

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3351 OF 2023
IN FIRST APPEAL NO. 367 OF 1995

MADHUSUDAN RANGNATHBUWA GOSAWI
VERSUS
CHARITY COMMISSIONER M.S. BOMBAY AND OTHERS

...
Mr. N.K. Tungar – Advocate for Applicant
Mr. D.R. Kale – GP for Respondent, State
Mr. A.S. Kulkarni h/f. Mr.A.M. Dabir – Advocate for
Respondent No.3
Mr. V.D. Salunke – Advocate for Respondent No.7
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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 14th March, 2023

PER COURT :

1. The learned counsel - Mr. V.D. Salunke tendered across the bar affidavit-in-reply of respondent no.7. Taken on record. Copy furnished to other side.
2. The learned counsel – Mr. S.S. Thombre submitted that, Mr. N.K. Tungar can go with the Civil Application No. 3351 of 2023. As such, the appearance of Mr. S.S. Thombre – learned counsel stands discharged from this application.

3. Heard rival submissions from the respective learned counsel of the contesting parties. At this juncture the learned counsel for the applicant is seeking interim relief only respect of prayer clause – B, whereby the applicant wants to restrain the Sansthan Shri Eknath Maharaj Vishwastha Mandal trust from arranging Dahihandi Kala through it outside the Temple as per schedule of program declared (Exhibit C) by the Trust which is to be held on 15th March, 2023 as the same is against the guidelines and orders passed by this Court in Appeal No.1628 of 1969 dated 1st February, 1978 and in the Civil Application No. 5887 of 1995 in First Appeal No. 367 of 1995 dated 2nd April, 1997.

4. According to the applicant under order dated 1st February, 1978 this court has declared that, the plaintiff/respondent no.1 Laxmibai is the said application and the other descendants of Sant Eknath Maharaj from Paithan have right to perform Puja, Abhishek, to lit lamps and to perform all religious and customary ceremonies and also to take offerings, donations and gifts to upkeep and maintain

inner as well as outer temple according to their turns. The applicants also claimed that vide order dated 2nd April, 1997 this court has made it clear that if any major decision is to be taken by the Board of Trustees, the same shall be taken only with the consultation and approval from Joint Charity Commissioner, who shall after hearing the persons interested to take appropriate decisions.

5. In view of the same, learned counsel for the applicant submits that, the respondent no.7 - Trust is going to perform Dahihandi Kala on 15th March, 2023, as undertaken in the schedule Exhibit - C in contravention with the aforesaid order and therefore it should be restricted from doing so.

6. On the contrary, the respondent no.7 by filing affidavit-in-reply strongly opposed the application mentioning that, the Trust is not interfering with any right of applicant or other descendants of Sant Eknath Maharaj as conferred under the aforesaid two orders of this court. According to the respondent no.7 it was decided in the year 2020 by way of resolution dated 15th February, 2020 to hold the Dahihandi Kala outside

the temple only for the convenience of common man and therefore the tradition holding like a function which is to be held on 15th March, 2023 started and it is being continued every year since then without any objection. Learned counsel for the respondent no.7 clarified during the course of argument that, the Trust is not accepting any donations or offerings from the public at large for conducting such function which is being performed outside the temple premises.

7. Though the learned counsel for the applicant denied the fact that such function being held every year after 2020 but the respondent no.7 has stated on oath about conducting such function. Moreover, it appears that the said function in respect of Shri Nath Shashti Mahostav has been started from 13th March, 2023 and the applicant is seeking restriction only to the function of Dahihandi Kala which is to be performed on 15th March, 2023.

8. Admittedly, court is having every right to restrict any person from disobedience in respect of its order earlier passed, but it is equally important to note that the respondent no.7 is

holding such program outside the temple premises and it is being conducted every year after 2020. Moreover, it has been clarified by the respondent no. 7 - Trust that they are not acting contrary to the rights of applicant or any other descendants of Sant Eknath Maharaj and the same are kept intact. In addition to that, the learned A.G.P. also made statement before this court that, such program is being conducted by the respondent no.7 in presence of the representative of Government such as Tahsiladar as well as Additional Collector. Moreover, there is also resolution passed by the respondent no.7 on record which indicates that, since year 2020 such program is being conducted for the convenience of common man and that too outside the temple premises. Most important to note that the respondent no.7 – Trust has candidly admitted the rights of applicant and other descendants of Sant Eknath Maharaj in its reply itself and has assured that he would not touch or infringe any right of the applicant and other descendants conferred upon them by the aforesaid orders.

9. In view of the same, prima-facie I do not see that it is case of granting relief in terms of prayer clause - B in favour of the applicant. As such, the relief in terms of prayer clause – B, which is claimed by the applicant at this juncture stands rejected.

[SANDIPKUMAR C. MORE]
JUDGE

Pooja K.