

Chayya Narayanbua Gosavi Vs Sudhir Ramnath Chormale

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Jan. 7, 2025

Acts Referred: Maharashtra Public Trusts Act, 1950 " Section 18, 18(5), 19, 22, 22A, 28, 29, 36, 39, 41D, 41E(3), 43(2)(a), 47, 50A, 51, 54(3), 70A, 79AA(2)

Hon'ble Judges: R.M. Joshi, J

Bench: Single Bench

Advocate: S. S. Thombre, A. A. Nimbalkar

Final Decision: Allowed

Judgement

R.M. Joshi, J

1. This Petition takes exception to order dated 15.07.2024 passed by the Joint Charity Commissioner (for short "JCC") in Revision Petition No.

99/2021 whereby the order passed by the Assistant Charity Commissioner (for short "ACC") dated 21.12.2012 granting certificate of

registration of the trust in respect of immovable property i.e., inam property Gut No. 1 Changatpuri, Tal. Paithan, Dist. Chhatrapati Sambhajanagar

admeasuring 5A 2R (subject property).

2. The facts which led to the filing of this Petition can be narrated, in brief, as under:

The Petitioner is the son of Inamdar in respect of subject property. Initially, the subject property stood in the name of Inamdar. The said inam was

created for the purpose of maintenance of the Shri Vithal Rukhmini Mandir Tirth Khamb, Paithan. On abolition of inams, at later point of time revenue

record was changed. The said land was shown in the name of the Temple and in the other rights column name of Inamdar came to be included.

Respondent had filed application under Section 19 of the Maharashtra Public Trusts Act, 1950 (for short "the Act") for the purpose of

registration of a temple situated at village Changatpuri as a public trust in the name of Shri Vithal Rukhmini Mandir Tirth Khamb, Changatpuri. In the

said application the subject property was shown to be the property of the trust. Pursuant to the said application, ACC by order dated 21.12.2012

granted registration as sought. After getting knowledge of this order, Petitioner filed Revision Application before the JCC under Section 70-A of the

Act taking exception to the same. This application was filed on 21.09.2021.

3. It is the case of the Petitioner before the JCC that he is the inamdar, owner and possessor of the said inam land and without hearing him or his

predecessor, the impugned order came to be passed by the ACC. It is stated in the application that this order was not within his knowledge and as

such, immediately after getting knowledge thereof, he filed application for obtaining certified copy and the revision was preferred.

4. This application was contested by the Respondent. The learned JCC by passing impugned order dated 15.07.2024 has dismissed the revision on two

counts i.e., the revision being not filed within a reasonable period and that the issue of title of the property cannot be gone into in this proceedings.

5. Learned Counsel for the Petitioner submits that there is ample documentary evidence on record to indicate that subject property is inam land and

revenue record clearly shows that initially the property stood in the name of Inamdar and later on it was shown in the name of Temple and name of

the Inamdar was recorded in the other rights column. He drew attention of the Court to the mutation entries and revenue record which is part of the

paper book of this Petition. It is his submission that the application filed by the Respondent for the registration of the trust is in respect of temple which

is constructed in the year 2002 and hence, question of the subject land being inam for maintenance of said temple does not arise. It is argued that

existence of some different temple than the one in respect of which registration of the trust is sought can be seen from revenue record. He drew

attention of the Court to the information received from the Grampanchayat with regard to registration of any temple and it is informed to Petitioner

that no such temple is registered in the name of Shri Vithal Rukhmini Mandir Tirth Khamb at Changatpuri. He also drew attention of the Court to

writing allegedly given by the private individual who claims that Shri Vithal Rukhmini Mandir Tirth Khamb Temple is constructed in the year 2002 by

him in his personal property. It is his further submission that the order passed by the ACC is not sustainable in law as no notice was issued to the

person interested in the subject property. It is his submission that under Section 19 of the Act it was incumbent on the part of the ACC firstly to issue

notice to the person interested and even if notice is issued by way of publication, it has to be done in a widely circulated newspaper. It is his

submission that the newspaper in which the notice was published i.e., Dainik Shashan Samrat is not a widely circulated newspaper. It is his submission

that for the purpose of accepting such notice even ACC has not recorded the findings that the publication of notice is done in the widely circulated

newspaper. With these amongst other submissions, he seeks interference in the impugned order.

6. Learned Counsel for the Respondent objected to the entertainment of the Petition on the ground that there was no application for condonation of

delay filed by the Petitioner before the JCC nor any plausible explanation was provided for the delay caused in filing of the revision. In support of his

submissions, he placed reliance on the judgment of this Court in case of Shri Goswami Rameshpuri s/o. Guru Maheshpuri (dead) vs.

Madhukarrao s/o. Shankarrao Khode and Others, Second Appeal No. 149/2006 decided on 14.03.2022 at Nagpur Bench, wherein this Court

has held that the law of limitation is matter of public policy which lays down that stale claims cannot be agitated and even if there is no time limit

prescribed, proceedings cannot be entertained if not filed in reasonable time. It is his further submission that the Revision Application clearly indicates

that the Petitioner was seeking to object to the order passed by the ACC on the ground that he is owner of the subject property. This claim, according

to him, is not permissible to be decided in exercise of powers by the authorities under the Act. To support his submissions, he placed reliance on the

judgment of this Court in case of Nana Laxman Tapkire and Another vs. Vijay Arjun Bhagat and Others, 2024(1) ALL MR 581. Finally, he

placed reliance on the judgment of the Division Bench of this Court in case of Ramnarayan s/o Manilal Sahu and Others vs. The State of

Maharashtra and Others, 2005(2) Mh.L.J. 95, in order to support his submissions that the issue of title can be decided by the Civil Court and not by

the authorities under the Act. He has also drawn attention of the Court to paragraph 9 of the impugned order wherein it is held that the Petitioner has

failed to lead any evidence to indicate that he is inamdar, pujari or owner of the land or his nexus with heir of Narayan Dattatraya Bua.

7. There cannot be any dispute about proposition of law that wherever there is no period of limitation prescribed for initiating any proceedings it is

contemplated that within a reasonable time such proceedings are initiated. The reasonability of the time however will vary from case to case and

depending upon peculiarity of facts involved therein. There cannot be any straight jacket formula to accept in this regard. As far as present case is

concerned, it is specific case of the Petitioner that he is resident of Paithan whereas land in question is situated at about 30 to 40 kms away from the

place at Changatpuri. He has further come out with a specific case that no notice was issued to him or his predecessor and as such, he was not aware

of the order passed by the ACC and after getting knowledge thereof, he filed Petition under Section 70-A of the Act before JCC. Since this issue of

limitation requires decision in the light of facts of the case, the same would be answered in later part of judgment on taking into account material

evidence on record available before Authorities below.

8. Application of registration of Trust has been filed by Respondent under Section 18 of the Act. It is stated in the application that Trust is to be

formed of Shri Vithal Rukhmini Mandir Changatpuri, Tq. Paithan, Dist. Aurangabad. It is further claimed therein that for Trust inam land (subject

property) is available. It is also claimed that in this land the temple is situated. Applicant No. 1 therein claimed that he resides near to the temple and

manages the same. Draft scheme of Trust, consent letters of Trustees, 7/12 extract of subject land, map, village extract 8A, resolution dated

22.07.2012 passed by Grampanchayat were annexed with the application.

9. ACC issued notice, which was affixed on the office of Charity Commissioner, property & Grampanchayat office. It was published in *Āçâ,~ËœDaily*

Shashan SamratĀçâ,~â,,ç. On the basis of these notices, order came to be passed granting registration of trust for the subject property. This Court is

required to consider as to whether ACC has passed order of granting registration of Trust in accordance with the provisions of the Act. It would be

relevant at this stage to consider the provisions of Section 19 of the Act, which reads thus:

Section 19 - Inquiry for registration

On the receipt of an application under section 18, or upon an application made by any person having interest in a public trust or on his own motion, the Deputy or

Assistant Charity Commissioner shall within thirty days make an inquiry in the prescribed manner for the purpose of ascertaining -

- (i) whether a trust exists and whether such trust is a public trust,
- (ii) whether any property is the property of such trust,
- (iii) whether the whole or any substantial portion of the subject-matter of the trust is situate within his jurisdiction,
- (iv) the names and addresses of the trustees and manager of such trust,
- (v) the mode of succession to the office of the trustee of such trust,
- (vi) the origin, nature and object of such trust,
- (vii) theĀ, amountĀ, ofĀ, grossĀ, averageĀ, annual income and expenditure of such trust, and
- (viii) any other particulars as may be prescribed under sub-section (5) of section 18.

The above provision, therefore, contemplates anĀ, inquiryĀ, toĀ, beĀ, doneĀ, byĀ, ACCĀ, inĀ, theĀ, prescribedĀ, manner for ascertaining

amongst other things, as to whether any property is the property of such Trust. It is necessaryĀ, toĀ, seeĀ, whetherĀ, ACCĀ, conductedĀ, anyĀ,

inquiryĀ, to determineĀ, theĀ, same.Ā, The Ā, mannerĀ, inĀ, whichĀ, inquiryĀ, isĀ, to be made is provided in Rule 7, which reads thus:

7. Manner of inquiries

Except as otherwise provided in the Act and these rules, inquiries under or for purposes of sections 19, 22, 22A, 28, 29, 36, 39, 41D, 41E(3), 43(2)(a), 47, 50A, 51, 54(3)

and 79AA(2) or any other inquiry which the Charity Commissioner may direct to be held for the purposes of the Act, shall be held, as far as possible, in the Greater

Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Court Act, 1882, and elsewhere under the

Provincial Small Cause Court Act, 1887, In any inquiry a party may appear in person or by his recognised agent or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Deputy or Assistant Charity Commissioner so directs, be made by the party in person.

As per this rule, unless otherwise provided inquiry under Section 19, shall be held, as far as possible in accordance with the procedure prescribed for

the trial of suits under Provincial Small Cause Court Act, 1887, as applicable to the present case.

10. Rule 7A mandates public notice before making inquiries. It would be necessary to reproduce the said rule, which reads thus:

7A. Public notice before making certain inquiries.

(1)When an application or otherwise, any inquiry is to be made for purposes of sections 19, 22, 22A, 28 or 29 as to whether a public trust exists or whether any

property belongs to a public trust, the Deputy or Assistant Charity Commissioner shall, subject to the provisions of this rule, give public notice of such inquiry as

provided in sub-rule (3) by calling upon all persons concerned to submit their objections, if any, to him.

(2)(a) When any such inquiry is initiated on application, the Deputy or Assistant Charity Commissioner shall, by order in writing,-

(i) call upon the applicant to pay the estimated cost of giving such public notice within a specified time, regard being had to the mode of issuing such public notice;

or

(ii) when publication of such notice by an advertisement in one or more local newspapers is ordered in addition to other modes of publication, allow the applicant to

publish at his own cost the public notice prepared by the Deputy or Assistant Charity Commissioner in the newspapers approved by the said officer within a

specified time.

(b) Notwithstanding anything contained in clause (a) the Deputy or Assistant Charity Commissioner may by order in writing exempt the applicant from payment of

the whole or part of the cost of issuing such public notice, if he is satisfied that the applicant is not in a position to bear such cost, regard being had to the capacity

of the trust to pay the financial position of the applicant or the nature of his interest in the matter.

(c) When the applicant fails to pay the estimated costs of giving such public notice within the specified time without reasonable excuse, or where the applicant is so

exempted from depositing or meeting the cost of issuing such public notice or when the inquiry is made by the Deputy or Assistant Charity Commissioner on his own

motion, the Deputy or Assistant Charity Commissioner shall direct the cost to be initially met from the Public Trusts Administration Fund and then while making the

final order shall pass appropriate orders as to its reimbursement or otherwise from the property of the trust or any party to the proceedings as he may deem fit.

(d) Failure on the part of the applicant to deposit or pay estimated or actual cost of giving such public notice within the specified time, or to publish it as an

advertisement in the newspapers at his own cost within the specified time, as required by this sub-rule, shall amount to a contravention of the provision of this rule

for the purposes of section 67.

(3) The Deputy or Assistant Charity Commissioner shall give or cause to be given public notice of such inquiry -

(a) either by advertisement in one or more local newspapers having wide circulation in the region or by beat of drums or any other method considered by him to be

adequate in the circumstances of any case, regard being had to the value of the property involved and the capacity of the trust to bear the cost of advertisement in a

newspaper, and

(b) by affixing a copy of such notice on the Notice Board of his office, or by publication of such notice on the Official Website of the Charity Commissioner,

and also on some conspicuous part of the property involved, if any, and

(c) by issuing a notice to the person in occupation or possession of such property.

(4) No objection submitted under sub-rule

(1) shall ordinarily be considered, unless it is submitted within thirty days from the date of publication of the notice which is the last in point of time.

Sub Rule 1, mandates, calling upon, all, persons concerned to submit their objection, if any. Meaning thereby, issuance of notice to the

concerned persons is mandatory. Over and above such notice, a publication of notice is also necessary. Sub Rule 2(a) shows that ACC shall, by,

order, cause, publication, of, notice, in, one, or more local newspapers in addition to other mode of publication. Sub Rule (3) requires

such publication of notice in widely circulated newspapers.

11. At this stage, it would be relevant to take note of the order passed by the ACC which was impugned before the JCC in the Revision. The said

order indicates that the said authority has practically accepted the contentions of the Respondent on the basis of an affidavit. There was no other

evidence to indicate that the Respondent was any way concerned with the subject property. Apart from this, before the ACC there was ample evidence

in the form of the revenue record which indicated the existence of the rights of the Narayanbua in the other rights column in respect of subject

property. If it is so, it was absolutely necessary for the ACC to issue notices to him. Now it is sought to be argued on behalf of Respondent by

referring to the order of the JCC that since the said Narayanbua died in the year 2000, question of issuance of notice to him did not arise. Such finding

cannot sustain being not in consonance with the provisions of law. When there was evidence before the ACC to indicate that there is a interested

person in the subject property, in view of Section 19 of the Act, it was mandatory to issue notice to such person. Admittedly, neither notice is issued to

Narayanbua nor to his heir. Thus, there is non compliance of Rule 7A which is mandatory in nature.

12. Apart from this, it is necessary that the publication of notice is required in newspaper having wide circulation. There is no finding recorded by the

ACC of publication of such notice as service in widely circulated newspaper. As such, there was no compliance of relevant rules before proceeding

with inquiry and ACC has erroneously proceeded further for entertaining the application filed under Section 19 of the Act and granting registration of

the trust.

13. Now, it is necessary to see as to whether ACC has conducted an inquiry as required by Section 19(ii) of the Act in the matter of any property is

property of Trust. A combine reading of Section 19 and the Rules 7 and 7A framed under the Act, makes it clear that the purpose of issuance of

notice to person concerned is to enable ACC to decide whether any property is property of Trust. This does not contemplate decision of title of any

property, if in dispute, but it certainly enables the Authority to satisfy itself that the property claimed of the Trust is in fact its property. Similarly, the

purpose of notice to the concerned and publication of notice in widely circulated newspaper, is aimed at ensuring that the property of third party is not

shown as trust property.

14. Record indicates that though there was evidence on record in the inquiry before ACC to indicate that the land is inam land and name of inamdar is

recorded in other rights column. Once such evidence is forthcoming, it was wholly impermissible for the ACC not to issue notice to inamdar. Similarly,

non publication of notice in widely circulated newspaper has led to keep the concerned person having interest in the property in dark. Most shockingly,

ACC by completely overlooking revenue record has proceeded to accept the case of Respondent, solely on the basis of affidavit. Thus, there is non

compliance of requisite procedure which is mandatory before passing order of registration.

15. Above facts clearly indicate that there could not have been any knowledge to the Petitioner about the proceedings pending before the ACC and

hence, question of he having noticed the impugned order does not arise. While deciding condonation of delay, the facts of the case would become

absolutely relevant. Thus, there was no chance for the Petitioner to know about the mischief done by Respondent showing subject property as Trust

property. If delay is not condoned in the case like this, the same would lead to miscarriage of justice. In any case, this was an attempt on part of

Respondent to take over illegally the subject property and as such, it is a fit case to entertain Petition even belatedly.

16. As far as the contention of the learned Counsel for the Respondent of Petitioner not placing evidence on record to show that the inamdar, pujari or

any owner or Narayan Bua is concerned, admittedly no objection was raised with regard to status of Petitioner before the JCC. Suffice it to say that

as of today there is no dispute made by Respondent about status as it could be seen from reply filed before this Court. It is also argued on behalf of

Respondent that claim of title cannot be decided in the proceedings under the Act.

17. The Hon'ble Division Bench of this Court, in the case of *Amnarayan Sahu (supra)* has held that it would be the decision of the Civil

Court which will prevail over any findings by the other authorities in respect of title of the property. There cannot be dispute in respect of the said

position of law.

18. The question arises whether the issue of decision of title is involved in this case. Learned JCC has fallen into error when it is held that issue of title is

involved. Learned JCC completely ignored that the intention of the Petitioner in making statement in his revision application is to assert that the

Respondent has no right whatsoever in the subject property. The memo of the revision application shows that no point of time any declaration was

sought by the Petitioner in respect of his title over the subject property. In fact JCC ought to have considered the fact that order impugned before him,

is passed by ACC in utter disregard of the provision of Section 19 of the Act and relevant rules. Learned ACC has failed to discharge his bounden

duty to inquire as to whether property is of trust. The findings of JCC, therefore, are perverse and hence, not sustainable.

19. This Court finds substance in the contention of the learned Counsel for the Petitioner that by taking advantage of the absence of the Petitioner or

his predecessor, the Respondent in collusion with others, had filed application before ACC. According to him, the whole idea was to grab land

belonging to third party and it was a concerted effort. In view of the documents placed on record, there is no reason not to agree with the said

submissions. It is pertinent to note that there is a resolution passed by the Grampanchayat on 22.07.2012 to the effect that revenue entry in favour of

Narayanbua is not legal and valid. Such resolution is utterly illegal and seems to have been aimed at helping Respondent, when Grampanchayat had no

authority to decide correctness of revenue entry.

20. Upshot of above discussion is that herein this case ACC has passed order in utmost casual manner, without considering repercussions thereof. If

orders are allowed to be passed in such manner, it would lead to causing of prejudice, irreparable loss and injustice to the owners of properties or

person having interest therein. There is also fear that unattended properties can be usurped by disgruntled persons with aid of the provisions of the

Trust Act. Learned Charity Commissioner, State of Maharashtra, is hereby requested to issue appropriate directions to all ACC and Dy. CCs to

scrupulously follow the procedure of inquiry as contemplated by law and rules under the Act before accepting any property to be trust property.

21. Registry to forward copy of this order to learned Charity Commissioner for compliance of above directions.

22. Petition, therefore, stands allowed. Orders impugned passed by JCC as well as ACC are set aside.

23. Learned Counsel for Respondent prays that above observations be restricted to this judgment itself, as it would come in way of Respondent to

form any trust.

24. The observations, therefore, are specifically kept restricted to this order and the same would not affect Respondent's right to form a trust, as

per law.