

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

CIVIL APPLICATION NO.4401 OF 2022

Shashikant s/o Suryakantbuwa Jahagirdar,
Age : 74 years, Occu.: Retired,
R/o.: Nath Galli, Paithan,
Presently r/o.: 2-4-18, Mill Colony,
Aurangabad, District : Aurangabad. APPLICANT

VERSUS

1. Raghunathbuwa s/o Narayanbuwa Gosawi,
Age : 57 years, Occu.: Agriculture,
R/o.: Nathi Galli, Paithan,
Tq. Paithan, District : Aurangabad
 2. Rangnathbuwa Bhanudasbua Gosavi,
(Died), Through LRs.:
 - 2A) Madhusudan s/o Ranganathbuwa Gosavi,
Age : 73 years, Occu.: Agriculture,
 - 2B) Venumadhav s/o Ranganathbuwa Gosavi,
Age : 71 years, Occu.: Agriculture,
 - 2C) Haripandit s/o Ranganathbuwa Gosavi,
Age : 64 years, Occu. : Agriculture,
 - 2D) Meghasham s/o Rangnathbuwa Gosavi,
Age : 61 years, Occu.: Agriculture
- All R/o.: Nath Galli, Paithan,
Tq. : Paithan, District : Aurangabad
3. The Charity Commissioner,
Maharashtra State,
83, Dr. Annie Basant Road, Mumbai,
Through : Jt. Charity Commissioner,
Aurangabad

4. Bajirao Keshavrao Bare
(Deleted as per order dt. 01/02/2023)
5. Shrikrishna s/o Bhagawatbuwa Gosavi,
Age : 52 years, Occu.: Service as Music Teacher,
Potdar International School,
Near Shahanoormiya Darga,
Garkheda, Aurangabad
Orig.R/o.: Nath Galli, Paithan,
Tq. Paithan, District : Aurangabad
Now residing at Flat No. 502,
Pushkaraj Residency, Ulkanagari,
Aurangabad, Tq. & Dist.
Aurangabad ... RESPONDENTS

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Senior Advocate for Applicant : Mr. Rajendrraa Deshmukh a/
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Mr. Shriram Deshmukh i/b Mr. Devang R. Deshmukh
Senior Advocate for Respondent No.1 : Mr. V. J. Dixit i/b
Mr. A. S. Kulkarni

Advocate for Respondent Nos.2A to 2D : Mr. S. S. Thombre

AGP for Respondent No.3-State : Mr. B. V. Virdhe

Advocate for Respondent No.5 : Mr. Anuj A. Fulfagar h/f
Mr. P. R. Katneshwarkar

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 16/02/2023

PRONOUNCED ON : 24/02/2023

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ORDER :

1. The applicant - Shashikant Suryakantbuwa Jahagirdar
being one of the descendants of Shri Saint Eknath Maharaj is
seeking direction for receiving turn of Pooja of the outer Nath
Temple, situated at Paithan from Falgun Vadya Navmi of the

year 2022 i.e. from 26/03/2022. Initially, the turn of Pooja known as Sal-Pali has been claimed by the applicant from present respondent No.1 - Raghunathbujwa s/o Narayanbuwa Gosawi, who is also one of the descendants of Saint Eknath Maharaj. However, during pendency, the applicant by way of amendment and under prayer clause-CC sought direction to added respondent No.5 - Shrikrishna s/o Bhagwatbuwa Gosavi to hand over Sal-Pali of outer Nath Temple to him with immediate effect, as during pendency of this application respondent No.2C - Haripandit Rangnathbuwa Gosavi unauthorisedly and illegally handed over the said Sal-Pali to respondent No.5.

2. According to the applicant, he represents branch comprising of himself, Vasudeo and Prasad being the descendants of Saint Eknath Maharaj. The Sal-Pali of the temples concerned, was to be handed over to the applicant and his branch from 26/03/2022 since the tenure of respondent No.1 was supposed to expire on 25/03/2022 as per various orders passed by this court in this matter. However, the applicant learnt that respondent No.1 in connivance with respondent No.2C, was not likely to hand

over the charge of the temples to the applicant and therefore, in apprehension of violation of his hereditary right to perform Pooja as per his turn, the applicant filed this application for the prayers mentioned therein. According to the applicant, the handing over of charge was supposed to be from Falgun Vadya Navmi falling on 26/03/2022, but during the pendency, respondent Nos.1 and 2C did not hand over the turn of Pooja of outer Nath Temple to him, his brother Vasudeo and cousin -Prasad but respondent No.2C-Haripandit handed over the turn of Pooja to subsequently added respondent No.5- Shrikrishna and therefore, this application.

3. On the contrary, respondent No.1 vide his affidavit in reply dated 27/06/2022 strongly opposed the application and claimed that past many centuries in the family of Shri Saint Eknath Maharaj the Sal-Pali has been done by his descendants in respect of two temples i.e. one is Inner Temple where Eknath Maharaj used to live and other is Outer Temple where Samadhi of Saint Eknath Maharaj is situated. He claims that Eknath Maharaj had one son namely Hari Pandit, who had three sons namely Pralhad, Meghashyam

and Raghoba. Thereafter, the branch of Pralhad got extinguished after sixth generation i.e. after Shri Dadaji and thereafter the Sal-Pali started rotating between remaining two branches of Meghashyam and Raghoba for every year. Respondent No.1 claims himself as only surviving member of Raghoba's branch and claimed that he is entitled for Sal-Pali after every alternate year traditionally on the day of Falgun Vaidya Navmi. He also referred various orders passed by this court earlier in this matter. He claims that there was *interse* dispute between branch of Meghashyam to which he has no concern. According to him, he only followed the order dated 28/03/2018 in Civil Application No. 3642 of 2018 in respect of para Nos.5 clauses (a) to (f) which remained intact even after recalling of the aforesaid order. Thus, he claims that he is entitled for his turn of Pooja i.e. Sal-Pali from Falgun Vaidya Navmi of this year i.e. falling on 16/03/2023.

4. To the reply of respondent, the applicant filed affidavit in rejoinder and thereby denied right of respondent No.1 to continue with Sal-Pali since the branch of Raghoba got extinguished in the year 1951 itself and respondent No.1 being the adopted son, is not entitled for any Sal-Pali.

However, the adoption of respondent No.1 has been accepted in the judgment of Hon'ble Apex Court and therefore, the contention raised by the applicant in the affidavit of rejoinder disputing the right of respondent No.1 is not having any force in the present situation.

5. On the other hand, the added respondent No.5 also strongly opposed the application and contended that he exercised his Sal-Pali in the year 2009 -2010 in respect of Outer Samadhi Temple and his next turn came in the year 2022-2023 as per the internal arrangement and therefore, he is having every right to exercise his turn of Pooja at present till Falgun Vadya Navmi of 2023. According to him, the applicant's turn of Sal-Pali would come in 2026-2017 and therefore, the application needs to be dismissed. He claimed that the applicant was given Sal-Pali in March 2021 but under order dated 24/06/2021 passed by this Court in C.A. No.4577 of 2021 it was taken back and handed over to respondent No.1. According to him, as per the decision of the Hon'ble Apex Court, respondent No.1 Raghunathbuwa will be entitled for Sal-Pali after every alternate year and for the remaining alternate years, all the legal heirs of Meghashyam

namely Madhusudhanbuwa, Shashikant and Prashant, Chhayabuwa, Nandkishor and himself, Vithalbuwa and Chaitanya will be entitled as per their *interse* rotation. The rotation which has been given by him moves in the manner i.e. Madhusudhanbuwa thereafter Shashikant and Prashant, thereafter Chhayabuwa then Shrikrushna and Nandakishor then Vithalbuwa and Chaitanya and in the next rotation Madhusudhan, Janardhan Bhagwat, Nandkishor Shrikrushna, Madhusudhan then Shashikant Prashant then Vithalbuwa, Chaitanya and so on. It is specifically claimed by respondent No.5 that Shashikant and Prashant got Sal-Pali of Inner Temple and Outer Temple in the year 1999-2000, 2003-2004, 2007-2008, 2011-2012, 2016-2017 until now and they will get further Sal-Pali in the year 2026-2027, 2034-2035 and so on. Thus, he claims that as per the aforesaid rotation, he is holding Sal-Pali of Outer Temple along with Nandkishor upto Falgun Vadya Navmi of the year 2023.

6. To the affidavit in reply of respondent No.5, the applicant opposed by filing affidavit in rejoinder disputing the internal arrangement table as claimed by respondent No.5

and reiterated how he is entitled for turn of Pooja in the present year till Falgun Vaidya Navmi falling on 16/03/2022.

7. With the able assistance of the learned counsel for the rival contesting parties, I have gone through the entire material on record.

8. Though the present dispute is having history of almost 50 years, but since the dispute involved in this application, is in respect of only turn of Pooja i.e. known as Sal-Pali in respect of outer and inner temples of Saint Eknath Maharaj, the detail history of litigation is not mentioned. Further, this court under order dated 28/03/2018 in C.A. No. 3642 of 2018 has directed that the Sal-Pali is to be rotated as per the direction under clause (a) to (f) in para No.5. Even though the said order has been set aside by subsequent orders but the interim arrangement done by this court as directed under clause (a) to (f) remained intact till final disposal of C.A. No. 3642 of 2018. Therefore, the parties and the descendants of Saint Eknath Maharaj are bound by the aforesaid directions in respect of the Sal-Pali.

9. It appears that First Appeal No.28 of 1996 is pending for final adjudication, which has arisen from the decision rendered in Trust Suit No. 2 of 1974, which was pertaining to removal of trustee and for framing scheme in respect of Shri Saint Eknath Maharaj Trust, Paithan. It can be seen from the record that there are various applications made by the parties in the aforesaid appeal as regards turns of Pooja (Sal-Pali). This court from time to time, has passed various orders but the directions under clause (a) to (f) in para 5 of the order dated 28/03/2018 remained intact. Thus, the dispute of Sal-Pali is to be governed strictly under those directions.

10. The learned senior counsel for the applicant demonstrated as to how the applicant is entitled for turn of Pooja for the period starting from Falgun Vadya Navmi of 2022 up to Falgun Vadya Navmi of 2023. According to him, there is no dispute that the turn of Pooja is to be performed by descendants from branch of Meghashyam and Raghoba for alternate year. According to him, the branch of Meghashyam is also divided in two sub-branches, one originating from common ancestor Krushnaji and other from Narayan. He submitted in writing that the present turn of Pooja is to be

performed by sub-branch of Krushnaji since respondent No.2A to 2D are not coming with the case that this turn belongs to sub-branch of Chhayabuwa. He also relied on the reply of respondent No.5, wherein there is an admission that the turn of applicant would come after every four years. He pointed out that the *interse* arrangement between the descendants from Meghashyam branch as given by the respondent No.5 has no support and so called theory of rescheduling of turn of Pooja is only a fiction. Further according to him, respondent No.1 has no locus to oppose this application since his turn after alternate year is kept intact and he has nothing to do with the *interse* dispute between branch of Meghashyam.

11. The learned senior counsel for respondent No.1 also submits that as per the arrangement done by this court, his client respondent no.1 would get turn of Pooja in respect of outer and inner temple of Saint Eknath Maharaj after every alternate year and he had handed over the charge to Haripandit i.e. respondent No.2C only as per the order of this court and without any *malafide* intention of depriving right of the applicant.

12. On the other hand, respondent No.5 has come out with the *interse* arrangement as to how the turn of Pooja is to be rotated among the branch members of Meghashyam.

13. Though a lot has been said by the contesting parties namely the applicant, respondent No.1 and respondent No.5 in respect of manner of rotation of turns of Pooja i.e. Sal-Pail, but it is extremely important to note that the Sal-Pali i.e. turn of Pooja would rotate only as per the direction given by this court in para 5 under clauses (a) to (f) till final disposal of the Civil Application No.3642 of 2018. Though the contesting parties have given their respective theories or schedule of rotation of Sal-Pail contrary to each other, but those respective theories of one party are disputed by other contesting party. There is no supportive material in respect of one particular theory of schedule of rotation of Sal-Pali as claimed by the parties. Therefore, at the most those theories or schedule of rotation of Sal-Pali can be considered as the respective contentions of the contesting parties. However, while deciding the turn of Sal-Pali, only the directions in para No.5 under clauses (a) to (f) in order dated 28/03/2018 would rule the field till final disposal of Civil Application No. 3642 of

2018. Though the Sal-Pali was to operate under the aforesaid directions till disposal of the main Appeal No.28 of 1996, but at the time of setting aside the order dated 28/03/2018, the same was made applicable till final disposal of Civil Application No.3642 of 2018. Therefore, it is extremely important to understand how the turn of Pooja i.e. Sal-Pali would rotate according to the aforesaid directions.

14. For a quick reference, I would like to reproduce the directions under clauses (a) to (f) herein below from the order dated 28/03/2018.

"(a) For the year 2018, since "Falgun Vaidya Navmi" has already passed by, Raghunathbuwa will hand over the charge to the applicants represented by Hari Pandit on 29/03/2018 at 5.00 p.m. The handing over charge by Raghunathbuwa and taking over the charge by Hari Pandit on behalf of the applicants, would be peaceful and uneventful.

(b) Next year, which will be 2019, Hari Pandit on behalf of all these applicants will peacefully hand over the charge on "Falgun Vaidya Navami" at 5.00 p.m. to Raghunathbuwa and the said handing over

of charge would not be delayed even by a day.

- (c) In 2020, Reghunathbuwa will similarly hand over the charge to the other branch of Meghasham through Hari Pandit on behalf of that branch on "Falgun Vaidya Navami" at 5.00 p.m. without even a day's delay.*
- (d) The above illustrations are purely to ensure that there would be a peaceful handing over of charge and taking over of charge which will continue in a similar fashion till FA No.28/1996 alongwith connected first appeals are decided.*
- (e) This order is passed today by the consent of the parties with the request that their entire submissions need to be recorded as they would virtually amount to arguing the very first appeals.*
- (f) All contentions of these litigating sides concerning all the first appeals are kept open."*

15. It is extremely important to note that though the respective contentions of the applicant and respondent No.5 in respect of turn of Pooja (Sal-Pali) are disputed by each other, but the parties have fairly accepted the genealogy as

mentioned in family tree starting from common ancestor Bhaskarpant.

16. As per direction (a), the charge of Pooja (Sal-Pali) for the year 2018 was to be handed over to the applicant in Civil Application No. 3642 of 2018 by present respondent No.1 Raghunathbuwa through Haripandit peacefully from 29/03/2018. Likewise, from the Falgun Vadya Navmi of the year 2019 Haripandit on behalf of those applicants was supposed to hand over the charge back to Raghunathbuwa under direction (b). Thereafter, as per the direction under clause (c) Raghunathbuwa was supposed to hand over the charge in the year 2020 from Falgun Vadya Navmi to the other branch of Maghshyam through Hariprasad. It is extremely important to note that in direction (c) there is a mention of other branch of Meghashyam and nowhere it is mentioned that the said charge would go to applicants of Civil Application No. 3642 of 2018. Therefore, this court had already considered two branches of descendants of Meghshyam and therefore it is important to understand those two branches of Meghshyam though it was said that the

handing over of such charge of Sal-Pali was to be done through Haripandit.

17. To understand the branches of Meghshyam, I have to rely upon the genealogy / family tree of descendants of Saint Eknath Maharaj, which is not disputed by the contesting parties. From the said family tree, it is clearly evident that Saint Eknath Maharaj survived by Haripandit (not the present respondent No.2C), who was having three sons Pralhad, Meghshyam and Raghoba. Since there was no survivors in the branch of Pralhad after Dadaji, there remained only two branches; one of Meghshyam and other of Raghoba. It is not disputed that from the branch of Raghoba there is only one survivor i.e. present respondent No.1 Raghunathbuwa, whose status as an adopted son of Narayanbuwa and Laximibai, has been approved by the Hon'ble Apex Court. On the other hand, initially Meghshyam survived by four sons namely Pralhad, Ramji, Narayan and Krushnaji. Thereafter as there were no survivors left in the branches of Pralhad and Ramji, only two branches of Meghshyam survived till today.

18. Thus, in the family lineage of Meghshyam there are two branches; one is of Narayan and another is of Krushnaji. The family tree clearly indicates that there are so many members in the respective branches of Narayan and Krushnaji. Surprisingly, none of the parties have given the names of surviving members of those branches. Even by making a specific query to that effect, the respective learned counsel for the parties failed to give list of such surviving members from these branches. Thus, the true interpretation of directions under clauses (a) to (c) is that the turn of Pooja would rotate alternatively between the branch members of Narayan and Krushnaji that means, if in the first year charge of Pooja is given to Narayan's branch, then in the second year it would go to Raghunathbuwa from the branch of Raghoba and in the next year it would go to branch members of Krushnaji and thereafter to Raghunathbuwa and then it would come to Narayan's branch thereafter and so on. Thus, the charge of Sal-Pali coming to Meghshyam branch in alternate year will again be sub-divided between branches of Narayan and Krushnaji.

19. It appears that for the year 2018 as per the direction (a), the turn of Pooja had gone to the applicants in Civil Application No.3642 of 2018, who are the branch members of Narayan. Further, as per the direction (b) the said charge again went to Raghunathbuwa i.e. present respondent No.1 and as per the direction (c) the charge then came to other branch members of Meghshyam in the year 2020 from Falgun Vadya Navmi. Though there are no details as to which members from Krushnaji's branch i.e. other branch of Meghshyam held the charge of Sal-Pali in the year 2020, but from the order dated 24/06/2021 passed by this court in Civil Application No.4577 of 2021, it appears that the said charge was held by present applicant Shashikantbuwa along with Vasudeo and Prasad in respect of outer temple and Prashant, Chandrashekar and Divakar in respect of inner temple. Except Divakar, the remaining persons appears to be the branch of Krushnaji since name of Divakar is missing from entire family tree. Surprisingly, name of present respondent no.5 is not mentioned in the said order being the persons holding charge of any of the temples of Saint Eknath Maharaj. The said order further indicates that since after

getting charge in the year 2020, the members of Krushnaji's branch including the present applicant, refused to hand it over back to respondent No.1 Raghunathbuwa and Raghunathbuwa had to file that application for getting the charge of Sal-Pali, which he ultimately got from 26/06/2021. Therefore, as per the directions under clauses (a) to (d), present respondent No.1 Raghunathbuwa remained in charge thereafter till Falgun Vadya Navmi of 2022. Though it is claimed by the present applicant Shashikantbuwa, who is from branch of Krushnaji that from Falgun Vadya Navmi of 2022 he is entitled for turn of Pooja (Sal-Pali), but as per the arrangement made under aforesaid directions under clauses (a) to (d), the charge of Sal-Pali from Falgun Vadya Navmi of 2022 is supposed to pass on to the members of Narayan's branch of which the present respondent No.2A to 2D belong.

20. Though the present respondent No.2A to 2D have not given any details or any *interse* arrangement among the branch members of Narayan about holding charge of Sal-Pali in respect of both temples, but admittedly, they are entitled for holding charge of Sal-Pali along with the other members of Narayan's branch as per the directions under clauses (a) to

(f). It appears that branch of Narayan was in fact entitled to receive the charge for the year, 2022 from Falgun Vadya Navmi till Falgun Vadya Navmi of 2023, but it appears that Haripandit, who is a branch member of Narayan, after receiving the charge from respondent No.1 Raghunathbuwa, again handed over to respondent No.5 Shrikrishna, who is a branch member of Krushnaji. It certainly appears that this handing over of charge is contrary to the arrangement made by this court under directions (a) to (f).

21. It is highly important to note that there are so many branch members of Narayan and Krushnaji available as mentioned in the family tree but only some of them are before this court in this application. Though the applicant as well as respondent No.2 put forth their respective theories about the *interse* arrangement or re-schedulement of turn of Pooja, but basically they are from Krushnaji's branch. Further, there is no material on record to support their theories in respect of Sal-Pali. All the branch members of Narayan and Krushnaji are not made party in this application. Moreover, nobody from the parties in this application cared to give list of surviving branch members of Narayan and Krushnaji.

Moreover, it appears that respondent No.5 is holding charge of Sal-Pali till Falgun Vadya Navmi of this year i.e. 2023 contrary to the interim arrangement made by this Court under order dated 28/03/2018. Thereafter the said charge will go undisputedly to respondent No.1 -Raghunathbuwa. Therefore, it seems extremely important that unless and until all the branch members of Narayan and Krushnaji sit together to formulate unanimously accepted pattern of holding charge and Sal-Pali amongst their respective branch members, a problem will periodically arise whenever their turn comes in future. Thus, no single member from their respective branches can claim exclusive rights of Sal-Pali in exclusion of others in absence of such consensus.

22. Thus, at present in absence of such commonly accepted pattern of holding Sal-Pali agreeable to all the branch members of Narayan and Krushnaji that too in absence of all the surviving members of branches of Narayan and Krushnaji, the application stands rejected.

(SANDIPKUMAR C. MORE, J.)