

*Uday S. Jagtap*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 554 OF 2015
WITH
CIVIL APPLICATION NO. 3340 OF 2015
IN
FIRST APPEAL NO. 554 OF 2015**

Rajaram Trimbak Bhojane & Anr.

.. Appellants

Vs.

Balkrishna Gajanan Salvekar

.. Respondent

.....

Mr. Rahul S. Kadam for the appellants

Mr. Suresh Dhole a/w Ms. Smita Patil, Mr. Praviin Mengane for the respondent

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 30th AUGUST, 2023

P.C.

1. Heard learned Counsel for the appellants and the respondent.
2. The appellants have challenged an order passed by the Joint Charity Commissioner, Pune in Application No. 4/2000 under Section 47 of the Bombay Public Trust Act, 1950 (the Act) mainly on the ground that there was no proper enquiry conducted by the Joint Charity Commissioner as contemplated under Section 47(2) of the Act and secondly, the Joint Charity Commissioner has also

ignored an important aspect that the Public Trusts viz. Maruti Devastan and Bhairav Devasthan temples are the hereditary Trusts of Bhojane families. He invited my attention to the Annexure A, which is extracted copy from the office of the Assistant Joint Commissioner.

3. On the other hand, learned Counsel for the respondent submits that the entry indicating hereditary trust is not correct and that the appellant after his retirement from the service is now trying to interfere in the Trust.

4. The learned Counsel for the appellants has placed on record a judgment of this Court in the case of **Avinash Ganpatrao Shegaonkar & Ors. Vs. Jaywant @ Babasaheb S/o. Vishwanath Uttarwar & Ors., 2010(3) ALL MR 606**, which is more or less on the identical facts.

5. Even the impugned order passed by the learned Joint Charity Commissioner reveals that after the death of Trustee – Tryambak Balkrishna Bhoajne on 16th February, 1971, the vacancy was not filled up and, therefore, he appointed respondent – Balkrishan Gajanan Salvekar as a sole Trustee, who according to the authority

is looking after the deities and devasthan. The order does not reflect as to whether due enquiry as provided under Section 47 of the Act has been conducted by the Joint Charity Commissioner.

6. Learned Counsel for the parties are *ad idem* to remand the matter to the Joint Charity Commissioner for conducting fresh enquiry after giving due notices to all the interested persons and then to pass an order.

7. At this stage, it is needless to go into the aspect whether the respondent is a fit person to be appointed as a trustee or otherwise of the said Trust. Since the order of the Joint Charity Commissioner suffers from certain illegalities as the enquiry had not been conducted as per Section 47 of the Act, it needs to be set aside and, therefore, it is set aside.

8. The matter is remanded back to the Joint Charity Commissioner, who shall issue notices to the appellants, respondent as well as persons who claim to be the decedents of the deceased trustee. The Joint Charity Commissioner shall also display notice in the temple inviting objections to the application.

9. The Joint Charity Commissioner shall, thereafter, conduct a fresh enquiry and decide the application afresh.
10. The Joint Charity Commissioner, in the meanwhile, may consider appointing a fit person to administer the Trust.
11. The Appeal is allowed in the aforesaid terms by setting aside the impugned order. There shall be no order as to costs.
12. The parties shall appear before the Joint Charity Commissioner in the week commencing from 11th September, 2023.
13. The appeal stands disposed of in the aforesaid terms.
14. In view of the disposal of the appeal, the civil application does not survive and the same is also disposed of.

(PRITHVIRAJ K. CHAVAN, J.)