

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1532 OF 2017

- 1) Baburao s/o Bansi Wayndeshkar,
Age 69 years, Occupation Manager And
Poojari / Bhope of Shri Dattatraya
Mandir (Chakradhar Charankit Sansthan),
Village Bagpimpalgaon Taluka Georai
Dist. Beed, R/o Village Bagpimpalgaon
Tq. Georai Dist. Beed.
- 2) Motiram s/o Bansi Wayndeshkar,
Age 66 years, Occupation and R/o
As above.

...Appellants.

VERSUS

- 1) Bhagwat s/o Narayan Kotambe,
Age 34 years, Occupation Labourer,
R/o Village Bagpimpalgaon Taluka
Georai Dist. Beed.
- 2) Bharat s/o Babasaheb Kotambe,
Age 32 years, occupation Agriculture,
R/o As above.
- 3) Madhukar s/o Pralhad Kotambe,
Age 38 years, Occupation Labour,
R/o As above.
- 4) Narayan s/o Salikram Kotambe,
Age 63 years, Occupation Agriculture,
R/o As above.
- 5) Prakash s/o Dattatraya Kotambe,
Age 63 years, Occupation and R/o
As above.
- 6) Vilas s/o Uttamrao Kotambe,
Age 41 years, Occupation and
R/o As above.

- 7) Shivaji s/o Sudhakar Kotambe,
Age 35 years, Occupation and
R/o As above.
- 8) The Tahsildar,
Tahsil Office, Georai.
Taluka Georai Dist. Beed.

...Respondents.

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Mr. R. S. Deshmukh, Advocate, for Appellants.
Mr. A. N. Sikchi, Advocate, for Respondents No.1 to 7.
Mr. A. M. Phule, AGP, for Respondent No.8-State.

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CORAM : SMT.VIBHA KANKANWADI, J.
Date : 09-09-2019.

ORDER :

1. Present appeal has been filed by original appellants challenging the Judgment and order passed in Misc. Civil application No.475 of 2015, by learned District Judge-6, Beed, on 22-09-2016, whereby their application under Section 72 of the Maharashtra Public Trust Act, 1950, came to be rejected.

2. The appellants contended that, they are the Managers and Pujaris of the Datta Mandir Trust. Their rights are hereditary, and they are managing the Trust under the supervision of respondent No.8 Tahsildar, Georai. The Trust was established under Hyderabad Endowment Act, 1349 (Fasli), and was registered on 17-09-1953 by Nizam Government of Hyderabad State. Thereafter, it was re-registered on 18-08-1961 under the then Bombay Public Trust Act, 1950. They contend that, the temple belongs to 'Mahanubhav Panth' which was founded by Shri. Chakradharswamiji. The temple was

reconstructed in the year 2001-2003. The respondents No.1 to 7 are only devotees and followers of 'Mahanubhav Panth' and not concerned with the management of the temple. They had filed a scheme to take over the management of temple illegally. The said scheme was granted by learned Assistant Charity Commissioner, Beed, and therefore, the said miscellaneous application was filed under Section 72 of the Maharashtra Public Trust Act for setting aside the order passed by learned Assistant Charity Commissioner, dated 28-05-2015 in Inquiry No.99 of 2013.

3. It appears that, the application was objected by the respondents and they had challenged the locus standi of the appellants to file the application. It was also submitted that, if the appellants had any grievance in respect of the said scheme, they could have made application under Section 50 of the Trust Act before learned Assistant Charity Commissioner. Whatever certificates have been obtained and attached to the appeal by the appellants are false.

4. After hearing both the sides, the learned District Judge has come to the conclusion that, the appellants have failed to prove that, they are the Managers and Pujaris of the temple. They have also failed to prove that, the learned Assistant Charity Commissioner granted the scheme without any evidence and proof. It was stated that, there was a necessity for formulation of a scheme to manage

the temple, and it was then held that, there is no necessity to interfere in the Judgment and order passed by learned Assistant Charity Commissioner, thereby the said application came to be dismissed. Hence, the present appeal.

5. Heard learned advocate Mr. R. S. Deshmukh for the appellants and learned advocate Mr. A. N. Sikchi for respondents No.1 to 7, and learned AGP Mr. A. M. Phule for respondent No.8 Tahsildar.

6. It has been vehemently submitted on behalf of the appellants that, the learned District Judge failed to consider that the application which was filed by the respondents, before learned Assistant Charity Commissioner, was a false proceeding just to gain control over the management of the temple. Those respondents had no concern with the trust. In fact Tahsildar was the only authority i.e. trustee of the said trust, and therefore, even if it would have been a necessity to formulate a scheme, appropriate procedure ought to have been adopted. Learned Assistant Charity Commissioner did not make any inquiry as contemplated under the Act. Learned Assistant Charity Commissioner had failed to see that, the temple is being managed by the present appellants since many years and they are the persons who could have manage this temple more appropriately. The welfare of the Trust was not at all considered by the learned Assistant Charity Commissioner, and therefore, the learned District Judge ought to have interfered with the scheme. Reliance was placed on the

decision in, *Omprakash Gulabchand Partani and Ors. Vs. Charity Commissioner*, reported in *2008(1) ALL MR 228*, wherein it has been held that,

“Section 72 of the Bombay Public Trust Act entitles a person aggrieved by the decision of the Charity Commissioner under the provision of Section 50-A of the Act to apply to the Court to set aside the said decision. An order or decision under Section 50-A of the Bombay Public Trust Act though it pertained to the modification of the scheme, could be challenged only before the District Court under the provisions of Section 72 of the Bombay Public Trust Act.”

He therefore, prayed for setting aside the decision by the learned District Judge and it was submitted that, inquiry be directed to be held into the formulation of scheme.

7. Per contra, the learned advocate appearing for respondents No.1 to 7 supported the reasons given by the learned District Judge and submitted that, the appellants had failed to prove that, they are the Managers or Pujaris of the temple, and therefore, it cannot be stated that, they had any kind of interest in the Trust. Only on the basis of some certificate issued by Grmapancahyat, they were claiming that, they have interest, and then had come with a case that, their rights are hereditary. They have not got the said right established from any lawful authority.

8. At the outset, the record shows that, only on the basis of two

certificates issued by Grampanchayat, the appellants were contending that, they are the Managers and Pujaris of the temple. It can be seen that, though it is stated that, the Trust was registered way back in 1953 by the Nizam Government of Hyderabad State yet it appears that, there was no attempt on the part of either the present appellants or their predecessors to get their names included in the PTR extract as beneficiaries. Even at the time of re-registration of the Trust under the Bombay Public Trust Act in the year 1961, their names are not appearing. It further appears that, the temple was renovated in 2001-2003 but there is no record about the same with Assistant Charity Commissioner, that means, whatever if at all has been done by the appellants, is not as per the procedure laid down under the Trust Act. They have not produced any account of the expenditure incurred by them on the said renovation. No change report regarding it, is stated to have been communicated to the office of Assistant charity Commissioner. Therefore, under which circumstance the appellants were claiming that, they were managing the Trust, itself is a question. Certainly on the basis of two certificates issued by Grampanchayat, it cannot be stated that, they have the said capacity. When *locus standi* of the appellants itself was not established, and further as it appears from the record that, only the Tahsildar was appointed as Trustee and he was supposed to manage the temple, on the basis of his application the scheme was formulated, then if aggrieved, the remedy for the

appellants was elsewhere. They had not participated in the said proceeding before Assistant Charity Commissioner. Further still they have their own remedy under the Trust Act for modification of the scheme, if any. No doubt in view of the aforesaid decision, they had the remedy under Section 72 of the Bombay Public Trust Act, yet as aforesaid since they had failed to prove their *locus standi*, no case is made out to entertain and interfere with the Judgment and order passed by the learned District Judge. Hence, the first appeal stands rejected. No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.