

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

**WRIT PETITION NO. 19 OF 2016 WITH
WRIT PETITION NO. 39 OF 2016 WITH
WRIT PETITION NO. 49 OF 2016 WITH
WRIT PETITION NO. 54 OF 2016**

**AHIR SALI SAMAJ DEVI MANDIR TRUST THROUGH
CHIEF TRUSTEE SANTOSH SUPADU SURYAWANSHI
VERSUS
SURESH GIRIDHAR PARDESHI**

...

Advocate for the Petitioner : Shri S. S. Kulkarni
Advocate for the Respondents : Shri S. S. Bora
(Respondent Nos. 2B to 2F in WP No. 39/2016,
Respondent Nos. 2B and 2C in WP No. 49/2016
Respondent Nos. 1B, 1C and 2A in WP No. 54/2016)
AGP for Respondent No. 2F/ in WP No. 49/2016 and R./1 F in WP
No. 54/2016 : Shri R. N. Bhapkar

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th FEBRUARY, 2020

...

PER COURT :

1. By this petition, the Petitioner trust is aggrieved by the order dated 16/10/2015 passed by the executing Court, by which, application Exhibit 52, filed by the decree holder in Regular Darkhast No. 39/1985, seeking change in the names of the trustees, has been rejected.

2. I have considered the submissions of the learned

Advocates for the respective sides.

3. The learned Advocate for the Petitioner relies upon the judgment of the learned Full Bench of this Court in the matter of ***Shyamabai wd/o Surajkaran Joshi & Ors. Vs. Madan Mohan Mandir Sanstha, 2010(1) ALL M.R. 648.***

4. The Petitioner has projected before this Court in the averments set out in paragraph 2 of the memo of the petition, as well as, in the synopsis that the Petitioner is a registered trust by name 'Ahir Sali Samaj Devi Mandir Sansthan, Faizpur', on 08/07/1953. It is then mentioned in paragraph 2 that earlier the said trust was known as 'Shri Devi Mandir Sansthan' from 1953 and the name was changed in 2002.

5. The issue turns upon a gift deed executed by the Satpute family on 24/04/1976 in favour of the Petitioner trust pertaining to land bearing City Survey Nos. 3154, 3155, 3156, 3157 and 3158. By virtue of the gift deed, a mutation entry was carried out in the

name of 'Ahir Sali Samaj Devi Mandir Faizpur' through the chief trustee Shri Ramdas Anant Wadhe.

6. Regular Civil Suit No. 38/1984 was filed by Shri Ahirsali Samaj Devi Mandir Trust, Faizpur through its trustees. It was conveyed to the Trial Court that the trust was registered as per the Bombay Public Trust Act and was entered in the register No. A-1/80 Jal. By judgment dated 08/02/1985, the suit was decreed and the defendant Suresh Giridhar Pardeshi, sole Respondent herein, was directed to give the possession of the suit property to the plaintiffs.

7. It is from the above litigation that Regular Darkhast No. 39/1985 was filed and the same is still pending. The impugned order is a result of the claim of the decree holders that the names of the earlier trustees be replaced by the names of new trustees.

8. The judgment debtor has opposed Exhibit 52 contending that there was no trust any time registered in 1953 or prior to 2002 by name 'Ahir Sali Samaj

Devi Mandir Sansthan Faizpur'. It was also pointed out that the decree holder had earlier filed a similar application at Exhibit 18 for the same reason and the said application was rejected by order dated 10/01/1994. The said order has attained finality as it was never challenged.

9. After I had heard the learned Advocates for a considerable time on 17/02/2020 and having noticed that there was an err of suspension with regard to the name of the trust as per the Registration record, that I had passed the following order on 17/02/2020 :-

"1. The learned Advocate for the Petitioner shall place the following documents before the Court :-

(a) The original registration of the Trust namely Shri Devi Mandir Sansthan.

(b) The property / gift deed documents indicating the properties held by Shri Devi Mandir Sansthan.

(c) The change report with regard to accepting the change in name of the Trust in 2002.

(d) Explain as to why Regular Civil Suit No. 38/1984 was filed in the name of Shri Ahir Sali Samaj Devi Mandir Trust, Faizpur, Taluka Yawal, District Jalgaon.

2. The above referred documents shall be produced alongwith the affidavit of the person, who has filed these petitions.

3. I am ordering the Petitioner to produce the above referred documents since I have a serious apprehension that the Trust which preferred the 1984 suit was a different Trust since in 1984 the name of the Petitioner Trust was Shri Devi Mandir Sansthan and was never Shri Ahir Sali Samaj Devi Mandir Trust.

4. It is made clear that if this Court comes to a conclusion that the present Petitioner has attempted to play a fraud on the Court, this Court would not hesitate to impose costs of Rs. 5,00,000/- and would also direct criminal prosecution of those office bearers of the Petitioner Trust, who are responsible for such acts.

5. List these petitions in the "passing orders category" on 28/02/2020."

10. Pursuant to the above order, the Petitioner has entered a short affidavit stating the names of 13 original trustees of the Shri Devi Mandir through Shri

Devi Mandir Sansthan, Faizpur, which was formed in 1953. By change report enquiry proceeding bearing No. 907/1980 the Charity Commissioner had passed an order on 28/10/1980 for adding 8 names to the Shri Devi Sansthan, Faizpur. The said trust is said to have undergone a change of name in 2002 and it has assumed the name of Ahir Sali Samaj Devi Mandir Trust, Faizpur.

11. I have perused the record available. The litigation prior to 2002 beginning from Regular Civil Suit Nos. 38, 40 and 42 of 1984 till 2002, were all in the name of Ahir Sali Samaj Devi Mandir Trust, Faizpur. It is quite startling to note that the Petitioner has produced a copy of certificate of registration No. 23398 dated 08/07/1953 with entry in Register of Public Trusts A-80, which establishes that there was no trust registered by the name Ahir Sali Samaj Devi Mandir Trust, Faizpur. The name of the Public Trust registered under the Bombay Public Trusts Act, 1950 was 'Shree Devi Mandir Sansthan Faizpur'.

12. Shri Kulkarni, the learned Advocate for the Petitioner has made a valiant attempt to convey to the Court that though the trust was registered by the above stated name in 1953 which name continued till 2001, the temple was famously known as Ahir Sali Samaj Devi Mandir Trust, Faizpur and therefore, the suits that were filed by the trust were in the name of Ahir Sali Samaj Devi Mandir Trust, Faizpur.

13. In the peculiar facts and circumstances as noted above, it, therefore, indicates that the trust which declared itself to be registered under the Bombay Public Trust Act and which had filed the four suits in 1984, was never a registered trust. The Certificate of Registration quoted in the pleadings of the plaintiffs, is projected that the trust was registered as Ahir Sali Samaj Devi Mandir Trust Faizpur, which pleadings were apparently untrue statements. Based on projecting that the trust was the Ahir Sali Samaj Devi Mandir Trust, Faizpur, an unregistered trust proceeded with the suits which were decreed.

14. The execution proceedings are also in the name of Ahir Sali Samaj Devi Mandir Trust, Faizpur when lodged in 1985. Even then, there was no such trust existing in the register of trust under the Bombay Trust Act. It appears that it is in this backdrop, that the original defendant who is now about 80 years of age, is consistently harping on a bogus trust having preferred the suits.

15. The Respondent submits that he has now preferred Regular Civil Suit No. 110/1986 seeking a declaration that the decree obtained in the 1984 suits, was a result of playing a fraud as a fictitious trust had approached the Civil Court. The said suit was dismissed and Regular Civil Appeal Nos. 497, 498, 499 and 500 of 2014 are pending before the First Appellate Court.

16. Though prima facie, I find on the basis of the record that there was no trust in existence by the name Ahir Sali Samaj Devi Mandir Trust, Faizpur or Shri Ahir Sali Samaj Devi Mandir Sansthan, the Appellate

Court has to deal with as to whether, the 1984 suits were decreed under misrepresentation or a fraud or the suits were not tenable. This Court ought not to entertain such disputed issues when Regular Civil Appeals are pending. Insofar as the impugned order for replacing the names of the trustees in the execution proceedings is concerned, in my view, the Appellate Court ought to be directed to decide the Regular Civil Appeals in the light of the documents which have now surfaced and are produced on record before this Court. In this backdrop, allowing application Exhibit 52 which has been rejected by the executing Court vide the impugned order, is likely to create further complications.

17. Insofar as the judgment of the learned Full Bench in *Shyamabai (supra)* is concerned, I find that the issues referred to the learned Full Bench by the two learned Single Judges of the Nagpur Bench set out in paragraph 2 of the judgment, were different and the facts emerging in those cases are distinguishable from the facts in this case.

18. This petition is, therefore, disposed off by directing the First Appellate Court to decide Regular Civil Appeal Nos. 497, 498, 499 and 500 of 2014 as expeditiously as possible and specifically deal with the effect of an unregistered trust filing four suits in the year 1984 in the light of the allegations made by the original defendant Suresh Giridhar Pardeshi. The Appellate Court would endeavour to decide the said Appeals as expeditiously as possible and preferably on or before 31/10/2020.

19. It is made clear that this Court has prima-facie considered the record made available and since the First Appellate Court will have to decide all issues raised by the Respondent Suresh Giridhar Pardeshi, the observations in this order shall not influence the First Appellate Court while deciding the Appeals.

(RAVINDRA V. GHUGE, J.)

shp/-