

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

962 FIRST APPEAL NO.3037 OF 2016 WITH
CIVIL APPLICATION NO.12130 OF 2022
IN FA/3037/2016 WITH CA/452/2021 IN FA/3037/2016
WITH FIRST APPEAL NO.3038 OF 2016 WITH
CA/453/2021 IN FA/3038/2016

MAHADEV SOMNATH SWAMI (DIED THROUGH L.RS.
BHIMASHANKAR AND OTHERS
VERSUS
SHIVALING SHIVACHARYA GURU MADIWAL
SHIVACHARYA AND OTHERS

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Mr.N.C. Swami, advocate for appellants.

Ms. Pradnya Talekar for Talekar and Associates, advocate
for respondents.

Mr.S.S. Dande, AGP for respondent/State.

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CORAM : S.G.DIGE, J.

DATE : 07.10.2022

P.C. :

. The challenge raised in these appeals is to the order passed by the learned District Judge, Latur remanding the matter to the learned Assistant Charity Commissioner, Latur (for short, "the A.C.C.").

2. Both these appeals are preferred against the common order passed by the District Judge, Latur, hence I am deciding these appeals by common order.

3. Brief facts of the case are as under :-

The respondent no.1, who was sole trustee of Shivaling Shivacharya Guru Madiwal Shivacharya (for short, "the said trust") had filed an application before the A.C.C. under section 22-A of the Bombay Public Trust Act, 1950 (for short, "BPT Act"), which was numbered as Inquiry No.398/1993 and thereby applied for recording the properties i.e. Municipal Council Ahmedpur House Nos.705, 706, 707 as trust properties. The A.C.C. allowed the said application and thereby directed that the Municipal Council, Ahmedpur House Nos.705, 706, 707 be recorded as trust properties. Being aggrieved by the judgment and order of A.C.C., the appellant preferred revision no.21/2006 under section 70-A of the BPT Act before the Joint Charity Commissioner, Latur (for short, "Jt. C.C."). The Jt. C.C. partly allowed the revision thereby quashed and set aside the order passed by the A.C.C. and remanded back the matter to the A.C.C. for fresh inquiry. Against the said order, the appellants preferred Misc. Application before the Additional District Judge, Udgir Camp Ahmedpur challenging the part of the judgment and order to the extent of remand of the matter for fresh inquiry. The District Judge passed the judgment and order thereby dismissing the Misc. Application. Against the said judgment and order, these appeals.

4. I have heard both the learned counsel for some time. After hearing the submissions of both the learned counsel, this Court pointed out to the learned counsel for the appellant that this court is going to allow appeals and if these appeals are allowed it would amount to confirm the order passed by the A.C.C. The appellant no.1A present in the court said that matters be remanded to A.C.C. for fresh hearing.

5. It is the contention of the learned counsel for the appellants that the appellants are ready to go before the A.C.C. for fresh inquiry, hence requested to remand the matters to the A.C.C.

6. The learned counsel for the respondents submitted that the appropriate orders be passed.

7. In view of the consent of both the learned counsel, the appeals are disposed of.

8. The A.C.C., Latur is directed to decide the Inquiry Application No.398/1993 afresh. Both the parties are directed to give evidence in support of their contentions if they desire. As the matter pertains to year 1993, hence the learned A.C.C. is requested to dispose of the Inquiry Application as early as possible, however, preferably within three months from the date of receipt of order of this Court.

9. All pending civil applications are disposed of accordingly.

10. The learned counsel for the respondents submits that till the decision of Inquiry Application, the appellants be directed not to make construction in the house properties. The learned counsel for the respondents further submit that after the death of original respondent no.1, change report was filed before the Deputy Charity Commissioner, Latur (For short, "Dy.C.C.") in respect of trustee of the respondent – trust. The Dy.C.C. in Inquiry Application No.803/2020 by order dated 25th June, 2021 allowed the application and hold that Kumar Rajshekhar Guru Dr. Shivling Shivacharya as trustee of the said trust but the appellants have not carried out the amendment in that regard.

11. The learned counsel for the appellants submits that the appellants have challenged the said change report before the Joint Charity Commissioner, Latur and it is pending. In my view, this Court is remanding back matter for fresh inquiry before the A.C.C. The Dy.C.C. has allowed the change report holding that Kumar Rajshekhar Guru Dr. Shivling Shivacharya is the trustee of the said trust. Whether the appointment of Kumar Rajshekhar Guru Dr. Shivling Shivacharya is legal or not is not issue before me.

It is necessary to decide whether the house properties are trust properties or not ? There is no stay order granted to the order passed by the Dy. C.C. regarding the appointment of the trustees of the respondent – trust. Hence the appellants to carry out the amendment adding Kumar Rajshekhar Guru Dr. Shivling Shivacharya as trustee of the said trust.

12. The learned counsel for the appellants submits that he will carry out the amendment by Monday.

13. The appellants shall not carry out construction in the house properties till the decision of the pending Inquiry Application.

[S.G.DIGE]
JUDGE

SGA