there is not a single document on record to demonstrate that the public at large or for that matter the devotees of *Shree Bhagwati Devi* have raised any grievance or complaints of any nature whatsoever, including a complaint as to non-application of the funds received from the sale of the land of Gat No. 123 for the purpose of renovation and additional constructions to the temple. In fact, an affidavit of respondent No.5 dated 24/07/2017 makes a mention that extensive work of renovation of the temple was already going on.

A photograph to demonstrate this, has been handed-over across the bar by Mr. Mantri, learned Counsel for respondent No.5, which shows the nature of construction being made to the existing temple, which in comparison to the photographs filed by the petitioners alongwith the petition would substantiate the contention of substantial construction being made in and to the existing temple, which is on the land of Gat No. 708.

12. The cause espoused in the present petition by the petitioners clearly appears not to be of any public nature or in public interest. The grievance raised by the petitioners vis-a-vis the order of the respondent No. 2 dated 06/09/2014 and the consequent sale deed can be raised in appropriate proceedings as permissible by law. So also, the challenge, as sought to be raised by the proposed Civil Application No. 1137/2019, to the sale deed dated 10/03/2015 in favour of said Arun Sambhaji Kapse, seeking to set it aside and holding that the same is not binding on the *Bhagwati Devi Mandir Devasthan* (Trust), of which the son of petitioner No.1, is admittedly the trustee and president, can be a subject matter of challenge in a suit before the Civil Court. So also, the challenge, as sought to be raised by the proposed Civil Application No. 1137/2019, to the judgment and order dated 29/08/2016 passed by the Dy. Charity

Commissioner Ahemadnagar in inquiry No. 989/2014 is amenable to an appeal under the provisions of the Maharashtra Public Trusts Act before the appropriate appellate authority. The issues raised also involve the disputed question of facts, which cannot be entertained in a public interest jurisdiction.

13. In the light of what we have said above, we hold that the petitioners have no locus standi nor does the petition espouse any public interest and, thus, is accordingly dismissed.

14. Needless to state that in view of final disposal of the public interest litigation, the interim order passed by this Court stands vacated.

15. In view of final disposal of the public interest litigation, no orders are required to be passed on the pending civil applications. As such, all pending civil applications stand disposed of.

(AVINASH G. GHAROTE, J.) (PRASANNA B. VARALE, J.)

Madkar