

HUSENBASHA
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NADAF

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1085 OF 2013

WITH

CIVIL APPLICATION NO. 3101 OF 2013

- | | | |
|----|-----------------------------------|----------------------------|
| 1. | Swati Tukaram Kamble |) |
| | After marriage, |) |
| | Sou. Swati Deepak Kamble. |) |
| | Age. 31 yrs, Occu. Household and |) |
| 2. | Smt. Chhabu Tukaram Kamble |) |
| | Age. 48 yrs. Occu. Agri. |) |
| | Both R/o. Rukadi, |) |
| | Tal. Hatkanangle, Dist. Kolhapur. |) ...Appellants/Applicants |

Versus

- | | | |
|----|------------------------------------|---|
| 1. | The Mohmedan Education Society |) |
| | Registered Trust having office at, |) |
| | Dasara Chowk, Kolhapur. |) |
| 2. | Haji Ismile Umar Bagwan |) |
| | Age. 67 yrs. Occu. Business, |) |
| | R/o. Hs. No. 22/3, C Ward, |) |
| | Kolhapur. |) |
| 3. | Gani Abdul Ajarekar |) |
| | Age. 57 yrs.. Occu. Nil. |) |
| | R/o. 709. Bagwan Galli, |) |
| | C Ward, Kolhapur. |) |
| 4. | Haji Tajuddin Haji Noormahamad |) |
| | Mujawar, Age. 62 yrs. Occu. Nil. |) |
| | R/o. Noor Manzil, Near Mutton |) |
| | Market, C Ward, Kolhapur. |) |
| 5. | Kadar Hamja Malbari |) |
| | Age. 67 yrs. Occu. Business, |) |
| | R/o. 1851, Ibrahim Khatik, |) |

- Chowk, 'C' Ward, Kolhapur.)
6. Mahamad Sharif Abdul)
 Rajjak Shaikh. Age. 72 yrs.)
 Occu. Nil, 1892, Somwar Peth,)
 'C' Ward, Kolhapur.)
7. Sanaulla Yusuf Thodye,)
 Age. 57 yrs. Occu. Nil.)
 R/o. 1718, Behind Mutton Market,)
 'C' Ward, Kolhapur.)
8. Dr. Abdul Gafar Bandulal Bagwan)
 Age. 62, Occu. Doctor,)
 1612, Ganji Galli,)
 'C' Ward, Kolhapur.)
9. Haji Papabhai Haji Kasambhai)
 Bagwan, Age. 72 yrs. Occu. Nil.,)
 R/o. 2051, D Ward, Kolhapur.)
10. Mahamad Nasar Wajivkhan)
 Pathan, Age. 67 yrs, Occu. Nil.)
 R/o. 22/12, Tarabai Park,)
 Kolhapur.)
11. Haji Gafur Ibrahim Wantmure)
 Age. 57 yrs. Occu. Nil.)
 R/o 390 'C' Ward,)
 Hatti Mahal Road, Kolhapur.)
12. Haji Alam Aba Nadaf)
 Age. 57 yrs. Occu. Nil.)
 1843, Laxmipuri, Kolhapur.)
13. Madhukar Gangaram Rukadikar)
 Age. 82 yrs., Occu. Agri.)
 R/o. Rukadi, Tal. Hatkanangale,)
 Dist. Kolhapur.)
14. Balu Anappa Kamble)
 Since Deceased through L. Rs.)
 a. Smt. Lalita Ballu Kamble)
 Age. 59 yrs. Occu. Household,)

- R/o. Rukadi, Tal. Hatkanangale)
 Dist. Kolhapur.)
 b. Sharad Balu Kamble)
 Age. 32 yrs. Occu. Agri.)
 R/o. Rukadi, Tal. Hatkanangale,)
 Dist. Kolhapur.)
 c. Smt. Anita Dashrath Kamble)
 Age. 42 yrs. Occu. Household,)
 R/o. Kurundwad, Tal. Shirol,)
 Dist. Kolhapur.)
15. Shamrao Ramu Kamble)
 Age. 66 yrs. Occu. Rtd. & Agri.)
 R/o. Rukadi, Tal. Hatkanangale)
 Dist. Kolhapur.)
16. Prabhakar Ramchandra Kamble)
 Age. 62 yrs. Occu. Agri.)
 R/o. Rukadi, Tal. Hatkanangale)
 Dist. Kolhapur.)
17. Ramesh Ramchandra Kamble)
 Age. 69 yrs. Occu. Agri.)
 R/o. Rukadi, Tal. Hatkanangale)
 Dist. Kolhapur.)
18. Joint Charity Commissioner)
 Kolhapur Region Kolhapur.)
 Having office at Bagal Chowk,)
 Kolhapur.)
19. State of Maharashtra)
 Through its Department of Law,)
 And Judiciary, Mantralaya, Mumbai.) ... Respondents

Mr. D. V. Sutar a/w. Mr. Latika Kabad & Ms. Kavita Vijapure,
 Advocates for Appellants/Applicants.
 Mr. Drupad Patil a/w Mr. Shantanu S. Kalekar Advocates for
 Respondent No.1.

CORAM : M.M. SATHAYE, J.

DATE : 19th June, 2025

JUDGMENT :

1. This is an appeal filed under Section 72(4) of The Maharashtra Public Trusts Act, 1950 ("the said Act", for short) challenging the impugned order dated 27.07.2012 passed by District Judge-2, Kolhapur in Miscellaneous Civil Application No.122 of 2006. This miscellaneous application was filed under Section 72(2) of the said Act, challenging the order dated 07.04.2006 passed by the Joint Charity Commissioner, Kolhapur Region, dismissing Revision Application No.2 of 2006 under section 70A of the said Act. Section 72 was on the statute book at the time of filing the appeal.

2. Agricultural land Gat No.438 admeasuring 14 H 18 R (originally bearing survey No.137 and survey No.166) situated at Village Rukadi, Taluka Hatkanangale, District Kolhapur is the subject matter property and it hereinafter referred to as 'suit property'.

3. Few facts necessary for disposal of this appeal, are as under. Suit property is an Inaam land. Chhatrapati Shri. Shahu Maharaj of Kolhapur by proclamation (*Mulki Khate Tharav* No.102) dated 28.06.1919 ordered that the income of Hajrat Peer Rajebagswar (Rajebaxar) be paid to King Edward Mohmedan Education Society, Kolhapur after keeping aside Rs.500/- for repairs and maintenance of the *Dargah* as well as for *Urus* festival. Appellants claim that their predecessors were in possession of the suit property as protected tenants and after their demise, they are cultivating the suit property. By an order dated 31.10.1953 passed in Inquiry Application

No.726/52, the Respondent No.1-Trust was registered at the instance of one Badshah Jamadar. Respondent No. 1 itself was earlier a registered society and its erstwhile name was King Edward Mohmedan Education Society. This order of registration was not challenged by any of the predecessors of the Appellants and no such record is shown to this Court. However, in 2006 for the first time, present Appellants challenged the registration by filing Revision Application No.2 of 2006 under Section 70A of the said Act. By a reasoned order, passed after hearing all concerned including the Appellants and Respondent-Trust, the Joint Charity Commissioner, Kolhapur Region, Kolhapur dismissed the said revision on 07.04.2006. The Appellants filed Miscellaneous Application No.122 of 2006 under Section 72(1) of the said Act and challenged the dismissal of the revision. Ultimately, by impugned order, the miscellaneous application is also dismissed.

4. In these facts and circumstances, the Appellants are before this Court challenging concurrent findings of the District Court as well as the Joint Charity Commissioner.

5. Mr. Sutar appearing for the Appellants submitted that the Respondent No.1-Trust was registered behind their back and without issuing any notice to their predecessor. He submitted that the Respondent No.1-Trust is only *Vahivatdar* of the suit property and is not owner thereof. He submitted that the Joint Charity Commissioner as well as the District Court has not appreciated the evidence on record correctly, in as much as, the Respondents No.1 could not have been considered as owner of the suit property. He

submitted that even wording of the proclamation dated 28.06.1919 indicates that only the income of the property was directed to be paid to the erstwhile King Edward Mohmedan Education Society and certain amount was directed to be kept aside for maintenance of *Dargah* and *Urus* festival.

6. Per contra, Mr. Patil learned counsel for Respondent No.1-Trust submitted that it is not disputed that the Respondent No.1-Trust was initially a society known as King Edward Mohmedan Education Society and the Trust is the owner of the suit property. Drawing attention to the Schedule-I of the Public Trust Register ('PTR' for short), it is pointed out that the suit property at Rukadi is shown as Trust property under Inaam. He submitted that long ago, on 29.04.1960, by complying with the provisions of The Bombay Tenancy and Agricultural Lands Act, 1948 ("BTAL", for Short), the Respondent-Trust has secured an order of exemption under Section 88B of BTAL Act and therefore neither the Appellants nor their predecessor are protected under BTAL Act. He submitted that the order granting exemption under Section 88B was subjected to challenge by Shamrao Ramu Kamble and his legal heirs, who are close relative of the Appellants by filing Writ Petition No. 1072 of 2005 in this Court. The Appellants' father Tukaram and the Petitioner Shamrao in the said writ petition, were real brothers. It is submitted that the subject matter of the said petition was the same as present suit property. He submitted that after hearing the parties, the said writ petition has been dismissed by a well-reasoned order dated 15.04.2025. It is submitted that same grievance of notice being not

given to predecessor was raised, which has been rejected.

7. It is not disputed that in view of exemption under section 88B of the BTAL Act, the Respondent No. 1 Trust had filed a civil suit seeking possession of the suit property, which is stated to be pending at the appellate stage.

8. Having carefully considered the rival contentions and on perusal of the record, I find no merit in the case of the Appellants, for the **following reasons** :

8.1. It is noted from the order of this Court passed in Writ Petition No.1072 of 2005 that its subject matter property was the same as the present suit property. After going through the record this Court has already concluded that way back in the year 1975, during pendency of Special Civil Applicant No.305 of 1975, the Petitioner in the said petition i.e. Shamrao who is brother of present Appellants' father was aware of the claim of Respondent No.1-Trust over the suit property. It is recorded that the certificate of exemption under Section 88B of BTAL Act was placed on record long ago in civil suit. It is also noted by this Court that in the year 1971, Regular Civil Suit No.121 of 1971 was filed by Respondent No.1-Trust seeking possession of the suit property based on exemption under Section 88B of BTAL Act which was exhibited document at Exh. 65. From these facts, it is clear that the family of the Appellants already knew at least from 1971 that Respondent No.1-Trust is claiming ownership of the suit property and seeking its possession.

8.2 It is not shown to the Court even remotely that any one of the

Appellants' predecessor ever objected to the registration of the Respondent No.1-Trust. The order of the registration is of the year 1953 and challenge to the said registration has been raised first time after a lapse of 53 years i.e. in the year 2006. The Joint Charity Commissioner was therefore justified in rejecting the revision on the ground of delay amongst other grounds. Perusal of the order dated 07.04.2006 passed by concerned Joint Charity Commissioner shows that the Appellants' contention has been considered on merits in detail.

8.3 About the case of the Appellants that Appellant No.1 was minor and Appellant No.2 is widow and therefore they had no knowledge about the registration of Trust, cannot be accepted in view of the fact that the Appellant No.1's date of birth is 16.06.1982 therefore she became major in 2000 and even thereafter the Appellants have waited for 6 years to file the revision application in 2006. There is no justifiable reason for the said conduct. So far as the argument about Appellant No.2 being widow and therefore not having knowledge is concerned, the said argument is too specious and omnibus for this Court to upset the concurrent findings by the District Court as well as the Joint Charity Commissioner.

8.4. As far as interpretation of the wordings of proclamation dated 28.06.1919 is concerned, when the entire proceeds of the suit property were directed to be paid to the erstwhile King Edward Mohmedan Education Society by keeping aside a limited amount for repair and maintenance of the *Dargah* and *Urus* festival, the same is sufficient indication to conclude that the Respondent No.1-Trust

(which was the said erstwhile society) was considered as owner by the grantor.

8.5. Perusal of the PTR Schedule-I clearly indicates that the Respondent-Trust is owner of the suit property which is listed in the column of immovable property of the Trust recording that suit property is Inaam land, which is in tune with the proclamation of the year 1919.

8.6. This Court, in a case relied upon by learned counsel for Respondent No.1 in the case of **Kondiba Laxman Hanmar since deceased by his legal heirs Baburao Kondiba Hanmar & Anr. Vs. Krishnarao Anandrao Dalavi deceased by his legal heirs Radhabai Krishnarao Dalavi and Ors. [2004(4) Mh.L.J. 324]**, while dealing with the entitlement of the Trust to get certificate under Section 88B of the BTAL Act, has held that the entitlement will have to be reckoned as on 01.04.1957 i.e. "Tiller's day" and it was held that the property must have been acquired prior to Tiller's day by the Trust. In the present case, the property has been allotted under proclamation in the year 1919 i.e. much prior to the tiller's day. There is no dispute that the erstwhile King Edward Mohmedan Education Society has been registered as present Respondent No.1-Trust. Therefore, the certificate of exemption under section 88B of BTAL Act, duly confirmed by this Court in Writ Petition No. 1072 of 2005, also supports the case of the Respondent No.1 that the suit property is Trust property.

8.7. Perusal of the Mutation Entry No.6821 dated 08.11.1961

indicates earlier survey numbers of the suit property being recorded in the name of Respondent No.1-Trust as 'owner' and further recording grant of 88B certificate.

8.8. The entries of the Respondent No.1 in revenue record merely mentioning the Respondent No. 1 as '*Vahivatdar*' will not advance the case of the Appellants, as the word '*Vahivatdar*' also means person in possession. In view of Schedule-I of the PTR showing suit property as property of the Trust and Exemption Certificate under section 88B granted in favour of the Respondent No. 1 sufficiently establishes that Respondent No. 1 Trust is the owner of the suit property.

9. Lastly it is necessary to note that learned counsel for the Appellants has relied upon the case-law in **Vithalrao s/o Sambhajirao Kharpade & Ors. Vs. Motiram s/o. Narsingrao Birajdar & Ors. [2010 ALL MR (Supp.) 110]**, in support of his contention that there is no period of limitation prescribed for exercise of suo motu powers for entertaining application under Section 70A of the said Act. In this respect, it is material to note that in the present case, the power was not exercised suo motu but it was on an application by the Appellants. Admittedly the application has been filed after 53 years of registration of Respondent No.1-Trust. It is settled position of law that power of revision has to be exercised within a reasonable time and, 53 years, by no stretch of imagination, can be said to be reasonable. Therefore the said case-law will not advance the case of the Appellants.

10. For the aforesaid reasons, the belated objection raised by the Appellants after a long lapse of time, to the registration of the Respondent-Trust, which is turned down by the Charity Commissioner as well as the District Court, does not require any interference at the hands of this Court. The Appeal is devoid of merits and it is accordingly dismissed. No order as to costs.

11. In view of dismissal of the Appeal, pending Civil Application is also dismissed.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)