IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 548 OF 1998
WITH
CIVIL APPLICATION NO. 6452 OF 1998

1. Vasantrao s/o Dagajirao Patil,
age 52 years, Occu. Agri. ,
Died his Lr. as per order dtd. 13.09.2007.
2. Satishkumar s/o Vasantrao Patil,
age 32 years, Occu. Agri,
Both r/o Virdel, Post Virdel,
Tq. Sindkheda Dist. Dhule ... **APPELLANTS**
(ORI. RESPONDENTS)

VERSUS

1. Bhilajirao s/o Sampatrao Deokar,
age 80 years, occu. Agri.
...deleted as per order dtd.13.09.2007.
2. Ajabsing s/o Sardarsing Girase.
...deleted as per order dtd.15.06.2016.
3. Jaywantrao s/o Wamanrao Patil,
age : 40 years occu. Agri.
4. Arvind s/o Brijlal Patil,
age 34 yrs, occu. Agri.,
All r/o Virdel, Post : Virdel,
Tq. Sindkheda, Dist. Dhule.
5. Charity Commissioner,
Maharashtra State, Dharmada
Ayukta Bhavan, Worli Naka,
Worli, Bombay-18.

6. Jijadevi Dagajirao Patil (expired)
Age : 70 years, Occ. Nil, R/o Virdel
Tq. Sindhkheda , Dist. Dhule. **...RESPONDENTS**
(ORI. APPLICANTS)

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Advocate for the Appellants :- Mr. Vivek Dhage
Mr. M. H. Patil for Applicant No.2 (in CA No. 6452/1998)
Respondent Nos. 1 and 2 : Deleted
Advocate for the Respondent No. 3 : Mr. A. D. Shinde

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 19.12.2022
PRONOUNCED ON : 09.03.2023

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JUDGMENT :

The Appellants have preferred this appeal against the judgment dated 02.03.1998 in Civil Appeal No. 209/1985 passed by 2nd Additional District Judge, Dhule in an application under Section 72 of the Bombay Public Trust Act, 1950 which was filed by the present respondents.

2. The background facts are summarized as under :

The present dispute is in respect of a temple known as Vitthal Mandir situated at village Virdel. The appellants are claiming that it is a private property of themselves, whereas the respondents are claiming that the said Vitthal Mandir is of public character and it has to be registered as public trust under the provisions of the Bombay Public Trust Act. Initially the respondents filed application before the Assistant Charity Commissioner, Nashik being a trustee of the said temple for registration of the said Mandir is of public trust. The respondent Nos.1 to 4, out of which some of are no more, had contended that registration of trust in respect of said Mandir was necessary to maintain the temple and carry out the 'Puja-Archa' and also for making arrangement of marriages for financially backward people of the village. According to them, the temple was shown as Grampanchayat House No. 1 in the records. After receiving such application, the learned Assistant Charity Commissioner initiated enquiry under Section 19 of the Public Trust Act by issuing public notices. Appellant No. 1 had an objection for such registration and claimed that it was a private property of his forefathers and himself. The learned Assistant Charity Commissioner, during the enquiry, recorded evidence from both the sides and ultimately upheld that the aforesaid Vitthal Mandir at Virdel constitutes a public trust, requiring registration under the provisions of the Act.

3. Against that decision of the Assistant Charity Commissioner, the appellants and respondent No. 6, who is also no more, has preferred appeal before the Deputy Charity Commissioner, Bombay and the Deputy Charity Commissioner, vide his judgment dated 31.05.1985, set aside the decision of Assistant Charity Commissioner and held that the aforesaid Mandir does not constitute a public trust requiring registration, since the land of the same was still in the name of present appellants. Against this decision of the Deputy Charity Commissioner the respondent Nos. 1 to 4 had preferred appeal before the learned District Judge, Dhule as aforesaid, who upheld the decision of Assistant Charity Commissioner by setting aside the judgment dated 31.05.1985 passed by the Deputy Charity Commissioner in Appeal No. 4/1984. Hence, this appeal.

4. The learned counsel for the appellants submits that the appellants are owners of the property on which the temple is constructed, and therefore, the temple has not acquired the character of public nature. He pointed out various contrary inferences drawn by the learned Assistant Charity Commissioner whereby it was wrongly held that the said

Vitthal Mandir is of public nature. He further pointed out that the learned District Judge ignored the fact that there was no pleading in the original application filed by respondent Nos. 1 to 4 before the learned Assistant Charity Commissioner as regards the dedication of the temple to public at large and alleged contributions in funds by the public in constructing the said temple. He supported the judgment of the Joint Charity Commissioner whereby the private nature of aforesaid Vitthal Mandir was protected. He relied on the following judgments :-

(i) Rajasthan State TPT Corpn. And another Vs. Bajrang Lal, 2014 AIR SCW 2058,

(ii) State of Orissa & Anr. Vs. Mamata Mohanty, 2011 AIR SCW 1332,

(iii) Md. Sukur Ali Vs. State of Assam, 2011 AIR SCW 1352,

(iv) Central Bank of India, Bombay Vs. Sion Bakers and Confectioners Private Ltd. ,2008(5), Mh.L.J.772.

(v) Hari Bhanu Maharaj of Baroda Vs. Charity Commissioner, [1987 Mah.LR 106],

(vi) Maruti Shripati Dubal Vs. State of Maharashtra, [1987 Mah.LR 114],

5. On the other hand, learned counsel for the contesting respondents namely respondent Nos. 1 to 4, strongly opposed the submissions made on behalf of the appellants. He pointed out that there are various admissions given by appellant No.1 and his witnesses and therefore, the facts which were admitted by the appellants and his witnesses need not to be proved by separate pleadings. He further submitted that there are so many admissions on the part of the appellants whereby it is admitted that 'Pujari' was appointed by the villagers. Moreover, the villagers had in fact contributed in the construction of temple by way of money and kinds. The evidence to that effect has also been led by the villagers. Besides the oral evidence there is also documentary evidence on record which shows that the contesting respondents were acting as trustees and the temple was getting certain funds from local authority i.e. Grampanchayat. As such, he pointed out that this circumstance on record has established beyond all the reasonable doubts that the Vitthal Mandir achieved character of public nature and required to be registered as a public trust.

6. With the assistance of learned counsel for the rival parties, I went through the impugned judgment along with the judgments passed by the learned Assistant Charity Commissioner as well as learned Deputy Charity Commissioner. Also perused the record and proceedings of the First Appeal No. 548/1998.

7. The main dispute in this appeal is that whether the Vitthal Mandir in question was private property of the appellants or it has acquired the character to public nature. On perusal of the judgment, it appears that the learned District Judge has decided the appeal in the light of certain tests laid down by Honourable Apex Court in the judgment in the case of ***Goswami Shri Mahalaxmi Vahuji Vs. Rannchhoddas Kalidas and others*** reported in ***A.I.R. 1970 Supreme Court, 2025.*** The tests are reproduced as follows :-

> *"(1) Is the temple built in such imposing manner as it may prima-facie appear to be a public temple ?*
> *(2) Are the members of the public entitled to worship in that temple as of right ?*
> *(3) Are the temple expenses met from the contributions made by the public ?*
> *(4) Whether the sevas and utsavas conducted in the*

temple are those usually conducted in public temples ?
(5) Have the Management as well as the devotees been treating that temple as a public temple ?"

8. This Court in case of ***Maltibai and others vs. Shankarrao and others*** reported in ***2015 DGLS (Bom.) 898***, has observed in paragraph 14(4) as follows :

"14(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

Further, this Court has referred certain tests as laid down by the Honourable Apex Court in the case of Radhakanta Deb and another in para No. 14 as under :

"*Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature :*
(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right :
(2) The fact that the control and management vests

either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance when the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large.

(3) Where, however, a document is available to prove the ature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive, properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature".

09. On going through the aforesaid observation of the Honourable Apex Court, it appears that these tests are sufficient guidelines to determine whether the endowment is a private or a public nature. It is extremely important to note that these guidelines for determining the aforesaid question, must be considered in the light of facts of each case. As such, the evidence led in this matter by the rival parties before the learned Assistant Charity Commissioner is of extreme importance to determine the present controversy. It appears that the respondents had examined six witnesses before the

learned Assistant Charity Commissioner and also produced certain documents which were exhibited there and relied on before the learned District Judge. As against this, the appellant's side has examined three witnesses.

10. The origin of the Vitthal Mandir appears to be too old and it relates back to the period before obtaining the Independence. It can be said that the existence of temple is from around 1927. Therefore, the entire evidence on record needs to be scrutinized carefully to ascertain the nature of Vitthal Mandir, whether public or private.

11. Admittedly, it appears that the land on which the Vitthal Mandir is situated, had been purchased by the ancestor of appellant Lahu Chimnaji, as per the sale-deed produced on record which appears to be of 1882. However, there appears dispute as to who constructed the temple, since there is no documentary proof for the same filed by either of the parties. However, it is not in dispute that the said Mandir in the Grampanchayat record has been recorded as House No.1 of Vitthal Mandir and there was no tax levied on the same. So far as the oral evidence in respect of

construction of the temple is concerned, the witnesses of respondents have stated in contradiction with each other. Some of them are saying that they heard that construction of the temple was made by villagers. Some of them especially P.W.2 -Daulat Sing stated that since the Mandir was in dilapidated condition, after collecting the funds, the Mandir was constructed. He claimed that he had given certain contribution in kinds and according to him, the Mandir was re-constructed in the year 1927-28. There was no stone affixed in the temple showing when it was built by Lahu Chimnaji out of his own funds and it was only suggested that the said Mandir was property of Lahu Chimnaji. P.W. 3 Shivdas had also stated that the Mandir was built 50 years ago by collecting the contribution from the villagers. The witness Gajmal Chatur Patil had also stated that the temple was built before 40 to 50 years back and he contributed cotton in kind. According to him he had paid Rs. 20/- in cash and also supplied cotton as well as bricks about 3,000 to 4,000. Though there is no documentary evidence as regards the contribution made by these witnesses and the villagers, but it can be seen that all these witnesses are old aged persons and had deposed as to what had happened at the time of construction of the Mandir.

12. As against this, according to appellant No. 1 and 2 Vasantrao and Satishkumar, the Mandir was built many years ago by their grand father Lahu Chimnaji, but definitely at that time they were not there. Though it is nowhere contended by Vasantrao that Mandir was built by collecting contribution from the public and his witnesses also contended the same, but one thing is admitted that there is no documentary evidence on record to show that from either of the parties in respect of the construction of the temple. Therefore, some other aspects are to be considered to determine the nature of the aforesaid Vitthal Mandir.

13. One of the tests, to determine the nature of Vitthal Mandir is that whether there was a dedication of the temple property to the public at large. It has already on record that temple is open for all and everybody is going for 'darshan' and offering ‘Puja’. The appellants never raised any objection or put condition on the public at large in respect of offering 'Puja' and taking ‘darshan’. Thus, public at large were doing such activities as of right since long. This fact is also

admitted by appellant No.1 in his deposition that the Mandir is opened to public at large overnight. Further xerox copy of one newspaper dated 15.10.1955 is on record filed before the learned Assistant Charity Commissioner during the pendency of enquiry under Section 19 being case No.512/1980. Though the same is not admissible, but it appears relevant. According to the said document, Harijans had made efforts for entering into the said Vitthal Mandir in the year 1955 and at that time Manager of temple Smt. Jijabai i.e. present respondent No. 6 had welcome to them and also offered tea and snacks to them. This conduct on the part of Jijabai clearly indicates that there was no stipulation from the appellants as regards visits to the temple by public at large.

14. Now, I come to some documentary evidence on record to ascertain the nature of Vitthal Mandir. The record shows that in the year 1963, precisely on 03.09.1963 Assistant Charity Commissioner, Pune had issued one notice addressed to present respondent No. 1 Bhilajirao treating him as one of the trustee whereby he was called upon to make submissions as to why the aforesaid Vitthal Mandir should not be registered as a public trust. Admittedly, the said notice

was not acted upon by Bhilajirao, but one another notice dated 04.11.1963 issued by present appellant No.1 -Vasantrao in capacity of Grampanchayat Sarpanch of the Virdel village for calling public meeting in front of the Vitthal Mandir for appointment of the trustees of the same is on record. It is absolutely important to note that the issuance of such notice has been admitted by Vasantrao in his cross-examination and therefore, it was included in his evidence. Though the said notice is also not acted upon by Vasantrao and trustees were not appointed in respect of the Vitthal Mandir, but the issuance of such notice clearly indicates that as to what was there in the mind of Vasantrao. It can also be interpreted that he was also desirous of handing over the temple to public at large. This aspect can be taken as dedication of the properties to public at the hands of the appellants. Though this aspect is opposed by the appellants on the ground that despite such notice the property of temple remains undedicated, but this incident can also be taken to consider the aspect of dedication. Further, the issuance of said notice by Vasantrao was not in his private capacity, but in capacity of Sarpanch of village Virdel and therefore, it can safely be inferred that Vasantrao must have issued the said notice as there was demand from the villagers to that effect. Further, though the property of Vitthal Mandir was of private nature, but the documents on record indicates that in the year 1951-1952 there were trustees of Vitthal Mandir including respondents Bhilajirao, Jagannathrao and one Damodar Haraklal being described as village Panch (Gao Panch Mandali of Vitthal Mandir). Significant to note that Vasantrao's brother Jagannathrao was also included in this Pancha Mandali. Had it been the private property of appellants then certainly there could not have such inclusion of Bhilajirao and Damodarrao Haraklal in panch Mandali of Vitthal Mandir. It is significant to note that appellant No. 1 - Vasantrao was holding post of Sarpanch of Grampanchayat village for 35 years i.e. from 1954 to 1979, and therefore, holding such posts in panch Mandali of Vitthal Mandir by Bhilajirao and Damodarrao in addition to Vasantrao’s brother Jagannathrao certainly speaks that the other members of village were also managing the affairs of the said Vitthal Mandir. Thus, this aspect is also one of the aspects of the dedication of the property of Vitthal Mandir to villagers. Further, it appears that there is no property tax levied on the said Vitthal Mandir since long. Even the witness Bhilaji on behalf of the appellants has deposed that no taxes levied on Vitthal Mandir, but the tax was levied on other Radhakrishna Mandir since it was belonging to a private person. This is also one of the characteristics of a public endowment as it has come in the evidence of Bhilaji that only private properties are susceptible to levy of taxes.

15. It is extremely important to note that there was one document at Exhibit 40 in the form of resolution passed by the Virdel Grampanchayat on 20.09.1963 whereby it is evident that certain articles belonging to Grampanchayat, Virdel which is to be used as construction material was donated to the Vitthal Mandir by the concerned society. It is specifically stated that the said building material was given to the trustees of Vitthal Mandir. Though this resolution has been denied by appellant No.1 -Vasantrao during the course of evidence, but nothing is argued by him as regards to this resolution. Thus, considering this resolution, it appears that the temple was treated as dedicated to the public at the relevant time. Further, there are also documents on record showing that Mushayra of Rs. 3.50 was given to said temple by government. The document clearly indicates that government had sanctioned amount of Rs. 3.50 to Vitthal-

Rukhmai Mandir of Virdel and the said amount was actually paid to the Mandir for three years. It is significant to note that the appellant -Vasantrao was the Sarpanch of village Virdel at the relevant time and there was no resistance on his part for such receipts. Thus, it can be a good example of dedication of the temple to the public.

16. Further, it appears that the Vitthal Mandir is situated not in the house property of the appellants, but at distinct place which is separate from the house of appellants i.e. at the distance of 150 ft. Thus, it clearly indicates that the appellants are residing separately from the said Mandir. Moreover, though there is evidence that the aforesaid Vitthal Mandir is not built in the manner in which normally the other temples are built that means no 'Kalas', no place of 'Pradakshina' or existence of 'Garbhgriha', but considering the documents on record, it is being treated as temple since long. Moreover, the absence of aforesaid facts cannot confer any status to the Mandir being private place. Further, it has been already held by the Hon’ble Apex Court in various judgments referred in the course of argument that a dedication of endowment may be made oral or can be

inferred from the conduct or from the given set of facts and circumstances if there is no document to evidence the dedication to the public.

17. Therefore, what emerges from the entire evidence on record that there is no conclusive evidence on record that the appellants during the lifetime were managing the suit temple privately. Moreover, the said Mandir had also received donation from Grampanchayat, Virdel in respect of the building material worth Rs. 400/- from Vividh Karyakari Seva Society especially when appellant No.1 was the Sarpanch of Grampanchayat Virdel. The extract of Grampanchayat on record also indicates that there were trustees for the said Vitthal Mandir in the year 1951-1952 inclusive of other members of the village along with the brother of appellant No.1. Further, certain government grants were also received by that Vitthal Mandir. Moreover, appellant No. 1 in capacity of Sarpanch had also executed the certain rent receipts in respect of the shop situated in the premises of Vitthal Mandir. The notices issued by appellant No.1 in the year 2003 for appointment of the trustees of the said Vitthal Mandir also indicated dedication of Vitthal Mandir to public at large. It is significant to note that the temple is open to all

and no stipulations are made in respect of offering 'Puja' and 'Darshan' upon the visitors by the appellants. As such, though the learned counsel of the appellants relied on the observations of Honourable Apex Court as well as this Court in support of his submissions as mentioned above, but the tests which are laid down by the Hon'ble Apex Court in the judgments cited (supra), which are relied by the respondents appear to have satisfied by the respondents for treating the aforesaid Vitthal Mandir as a public property. Therefore, I find that the learned District Judge has rightly appreciated the evidence on record and upheld the decision of learned Assistant Charity Commissioner for registering the suit temple as a public trust.

18. In view of the same, following order is passed :

ORDER

(i) The present appeal being devoid of merit stands dismissed.

(ii) Pending Civil Application, if any, also stands disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

shp/-