

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

WRIT PETITION NO.4365 OF 2019

**CHANDRAKANT DEVIDASRAO DESHPANDE
VERSUS
DINKAR JANARDHANRAO KOKIL AND OTHERS**

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Advocate for Petitioner : Mr. Amol K. Gawali
AGP for Respondent Nos.2 & 3 : Mr. S.R. Yadav Lonikar
Advocate for Respondent No.1 : Mr. P.D. Dadpe

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 03rd JULY, 2023

PER COURT :

1. At the outset, learned advocate for petitioner restricts his petition only to the extent of prayer clause 'A'.
2. Petitioner is aggrieved by the order dated 04/08/1981, passed by the Deputy Charity Commissioner (with appellate powers), Maharashtra State, below Exhibit-1 in Appeal No.08/1978.
3. Petitioner filed appeal under Section 70 of the Bombay Public Trusts Act, 1950, challenging the findings recorded by the Assistant Charity Commissioner, Aurangabad Region, Aurangabad, by order dated 13/06/1972, in Application No.13/1971 filed under Section 28 of the Bombay Public Trusts Act, 1950. The appeal is filed by petitioner on 18/01/1970. Since there was delay of six years, in absence of delay condonation application, the Deputy

Charity Commissioner has held that the appeal is barred by limitation and therefore, not maintainable.

4. It is the case of petitioner that though property House No.1691 was given to the share of Tukaram Pant Kokil in family arrangement prior to 1953, in 1970-1971 Tukaram Kokil transferred the said house in the name of his daughter, Padmavati Devidasrao Deshpande, i.e. mother of present petitioner. The said transfer is recorded in the municipal record. In 1972, respondent No.1 filed Application No.13/1971, under Section 28 of the Bombay Public Trusts Act, seeking registration of Shri Ram Mandir at mauje Kasba, Taluka and District Osmanabad. He also applied to register Municipal House Nos. 1690, 1601, 1691 and 1691/1 as the Trust properties. Padmavati Devidas Deshpande was not made party to the said application. By order dated 13/06/1972, the Assistant Charity Commissioner, Aurangabad, after holding inquiry registered the Trust known as Ram Mandir as per Section 28 and issued certificate in favour of respondent No.1. House Nos.1690, 1601, 1691 and 1691/1 were shown as Trust properties.

5. It is further case of the petitioner that claim of respondent No.1 was based on Muntakhab which was originally in Urdu language and was translated in English. The said Muntakhab, according to petitioner, does not reflect the suit property i.e. House

No.1691. Pursuant to the order passed by Assistant Charity Commissioner, house property of the petitioner was also shown as property of Trust in Schedule 'B'.

6. Respondent No.1 applied to the City Survey Department for entering name of Ram Mandir Trust to the properties of the Trust mentioned in Schedule 'B', including the suit property. During the course of inquiry by the said department, notice was issued to Padmavati Deshpande who objected to the amendment to the city survey record. Her objection was turned down and name of the Trust was recorded to the suit property on 24/02/1978. During the course of inquiry before City Survey Officer, for the first time Padmavati Deshpande came to know about order dated 13/06/1972, passed by the Assistant Charity Commissioner, thereby recording the suit property in Schedule 'B' of the Trust. She, therefore, preferred Appeal No.08/1978 before the Charity Commissioner, Mumbai. Delay of six years caused in filing the appeal by Padmavati Deshpande, is refused to be condoned by the Deputy Charity Commissioner. Hence, the present petition.

7. Heard learned advocate for petitioner, learned advocate for respondent No.1 and learned Assistant Government Pleader for respondent Nos.2 and 3. Perused the memo of writ petition, annexures thereto, impugned order, affidavit-in-reply filed by

respondent No.1 and the citations relied upon by the learned advocates for respective parties.

8. It is evident from record that Padmavati Deshpande, mother of the petitioner, was not made party to Application No.13/1971, though she was owner of the house bearing No.1691, which she claimed that her father had transferred in her name. In these peculiar facts, this Court is of the view that the Deputy Charity Commissioner ought to have entertained the appeal on merits as petitioner's valuable right in the property is involved.

9. It appears that since Padmavati was not made party to the application of Trust and when for the first time she came to know about inclusion of her house property in Schedule 'B' of the Trust, she has immediately moved the appellate authority by filing appeal challenging order passed by the Assistant Charity Commissioner, the delay in these facts is liable to be condoned. Petitioner has given explanation of delay in paragraph No.2 of her appeal, but the same is not properly considered by the appellate authority.

10. Learned advocate for petitioner is right in relying on ***M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and Others, AIR 1993 SC 802***, wherein the Hon'ble Supreme Court has held:-

"13. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches."

The said decision supports the case of petitioner.

11. In the result, writ petition is allowed. Impugned order dated 04/08/1981, passed by the Deputy Charity Commissioner (with appellate powers), Maharashtra State, below Exhibit-1 in Appeal No.08/1978, is hereby quashed and set aside, subject to the petitioner paying cost of Rs.10,000/- to respondent No.1 before the Charity Commissioner.

12. Respondent No.2 shall expeditiously decide the appeal on merit.

(NITIN B. SURYAWANSHI, J.)