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wp4523.23

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4523 OF 2023**

Renukamata Mandir **...PETITIONER**
At/Post nav-Nagapur, Tal + Dist. Ahmednagar
A registered public Charitable Trust
Under the Provisions of the
Maharashtra Public Trust Act, 1950
and others

VERSUS

Renukamata Deosthan Trust, Nagapur **...RESPONDENTS**
Dist. Ahmednagar
A registered public Charitable Trust
Under the Provisions of the
Maharashtra Public Trust Act, 1950
bearing PRT No. A/1195/Ahmednagar
having its office at
Address- A / P. Nagapur, MIDC, Tq. & Dist. Ahmednagr
and others

Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate A/w
Mr. S. S. Kote, Advocate for the petitioner
Mr. K. N. Lokhande, AGP for the respondent Nos. 8 & 9
Mr. Vivek Dhage, Advocate h/f Mr. Mr. N. C. Garud, Advocate for
the respondent Nos. 1 to 7

CORAM : KISHORE C. SANT, J.

RESERVED ON : 27th MARCH, 2025

PRONOUNCED ON : 11th JUNE, 2025

P. C.

1. Challenging the judgment and order dated 24-03-

2023 passed by the learned Joint Charity Commissioner-II, Pune Region, Pune in appeal No. 7/2021, the petitioners have approached this court. The learned Joint Charity Commissioner (hereinafter referred to as 'the JCC') by way of impugned order allowed the appeal filed by the respondents and set aside the order DATED 19-03-2020 passed by the learned Assistant Charity Commissioner, Ahmednagar Region, Ahmednagar (Hereinafter referred to as 'the ACC') registering the petitioners-trust under Section 18 of the Maharashtra Public Trust Act.

2. The appeal was filed by respondent No.1. Respondent Nos.2 to 7 are the trustees of respondent-trust. Respondent No.8 is the JCC. Respondent No.9 is the State of Maharashtra. Respondent Nos. 10 and 11 died during pendency of this petition and therefore they are deleted. Respondent Nos. 12 and 13 were trustees who resigned from the new trust. The dispute is with regard to the registration of the petitioners' trust which is objected by respondent No.1. The objection is that by registration of the petitioners' trust, the petitioners' trust had

shown activities and the property that is already possessed and carried out by respondent No.1. The other objection is that by using the similar name, the petitioners' trust is trying to get undue advantage and grab the property of respondent No.1 trust. The property having duty claimed by both the trustees is the same.

3. It is admitted fact that respondent No.1-trust is registered in the year 2002 whereas petitioners filed an application for its registration in the year 2012 which was initially allowed. The learned JCC held that respondents had filed a complaint in respect of the registration of the petitioners' trust with the allegations that the petitioners have prepared false documents and by giving false information. In view of the complaint, enquiry was started. In the enquiry, the Inspector gave a report adverse to the petitioners. The trust is sought to be registered only because village which is shown to be having a temple is now merged into another village viz. Nav-nagapur.

4. The facts are that in 2002 respondent trust was registered as A-1195 ['Old Trust' for the sake of gravity]. Some of the trustees namely Ramdas Shivaji Wagh, Vilas Bhausahab Lamkhade, Sharad Balasaheb Bhor and Goarakh Uttam Wagh of the new trust are also trustees of the respondent No.1 trust. It is the case of the petitioners that in fact aims and the object of the old trust are different and new trust is having independent proprieties and the functions. It is no way related to the old trust. The learned ACC had rightly granted permission to register the trust. The learned JCC, however wrongly cancelled the registration.

5. The learned senior counsel Mr. Hon for the petitioners argued that old trust was registered in the year 2002 where no property was shown of the trust. The object itself was to get the land for construction of a temple. Whereas new trust is having temple. New trustees had filed an application for registration of the trust under Section 18. It is the villagers who resolved and decided to form a trust to carryout the religious

functions. There was no objection raised while registering the trust. Application was made and it is, thereafter, the trust was registered by following due procedure by inviting the objections etc. He submits that no opportunity was given to the new trustees with report submitted by the Inspector. Conclusions are drawn are one sided. There is no bar from becoming the trustee of the two or more trust. The learned JCC failed to appreciate that objectives of both the trusts are different. There is no case of fraud. In spite of publishing the notice in the news paper, old trustees never appeared in the proceeding.

6. He further argued that, the old trustees challenged the order of the registration by filing appeal without any reason. Objections raised were without any foundation. The learned JCC made observations without any record. The order, is thus, perverse and deserves to be quashed and set aside. Under the law, there is no bar to register independent trust with a different name. There was no objection granted by the Sarpanch of Nav-nagapur village. He, thus prays for allowing the writ petition by

quashing and setting aside the impugned judgment and order.

7. Mr. Dhage, learned advocate for the respondent Nos. 1 to 7 vehemently argued the matter. He submits that petitioner Nos. 4 to 6 and respondent No.10 are the trustees of the old trustees. They had every knowledge of the existence of old trust. However, by suppressing this fact they applied for registration of the new trust. They have every knowledge of functions of the propriety and the functions of the old trust. He points out from the old trust deed that there is one temple of Goddess Renukamata. It is the old trust who acquired the land and constructed the temple thereon. Pooja is regularly performed. Other functions are also carried. New trustees by using similar name filed an application for registration. No property is shown in the registration application dated 19-12-2019 of the new trust in column 7 and still the address shown is of Renukamata Mandir, Nav-nagapur. No opponent is shown in the application filed under Section 18. The original village was Nagapur which merged into Nav-nagapur. The letter was fraudulently obtained

from the Sarpanch of Nav-nagapur for registration of the new trust. Now even Sarpanch has given a letter that she was not aware of the earlier trust. In no case, he submits that second trust can be registered in the same place. He relies on the audit report filed by the old trust. In his submission the learned JCC has rightly concluded that in 2002 there was no temple in existence and therefore, objective was shown as construction of temple. Old trustees have paid salary to the employees and the priest of the trust. Audit reports are also filed. He has rightly recorded that it is falsely represented that there is no registration of the temple done previously. He points out that petitioners were heard while preparing the report. Undisputed facts are already discussed. Even new trustees have not disputed existence of earlier trust. From the record, it is seen that both the trustees are claiming same temple to be temple, it cannot be said to be temple belonging to the trust. Though Mr. Hon, learned senior counsel submitted that there is no temple mentioned in the trust deed of the earlier old trust, however, it is clearly seen that one of the objections was construction of

temple which is now constructed. He, thus, submits that petition deserves to be dismissed. He relies on the following judgment :

1. S. P. Chengalvaraya Naidu (Dead) by LRs. Vs Jagannath (Dead) By LRs and others¹

2. Kavas Khurshad Nariman Vs Cyrus Behram Irani and others²

3. Shivajirao Bhavanrao Patil and others Vs Shikshan Prasarak Mandal Malshiras and others³

8. On hearing the parties and going through record placed before this Court it is seen that, same temple is shown to be temple of the new trust. The learned JCC has mainly relied upon report by the Inspector.

9. On going through the said report it is seen that in the report conclusions are recorded. L & T Company is shown to be occupant of the land of temple. Sarpanch who gave no objection, gave a statement that she was not aware of the registration of the earlier trust while giving no objection. Salary to the priest and other employees is paid by the old trust. There are audit reports submitted time to time in the office of the learned ACC. The temple which was shown earlier in the

1 (1994) 1 SCC 1

2 2012 (4) Mh. L. J. 845

3 2017 (3) Mh. L. J. 644

Nagapur is now shown as in Nav-nagapur and therefore, same is now shown to be a temple of the new trust. Four of the trustees of the new trust are the trustees of the old trust. They are aware of the earlier trust and still they have suppressed the fact of existence of said temple which is already shown to be a temple of the earlier trust. The temple is situated in MIDC area. Officer of the MIDC have given statement that temple is constructed and developed by the earlier trust. The MIDC had given letter on 30-10-1985 giving 2-Acres lands for Renukamata Mandir and is maintained by the earlier trust. The learned ACC though has not properly appreciated this report, on going through the impugned judgment it is seen that the learned JCC has considered all these aspects and has given judgment.

10. In the case of S. P. Chengalvaraya Naidu (supra) the Hon'ble Apex court has held that the judgment and decree obtained by fraud to be treated as nullity and can be questioned even in collateral proceedings. It is also further held that even non-disclosure of relevant and material documents with a view

to obtain wrongful advantage amounts to fraud. It is clearly held that fraud avoids all judicial acts, ecclesiastical or temporal. It was a case wherein preliminary decree of partition was obtained by playing fraud on the court. In view of that it was held that no person can take benefit of an order obtained by playing fraud.

11. In the case of Kavas Kurshad Nariman (Supra) the Assistant Charity Commissioner had failed to peruse the Will and codicil to cull out objects of the proposed trust. No enquiry as to who can appoint as trustees of the trust and what scheme was required for trust. It was held that the learned ACC failed to take proper care while passing the order. In that view of the matter it was held that the order directing the registration of the public trust need to be set aside by directing to conduct fresh enquiry and to pass order. In the case of Shivajirao Bhavanrao Patil (supra), claim of the trust was refused with new scheme. It was found in the said case that there was no service of notice of proceeding before the learned ACC on the members. The address of respondent No. 6 in that case was shown to be

addressed of all other members. All notices were sent on the address of Respondent No.6 and were shown to have been served. He never delivered those notices to the respondents. It was held that thus he committed fraud and that he obtained the order by misrepresentation and fraud. It was held that the order cannot be said to be an order and same cannot be sustained in the eyes of law.

12. In the present case, basis fact remains that four trustees of the new trust were the trustees of the old trust and thus had clear idea of existence of the trust. Still this fact was suppressed by them. The order of learned ACC thus clearly suffers from the misrepresentation and misinformation. This court finds that the learned JCC has therefore, rightly concluded in favour of respondent No.1. On this, no fault can be found with the findings and conclusions recorded by the learned JCC. The learned JCC has mainly relied upon the report submitted by the Inspector. Nothing is shown that report was prepared behind back of the petitioners or that without any material.

13. Considering all this, this court finds that judgments relied upon by the learned advocate for respondent No. 1 are squarely applicable to the present case.

14. It is further seen that even the Sarpanch had given no objection without knowing that already there is registration of the trust which is shown to be property of the petitioners trust. No illegality or perversity is pointed out in the order passed by the learned JCC. No case is made out to allow the petition. The petition, therefore, stands dismissed.

[KISHORE C. SANT, J.]

LATER ON:

1. The learned advocate for the petitioner at this stage, prays for continuation of interim relief.

2. The prayer is opposed by the learned advocate for the respondent.

3. However, considering that the interim relief is granted since last two years, same be continued for a period of six weeks from today.

[KISHORE C. SANT, J.]

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