

(1982) 12 BOM CK 0020

Bombay High Court

Case No: Letters Patent Appeal No. 81 of 1979

Bhaskar Shripal Deobhajta

APPELLANT

Vs

Shankar Ganesh Modak and
Another

RESPONDENT

Date of Decision: Dec. 3, 1982

Acts Referred:

- Bombay Public Trusts Act, 1950 - Section 2(13), 2(17)

Citation: AIR 1983 Bom 104 : (1983) 1 BomCR 196

Hon'ble Judges: Sharad Manohar, J; S.C. Pratap, J

Bench: Division Bench

Advocate: Y.S. Jahagirdar, for K.J. Abbyankar, for the Appellant; R.M. Purandar and D.G. Vaidya, Honorary Asst. Govt. Pleader, for the Respondent

Judgement

Pratap, J.

This appeal arises out of original proceedings commenced in the provisions of the Bombay Public Trusts Act, 1950 (hereinafter the Act).

2. One Raghunath Bhatji Maharaj, also known as Adwaiteshwar Sachhidanand Saraswati, was a great saint who took Samadhi on the bank of river Godavari at Nasik ins the year 1817 on Magh Wadya Chaturdashi, Shake 1739. On this Samadhi, a Shivling was installed. Over this Samadhi and the Shivling, a massive structure was built in stone resembling a around the same. In the precincts thereof were constructed a Sabhamandap and Dharmashala by different persons. The Samadhi and the structure built over it and the constructions surrounding the same and in the precincts thereof came to be known as Adwaiteshwar Mandir and Raghunath Bhatji Maharaj Math.

3. The appellant herein made an application under protest under S. 18 if the Act. His original contention was that the aforesaid properties. The said stand was given up, contention thereafter being that the said properties constituted a private trust and

not a public trust. This was opposed by respondent No. 1 Shankar Ganesh Modak who contended that the Samadhi known as Raghunath Maharaj alias Adwaiteshwar Math and the temple and the building in question were all along used for public religious worship and functions. Raghunath Bhatji alias Adwaiteshwar Sachhidanand Saraswati had a large spiritual following, after he took Samadhi, a Shivling named as Adwaiteshwar was installed on the Samadhi in 1820 and a big temple of God Shiva was constructed by one Nattu who also provided for daily worship of the Shivling. Subsequently, Sardar Potnis constructed a spacious Sabhamandap to the north of the temple and one Angre constructed a Dharmashala and a Math on the eastern side. Utsavs and festivals were celebrated therein by the public. Public subscriptions were also collected in that behalf. Innumerable devotees have been worshipping there. Several religious functions are also being performed. All this was being done and performed without any permission from anyone. The properties were also exempt from taxation on the ground that they were being used for public religious worship and functions. In all these circumstances, contention of Modak was that these properties constituted a public trust within the meaning of the Act.

4. The Assistant Charity Commissioner who held an inquiry under S. 19 of the Act came to the conclusion that Raghunath Bhatji Maharaj temple was a place of public religious worship: that members of the Hindu community used the same as of right and that the said place was a temple as defined in S. 2 (1) of the Act. The board of trusteeship of the said trust was held to be hereditary. As regards the other properties, it was held that the structures around the Samadhi and the temple and in the precincts thereof did not belong to the public trust. Order accordingly was passed. Against the order holding the temple to be a public trust, the appellant herein Bhaskar appealed to the Charity Commissioner. And against the order, to the extent it held the other properties not to belong to the public trust and holding the mode of succession to the trusteeship to be hereditary, Modak, respondent No. 1 herein, appealed. Both these appeals were heard together by the Joint Charity Commissioner. He confirmed the finding of the Assistant Charity Commissioner that the temple constituted a public trust within the meaning of the Act and that the mode of succession to the trusteeship was hereditary. He also further held that the other properties and structures standing around the temple and in the precincts thereof on C.T.S. Nos. 1109 and 1110 were also properties belonging to the public trust. Consistent therewith, the appeal of Bhaskar dismissed. Bhaskar thereupon preferred application under S. 72 (1) of the Act. The Joint Judge hearing this application confirmed the findings of the Joint Charity Commissioner and dismissed the application. This dismissal was challenged by Bhaskar in an appeal therefrom, being First Appeal No. 564 of 1977, to this Court. The learned single Judge who heard the said appeal dismissed the same by his judgment dated 15th June 1978. Hence, this appeal therefrom under the letters Patent.

5. In support of the appeal, we have heard Mr. Y. S. Jahagirdar, learned counsel for the appellant. Respondent No. 1 Modak is represented by his learned counsel Mr. R.

M Purandare. Respondent No. 2 -- the Charity Commissioner is represented by the learned Assistant Government Pleader Mr. D. G. Vaidya.

6. Though this appeal was ably argued by Mr. Jajagirdar, learned counsel for the appellant, taking us through the various authorities as also the evidence on record, we find ourselves, on consideration thereof, unable to take a view and come to a conclusion different from that the learned single Judge deciding the first appeal. The finding of the Assistant Charity Commissioner confirmed all throughout to the effect that the temple in question is a public trust within the meaning of the Act is preeminently correct and justified. The further finding of the Joint Charity Commissioner confirmed by the learned Joint Judge and the learned single Judge who heard the appeal therefrom holding the properties and the structures surrounding the temple and in the precincts thereof on C.T.S. Nos. 1109 and 1110 to be of the public trust is also correct and pre-eminently justified. There is overwhelming material and evidence in support of both these findings. The appellant Bhaskar who initially claimed all these properties to be his private ancestral properties and subsequently contended that the same constituted a private trust fails on both these counts. Since the case that these properties were private ancestral properties has been given up, it is not necessary to consider the same save and except an observation viz., there is not an iota of any cogent material in support thereof. On the question whether the properties constituted a private or a public trust, we have no hesitation in accepting the finding of the Joint Charity Commissioner affirmed by the Joint Judge and in appeal therefrom reiterated and confirmed by the learned single Judge of this Court that these properties constitute a public trust.

7. Contention strenuously urged by Mr. Jahagirdar, learned counsel for the appellant, was that a Samadhi even of a saint, however great and eminent he be, can hardly be an object of public religious worship, much less could it evolve into a temple. Contention is that a temple presupposes a God and saint is not a God. Submission thus was that by the very fact that this originated in a Samadhi of a saint, it can never be termed as a public trust. It is not possible to accept this contention. In this country, innumerable instances can be cited of saints attaining Samadhi and the said Samadhis evolving into temples and public religious worship as of right can be said to have evolved into a temple. There is overwhelming evidence here to show that the Samadhi and the temple constructed thereon has been all throughout and continuously ever since the time of its construction more than a century ago treated as a place of public religious worship as of right by the Hindu community. There is inspiring and unimpeachable material establishing that there was at no stage all these years spread over a century and more, any objection to any member of the public in the matter of his visit and/or his worship and/or his carrying out religious functions and/or his actively participating in religious festivals at this place.

8. The admissions of the appellant Bhaskar himself show that he too had never objected to any person in this behalf. His admissions further show that nobody had even asked for his permission either for worship or even for reciting Kathas and Kirtans. Witness Narayan Joshi who was a Pujari from the year 1916 to the year 1928 also admitted that he too had never prevented anybody from coming to the temple nor did anybody seek his permission in that behalf. Indeed, he goes further and admits that his permission was not necessary. Witness Woman Shankar Lele deposes that Shravani used to be performed every year at this place right from 1917 to 1968 and at no stage was any permission required or taken. Witness Dasakkar, a kirtankar by profession, states that he was himself doing Abhishek of Rudra at this place since 1914. He further states that at least till 1930, Gangadhar Shastri used to narrate Puran at this place. Evidence further shows that there is a Sanskrit Pathashala constructed in the Math building. Pingale who had occasion to inspect the said school every year from 1926 to 1934 stated that he had made a report that this school was run in a public place. Purushottam who was a student of this school speaks of Utsav of Godavari river and the Kirtan which Ganesh Shastri Modak used to recite in Dashahar and Chaturmas. Evidence further shows that public subscriptions used to be collected by public advertisements and sometimes even by advertisements in newspapers. One Umashankar, a retired police inspector, deposed to the fact that he himself used to offer puja and recite Gita Path at this place for years together without any objection.

9. There is also not an iota of evidence to show that there was at any stage all these years any objection to the various properties and structures put up at this place from time to time by different persons. After the Samadhi and after the installation of Shivling in the year 1920, one Nattu constructed a big temple: Sardar Potnis put up a large Sabha Mandap; one Angre put up a spacious Dharmashala. The appellant herein how originally claimed the same to be a private trust had never neither himself nor his father Shripad at any stage prevented or objected to anyone putting up these properties or any of the structures roundabout the temple and in the precincts thereof. Witness after witness has come forth to depose to the nature and character of the properties in question. In this context, it would be relevant to note that the Sabhamandap here is not any small structure but a three-storeyed structure capable of seating five to six hundred persons at a time. It was thus obviously intended for a big gathering of worshippers and devotees. This Sabhamandap and certain other structures were damaged by the floods of river Godavari in the year 1939. Repairs and reconstruction took place and this again from public collections and subscriptions and donations from philanthropists. In fact, a public appeal was issued by eminent men to all worshippers and devotees requesting for contributions. All these factors and circumstances belie the case of the appellant and completely militate against the contention that the properties constitute a private trust.

10. On the question whether a Samadhi can evolve into a temple or can be a matter of public religious worship so as to become a public trust, suffice it to note that there have been in this country several instances of Samadhis of great saints evolving into temples. Only by way of illustration, we may refer to the Samadhis of Dhyaneswar, Ramdas and Saibaba. The Shree Gajanan Maharaj temple in which his Padukes and his image were installed has also been held to be on par with a Hindu temple. We may in this context refer to a Division Bench ruling of the Nagpur High Court (as it then was) in *Gajanan Maharaj Sansthan v. Ramrao Kashinath* AIR 1954 Nag 212:

"The status of an idol or a 'math'" as a juristic entity has been sanctified by Hindu religious usage and has received judicial recognition. The question of religious institutions also depends upon the status that has been given to them by religious usage, and if the conditions which have transformed an idol or a 'math' into a juridical personality are present, there is no reason why the fiction of law applying to an idol or a 'math' should not be extended to their case. For, it is the intensity of the veneration behind a religious teacher that gives to the institution, founded in his name, spiritual animation. In the case of a temple, the building is obviously intended for the abode of a deity, and until the idol is consecrated, it is only a structure of brick and lime, devoid of life and soul, whereas, in the case of a Sansthan, the object associated with the religious teacher and installed in the institution may itself symbolise the spiritual existence. The religious instinct of form and has given to consecrated objects the spirit of the sanctified sages with whom they are associated. It is immaterial whether the faith which sees in the idol of sage the image of God is right or wrong. All that is necessary to give the institution a legal entity is the strength and genuineness of the religious faith".

It is thus too late in the day to successfully contend that a Samadhi or a Math cannot evolve, itself into a temple. The said contention militates against the entire tenor and history of Hindu religion and religious usage, custom and practices.

11. That apart, the definition of "public trust" in S. 2 (13) of the Act as also the definition of "temple" in S. 2 (17) of the Act also nullify the appellant's contention. Under S. 2 (13) of the Act:

" "public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, apiary or other place of public religious worship a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860".

Under Section 2 (17) of the Act:

" "temple" means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by

the Hindu community or any section thereof as a place of public religious worship".

In the face of the overwhelming evidence establishing that the temple and the properties here were used as of right as a place of public religious worship by the Hindu community for over a century and more would, by itself and almost per se, be enough to bring it within the aforesaid definition of "temple". If so, it would equally well clearly fall within the definition of "public trust" in S. 2 (13) of the Act.

12. In the result, we see no merit in this appeal. The same fails and it dismissed with costs.

13. Appeal dismissed.