

## **Venkatesh Pradyumnacharya Varakhedakar (Since deceased by his heirs and legal representatives Bheemacharya (Bheemasen) Vyankatesh (Balacharya) Varakhedakar) Vs Maharashtra State and Others**

**Court:** Bombay High Court

**Date of Decision:** March 23, 2009

**Acts Referred:** Constitution of India, 1950 " Article 25, 26, 29

**Citation:** (2009) 6 BomCR 472 : (2009) 4 MhLj 476

**Hon'ble Judges:** Swatanter Kumar, C.J; D.Y. Chandrachud, J

**Bench:** Division Bench

**Advocate:** Bheemacharya Vyankatesh Varakhedakar, for the Appellant; V.S. Masurkar, Government Pleader, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Swatanter Kumar, C.J.

This Public Interest Litigation has been brought by Mr Bheemacharya Vyankatesh Varakhedakar, legal heir of late

Mr Venkatesh Pradyumnacharya Varakhedakar, the Petitioner, with the prayer the records and proceedings of the cases referred in the Petition

be called for and Review Petition Stamp No. 28623 of 2004 in Second Appeal No. 521 of 1983 be withdrawn from the Court of Mr. Justice

A.S. Oka and be placed for decision in accordance with law before any other Bench.

2. The Petitioner had filed a Suit being Regular Civil Suit No. 562 of 1980 with a prayer that he is member of Sanatan Vaidic Hindu religion,

Vaishnav Bhagavat society and has a right to perform the puja and also to demand dakshina by performing the religious ceremonies in the Vitthal

Rukminhee temple. He also claims that he possesses the right of management in view of Articles 25, 26 and 29 of the Constitution of India and

according to him his fundamental rights were being infringed. The Suit was based with reference to the provisions of the Pandharpur Temple Act,

1973 and, therefore, the Suit for declaration was filed. Reference to other facts including the properties of the temple was also made and the leave

for injunction was also claimed against the Defendants in the Suit. This Suit came to be dismissed by the learned Trial Court. First Appeal was also

dismissed by the learned District Court. Second Appeal preferred by the Petitioner was admitted vide order dated 11th October 1983 on the

question framed therein. This Appeal was finally heard by the learned Single Judge and came to be dismissed on 26th July 2004. Thereafter, the

present Petitioner filed a Review Petition being Review Petition No. 11 of 2005 seeking review of the order of dismissal of the Second Appeal by

the learned Single Judge. This Review Petition, as per record, was fixed from time to time for admission and there the Petitioner raised the

contention that Review Petition should be heard by another Court. Taking note of this, the learned Single Judge had placed the matter before the

Chief Justice, wherein it was directed that the Review Petition may be heard by the said Court as per the High Court Appellate Side Rules.

Thereafter, the Review Petition was again adjourned. The Petitioner submitted his written submissions and the Review Petition also came to be

dismissed vide order dated 24th October 2008. A Division Bench of this Court vide order dated 23rd February 2005 passed in the present Public

Interest Litigation directed that the Review Petition be listed before the same Judge which passed the order. After passing of the order dated 24th

October 2008 dismissing the Review Petition, the Petitioner has filed the present application for listing the Public Interest Litigation and for transfer

of the Review Petition from the Bench of the learned Single Judge.

3. We find that such a request would not be maintainable though in the facts of the present case the Review Petition has also been dismissed and

the Petitioner is entitled to take recourse to legal remedies available to him in accordance with law. Filing of Public Interest Litigation in fact is an

abuse of the process of the Court and cannot be entertained by the Court. We expect the Petitioner to act in a circumscribed manner and not to

keep on filing frivolous Petitions. The Supreme Court in the case of Janata Dal Vs. H.S. Chowdhary and Others, , had stated that the jurisdiction

of public interest litigation can hardly be invoked for personal gain and/or private profit and/or oblique consideration and it is intended not to

encourage vexatious litigation.

4. Public Interest Litigation and the present application for transfer thus both are dismissed leaving the parties to bear their own costs. The

Petitioner is at liberty to take such action as is permissible to him in accordance with law.