

(CNR No.MHOS01000 2302018).

Order below Exh.1 in Trust Suit No.1 of 2018

(Delivered on 24th January, 2018)

1 The present trust suit No.1/2018 is filed by the plaintiffs against the defendant Nos.1 to 6.

2 Perused the report of Nazir that, Caveat Nos.1/2018, and 4/2018, are pending in the case.

3 In the Trust Suit, there is office objection, stating that,

“the trust suit is filed by Subhash Inamdar, and others, for declaration that, they are the “Pujaris” of Bhavani Shankar Mandir, in Tuljabhavani Mandir area. They further sought declaration that, they are having rights to accept the offerings, made to the deity and the cash, and other articles, offered to the deity, and further restraining the defendants, from interfering, in the rights of plaintiffs, as per Sec.51 of Bombay Public Trust Act, 1950. The plaintiffs need to obtain permission of Charity Commissioner, before filing the suit. Such permission is not obtained by the plaintiffs.”

4 Sec.50 of The Maharashtra Public Trusts Act / The
Bombay Public Trusts Act, 1950 states that,

**“ S.50. Suit by or against or relating to
public trusts or trustees or others:**

In any case,---

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees;

(ii) 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 or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee;

(iii) where the direction of the Court is deemed necessary for the administration of any public trust; or

(iv) for any declaration or injunction in

favour of or against a public trust or trustee or trustees or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:

(a) an order for the recovery of the possession of such property or proceeds thereof;

(b) the removal of any trustee or manager;

(c) the appointment of a new trustee or manager;

(d) vesting any property in a trustee;

(e) a direction for taking accounts and making certain enquiries;

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(h) a direction to apply the trust property or its income *cy pres* on the line of Section 56 if this relief is claimed along with any other relief mentioned in this section;

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same;

(l) an order for winding-up of any trust and applying the funds for other charitable

purposes;

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;

(n) an order exonerating the trustees from technical breaches, etc.;

(o) an order varying, altering, amending or superseding any instrument of trust;

(p) declaring or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in the interest of the trust:

Provided that, no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof:

Provided further that, the Charity Commissioner may instead of instituting a suit

make an application to the Court for a variation or alteration in a scheme already settled :

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1.”

5 Moreover, Sec.51 of The Maharashtra Public Trusts Act / The Bombay Public Trusts Act, 1950 states that,

**“S.51, Consent of Charity
Commissioner for institution of suit:**

(1) 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 satisfied 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.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1) the persons applying for such consent may file an appeal to the [Maharashtra Revenue Tribunal] in the manner provided by this Act.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

(4) Subject to the decision of the [Divisional Commissioner] Bom. XXXI of 1958] in appeal under section 71, the decision of the Charity Commissioner under sub-section (1) shall be final and conclusive.”

6 In the suit, the plaintiffs prayed that, the suit filed by them, may be decreed, with costs, and it may be declared that, the plaintiffs are the “Pujaris” of Mahadev Mandir (now Bhavani Shankar Mandir), and the defendants should be restrained by permanent injunction, from interfering in the rights of plaintiffs, in receiving “Wahik, things, Dakshina.”

7 In the temporary injunction application **Exh.5**, filed by the plaintiffs, they prayed for allowing their temporary injunction application with costs, and restraining the defendant Nos.1 and 2, or any one acting through them, from interfering, obstructing in the rights of plaintiffs, from performing the “Puja-Archa” of deity Mahadev Mandir (now Bhavani Shankar Mandir), and restraining them, from interfering in the rights of plaintiffs, in receiving “ Wahik, things, Dakshina,” till the decision of this suit, i.e. Trust Suit No.1/2018.

8 The learned advocate of plaintiffs Shri. D.G. Devalalikar stated that, the consent of Charity Commissioner is not necessary, for instituting the suit.

9 In view of his such case, he filed in this case the following case laws, in support of his case, on this point.

1- **Mahomed Hassan Samru Vs. Peer Hazarath Diwanshah Darga Trust & Ors. In Writ Petition No.5488 of 1991, dated 16th March, 2002, reported in AIR(3) All MR 66.**

In it, the Hon'ble Bombay High Court held that,

“ Bombay Public Trusts Act (1950),

S.50 r/w. S.51- Suit by or against or relating to public trusts or trustees or others- Prior permission of Charity Commissioner- Requirement of obtaining permission- Reliefs claimed in the suit not covered by any of the clauses (a) to (q) of S.50- Case does not warrant taking prior sanction of the Charity Commissioner- Merely because the relief in the suit is for declaration or injunction, that per se would not attract the requirement of obtaining prior permission within the meaning of S.50.”

2- **Vinayaka Dev Idagunji and others Vs. Shivram and others, in Civil Appeal No.5641 of 2004, decided on 28th July, 2005, reported in 2005(4) Mah.L.R.47 (SC).**

In it, the Hon'ble Supreme Court held that,

“ Bombay Public Trust Act, 1950, Sections 50, 51, 79 and 80- Civil Procedure Code, 1908, Section 9- Suit for declaration of hereditary archaks- Jurisdiction of Civil Court- Bar of- Dispute relating to public Trust or not- Plaintiff's seeking declaration that they are archaks since time immemorial and defendants / appellants are simply managers of the

properties of the trust, and they are entitled to be remain as archaks- Defendants challenging jurisdiction of Civil Court and insisting for decision on issue of jurisdiction- High Court refusing to interfere in order of rejecting application of defendants, considering lapse of ten years in litigation and directing speedy disposal on all issues at once- Appeal- Held, since right of archarkship and sharing in the offerings to the deity at the temple, is purely hereditary personal right of private nature, with which public is not concerned, suit before Civil Court is rightly maintainable.”

10 I hold that, these case laws, filed by the learned advocate Shri.D.G. Devlalikar, are supporting the case of the plaintiffs.

11 As such, I hold that, the office objection, needs to be over ruled, as pointed out by the learned advocate Shri. D.G.Devlalikar, for the plaintiffs.

12 As such, I pass the following order.

ORDER.

- 1) The office objections are over ruled.
- 2) Issue notices to defendant Nos.1 to 6, and caveators,
on P.F.

Sd/-24.1.2018.

Date : 24/1/2018.

(P.J.Patil)
District Judge-2, Osmanabad.