

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.480/2022

CHANDRAKANT BAPU MALIK
AND 11 OTHERS. ... PETITIONERS

Versus

BHIVA LADU MALIK AND 30 ORS. ... RESPONDENTS

Mr Ashwin Bhobe with Ms A. Fernandes, Advocates for the
Petitioners.

Mr R. G. Ramani, Senior Advocate with Mr P. Kakodkar,
Advocate for Respondents No.1 to 14.

CORAM: M. S. SONAK, J.

DATED: 13th OCTOBER 2023

P.C.:

1. Heard Mr Ashwin Bhobe for the petitioners and Mr R. G. Ramani, learned Senior Advocate who appears along with Mr P. Kakodkar for respondents no.1 to 14.
2. The challenge in this petition is to the orders dated 07.04.2016 and 18.06.2020 made by the Trial Court and the Appeal Court in the context of applications for interim relief filed by the appellants-plaintiffs in Regular Civil Suit No.51/2012

pending in the Court of the Civil Judge, Junior Division at Pernem.

3. The suit and the applications for interim relief inter alia concern the right to perform some religious activities at the temple, i.e. Deity of Shri Sateri at village Hassapur, Pernem Taluka, Goa (said temple).

4. Mr Bhobe, learned counsel for the petitioners, submits that respondents no.1 to 14 have no right to perform any Varsal (religious activities) at the said temple. He states that these respondents, despite having no rights, interfere with the petitioners' rights to perform the religious activities, and therefore, interim relief was sought for. Mr Bhobe submits that the respondents no.1 to 14 rely on the amicable settlement dated 23.02.2014, to which the petitioners were not the parties. He submits that even the two courts have admitted that the amicable settlement dated 23.02.2014 does not bind the petitioners. Mr Bhobe submits that despite this finding, the two courts grossly erred in denying interim relief to the petitioners.

5. Mr Ramani, learned Senior Advocate for respondents no.1 to 14 submits that even though the petitioners may not have themselves been parties to the amicable settlement dated 23.02.2014, most of the parties to this amicable settlement are close relatives of the petitioners, and therefore, the petitioners cannot distance themselves from this amicable settlement dated 23.02.2014. Mr Ramani points out that besides this, the two courts, even after ignoring the amicable settlement, have held that

there is no prima facie merit in the petitioners' contention that respondents no.1 to 14 have no right to perform the religious activities at the said temple. He submits that such concurrent, though prima facie findings call for no interference.

6. Both Mr Bhobe and Mr Ramani agreed that the religious activities at the said temple are to be performed by two groups of Mahajans, i.e. "Talkhamekars" and "Naikecho Vans", every alternate year.

7. Mr Ramani submitted that Talkhamekars are further subdivided into two groups. These groups, for the sake of convenience, are now styled by this court as groups T(A) and T(B). Mr Ramani states that similarly, Naikecho Vans are also subdivided into two groups, which, for the sake of convenience, are styled as groups N(C) and N(D). This position of sub-grouping, however, is disputed by Mr Bhobe, who says that there is only one consolidated group of Talkhamekars and another of Naikecho Vans. In short, Mr Bhobe disputes the submission regarding the sub-groups.

8. Both Mr Bhobe and Mr Ramani however do not dispute that the religious activities are performed every alternate year by Talkhamekars group and Naikecho Vans group. In this regard Mr Ramani refers to the arrangement in amicable settlement dated 23.02.2014, which settlement, and consequently the arrangement therein, is disputed by Mr Bhobe.

9. Mr Ramani submitted that the petitioners and respondents no.25 to 31 (original plaintiffs in the suit) belong to the Talkhamekars group. However, he submitted that they belong to the sub-group T(B). Mr Ramani submitted that respondents no.1 to 14, whom he represents, also belong to the Talkhamekars group but to the sub-group T(A).

10. Mr Ramani states that respondents no.22 to 24 belong to the Naikecho Vans sub-group N(C), and respondents no.15 to 17 belong to the Naikecho Vans sub-group N(D). There is no dispute raised by Mr Ramani that all these sub-groups have to perform religious activities or Varsal at the said temple on an alternating basis.

11. Now, therefore, even if we are to accept Mr Ramani's case at its face value and further, even if we are to go by the amicable settlement dated 23.02.2014, the prima facie right of the petitioners to perform the religious activities at the said temple will have to be accepted and protected pending disposal of the suit. The only question is about their turn to perform religious activities.

12. Mr Ramani submitted that at no stage did respondents no.1 to 14 obstruct or intend to obstruct the petitioners from performing religious activities at the said temple as per their turn. He submitted that, in fact, it was the petitioners who were objecting to respondents no.1 to 14 from performing the religious activities in their turn.

13. At least in the interim, even if we assume that there are no subgroups amongst the Talkhamekars and the Naikecho Vans, the religious activities or the Varsal can proceed in an orderly manner. For this, some credence would have to be given to the sub-grouping theory since this theory finds prima facie support in the amicable settlement dated 23.02.2014. This settlement may not bind the Petitioners or the Plaintiffs. But it appears to be a document to which several mahajans of either group are parties. Therefore, at least in the interim, and to ensure that there is order in performing the Varsal or religious activities at the said temple, an arrangement based on the basic admitted principles and the sub-grouping theory (which is not admitted by the Plaintiffs) will have to be worked out. The balance of convenience also favours such a course because otherwise, each year, there are disputes and physical fights which do not augur well for the collective interests of the mahajans and the devotees of the said temple.

14. Further, the counsel, on instructions of the parties they represent parties agree that for this year i.e. 2023-24, it is the turn of Naikecho Vans members belonging to the sub-group N(D) i.e. respondents no.15 to 17 to perform religious activities at the said temple. If this is so, then the next year, i.e. 2024-25, it would be the turn of the Talkhamekars.

15. Although Mr Bhobe disputes the sub-grouping, pending the hearing and final disposal of the suit, it would be in the interest of justice if the religious activities are performed by taking cognisance of the sub-grouping or, rather, based on the premise that there was some sort of sub-grouping without accepting this

position. Accordingly, for the year 2024-25, the religious activities, i.e. the Varsal will have to be performed by Talkhamekars sub-group T(A), i.e. respondents no. 1 to 14 herein. The Petitioners or the Plaintiffs must not obstruct this.

16. By applying the same logic, for the year 2025-26, religious activities, i.e. Varsal, will have to be performed by Naikecho Vans sub-group N(C) represented by respondents no.22 to 24. Again, no parties should obstruct this.

17. Similarly, for the year 2026-27, it will be the turn of the Petitioners and respondents no.25 to 31 (Plaintiffs) to perform the religious activities, i.e. Varsal, at the said temple without any obstruction from respondents no.1 to 14 or for that matter any of the members representing the Naikecho Vans group or sub-groups. To this extent, at least, the two courts should have granted interim reliefs to the petitioners and respondents no.25 to 31, i.e. the original plaintiffs in the suit. Therefore, none of the parties must now obstruct the plaintiffs from performing the religious activities, i.e. Varsal, for the year 2026-2027.

18. The impugned orders are accordingly modified, and respondents no.1 to 24 are restrained from interfering with or obstructing the petitioners and respondents no.25 to 31 from performing religious activities, i.e. Varsal for the year 2026-27. Similarly, even the petitioners and respondents no.25 to 31 will have to, pending the disposal of the suit, respect the above arrangement and not interfere with respondents no.1 to 24 from

performing religious activities, i.e. Varsal for the next four years, by which time it is expected that the suit would be disposed of.

19. For clarity, the arrangement to be followed in the interim, and without prejudice to the rights and contentions of all parties, shall be as follows:

20. For this year, i.e. 2023-24, the Naikecho Vans, subgroup N(D) – respondents no.15 to 17 will perform the religious activities, i.e. Varsal, without any obstruction from any of the parties.

21. For the next year, i.e. 2024-25, the Talkhamekars subgroup T(A) – respondents no.1 to 14, will perform the religious activities, i.e. Varsal, without any obstruction from any of the parties.

22. For the following year, i.e. 2025-26, the Naikecho Vans, subgroup N(C) – respondents no.22 to 24 will perform the religious activities, i.e. Varsal, without any obstruction from any of the parties.

23. For the following year, i.e. 2026-27, the Talkhamekars, subgroup T(B) – the Petitioners and respondents no.25 to 31 (plaintiffs) will perform the religious activities, i.e. Varsal, without any obstruction from any of the parties.

24. The above arrangement is only an interim arrangement until the final disposal of the Regular Civil Suit No.51/2012 pending in the Court of Civil Judge, Junior Division at Pernem.

The Trial Court, when disposing of the suit finally, should not be influenced by this interim arrangement because the suit will have to be ultimately disposed of on the evidence that the parties lead and by adverting to the merits and the legal position.

25. Similarly, nothing in this order or the interim arrangement now formulated in this suit should influence or be relied upon in the final determinations in Civil Suit No.44/2006, which is instituted inter alia by respondents no.1 to 14 herein in a representative capacity. This is only an interim arrangement pending the disposal of Regular Civil Suit No.51/2012 and should be construed accordingly.

26. The impugned orders are modified in the above terms. There shall be interim injunctions and cross injunctions against all parties to abide by the above arrangements pending the final disposal of Regular Civil Suit No.51/2012. There shall be no order for costs.

M. S. SONAK, J.

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