



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3069 OF 2024
with
CIVIL APPLICATION NO.6045 OF 2024
in
WRIT PETITION NO.2149 OF 2024

Ashok s/o Tulsiram Shejul
Age: 53 yrs., Occu: Agriculture,
R/o: 49, Abegaon, At Post, Mothegaon,
Tq. Majalgaon, Dist: Beed.

... APPLICANT

V/s.

1. Pramodkumar s/o Sharadkumar Tiwari,
Age: 75 yrs., Occu: Agriculture,
R/o: At Post Main Road, Dharur,
Tq. Dharur, Dist: Beed.
2. Dushant s/o Pramodkumar Tiwari,
Age: 45 yrs., Occu: Agriculture,
R/o: At Post Main Road, Dharur,
Tq. Dharur, Dist: Beed.

(Original Petitioner Nos. 01 & 02)

3. The State of Maharashtra,
Principal Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
4. The District Collector, Beed,
Dist: Beed.
5. The Sub-Divisional Officer, Majalgaon,
Tq. Majalgaon, Dist: Beed.
6. The Tahsildar, Dharur,

Tq. Dharur, Dist: Beed.

7. The Sub Registrar, Class - I Beed,
Tq. & Dist. Beed.
8. The Sub Registrar Class - I Dharur,
Tq. Dharur, Dist: Beed.
9. The Chief Officer,
Municipal Council Dharur
Tq. Dharur, Dist: Beed

... **RESPONDENTS**

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Mr. A.S. Bajaj, Advocate for the Applicant
Mr. Neha Kamble, AGP for the Respondent-State in WP
Sr. Advocate Mr. P. R. Katneshwarkar a/w. Ms. A.S. Jadhav for
Petitioners in WP
Mr. S.B. Ghatol Patil, Advocate for the Respondent No.7 in WP

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**

RESERVED ON : 10th September, 2024

PRONOUNCED ON : 30th September, 2024

ORDER (Per: Y.G. Khobragade, J.) :-

1. Heard Adv. Bajaj, the learned counsel for the Applicant/Intervenor, Mr. Katneshwarkar, Sr. Advocate with Adv. Ms. A.S. Jadhav for the Non-Applicant Nos.1 & 2/ Ori. Petitioners, Ms. Neha Kamble the learned AGP for the Non-Applicant Nos.3 to 8/Ori. Respondent Nos. 1 to 6 and Adv. Ghatol Patil the learned counsel for the Non-Applicant No. 9/Ori. Respondent no. 7.

2. Having regard to the strenuous submissions canvassed on behalf of both the sides, the legal questions arises for our consideration that a person who is neither the Trustee nor the member of the Trust can said to be a "Person having interest" in the management of the Trust Property and can he said to be a proper party to the proceeding in respect of the Trust property?

3. Adv. A.S. Bajaj the learned counsel for the Applicant/Intervenor canvassed that, the Applicant is a devotee of Shree Balaji Mandir situated at Dharur and regularly visiting the Temple for celebration on different occasions. The Shree Balaji Mandir is a Public Trust registered on 14.02.1964 vide Registration No. A 958 (Bhir) under the provisions of Bombay Public Trust Act, 1951 (now by Amendment Mah. 24 of 2012 Maharashtra Public Trusts Act). According to the Applicant, there were 6 Trustees and landed properties bearing Survey Nos. 359, 363 and 551 situated at village Dharur Distt., Beed vested with the said Trust. The said landed properties are recorded with the Assistant Charity Commissioner, Aurangabad in Schedule-I of the Trust. The Non-applicant No. 1/Ori. Petitioner no. 1 was shown as a Manager/ Trustee and drawing 1/3rd income from said land for performing Pooja-Archana. However, on 25.01.2024, the Non-Applicant 4/Ori. Respondent No. 4 - Collector passed an order directing the Non-Applicant Nos. 7 & 8 /Ori. Res. Nos. 5 & 6 not to deal with any transaction in respect of the above Trust properties.

Therefore, the Non-Applicant Nos.1 & 2/ Ori. Petitioners filed the Writ Petition challenging order dated 25.01.2024 by suppressing the material facts with an intention to grab the Trust Property on the pretext that the said properties are their private properties. Therefore, in order to bring true facts on record as well as certain orders passed by the Surplus Land Determination Tribunal (in short S.L.D.T.) under the Maharashtra Agriculture Lands (Ceiling and Holdings) Act, 1961, order dated 26.01.1989 passed by the Additional Commissioner in respect of modification of order dated 16.08.1977 passed by the learned S.L.D.T., as well as certain orders passed in the Civil Proceedings the Applicant is necessary and a proper party to the petition. Therefore, prayed for issuance of directions against the Non-Applicant Nos.1 & 2/ Ori. Petitioners to implead the Applicant as party Respondent or in alternate he may be allowed to intervene in the matter.

4. In order to show that the Non-applicants 1 & 2 sold properties of Shree Balaji Mandir Trust, the applicant has filed Civil Application 6045/2024 and produced documents i.e. Sale-Deeds which have been executed by the Non-Applicant Nos.1 and 2 / Original Petitioners in favour of Mr. Madhav Ambadas Nirmal, on 08.05.2023 and in favour of Mrs. Ujjwala Dhairyashil Solanke on 07.08.2023.

5. Mr. Bajaj, the learned counsel for the Applicant relied on the cases of **Siddhinayak Construction Pvt. Ltd. V/s. Vikas Motiram Desai and Ors.; 2012 (4) Mh.L.J. 913, Chenchu Rami Reddy & Anr. V/s. Government of Andhra Pradesh; (1986) 3 SCC 391 and Suresh s/o Shivram Naiknaware and Ors. V/s. Joint Charity Commissioner; Latur & Ors.; 2013 6 Mh.L.J. 754.**

6. The Non-Applicant Nos.1 & 2 filed reply and strongly resisted the Application for intervention. Mr. Katneshwarkar, the learned Senior Counsel with Adv. Ms. A.S. Jadhav for the Non-Applicant Nos. 1 & 2/ Ori. Petitioners canvass that, the Applicant having no locus to intervene and participate in the petition in any capacity, as the Applicant is not concerned with the properties of the Trust involved in the petition and all necessary parties including statutory authorities are already arrayed as Respondents and as such the documents which are relied by the Applicant are public documents in possession of the Respondents-Authorities. It is further canvass that the present Application is abuse of powers of public authorities and it is in blatant violation of *dominus litus* principle, hence, it is deserved to be dismissed.

7. Needless to say that the present Applicant is seeking permission to intervene in the matter or in alternative seeking issuance of directions against the Non-Applicant/ Ori. Petitioners to implead him as Respondent on ground

that the applicant is a devotee of Shree Balaji Mandir situated at Dharur and regularly visiting the Temple for celebration of different occasions.

8. It is not in dispute that, Shree Balaji Mandir Trust having landed properties which have been recorded in Schedule I of the Trust, however, the Non-Applicant/Petitioner No.1 as shown as a Manager and is trying to grab the Trust properties by treating it as his private property. Therefore, the Applicant is interested person to protect the properties of the Trust.

9. Section 2A of the Maharashtra Public Trusts Act provides definition of beneficiary and Section 2(10) defines "Person having interest" as under:

"(2A) "beneficiary means any person entitled to any of the benefit as per the objects of the trust explained in the trust deed or the scheme made as per this Act and constitution of the trust and no other person;)"

"(10) "Person having interest" [includes];

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

(c) in the case of waqf, a person who is entitled to receive any pecuniary or other benefit from the waqf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf,

- (d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and*
- (e) in the case of any other public trust, [any trustee or beneficiary];”*

10. Section 51 (1) of the Act provides that, if the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is specified that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.”

Section 51 envisages right of appeal by the affected party if the Charity Commissioner refuses his consent to the institution of the suit. Prior to this Section 50 (ii) already envisages that where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust, a suit by or against or relating to public trust or trustees or other although may be filed, consent under Section 51 of the Charity Commissioner is clearly required under Section 51 of the Act of 1950 .

11. The term '*Dominus Litus*' is Latin phrase which means 'the master of the suit'. To say aptly, the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. It is for the plaintiff in a suit, to identify the parties against whom he has any grievance and to implead them as defendants in the suit filed for necessary relief. He cannot be compelled to face litigation with the persons against whom he has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the suit, he shall be entitled to get himself impleaded. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litus*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10.

12. In **Anil Kumar Singh V/s. Shivnath Mishra; (1995) 3 SCC 147**, Supreme Court interpreted Order 1 Rule 10(2) in the following manner:

“By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a

person as party-defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.”

13. The theory of “*dominus litus*” should not be over-stretched because it is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such persons to be impleaded. Merely because the plaintiff does not choose to implead a person, is not sufficient for rejection of an application for being impleaded.

14. In **Ramesh Hirachand Kundanmal V/s. Municipal Corporation of Greater Bombay and Ors. [1992] 2 SCR 1**, the Hon’ble Supreme Court held that though the plaintiff is a ‘*dominus litus*’ and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case.

15. Order I, Rule 10 C.P.C. enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of

multiplicity of proceedings is also one of the objects of the said provision in the Code. When a person is neither a necessary party nor a proper party, the Court would not allow him to be added as a party to the suit. The scope of the suit cannot be enlarged and questions which are not involved in the suit cannot be decided, simply by adding parties. Such addition of parties is not contemplated under sub rule (2) of Rule 10 of Order I.

16. In **Kashinath Trimbak Sane & Ors. V/s. Bharat Atmaram Suryawanshi & Ors.**; 2013 (6) Mh.L.J. 853, it has been held that the persons who are entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or his in the habit of partaking in the distribution of gifts thereof, are the persons having interest in the Trust.

17. In **Shankarlal Sandhuram Master Ors. V/s. Kedargir Guru Harigir & Ors.**; 2017 (2) ALL MR 839, the Single Bench of this Court held that the Appellant in cited case was attending the temple since his childhood and he is a devotee of Lord Shiva and he used to visit Shiva Temple. There are in all 100 families belonging to Bathri Teli Samaj, Jalna and all persons from this family used to visit said temple. Therefore, as per the expression “Person having interest” under Section 2 (10) of the Act of 1950 is wide enough to include not only trustees but also the beneficiaries and other person interested in the trust.

The term must be liberally construed as to as to include all the persons who may be directly or indirectly concerned.

18. In **Harendra Nath Bhattacharya & Ors. V/s. Kaliram Das (dead) by his LRs and Ors.; AIR 1972 SC 246**, it has been held that, the suit under Section 92 of C.P.C. is of a special nature which presupposes the existence of the public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration of the trust. In the suit, however, there must be a prayer for one or other of the reliefs that are specifically mentioned in the section. Only then the suit has to be filed in conformity of the provisions of Section 92.

19. In **Mahant Harnam Singh V/s. Gurudial Singh & Anr.; AIR 1967 1415**, it has been held that, mere residence in a village where free kitchen is being run for providing food to visitors does not create any interest in the residents of the village.

20. In the case in hand, the Applicant merely claimed that he is the devotee of Shree Balaji idol and regularly visiting temple for prayers on different occasions. It is not the case of the Applicant that he is an ordinary member of the Trust, much less, he being a Trustee of the Shree Balaji Mandir

Trust. No doubt lakhs of people visit various temples to pay obeisance to the deity like Saibaba Temple, Tirupati Balaji Temple, Lord Ganpati Temple (Ashta Vinayak), Vaishno Devi, Kamakhya Devi, Tulajbhavni Devi etc., therefore, those lakhs of people may have interest in paying obeisance to the deity being the devotees but they can not said be the persons having interest in the day to day administration of the trust, within the meaning of Sec. 2 (10) of the Act. Needless to say that, if all the devotees are held to be persons having interest, in such circumstances, it will create mess while dealing with the affairs of the Trust including managing the Trust property. Therefore, considering scope of Sec. 2 (10) of the Act as well as law laid cited herein-above, the applicant can not be said to be a necessary or proper party, while deciding the legality and validity of order dated 25.01.2024 passed by the Non-Applicant4/Ori. Respondent No. 4 – Collector Beed.

21. Needless to say that, the documents as well as the orders passed by the Competent Court and the respective Authorities can be referred by the Respondents. The issue involved in the Application is not directly or indirectly between the present Applicant-Intervenor and the Non-Applicant Nos.1 and 2 - Original Petitioners. Therefore, the present Applicant is neither a necessary party nor a proper party and no right of the Applicant is likely to be prejudiced.

Therefore, we do not find any substance in the **Civil Application No.3069/2024** and it is rejected.

22. Civil Application No.6045/2024 for production of documents is allowed.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]