

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

**WRIT PETITION (STAMP) NO.10781 OF 2018
WITH
CIVIL APPLICATION NO.1258 OF 2019
IN
WRIT PETITION (STAMP) NO.10781 OF 2018**

Bhajirao Ramchandra Jadhav
Kavthekar since deceased by his
LRs-

Smt. Pooja Bajirao Jadhav and Ors.

...Petitioners

V/s.

Vidyarthi Sahayyak Mandal and
Ors.

...Respondents

**WITH
WRIT PETITION NO.7978 OF 2019
WITH
INTERIM APPLICATION NO.3543 OF 2019
IN
WRIT PETITION NO.7978 OF 2019**

Vijay Dattatray @ Dattu Magdum

...Petitioner

V/s.

Vidyarthi Sahayyak Mandal and
Ors.

...Respondents

**WITH
WRIT PETITION NO.5189 OF 2019**

Ramchandra Santram Kale

...Petitioner

V/s.

Vidyarthi Sahayyak Mandal and
Ors.

...Respondents

Mr. S.G. Deshmukh *i/b. Mr. Nandkumar N. Bhosle for the Petitioner in WPST/10781/2018.*

Mr. Deepak A. Lad for the Petitioner in WP/7978/2019.

Ms. Ketki Patil, *i/b. Mr. Abhijit Adagule for the Petitioner in WP/5189/2019*

Mr. A.S. Khandeparkar, *Senior Advocate with Mr. Prerak A. Sharma for Respondent No.1.*

Mr. Sagar Ghogre *with Mr. Sarvesh Gawade i/b. Mr. Nitin Deshpande for Respondent No.3.*

Mr. P.V. Nelson Rajan, *AGP for Respondent -State in WP/5189/2019.*

Ms. Snehal Jadhav, *AGP for Respondent -State in WPST/10781/2018*

Ms. Aloka Nadkarni, *AGO for Respondent -State in WPST/7978/2019*

CORAM: SANDEEP V. MARNE, J.

Dated: 8 MAY 2025.

P.C.:

Civil Application No.1258 of 2019:-

1) Application is filed to bring on record the legal heirs of deceased Petitioner No.1. Application is fairly not opposed by the learned counsel appearing for the Respondents. For the reasons pleaded in the application, the same is allowed. The legal

representatives of the deceased Petitioner No.1 are permitted to be brought on record. Amendment to be carried out forthwith

2) Civil Application stands disposed of.

Writ Petition (stamp) Nos.10781 of 2018, 7978 of 2019 and 5189 of 2019:-

3) Writ Petition (stamp) No. 10781 of 2018 and Writ Petition No. 7978 of 2018 are filed by Petitioners, who claim themselves to be the tenants in the property, which is slated to be alienated at the instance of the Respondent -Trust in pursuance of permission granted by the Joint Charity Commissioner, Kolhapur, under Section 36 of the Maharashtra Public Trusts Act, 1950(**the MPT Act**). In Writ Petition No. 5189 of 2018, the Petitioner therein claims to have acquired ownership in the property.

4) I have heard Mr. Deshmukh, the learned counsel appearing for the Petitioner in Writ Petition (stamp) No.10781 of 2018, Mr. Lad in Writ Petition No.7978 of 2019 and Ms. Ketki Patil, the learned counsel appearing for the Petitioner in Writ Petition No.5189 of 2019. I have also heard Mr. Khandeparkar, the learned senior advocate for Respondent No.1-Trust, Mr. Ghogre, the learned counsel appearing for Respondent No.3 and Mr. Nelson Rajan, Ms. Snehal Jadhav, Ms. Aloka, Nadkarni, the learned AGPs for the Respondent -State in the respective Petitions.

5) Petitioners claim to be the tenants/owners in the properties, which are claimed to be trust property by the first Respondent-Trust. Petitioners claim that the properties cannot be treated as trust properties and this is the real challenge which is raised in the present Petitions. The Joint Charity Commissioner has already protected the rights of tenants while passing the impugned judgment and order dated 31 January 2018. Therefore, mere grant of permission for alienation of the property would not automatically result in eviction of the Petitioners. In the limited remit of enquiry under Section 36 of the MPT Act, the Joint Charity Commissioner is not expected to institute an enquiry into title dispute.

6) In another set of Petitions decided today, this Court has already relegated the Petitioners therein to the remedy of civil suit for the purpose of establishing their title to the property in question. So far as two of the present Petitions are concerned, they are merely tenants and their tenancy rights remain unaffected despite change in ownership of the land. Since interest of those Petitioners are sufficiently protected by order dated 31 January 2018, there is no warrant of interference in the impugned order. Expectation of the Petitioners that while conducting enquiry under Section 36 of the MPT Act, the Joint Charity Commissioner would decide title dispute is clearly erroneous. The Joint Charity Commissioner has held the properties to be the property of Trust. This finding recorded by the Charity Commissioner would obviously not affect any claim

raised against the property in the civil suit. It appears that Petitioners and other tenants have also filed civil suits as indicated in paragraph 9(m) of Writ Petition No.10781 of 2018. The exact nature of suits has not been disclosed. If Petitioners claim any higher right than tenancy rights in the property in question, they can agitate the same before the Civil Court and nothing observed by the Joint Charity Commissioner in the impugned order dated 31 January 2008 would affect outcome of such suits. In my view, therefore, no case is made out for interference in the impugned order. Rights of the parties are already protected by the impugned order and therefore, the tenancy would continue to operate even after Respondent No.3 purchases the land. I am therefore not inclined to interfere in the impugned order.

7) It is the contention of the Petitioner in Writ Petition No.5819 of 2019 that he is the owner of portion of property, which is taken up for alienation in pursuance of the order passed by the Joint Charity Commissioner. Thus, right of the Respondent-Trust to alienate the property is questioned by the said Petitioner by seeking to raise a title dispute. In limited remit of enquiry under Section 36 of the MPT Act, the Joint Charity Commissioner is not expected to decide the title dispute. What is done by the Joint Charity Commissioner under the provisions of Section 36 of the MPT Act is to consider whether alienation of the property is in the interest of the Trust or not. By raising the issue that the concerned property is not a Trust

property, the Petitioner in Writ Petition No.5189 of 2019 essentially contends that he is owner thereof. If that is the case, said Petitioner will have to file a civil suit seeking declaration of his ownership in respect of property in question. Mere grant of permission by the Joint Charity Commissioner or even recording of a finding that the property is a Trust property would not be a determinative factor with regard to issue of title. Civil Court would independently determine the issue of title in respect of the property. In my view therefore, Petitioner in Writ Petition No.5189 of 2019 again was not necessary party to Application No.103 of 2017. In fact, it appears that in respect of property at Survey No.173 admeasuring 5.58 Hecters the Joint Charity Commissioner has already protected the interest of Petitioner by directing that the alienation of the property would be subject to outcome of decision of the concerned authority.

8) Petitions are accordingly **disposed of** leaving open the issue of title and possession to be decided in appropriate proceedings. The issue of title shall be decided in those proceedings on its own merits regardless of finding recorded in the impugned order of the Joint Charity Commissioner that the property concerned is a trust property.

9) In view of dismissal of the Petitions, nothing remains to be adjudicated in Interim Application No.3543 of 2019 and the same is accordingly disposed of.

[SANDEEP V. MARNE, J.]