IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 305 OF 2023

Vijay Arjun Bhagat .. Petitioner
Versus
Kisan Lahanu Bhagat deceased
and others .. Respondents

WITH
WRIT PETITION NO. 306 OF 2023

Arjun Kisan Bhagat
Since deceased through his L.R.
Vijay Arjun Bhagat .. Petitioner
Versus
Jagdamba Tuljapurchi Devi
and others .. Respondents

WITH
WRIT PETITION NO. 316 OF 2023

Arjun Kisan Bhagat
Since deceased through his L.R.
Vijay Arjun Bhagat .. Petitioner
Versus
Nana Laxman Tapkire (Deceased)
and others .. Respondents

Mr. V. D. Sapkal, Senior Advocate along with Mr. Ajit M. Gholap, for the petitioner.

Mrs. G. L. Deshpande, AGP for the respondent-State.

Mr. N. V. Gaware-Patil i/b Mr. S. P. Salgar for the respondent No. 3 in WP No. 305 of 2023, the respondent No. 2 in WP No. 306 of 2023 and 316 of 2023.

Mr. Abhaykumar D. Ostwal with Mr. Mohit Deoda, Mr. Pawan Salunke, Mr. Sourav Munot for the respondent No. 5 in WP 316 of 2023.

Mr. S. S. Thombre for the respondent No. 4 in WP No. 316 of 2023.

WITH
WRIT PETITION NO. 558 OF 2023

Ramdas Rakhmaji Jadhav .. Petitioner
Versus
Arjun Kisan Bhagat
Since deceased through his L.R.
Vijay Arjun Bhagat .. Respondents

Mr. Abhaykumar D. Ostwal, for the Petitioner.
Mr. Ajit M. Gholap, for the Respondent.

Coram : SHARMILA U. DESHMUKH, J.
Reserved on : March 2, 2023.
Pronounced on : April 19, 2023.
[Through Video Conferencing]

JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith with the consent of the parties and taken up for final hearing.

2. On 13th January, 2023, this Court had heard the learned counsel for Petitioner on grant of interim relief and the matter was adjourned for further hearing. The matter was thereafter adjourned to 3rd February, 2023, 22nd February, 2023 and 2nd March, 2023 when the learned counsel for the respective parties were heard at length

by this Court for final disposal by consent.

3. As the aforesaid petitions raise common issues, the petitions are heard together and decided by this common judgment. The Petitioners are aggrieved by the common judgment and order of rejection dated 24th November, 2022 passed by the District Judge – 3, Ahmednagar in Trust Civil Application No.1 of 2009, Trust Civil Application No.2 of 2009 and Trust Civil Application No.3 of 2009.

4. The Petitioner in Writ Petition No.305 of 2023 is Vijay Arjun Bhagat, who is the Applicant in Trust Civil Application No.3 of 2009, the Petitioner in Writ Petition No.306 of 2023 is Arjun Kisan Bhagat, who is the Applicant in Trust Civil Application No.1 of 2009, Arjun Kisan Bhagat is the Petitioner in Writ Petition No.316 of 2023, which challenges the order of the District Judge upholding the order dated 19th November 2008 of the Joint Charity Commissioner allowing Scheme Application No.1 of 2008. Writ Petition No.558 of 2023 has been instituted by one Ramdas son of Rakmaji Jadhav, challenging the impugned order dated 26th November 2022, passed below Emergency Application No.00 of 2022 and the order dated 30th November 2022, passed in Civil Miscellaneous Application No. 259 of

2022, below Exhibits-1 and 13. This Writ Petition i.e., Writ Petition No.558 of 2023 challenges the orders staying the effect and operation of the common judgment and order dated 24th November, 2022 pending the challenge in appeal before this Court. As the other Writ Petitions are taken up for final hearing and disposal, learned counsel for parties agree that it is not necessary to render a decision in Writ Petition No.558 of 2023.

5. The subject matter of the petition is a temple of Shri Jagdamba Tuljapurchi Devi, situated at Burahannagar, Tq. and Dist. Ahmednagar. Revision applications were preferred by Arjun Kisan Bhagat and Vijay Arjun Bhagat under Section 70A of the Maharashtra Public Trust Act (for short "**Trust Act**") seeking to challenge the order of registration of trust, shown as registered bearing registration No. PTR- A/327 and the framing of scheme in respect of the said temple.

6. The issues arising for consideration are as regards the creation of the public trust- whether valid and legal, nature of the temple– whether private or public, and whether the property is property of public trust or private property. For the reasons indicated hereinafter, in my opinion, the public trust had been validly created

by complying with the provisions of the Trust Act, the temple was a public temple, which is evident from the long user by the public as a matter of right and the subject property is the property of the public trust.

7. Before proceeding further it will be worthwhile to bear in mind the scope and ambit of exercise of powers by the Joint Charity Commissioner under the provisions of the Trust Act. The provisions of Section 79 and Section 80 of the Trust Act sum up the limits of exercise of jurisdiction, which read as under:

> "**79. Decision of property as public trust property:**
> (1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act.
>
> (2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the Court on application or of the High Court in appeal be final and conclusive.
>
> **80. Bar of jurisdiction :**
> Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive."

8. A conjoint reading of the aforesaid provisions indicates that

the Deputy or Assistant Charity Commissioner or the Charity Commissioner is empowered to decide the questions as regards the existence of a trust, the nature of the trust-whether public trust and whether particular property is the property of such trust in proceedings instituted under the Trust Act and an express bar to the jurisdiction of the Civil Court to decide the issues which are required to be decided or dealt with by the concerned authority under the Trust Act.

9. Shorn of unnecessary details, the facts are reproduced as under:

[A] In the year 1952, an application was filed by Kisan Lahanu Bhagat, father of Arjun Kisan Bhagat and grandfather of Vijay Arjun Bhagat bearing Registration Application No.1566 of 1952 under Section 18 of the Trust Act. The application was allowed on 21st January, 1954 and the trust came to be registered under PTR No A-327. Subsequent thereto, Kisan Lahanu Bhagat was submitting the accounts regularly in the office of Assistant Charity Commissioner, change reports were submitted and accepted. and after Kisan Lahanu Bhagat, Arjun Kisan Bhagat assumed the office of the sole trustee of the trust.

[B] In the year 1980, Regular Civil Suit No.671 of 1980, was filed by Arjun Kisan Bhagat for perpetual injunction and declaration that the suit property therein i.e., the space surrounding the Tuljabhavani temple, belonged to him, which came to be decreed. Regular Civil Appeal No.384 of 1996 was filed by the Sarpanch, Gram Panchayat Burhannagar against the decree before the District Judge, which came to be dismissed. The second appeal, bearing Second Appeal No.16 of 2009, preferred against the dismissal of the civil appeal, came to be dismissed by this Court vide order dated 22nd June, 2004.

[C] Subsequently, Scheme Application No. 302 of 1980 was filed by the present respondent No.3 in Writ Petition No.305 of 2008, i.e., Ramdas Rakhmaji Jadhav. This application came to be allowed and the scheme in respect of the trust was framed, which was challenged under section 72(2) of the Trust Act [which was on the statute book at that point of time] before the District Judge being proceeding bearing No.153 of 1980, which came to dismissed, as against which First Appeal No. 804 of 1989 was filed by Arjun Kisan Bhagat.

[D] Regular Civil Suit No.600 of 1982 was filed by Vijay Arjun Bhagat for declaration that the property mentioned in the trust application is a private property, which came to be dismissed on 10th

December 1999 by the trial Court. First Appeal No.21 of 2000 was preferred before the District Judge by Arjun Kisan Bhagat and other legal heirs of Kisan Lahanu Bhagat, which came to be decreed, as against which Second Appeal No. 274 of 2002 was filed in this Court by Nana Laxman Tapkire and Ramdas Rakhmaji Jadhav.

[E] The aforesaid First Appeal No.804 of 1989 and Second Appeal No.274 of 2002 came to be decided by this Court by common judgment dated 19th July 2007. First Appeal No.804 of 1989 [pertaining to the framing of scheme in respect of the trust] was allowed and the matter was remanded to the Joint Charity Commissioner to decide the issue of framing of scheme as well as the revision application questioning the nature of trust. Second Appeal No.274 of 2002 [which was directed against the order of the appellate Court decreeing the suit filed by Bhagat for declaration that the trust property is a private property] came to be allowed by this Court, as against which the petitioners herein preferred a special leave petition before the Apex Court. The Apex court remanded the second appeal to this Court for fresh consideration. The second appeal is pending adjudication before this Court.

[F] After remand, Scheme Application No.302 of 1980 came to be re-numbered as Scheme Application No.1 of 2008 before the Joint Charity Commissioner. Revision Application No.2 of 2008 was filed by Vijay Arjun Bhagat seeking de-registration of the trust. An independent revision application bearing Revision Application No.3 of 2008 was preferred by Arjun Kisan Bhagat seeking setting aside of the order of registration dated 21st January, 1954 and de-registration of the trust.

[G] The Joint Charity Commissioner allowed Scheme Application No.1 of 2008 and dismissed Revision Application No.2 of 2008 and Revision Application No.3 of 2008 by common judgment and order dated 29th November 2008. Trust Application No.1 of 2009 was preferred in Revision Application No.3 of 2008, Trust Application No.2 of 2009 was preferred against the framing of scheme in Scheme Application No.1 of 2008, and Trust Application No.3 of 2009 was preferred in Revision Application No.2 of 2008. These applications were dismissed by the common judgment and order dated 24th November 2022, which are the subject matter of the present petitions.

10. Heard Mr. V.D. Sapkal, learned senior counsel for the

petitioners in Writ Petition No 305 of 2023, Writ Petition No.306 of 2023 and Writ Petition No.316 of 2023, Mr. Nitin Gaware-Patil, learned Counsel for Respondent No.3 in Writ Petition No.305 of 2023 and Respondent No. 2 in Writ Petition No. 306 of 2023 and Writ Petition No.316 of 2023, Mr. S.S. Thombre, learned counsel for Respondent No.4 in Writ Petition No.316 of 2023, Mr. A.D. Ostwal, learned counsel for Respondent No.5 in Writ Petition No.316 of 2023 and the Petitioner in Writ Petition No.558 of 2023 and Smt. G.L. Deshpande, learned AGP for State.

11. Mr. Sapkal, learned senior counsel submits that as Second Appeal No. 274 of 2002 was pending, the District Judge ought not to have decided the Trust Applications. He would submit that decree declaring the temple as private property is in force and another decree declaring the property surrounding the temple as private property has reached finality in Second Appeal No.16 of 2001. He would further submit that pursuant to the order of the Apex Court, an application was moved on 3rd August, 2019 before the District Judge pointing out that the second appeal is *sub judice* before this Court and sought a stay of the proceedings before the District Court, which came to be granted on the same day i.e., 3rd August, 2019. He

would further submit that in spite of stay being granted on 3rd August, 2019, the petitioners herein were pressurized to argue the trust application and an order came to be passed on 6th July, 2022 directing the arguments to be advanced, failing which the applications to be dismissed in default or determined on its own merits. As such, he would contend that the arguments were advanced before the District Judge.

12. Mr. Sakpal has invited the attention of this Court to the issues which have been framed, which are seventeen in number, and would submit that only issue which was required to be considered was whether there was any registration of the public trust and whether there was any order passed by the Charity Commissioner on 21st January 1954. He would further contend that the issues framed as regards the property of the public trust was *sub judice* before this Court in second appeal and hence no finding could be given in the proceeding under the Trust Act.

13. As regards the registration of trust, learned senior counsel would submit that the application was moved by said Kisan Lahanu Bhagat under a misconception and the intention was to register the

temple as a private trust. As regards the validity of registration, learned senior counsel has urged that after considering original application (Exhibit-35) and noting made thereon and holding that the endorsement thereon appears to be like a statement rather than an order, the District Judge has held that there was registration of the trust. Learned senior counsel in that respect has referred to the provisions of Sections 18 and 19 of the Trust Act and Rules 6 and 7 framed thereunder. He would further contend that without an enquiry contemplated under section 19 of the Trust Act, pursuant to an application filed under section 18 of the Trust Act, there cannot be any registration. He would further contend that the idols were purchased in the year 1913 after mortgaging the Wada and it is an admitted position that the temple is within the vicinity of Wada, i.e., the residence of the petitioner, which is a private property and thus a trust of the temple which is situated in a private property cannot be created. He would further contend that there is no nexus between the '*palkhi*' and the temple. He would assail the findings of the District Judge that there is no requirement of an enquiry in view of the fact that there was no objection received from any quarter. He would further submit that there is no trust registration certificate issued and there is no proof of payment of any registration fee.

14. As regards the deed of trust, the findings of the District Judge are assailed on the ground that schedule of the common judgment dated 29th November, 2008 passed by the Joint Charity Commissioner refers to the property of temple admeasuring 53 feet x 100 feet, and in the absence of deed of trust, the said temple could not have been considered as the property of trust. Learned senior counsel would further contend that the District Court was not required to go into the issue of the source of income of the Bhagat family. He would further contend that merely on the basis of installing '*kalas*' in a private temple in the house, it cannot be said that the temple was dedicated to the public. He would further contend that the findings of the District Judge as regards the title deeds of Wada is erroneous, inasmuch as that property has been declared to be a private property of Bhagat, which is subject matter of second appeal pending before this Court. Learned senior counsel would further contend that observations of the District Judge that the District Judge would be entitled to scrutinize all the evidence including the evidence pertaining to the ownership of the property in spite of the said issue being *sub judice* in second appeal before this Court, can only be termed as erroneous. Learned senior counsel also

alleged *mala fide* on the part of the District Judge by pointing out that although the said order is dated 24th November, 2022, the endorsement shows that it was checked on 25th November 2022 and signed on 26th November, 2022 and on 24th November, 2022 the decision of the Court was published in the newspaper, which prompted the petitioner to file an emergency application before the District Judge and by order dated 26th November, 2022, upon considering law and order situation, which had erupted pursuant to the newspaper report, the effect and operation of the impugned order was stayed which was extended again by order dated 30th November, 2022.

15. *Per contra*, Mr. Gaware learned counsel for the Respondent traces the history of temple to the time of Jankoji- the pre-decessor of the Petitioners. He would submit that it is not disputed that Jankoji had a revelation and as a result of which Jankoji started the tradition of taking the palkhi with the idol from Burhannagar to Tuljapur, which procession was joined by large number of public. He would contend that the tradition of palkhi originated, since time immemorial, is continued till today and, as such, the temple was in existence since the time of Jankoji. As regards the de-registration of

trust, he submits that there is delay in filing the revision application and the application is barred by limitation. He also challenged the *locus* of grandson of Kisan Lahanu Bhagat as he has no independent right. He would submit that the record pertaining to the registration of trust is a re-constructed record. He would point out that the trust was given PTR Number A-137. He would further submit that this position was accepted by the Petitioners themselves inasmuch as the change reports under Section 22 of the Trust Act were filed by the Petitioners. He would further submit that in the scheme application of 1980, the registration application was produced by the Petitioners themselves. He has invited the attention of this Court to the application and the order passed on the application for registration, which is annexed at page-56 of the petition and would contend that it is evident from paragraph 7(a) that the property of trust is the land on which the temple is situated and it is described by its dimensions, 53 X 100 ft. He would further submit that the application was supported by a verification clause and the application was verified by Kisan Lahanu Bhagat, who was the grand-father of Petitioners.

16. He has invited the attention of this Court to the order dated 22nd June 2004, passed by this Court in Second Appeal No.16

of 2001 and would submit that it is evident from the order of this Court that the dispute was in respect of the space surrounding Tuljabhawani Jagdamba temple. He would submit that in those proceedings, it was the contention of Arjun Kisan Bhagat that he is the sole trustee of the said temple and that the open space belongs to him. He has thereafter taken this Court to the findings of this Court in the common judgment dated 19th July 2007, passed in First Appeal No.804 of 1989 and Second Appeal No.274 of 2002. He submits that this Court while dealing with the appeals, has considered the question of delay in raising the issue about the nature of trust. He would contend that this Court has expressed a *prima facie* opinion that after a long drawn period, it may not be open to the Appellant to raise a dispute on such count. He would further submit that there is no necessity of trust deed for the purpose of establishing a public trust.

17. He has taken this Court minutely through the common judgment and order dated 29th November 2008, passed by the learned Joint Charity Commissioner and in particular to the finding as to limitation. He would further submit that it is a finding of Joint Charity Commissioner that the trust was registered by Kisan Lahanu

Bhagat, who was thereafter submitting the accounts regularly after the registration of trust and Arjun Bhagat also continued submitting of accounts till 1981-1982. He would further contend that the Joint Charity Commissioner has held that for about 27 years, the father as well as the son, by conduct, accepted the trust as a public trust and recognized the temple as a trust property and acted thereupon, which is *per se* sufficient to hold that these persons have no *locus* to assail the registration, and that too in the year 2008, i.e. after a period of 54 years.

18. On the aspect of non-compliance of the provisions of the Trust Act as regards the registration of the public trust, he submits that the Joint Charity Commissioner has held that the reliance placed upon Section 6A of the Trust Act by the Petitioner is misplaced, inasmuch as Section 6A was introduced in the year 1971, whereas the trust came to be registered in the year 1952. He would submit that there is no need of trust deed and the said position has been laid down by the Apex Court in the case of ***Menakuru Dasaratrami Reddi Vs Dadukuru Subba Rao [AIR 1957 (SC) 797].***

19. As regards the submission that the temple is situated

within the precincts of a residential premises, he submits that if the grant has been made in favour of an individual and not in favour of the deity, and the temple is situated within the residential premises, it can be said that it is a private trust. However, in the present case, when by history and by conduct, act and omission, the private trustees have converted the nature of trust, then, the said principle is inapplicable. He has further taken this Court to the Schedule-1 of the scheme which has been framed. He would submit that the trust property is the land below the temple admeasuring 53X100 ft. He would submit that this is not a part of second appeal which is pending before this Court.

20. He has invited the attention of this Court to the findings as regards the validity of registration and submits that there is no requirement of passing of an order of registration of trust. As regards the necessity of framing of the scheme, he would submit that the factual position demonstrates the necessity of framing of scheme. He would further contend that the Civil Court has no jurisdiction to determine whether the property is property of the trust or private property and, as such, it is the Joint Charity Commissioner who is empowered under the Trust Act to decide the

said issue. He relied upon the following decisions :

[a] Ragho Singh v. Mohan Singh [(2001) 9 SCC 717]

[b] Ramesh Chand Sharma v. Udham Singh Kamal [(1999) 8 SCC 304]

[c] State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144]

[d] R. N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683]

[e] Tata Iron & Steel Co., Ltd v. Union of India [(2001) 2 SCC 41]

[f] Waryam Singh v. Amarnath [AIR 1954 SC 215]

[g] Prabhakar Adiga v. Gowri & Others [(2017) 4 SCC 97] and,

[h] Chandavarkar S. R. Rao v. Ashalata S. Guram [(1986) 4 SCC 447]

21. In the rejoinder to the submissions of Mr. Gaware, Mr. Sakpal, has relied upon the following decision :

[a] Hari Bhanu Maharaj of Baroda v Charity Commissioner, Ahmednagar [AIR 1986 SC 2139];

[b] Gangadhar v Mahadeo [1999(3) Mh.L.J 248];

[c] Nathmal v. Bansilal [2011(3) Mh.L.J. 785]

[d] Babu Bhagwan Din v. Gir Har Saroop [LR 1939 67 IA 1]

22. Learned counsel Mr. Thombre appears for Respondent No.4 in Writ Petition No.316 of 2023 (who is one of the applicants seeking framing of the scheme in respect of the said temple). He has adopted the submissions of Mr. Gaware and in addition, he would submit that upto the year 1980, there was no dispute about the nature of trust; it was only when an application came to be filed by the villagers for the purpose of framing the scheme, that the Petitioners have raised the submission that the temple in question is a private temple and not a public trust. He would submit that the trust was given a PTR number and the same has been admitted by the Petitioners in the proceedings bearing No.302 of 1980, which was filed seeking framing of the scheme. He has invited the attention of this Court to Paragraph No.9 at page-67 of Writ Petition No.316 of 2023 which is a reply by Arjun Kisan Bhagat stating that in the year 1954, his father had submitted the trust to the provisions of Trust Act and has relinquished all his rights and benefits in respect of the said property. Mr. Thombre would contend that in view of the stand adopted by Arjun Kisan Bhagat in Inquiry No.302 of 1980, he is now estopped from claiming otherwise. Mr. Thombre has invited the

attention of this Court to the detailed affidavit-in-reply filed by Respondent No.4. He would contend that it is admitted that Kisan Lahanu Bhagat had filed an application under Section 18 of the Trust Act. He would further submit that the Petitioner has deliberately not placed on record the order passed on the trust application and the certificate of registration which was in the custody of the Petitioner.

23. As regards the properties which formed part of Schedule-1, he would submit that the said property is the trust property. He has drawn the attention of this Court to the Schedule, which is annexed at page-525, which shows that the property is registered in the public trust registration office as Shree Jagdamba Tuljapurchi Devi temple admeasuring 53 X 100 feet. He has also raised an objection to the maintainability of the application under section 70A of the Trust Act. He has invited the attention of this court to the provisions of the Trust act as regards the de-registration of trust, that is, Section 22A of the Trust Act. He has further taken this Court to the definition of "manager" as contained in Section 2(8) of the Trust Act and points out that in the application seeking registration, Kisan Lahanu Bhagat has stated "*he is priest*". As such he would contend that the position of Kisan Bhagat was that of a manager and not of a trustee.

Insupport of his submission, he relied upon the following decisions :

[a] Dattaram Deoji Patil v. Raghunath Shankar Badve [1975 UCR (Bom) 109.]

[b] Bashir B. Inamdar v. Muslim Misgar Jamat [1991 AIR(Bom.) 326].

[c] Maharashtra Gandhi Smarak Nidhi v. Gandhi Smarak Nidhi [(2011)6 Bom.C.R. 657] and

[d] Shankarlal Sandhuram Master v. Kedargir Guru Harigir [2016(5) ABR 78].

24. In rejoinder, Mr. Sakpal submits that the delay will have to be considered *vis-a-vis* the order of registration. In the present case, as there is no order of registration, there is no question of any delay. He has further submitted that it is evident from the evidence on record that to enter the residential house, ingress is through the main door of deity, which is a small part of the residential house of Bhagats. This fact has been admitted in the cross-examination by the contesting party. The evidence on record shows that there is no space available for *Parikrama* of the temple and that the room of the Goddess is part of the Gram Panchayat House No.114, belonging to Bhagats. He would further submit that this evidence conclusively

establishes that the temple was part of the residential premises.

25. Learned counsel Mr. A.D. Ostwal appearing for Respondent No.5 in Writ Petition No.316 of 2023 and Petitioner in Writ Petition No 558 of 2023 has supplemented the arguments of Mr. Gaware and Mr. Thombre. He would further submit that whether the property of the trust is a public property is an issue which squarely falls within the jurisdiction of the Charity Commissioner. He would further submit that the conduct of the petitioner would show that temple is a public trust. He has invited the attention of this Court to the issues which were framed by the learned District Judge while deciding the application and the findings thereon. In support of his submissions, Mr. Ostwal relied upon the following decisions :

[a] Mahibubi v. Sayed Abdul [2001(2) Mh.L.J. 512]

[b] Keshav v. State of Maharashtra [2007(2) Mh.L.J. 469]

26. Considered the rival submissions of the parties. I have deemed it appropriate to consider the issues under various heads as per the submissions of the learned counsels for the parties.

CREATION OF PUBLIC TRUST:

27. The creation of public trust is assailed on the ground that there is no trust-deed, no constitution, no rules and regulations. In that context, it will be apposite to refer to the definition of *"public trust"* under section 2(13) of the Trust Act, which reads thus:

> *"(13) "**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 Waqf, church, synagogue, agiary 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."*

28. The aforesaid definition indicates that public trust may be created by way of religious or charitable endowment. The provisions of the Trust Act do not mandate the execution of trust- deed for creation of public trust. However, in the absence of deed of dedication, it is essential that it should be clearly proved that the temple was dedicated to the public. The Apex Court in the case of ***Menakuru Dasaratharami Reddi v. Dudaukuru Subba Rao [1957 AIR SC 797]*** has held that deed of dedication to any charitable or religious institution need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication

to charity.

29. In the year 1952, Kisan Lahanu Bhagat, the grandfather of Vijay Arjun Bhagat and father of Arjun Kisan Bhagat, had preferred an application under Section 18 of the Trust Act seeking to register the public trust. The relevant information contained in the application is reproduced as under:

"२) मी पुढील आवश्यक तपशील सादर करीत आहे :-

(२) ट्रस्टीच्या किंवा मॅनेजरच्या जागा दुसरा ट्रस्टी किंवा मॅनेजर घेण्याची रीत - सदरचे देवीचे देवळास सरकारकडुन दरसाल रुपये २१ एकवीस मे. मामलेदार सो. ता. नगर यांचे कडून मिळते. ते रुपये सदर ट्रस्टी लोकाचे खर्चाची होय आम्ही देवीस खर्च करितो. आम्ही वहिवाट आमचे वाडवडिलापासुन वंशपरंपरा चालत आहे व ती मालकी हक्काने करित आहोत.

(४) अ) ट्रस्ट निर्माण करणा-या दस्तऐवजांचा तपशील (नकल जोड़ा) - ट्रस्ट निर्माण करणारा दस्त ऐवज नाही.

ब) ट्रस्टाचा उगम किंवा निर्मिती संबंधीच्या दस्त ऐवजाशिवाय इतर तपशिल - ट्रस्टचा उगम किंवा निर्मिती संबंधीचा दस्तऐवज नाही वहिवाटीप्रमाणे चालत आहे.

(६) जंगम मालमिळकत, अशा मालमिळकतीच्या प्रत्येक वस्तुच्या अंदाजे किंमतीसह. (टिप :- प्रत्येक वस्तुची नोंद करण्याऐवजी अशा मालमिळकतीच्या वस्तुचे एक नविन बुक करुन नोंदी भराव्यात जसे फर्निचर, पुस्तके वगैरे एकड़ रक्कम ट्रस्टाच्या भांडवलाच्या भाग असेल तरच सदर एकड रकमे संबंधी नोंद करावी. रोख्यांच्या बाबतीत प्रत्येक सिक्युरिटी, स्टॉक, शेअर व डिबेंचर यांचा त्यांच्या नंबरासह तपशील यावा).

भार	देवीचे अंगावरील दागिने
५०	चांदी देवीचा टोप
१०	चांदी कमर पटटा
सोने १ तोळे	गळयातील पुतळ्या

सोने १ तोळे वर्ज टीक

देवीची छत्री चांदीची भार पंचावन्न ५५.

समया दोन २ पितळी

नगारा १

घाटया दोन पितळी,

घाटया वरील झाकण पितळी.

किंमत सोने २०० चांदी १७० पितळ ६० नगारा १०

(७) अ) जेथे स्थावर मालमिळकत असेल ते गांव किंवा म्यु. सिटी सर्व्हे ची मुळ म्युनिसिपल किंवा मुळ प्रत, नकाशा किंवा दाखवणारी स्थावर मालमिळकतीची, गांव क्षेत्र माहितीपत्रक या सत्ता क्रमांक ती नोंद केली असे त्या सत्ताप्रकाराचे वरील (हक्काचे पत्रक, सिटी सर्व्हे रेकॉर्ड किंवा मुळ म्युनिसिपल रेकॉर्ड यांतील मालमिळकती संबंधीच्या नोंदीचा दाखला दिलेल्या प्रती जोडाव्या).

मौजे कापुरवाडी शिवारात तपे नगर गांव बु.हानगर (गावठाण जागेवर खाजगी मालकीचे श्री. झगदंबे तुळजापुरचे देवीचे देऊळ तुकाई या नावांचे देवालय आहे. त्या जागेस सर्व्हे नंबर अगर अदयाप कोणतेच नंबर नाही.

देवाचे देऊळ ज्या जागेत आहे त्या जागेचे अदमासे क्षेत्र :-

लांबी पूर्व प. फुट ५३ व द.उ. फुट १०० व बाकीची खुली जागा या जागेत देवीचे देवालय देऊळ इमारती, सभामंडप वगैरे आहेत. या जागेची वहीवाट वंश परंपरा व वहिवाटी प्रमाणे मालकी प्रमाने चालत आलेली आहे.

ब) प्रत्येक स्थावर मालमिळकतीची अंदाजे किंमत.

सदर जागेवर असलेले देवालय यांची अंदाजे किंमत रुपये पाच हजार ५०००. सदर देवापुढे येणारे दक्षना होय.

(८) या शिवाय सरकारकडून रुपये एकविस २१ पत्रक

(९) सरासरी ठोक वार्षिक उत्पन्न (३७०) तिनशे सतर

अ. जंगम व. स्थावर

(१०) सरासरी वार्षिक खर्च (३७१) तीनशे एकाहत्तर

(१३) ट्रस्टाच्या मालमिळकती संबंधीच्या मालकी हक्काच्या दस्तऐवजांचा तपशील व ते ताब्यांत असणा-या ट्रस्टींची नांवे --- नाही.

३) फी दाखल रु. (अक्षरी रुपये पाच) सोबत पाठविले आहे."

30. A scrutiny of the aforesaid application indicates that the purpose of the trust, as stated in Column 3, is to maintain the temple in perpetuity. As regards the grant received from government, Column 2 states that grant of Rs 21/- is received from the government towards the temple and is spent for the idol. Column 6 sets out the movable property of the trust and Column 7 sets out the immovable property which states that in village Burhannagar on gaothan land in private ownership, the temple of Shri Jagdamba Tulajpur Devi's temple by name of Devi Tukai is located and there is no survey number given. It is further stated that the approximate area on which the temple is situated is about 53 x 100 feet and rest of open space upon which the temple of Devi, Sabha Mandap etc is situated. It is further stated that the use of said land is by way of hereditary easementary right and is continued as owners. Column 7(b) states that the approximate value of the property is Rs.5,000/- and there are donations received. Column 14 states that the applicant has no other source of income except the offerings on which he is dependent for his sustenance. Column 14 (3) states that fee of Rs.5/- was enclosed therewith.

31. Column 3 of the application for registration indicates that the object of the trust is to maintain the temple in perpetuity and to carry out the worship of the deity by puja archana, lighting of lamp etc. Alongwith the application for registration there is a separate sheet in which additional information is given as regards the trust and in respect of Column 2(13), documents of court proceedings and mortgage deed is produced , which reveals the intention of Kisan Lahanu Bhagat to dedicate the property to the public trust. As such it was the intention of Kisan Lahanu Bhagat to create a trust for the purpose of worship of the deity and maintenance of the temple in perpetuity. On overall consideration of the information set out in the application filed by Kisan Lahanu Bhagat, it is revealed that the intention of the settlor is to create the trust in favour of deity and no beneficial interest is reserved for the settlor or his heirs. The Apex Court in the case of ***Deoki Nandan v. Murlidhar, [AIR 1957 SC 133],*** which decision was followed in ***State of Bihar v. Sm. Charusila Dasi [AIR 1959 SC 1002]*** has held that an endowment can validly be created in favour of an idol or temple without the performance of any particular ceremonies, provided the settlor has clearly and unambiguously expressed his intention in that behalf. Where it is

proved that ceremonies were performed that would be valuable evidence of endowment, but, absence of such proof would not be conclusive against it.

32. There is admittedly no deed of dedication in the present case and the question whether there was in fact a dedication of the property in question, is to be determined on the basis of the evidence produced by the parties and the circumstances brought on record. In this regard it will be worthwhile to note the pleadings in paragraph 9 of the reply of Arjun Kisan Bhagat to the Scheme Application No. 302 of 1980, which reads thus:

> "वास्तवीक सदरहू देवस्थान ट्रस्ट हा पूर्वी सामनेवाला यांचे घराण्याची पूर्णपणे खाजगी अशी बाब होती. तरीपण सामनेवाल्यांचे वडिलांनी सन 1954 साली देवस्थान मंदीरचा सार्वजनीक ट्रस्ट करून तो नोंदून घेतला आहे व देवस्थान वरील तत्संबंधीचे सर्व हक्क व सवलती सोडून दिलेल्या आहेत असे करण्यात सामनेवाला यांचे वडिल व खुद्द सामनेवाला यांचा प्रामाणिकपणा दिसून येतो."

33. It is settled that in order to constitute a valid endowment, it is necessary that the donor should divest himself of the property. It is essential that there should be an unambiguous expression of an intention to divest and an actual divestment for the benefit of the

beneficiary. The fact of dedication must be established by evidence, which can be ascertained by the subsequent conduct of the trustees. There should be a clear and cogent evidence to show that there was an intention to dedicate the property for the particular purpose, followed by an actual divestment or appropriation of the property to the specific object. Thus the law seems to be well settled that even in the absence of a document and ceremony such as Sankalp or Samarpan, dedication may be established by other evidence. The question whether there has been a dedication of a certain property to a temple is a question of fact to be determined on the basis of the evidence produced in each case. It may be noted that in the order dated 22nd June, 2004 passed in Second Appeal No.16 of 2001 wherein Arjun Kisan Bhagat was the respondent, this Court has recorded that the counsel for both the parties have admitted that there is no dispute in respect of the temple and its trustees. It appears that only when an application for framing of scheme came to be filed in the year 1980, the Petitioners have challenged the registration of the trust. Till that time the successors of Kisan Lahanu Bhagat had accepted the creation of the public trust and the dedication of the property to the public trust.

34. The Apex Court in the case of ***Bala Shankar Mama Shankar v. Charity Commissioner [1994 Supp(1) SCC 485]*** has held as under :

> *"An idol is a juristic person capable of holding property. The property endowed to it vests in it but the idol has no beneficial interest in the endowment. The beneficiaries are the worshipers. Dedication may be made orally or can be inferred from the conduct or from a given set of facts and circumstances. There need not be a document to evidence dedication to the public. The consciousness of the manager of the temple or the devotees as to the public character of the temple; gift of properties by the public or grant by the ruler or Govt; and long use by the public as of right to worship in the temple are relevant facts drawing a presumption strongly in favour of the view that the temple is a public temple. The true character of the temple may be decided by taking into consideration diverse circumstances. Though the management of a temple by the members of the family for a long time, is a factor in favour of the view that the temple is a private temple it is not conclusive. It requires to be considered in the light of other facts or circumstances. Internal management of the temple is a mode of orderly discipline or the devotees are allowed to enter into the temple to worship at particular time or after some duration or after the head man leaves, the temple are not conclusive. The nature of the temple and its location are also relevant facts. The right of the public to worship in the temple is a matter of inference.*
>
> *Dedication to the public may be proved by evidence or circumstances obtainable in given facts and circumstances. In given set of facts, it is not possible to prove actual dedication which may be inferred on the proved facts that place of public religious worship has been used as of right by the general public or a section thereof as such place without let or hindrance. In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment when property is set apart for the worship of the family idol, the public are not interested. The mere fact that the management has been in the hands*

> *of the members of the family itself is not a circumstance to conclude that the temple is private trust. In a given case management by the members of the family may give rise to an inference that the temple is impressed with the character of a private temple and assumes importance in the absence of an express dedication through a document. As stated earlier, consciousness of the manager or the devotees in the user by the public must be as of right. If the general public have always made use of the temple for the public worship and devotion in the same way as they do in other temples, it is a strong circumstance in favour of the conclusiveness of public temple. The origin of the temple, when lost in antiquity, it is difficult to prove dedication to public worship. It must be inferred only from the proved facts and circumstances of a given case. No set of general principles could be laid."*

35. It is contended in Revision Application No.3 of 2008 that there is no document of transfer of property in favour of the public trust. From the year 1952 till 1980, there was no challenge to the registration of the public trust and the property forming part of Schedule-I. The property was dedicated to the public trust and was treated as such by Kisan Lahanu Bhagat and his successors till the year 1980 when objections came to be raised by the Bhagat family upon the filing of an application for framing of scheme. In the reply filed by the Petitioners to the scheme application No.302 of 1980 Arjun Bhagat has pleaded that they had relinquished their rights in the property in favour of the trust. It is the case of the Petitioners that there is no document of the transfer of property to the public

trust. The burden was upon the Petitioners to firstly establish by cogent documentary evidence that the property of public trust stood in the name of the Petitioner's pre-decessors and continue to stand in their name in the public/revenue records. Admittedly, no title deeds to the properties of the public trust are produced. The application for registration filed by Kisan Lahanu Bhagat states that the temple is situated on Gaothan land and does not bear any survey number. It is further stated that land is used as owner by way of hereditary easementary right. The Petitioners have produced documents pertaining to the litigation of the year 1859 and it is improbable that they are not in possession of the title deeds to the subject properties. Upon failure to place on record the title deeds in respect of the public trust properties, it is difficult to arrive at a conclusion that the properties of public trust were in the ownership of the predecessors of Petitioners and there is no transfer of these properties in the name of public trust. As held by the District Judge there is no evidence brought on record that the predecessors of the Petitioners were the owners of the property and there are no title documents to show the ownership of any of the Petitioner's ancestors upon the land of the temple or Wada. In the absence of evidence regarding the ownership of property, in my opinion, the

submission as regards the absence of deed of transfer of property in favour of public trust cannot be sustained.

36. Much emphasis has been laid by the learned counsel for the Petitioner on the use of the word “as owners” occurring in Column 7(a) of the application for registration. It is contended that the said words convey that the property was the private property of the Petitioners and there was no endowment. The application states that Kisan Lahanu Bhagat was dependent on the offerings made and the annual income was Rs.370/-, which was substantial amount in the year 1952, which indicates that the temple was visited by huge number of devotees. There is no evidence brought on record to show that the access of the public to the temple was permissive. There is no evidence on any obstruction to the public and the order of this Court in Second Appeal No 16 of 2001 records that *Utsavs* were conducted for which the open space was let out to the hawkers and flower vendors etc and that pilgrims used to throng the temple. The free access and exit of the worshipers and devotees is an indication about the user of temple by the public as a matter of right.

37. The Petitioners contend that the devotees visited the temple occasionally for Darshan and not as of right. Proof of long

user by public without interference is a cogent evidence in support of the fact that temple is a public temple. In that context, the material on record will have to be examined. It has come on record that since inception, which dates back almost 1000 years, the public at large used to take darshan of *Palkhi,* which was taken from Burhannagar to Tuljapur and the *palkhi* was receiving grant of Rs 21/- from the government. As such it is indicative of the fact that it is meant for public and not controlled exclusively by the Bhagats. During the *Palkhi,* there was offerings by the devotees and there was flow of income from the public. Since time immemorial, the *palkhi* and idols are being worshiped by public at large. It is a matter of common knowledge that in Hindu culture, the worshipers are not turned away even from a private temple and the fact that the members of the public were permitted to take darshan of deity without any hindrance, will not be a circumstance which by itself would conclusively establish that the temple was a public trust in the absence of an element of right in the use of temple by the public. However, in the present case, there is no evidence of restriction on the free access and exit of the worshipers or any control by the Petitioners over the devotees. The temple was visited by devotees as a matter of right and there is no material on record to indicate that

the visit by the public was permissive; that any right was reserved to the Petitioners to restrict the entry of the public. It is not disputed that the festivals such as *Navratri* were conducted in the temple, in which the public participated as a matter of right. The conduct of the settlor, i.e. Kisan Lahanu Bhagat and the subsequent trustees reveals that there was dedication of the temple for public user, which user was as a matter of right. It may be noted that in Second Appeal No.16 of 2001 (which proceedings were in respect of open space surrounding the temple), this Court in its order dated 22nd June, 2004 has noted the submission of the Petitioners that as regards the open space, the pilgrims used to throng the temple and stay for a while in the open space at the time of festivals and that at the time of festival i.e., *Ashwini Shudhan Pratipada* the devotees and the pilgrims visit the temple. It is also recorded that there is no dispute in respect of the temple and its trustees. These submissions lend credence to the position that not only there was no restriction on the visits of the public but even the open space was used by the public as a matter of right. As such, in my opinion, the creation of public trust and the dedication of temple to the public is established through cogent and reliable evidence.

38. It is contended by the Petitioners that the application for registration was moved by Kisan Lahanu Bhagat under the misconception of protection for the temple. It is pleaded in Revision Application No.2 of 2008 that their grand-father Kisan Lahanu Bhagat was ignorant and as such erroneously made an application under Section 18 of the Trust Act.

39. The Trust Act was enacted in the year 1950 to regulate and make better provision for administration of public religious and charitable trusts in the State of Bombay. The application was rightly moved under the provisions of Trust Act as public trust includes a temple. If it was the intention of Kisan Bhagat to register a private trust, then during the lifetime of Kisan Lahanu Bhagat, he would have adopted appropriate proceedings to challenge the registration as public trust on ground of misconception. The subsequent conduct of Kisan Lahanu Bhagat and his successors is sufficient to warrant a finding that there was an intention to create a public trust. The provisions of the Trust Act were being complied with inasmuch as the accounts were being regularly submitted and change reports were filed. The District Judge has examined the records sent from the office of Joint Charity Commissioner, Pune which revealed an entry

of the year 1963 of change report bearing no. 247/1963 dated 27th July, 1963 showing the names of Arjun Bhagat, Nana Tapkire and Ramdas Jadhav notified, which indicated that in the year 1963 there were third party trustees, not related to Bhagat family. It appears that in the year 1980 when the scheme application was moved for framing of scheme in respect of the trust, the objection was taken to the creation of the public trust and the validity of the registration itself.

40. The contention is that Kisan Lahanu Bhagat was illiterate and did not know the costs and consequences of registration. The Petitioners desire to portray Kisan Lahanu Bhagat as a simpleton who was unaware of the legal position. However, the same cannot be accepted for the reason that the documentary evidence on record shows that Kisan Lahanu Bhagat was not a stranger to legal proceedings. There was considerable litigation between the factions of family in respect of the right to *palkhi* and its offerings, possession of temple and the open space surrounding it, etc., and the partition deeds and compromises were entered into in which Kisan Lahanu Bhagat was a party. As such, it cannot be accepted that Kisan Lahanu Bhagat was unaware of the legal provisions of the Trust Act

and under a misconception registered the temple as public trust.

VALIDITY OF REGISTRATION:

41. Reliance has been placed on the provisions of sections 18, 19 and 20 of the Trust Act to contend that the same necessitates an enquiry, findings, and speaking order for registration of public trust. The provisions of sections 18, 19 and 20 of the Trust Act and Rules 6, 7, and 8 of the Trust Rules are reproduced for ease of reference as under:

> **"Section 18. Registration of Public Trusts:**
>
> (1) It shall be the duty of the trustee of a public trust to which this Act has been applied to make an application for the registration of the public trust.
>
> (2) Such application shall be made to the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the trustee has an office for the administration of the trust or the trust property or substantial portion of the trust property is situated, as the case may be
>
> (3) Such application shall be in writing, shall be in such form and accompanied by such fee as may be prescribed.
>
> (4) Such application shall-
>
> (a) in the case of a public trust created before this Act was applied to it, be made, within three months from the date of the application of this Act, and
>
> (b) in the case of a public trust created after this Act comes into force, within three months of its creation.

(5) Such application shall *inter alia* contain the following particulars :-

(a) the designation by which the public trust is or shall be known (hereinafter referred to as the name of the public trust)],

(i) the names and addresses of the trustees and the manager,

(ii) the mode of succession to the office of the trustee;

(iii) the list of the movable and immovable trust property and such descriptions and particulars as may be sufficient for the identification thereof;

(iv) the approximate value of movable and immovable property;

(v) the gross average annual income of the trust property estimated on the income of three years immediately preceding the date on which the application is made or of the period which has lapsed since the creation of the trust, whichever period is shorter;

(vi) the amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under clause (v) relate;

(vii) the address to which any communication to the trustee or manager in connection with the public trust may be sent;

(viii) such other particulars which may be prescribed:

Provided that the rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(6) Every application made under sub-section (1) shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf. It shall be accompanied by a copy of an instrument of trust, if such instrument had been executed and is in existence.

(6a) Where on receipt of such application, it is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or disclose therein the full particulars of the trust, and resubmit it within the period specified in such direction; and it shall be the duty of the trustee to comply with the direction.

(7) It shall also be the duty of the trustee of the public trust to send a memorandum in the prescribed form containing the particulars. including the name and description of the public trust, relating to the immovable property of such public trust, to the Sub-Registrar of the sub-district appointed under the Indian Registration Act, 1908, in which such immovable property is situate [for the purpose of filing in Book No. I under section 89 of that Act.

Such memorandum shall be sent within three months from the date of creation of the public trust and shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.

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 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) the amount of gross average annual income and expenditure of such trust, and

(i) any other particulars as may be prescribed under sub-section (5) of section 18.

Section 20. Findings of Deputy or Assistant Charity Commissioners-

On completion of the inquiry provided for under section 19, the Deputy or Assistant Charity Commissioner shall record his findings with the reasons therefor as to the matters mentioned in the said section, land may make an order for the payment of the registration fee.

Rule 6. Application for registration of a public trust under section 18-.

(1) The application for registration of a public trust, in addition to the particulars specified in clauses (i) to (vii) of sub-section (5) of section 18, shall contain the following particulars:-

(a) Particulars of documents creating the trust.

(b) Particulars other than documents about the creation or origin of the trust.

(c) Objects of the trust.

(e) Particulars of encumbrances, if any, on trust property. Particulars of the scheme, if any, relating to the trust.

(g) Particulars of title deeds pertaining to trust property and the names of trustees in possession thereof.

The Charity Commissioner may, however, direct that in the case of any or all public trusts it shall not be necessary to give

the particulars of the trust property of such value and such kind as may be specified by him.

(2) The application shall be in the form of Schedule II hereto.

(3) The application in addition to a copy of the instrument of trust, shall be accompanied by a copy of the scheme, if any, in operation in regard to the public trust.

(4) Every person signing the application shall subscribe on solemn affirmation before the Deputy or Assistant Charity Commissioner, a Justice of the Peace, an Executive Magistrate or a Notary appointed under the Notaries Act, 1952 for the State of Maharashtra] that the facts mentioned in the said application are true to the best of his information and belief.

(5) The fee to accompany the application shall be in cash and of the following amounts:-

		Rs.
(i)	when the value of the property of a public trust does not exceed Rs. 2,000.	3
(ii)	when the value of the property of a public trust exceeds Rs. 2,000 but does not exceed Rs. 5,000.	5
(iii)	when the value of the property of a public trust exceeds Rs. 5,000 but does not exceed Rs. 10,000.	10
(iv)	when the value of the property of a public trust exceeds Rs. 10,000 but does not exceed Rs. 25,000.	20
(v)	when the value of the property of a public trust exceeds Rs. 25,000.	25

Provided that no such fee shall be charged in the case of public trusts deemed to have been registered under section 28.

(6) When on an application for registration of a public trust made under section 18, it has been decided by the

Deputy or Assistant Charity Commissioner or any other competent authority under the provisions of the Act, that the trust does not exist or that the trust is not a public trust to which the Act applies or that the value of the property of the public trust is less than the amount for which registration fee has been paid, the Deputy or Assistant Charity Commissioner or such other authority may direct the refund of the whole of the fee or such part of the fees as has been paid in excess of the fee payable under sub-rule (5), as the case may be, to the applicant. CHAPS TO 88

(7) The memorandum referred to in sub-section (7) of section 18 shall be in the form of Schedule II-A hereto. Such memorandum shall be verified in the manner prescribed under sub-rule (4).

Rule 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.

Rule 8. Certificate of Registration

(1) When a public trust is enrolled in the Register of Public Trusts a certificate in the following form shall be issued to the trustee in token of the registration. Such certificate shall be signed by the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office and shall bear the official seal.

Form of Certificate

It is hereby certified that the Public Trust described below has this day been duly registered under the Bombay Public Trust Act, 1950 (Bom. XXIX of 1950) at the Public Trusts.

Registration Officer

Name of Public Trust .....

Number in the Register of Public Trusts . . . . . .

Certificate issued to .....

Given under my hand this..... day of 20

Seal

Signature .....
Designation .....

(2) If any certificate of registration is lost, destroy or defaced the Deputy or Assistant Charity Commissioner may, on an application for the purpose, issue a duplicate thereof [(the word "Duplicate" being clearly stamped in red ink)] on payment of such charge therefor not exceeding two rupees as the Deputy or Assistant Charity Commissioner may deem fit."

42. The aforesaid provisions indicate that the proceedings for registration of public trust commence with the filing of an application for registration. For that purpose, let us have a re-look at the application for registration, copy of which is annexed at page no.63 to Writ Petition No.305 of 2023. The application for registration is Inquiry Application No.302 of 1980. The application states that it is filed under Section 50A of the Trust Act. The details as regards the trust and the other information are given in the said application. Column 3 of the application states that the requisite fee of Rs.5/- is enclosed. The application is thereafter verified by Kisan

Lahanu Bhagat on 21st May 1952. Thereafter, there is a separate sheet in which additional information is given as regards the trust and in respect of Column 2(13), documents of court proceedings and mortgage deed is produced. After the additional information there are findings, which read thus :

> "Additional information
> ट्रस्टचा पत्ता पुढीलप्रमाणे - मौजे दु-हानगर ता. नगर
> कलम २ (२) मधील मजकुर कलम २ (१४) मध्ये वाचावा
> कलम २ (२) मध्ये वंशपरंपरा
> कलम २ (३) मध्ये नवरात्रास ऊरुस वगैरे करणे
> कलम २(४)ब मध्ये देवुळ १९१३ मध्ये बांधले
> कलम २ (५) मधील मजकूर कमी करणे
> कलम २ (१०) मध्ये स. पूर्वी ऐवजी ३७० असे
> कलम २(१३) (१) नगर कोर्टाचा मुकदमा नं. २४६/३५
> याच्यावर झालेचा हुए ता. १३.१.४३ चा
> (२) मामलेदार ता. नगर यांचा ता. १६.८.५२ चा दाखला.
> (३) तोबे गहाणखत ता. २५.१२.१३ मुर्तीच्या खरेदीबाबत.
> वरील तिन्ही कागद अर्जदाराचे ताब्यात असतील.
> ---
> Findings
> (1) Yes.
> (2) Yes, as stated in Ex. 1 read with Ex.6
> (3) Yes,
> (4) to (13) As stated in Ex. 1 read with Ex.6
> (5) Yes.
> The trust is to be registered
> Certificate to issue.

21st January 1954."

43. After the filing of the application for registration under Section 18 of the Trust Act, an inquiry under Section 19 of the Trust Act is contemplated. It is the contention of the learned counsel for Petitioners that there was no inquiry conducted as mandated by the provisions of Section 19 of the Trust Act. I am not inclined to accept the submission for the reason that after the inquiry is completed, the provisions of Section 20 require findings to be recorded by the Deputy or Assistant Charity Commissioner, which findings are part of the Petition at Page 68. Without an inquiry as contemplated by Section 19 of the Trust Act, the Deputy of Assistant Charity Commissioner could not have rendered the findings.

44. A perusal of the findings shows that the findings are given as regards 14 items and thereafter there is an endorsement that the trust is to be registered and certificate to issue. The contention is that the said endorsement is a statement rather than an order. Section 20 of the Trust Act mandates the recording of findings with reasons therefor as to the matter mentioned in Section 19 of the Trust Act. It appears from the findings that there is Exhibit-1 read with Exhibit-6 which forms part of the findings of the Deputy or

Assistant Charity Commissioner and which has now not been made part of the record. This leads to a presumption that there is compliance of Section 20 of the Trust Act. Under the provisions of Section 21 of the Trust Act, the entries are made in the Register kept under section 17 in accordance with the findings recorded under Section 20. As the Petitioners dispute that there are no findings, the burden was upon the Petitioners to produce the register maintained under Section 17 to establish that there were no findings, which has not been done in the present case.

45. It is contended by learned senior counsel for Petitioners that after observing that there was no seal or signature after the findings and that it appears to be a statement rather than order, the District Judge has held that the order was passed after almost two years and that the order upon the certified copy also shows that it was passed with application of mind. In paragraph 96 the District Judge after examining the documents has on the basis of certified copy concluded that it is indeed a final order though without seal and signature. It will be worthwhile to bear in mind that this is a document which had been filed in the year 1952 by Kisan Lahanu Bhagat seeking registration of the trust. From the documents it appears that the inquiry was conducted and findings were recorded.

It is not disputed that subsequently the trust had been registered and a PTR number is given to the trust. The District Judge has observed that the original record of the Assistant Charity Commissioner was not available and what was received was the record purporting to be of the original application was received, which did not contain a separate order of registration bearing seal and signature. Considering that the proceedings were of the year 1954, it cannot be said with absolute conviction that there was no separate order of registration bearing the seal and signature. A presumption has to be drawn that the procedure which was required to be followed, had been duly followed. In my opinion, it is now not open for the Petitioners, after the lapse of almost 54 years, to contend that there was no inquiry and no order was passed on the registration of trust.

46. On overall consideration of application for registration, the payment of fees with the application, the additional information furnished, the findings, the endorsement and the registration number being given to the trust, in my view, all legal essentials of procedure in connection therewith were adhered to. Added to this as well is the rebuttable presumption of validity of official acts which

can be permissibly drawn in terms of Section 114 (e) of the Indian Evidence Act, 1872, which presumption is not dislodged by convincing evidence to the contrary.

PRIVATE TEMPLE OR PUBLIC TRUST :

47. Before embarking upon the inquiry as to whether the temple in question is a private temple or public trust it would be advantageous to bear in mind the tests laid down by judicial pronouncements :

(i) Way back in the year 1924, the Privy Council in the decision of ***Pujari Lakshmana Goundan & Anr. V. Subramania Ayyar & Ors [AIR 1924 PC 44]*** took the view that even in a case where at the initial stage the temple is a private one, by reason of the founder holding it out by representing to the Hindu public that the temple was a public temple at which all Hindus might worship, then, the inference will be that he had dedicated the temple to the public.

(ii) Another Privy Council decision is the decision in the case of ***Babu Bhagwan Din v. Gir Har Swaroop, [LR 1939 67 IA 1]*** where the grant was made to one Daryao Gir and his heirs in

perpetuity and the evidence showed that the temple and the properties attached thereto had throughout been treated by the members of the family as their private property appropriating to themselves the rents and profits thereof, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home. It was observed as follows:

> *"In these circumstances, it is not enough in their Lordships opinion to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol; they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust.*

(iii) In the case of ***Deoki Nandan v. Murlidhar [1956 SCR 756]*** the Apex Court held that the true test in determining whether a temple is a private or a public temple, depends on whether the public at large or a section. thereof, 'had an unrestricted right of worship' and observed :

> *"When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshipers, and that the purpose of the endowment is the maintenance of that worship for the benefit of worshipers, the question whether an endowment is private or public presents no*

> *difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any 'specified portion thereof." The decision of the Privy Council in Bahu Bhagwan Din v. Gir Har Saroop, (supra) was distinguished on the ground that properties in that case were granted not in favour of an idol or temple but in favour of the founder who was maintaining the temple and to his heirs in perpetuity, and observed: "But, in the present case, the endowment was in favour of the idol itself, and the point for decision is whether it was private or public endowment. And in such circumstances, proof of user by the public without interference would be cogent evidence that the dedication was in favour of the public." The Apex Court referred to several factors as an indicia of the temple being a public one viz the fact that the idol is installed not within the precincts of residential quarters but in a separate building constructed for that purpose on a vacant site, the installation of the idols within the temple precincts, the performance of pooja by an archaka appointed from time to time for the purpose, the construction of the temple by public contribution, user of the temple by the public without interference, etc.*

(iv) In ***Poohari Fakir Sadavarthy of Bondilipuram v. The Commissioner, Hindu Religious and Charitable Endowments [(1962) Supp.(2) SCR 276]***, the Apex Court laid down the following tests to find out whether a particular temple is a private or a public one :

> *"That an institution would be a public temple within the Hindu Religious Endowments Act, 1926, if two conditions are satisfied; firstly, that it was a place of public religious worship and secondly, that it was dedicated to, or was for the benefit of, or was used as of right by the Hindu Community, or any section thereof, as a place of religious worship. When there be good evidence about the temple being a private one, the mere fact that a number of people worship at the temple, is not sufficient to come to the conclusion that the temple must be a public temple to which*

those people go as a matter of right as it is not usual for the owner of the temple to disallow visitors to the temple even if it be a private one."

(v) In ***Goswami Shri Mahalaxmi Vahuji V. Rannchboddas Kalidas & Others [1970 (2) SCR 275]*****,** the Apex Court after considering the earlier decisions on this aspect, held as follows:

"Though root of the present day Hindu public temples have been found as public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples. Public temples are generally built or raised by the public and the deity installed to enable the members of the public or a section thereof to offer worship. In such a case the temple would clearly be a public temple- If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In those case the courts have to address themselves to various questions such as:- (1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple? (2) Are the members of the public entitled to worship in that temple as of right? (3) Are the temple expenses met from the contributions made by the public? (4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples? (5) Have the management as well as the devotees been treating that temple as a public temple? Though the appearance of a temple is a relevant circumstance, it is by no means a decisive one. The architecture of temples differs from place to place. The circumstance that the public or a section thereof have been regularly worshipping in the temple as a matter of course and they can take part in the festivals and ceremonies conducted in that temple apparently as a matter of right is a strong piece

> *of evidence to establish the public character of the temple. If votive offerings are being made by the public in the usual course and if the expenses of the temple are met by public contribution, it is safe to presume that the temple in question is a public temple. In brief the origin of the temple, the manner in which its affairs are managed, the natura and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are factors that go to establish whether a temple is a public temple or a private temple.*

48. Considering the aforesaid judicial pronouncements, it is trite that in ascertaining whether a temple is a private or public temple, number of factors are required to be taken into consideration. The cardinal factor would be whether the temple has been dedicated to public user or in other words whether the public is entitled to worship as a matter of right. As regards the dedication to the trust, in the absence of any deed, it is essential that it is clearly proved that the temple claimed as a public temple was dedicated to the public. It will be also necessary to consider the historical origin of the temple and the manner in which the affairs of the temple are managed. It begs of no debate that the temple will be a public trust when it is either for the benefit of the public at large or for a section or class of public which is uncertain and fluctuating body of persons.

49. In the guiding light of the exposition of law by the Apex Court let us now examine the facts of the present case. As discussed earlier, the application for registration indicates that the endowment was in favour of the idol itself. As held by the Apex Court in the case of ***Deoki Nandan v. Murlidhar (supra)*** in the event the endowment is in favour of the idol, it will have to be examined whether it was private or public endowment and proof of user by the public without interference would be cogent evidence that the dedication was in favour of the public.

50. There has been considerable debate about the origin of temple. The case of Bhagats as revealed from their revision applications is that Shri Jagdamba Tuljapur Bhavani is the family deity of Bhagat family. In December, 1913 the idol of Goddess and Lord Ganpati were purchased by their ancestor - Late Lahanu Bhika Bhagat by mortgaging his ancestral property and thereafter he has installed and consecrated the family deities for the purpose of performing *puja-archa* and other religious rites by the family members and he had not dedicated the same for public at large. On the other hand, it is the contention of the Respondents that Jankoji- the great grandfather of Lahanu Bhagat had a revelation at the

place of the "Devara" of Goddess, consequent to which Jankoji was taking the "*Palkhi*" of Goddess to Tuljapur and it is therefore contended that the temple is in existence since time immemorial.

51. As such rival claims as regards the origin of temple fall for consideration. According to Mr. Sakpal, the idols were installed in the year 1913 by Lahanu Bhika Bhagat as family deity and that the "palki" has nothing to do with the installation of the idols. In this context, it will be apposite to refer to the genealogy of the Bhagat family, as there was considerable litigation dating back to the 19th century. The genealogy set out in the impugned judgment is as under:

Jankoji
|
Dhondi – Grandson
|
Bhiku – expired in 1910-12.
|
Lahanu – expired in 1935.
|
Kisan – expired in 1974.
|
Arjun
_____|_____
| | | |
Vijay and 3 others.

52. During the proceedings before the Joint Charity

Commissioner, Arjun Bhagat has admitted the publication of book by him giving the details of Shree Jagdamba Devi Temple. It is narrated in the said book that their ancestor-Jankoji was issueless and Jankoji and his wife were devotees of Goddess Jagdamba Devi. The history which has been narrated in the said book is that on one fine morning, the Goddess had come to the house of Jankoji in the form of a girl of about 7 to 8 years, who was looked after by Jankoji and they were treating her as a daughter. It is narrated that she was found to be a Goddess Tuljabhavani and, after giving her blessings, she disappeared. And as such Jankoji received the revelation at the place where there is "*Devhara*" of the Goddess. It is narrated that due to the said revelation, Jankoji flourished. As such Jankoji was taking *palkhi* to Tuljapur and so on. The *palkhi* of the Goddess was taken to Tuljapur from the time of Jankoji and the government grant of Rs.21/- was given for the *palkhi*.

53. The book published by Arjun Kisan Bhagat narrates the history of Jankoji taking the *palkhi* of the Goddess from Burhannagar to Tuljapur. It is an age old Hindu tradition that in specific auspicious month, the idol or some form representing the idol is taken in a *palkhi* or palanquin to the idol's revered destination. The claim of the

Petitioners is that the temple was built in the year 1913 and the idols were also purchased at the same time, which cannot be accepted by reason of the admission of the tradition of *palkhi* having originated since the time of Jankoji. As *palkhi* was being taken from Burhannagar to Tuljapur, the idol of the Goddess was in existence since the time of Jankoji. Relying upon the history of Jankoji narrated in the publication, the District Judge has rightly held that there is no question of *Palkhi* without the idol of Goddess; that the idol cannot be separated from the *palkhi* and it cannot be said that temple, carriage of *palkhi* and offering to it on the way are all different things.

54. As there is admission of the tradition of *palkhi* since the time of Jankoji, it is evident that Jankoji must have installed the idol of the Goddess being an ardent devotee and the *palkhi* bearing the idol or some form representing the deity was taken to Tuljapur, which is known as the main seat of Goddess Jagdamba Bhawani. It has also come on record that *palkhi* was accompanied by large number of devotees. Such being the antecedents, as narrated in the publication by the Petitioners themselves, the submission of the Petitioners that *Palkhi* has no nexus with the subject Goddess or subject property

cannot be accepted.

55. The Petitioners rely upon the mortgage-deed of the year 1913 to contend that the house was mortgaged to release the idols sent by VP. The mortgage-deed, in my opinion, does not conclusively establish that there was no idol in existence prior to the year 1913. There is no explanation tendered by the Petitioner as regards the deity worshiped since the time of Jankoji. As it is the case of the Petitioners that the temple has been constructed in the year 1913, the burden was upon the Petitioners to explain the history of idols in existence from the time of Jankoji, which is evident from the tradition of *palkhi*. The contention of the Petitioners is contrary to the history narrated in the book published by the Petitioners. The idol of the Goddess and *Palkhi* are integral part of religious worship and are co-existent. The *Palkhi* has to originate from a place of religious worship-whether private or public and is taken to the idol's revered destination. The Petitioners attempt to divorce the tradition of "*palkhi*" from the subject temple is deviating from the age old Hindu tradition and is unacceptable.

56. As indicated above, the idol of the Goddess was in existence

since the time of Jankoji. However, the question is whether the idol was private deity of the Bhagat family or a public temple. The *Palkhi* was receiving a grant of Rs.21/- from the government. The documentary evidence referred to in the impugned judgment of the District Judge indicates that there was substantial litigation as regards the right to manage the *Palkhi* and the offerings to the "*Devi*". Civil Suit No.1216 of 1893 was instituted by Bhiku Dhondi Teli to establish his exclusive right to manage the *Palkhi*, Application No.246/1935 filed against Kisan Lahanu Bhagat by Chandrabhan Savalram for the rights regarding *Palkhi* and to the offerings to "*Devi*", which was settled by execution of partition deed dated 4th September, 1942, wherein Kisan Lahanu Bhagat was given the right to the offerings made to *Devi*, and, about *palkhi* an arrangement was made of rotation and that the offerings to *Palkhi* will not be claimed by Kisan Lahanu Bhagat. There was a compromise on 28th June, 1938 according to which the possession of temple was with Lahanu Bhiku Bhagat.

57. From the litigation referred to above, it appears that in respect of the offerings to *Palkhi* and *Devi*, compromise was entered into between different factions of the family and in the year 1938,

under a compromise, the possession of the temple was given to Lahanu Bhagat. The documentary evidence as scrutinized by the Joint Charity Commissioner and the District Judge indicates that the subject matter of partition deed of the year 1942 between different branches of the Bhagat family were the offerings made to *palkhi* and *Devi*. The Joint Charity Commissioner on examining the partition deed has observed that it is recited therein that at the time of *Palkhi*, there was offering by devotees and there was income, which was agreed to be distributed. To the same effect is the copy of receipt dated 26th June, 1943, referred to in the judgment of the District Judge, which is a receipt executed by Dhondi in favour of Kisan Lahanu Bhagat in respect of *Palkhi* rights for Rs.900/- for a period of ten years as they were in need of money. There is no evidence of reversion and this right is said to have been enjoyed by the legal heirs of Kisan Bhagat. It appears that the offerings to the deity was considered by the family of Bhagat as their private earnings. However, the appropriation of the offerings by the Bhagat family, by itself, is not conclusive of the fact that the temple was a private temple.

58. It is not in dispute that over a period of time, the subject

temple has acquired considerable eminence and is visited by throngs of worshipers. In such cases, it is not unusual for the family of the founder to claim the temple as their private temple. The discussion above indicates that the offerings and the income was substantial to warrant a litigation between the parties in respect of right to claim the same. In addition thereto, there was grant of Rs.21/- from the government to *Palkhi*. From the aforesaid documentary evidence on record it is apparent that there was substantial flow of public money to the "*Palkhi*" and the "*Devi*".

59. The Petitioners contend that they had several sources of income apart from the offerings made to *Devi* and *Palkhi* from which the property was acquired. As discussed above, *Palkhi* was receiving substantial offerings which led to a compromise being arrived at between the warring sections of the family claiming right to receive the offerings. The impugned judgment states that the Petitioners relied upon the partition deed to show that the Petitioners and their ancestors had income from ancestral agricultural land, much more than the income from *Palkhi*. Admittedly, the Petitioners have not produced the title documents of the idols or the lands. The application for registration filed by Kisan Lahanu Bhagat states that

the temple is situated on *Gaothan* land and does not bear any survey number. It is further stated that land is used as owner by way of hereditary easementary right.

60. The deposition of Arjun Bhagat is that his ancestors used to run shop of oil and cycle repairing; that there was land bearing Survey Nos.139 and 140 in the name of his father and grandfather (considering the genealogy, Arjun's father and grandfather would be Kisan and Lahanu). Arjun has further deposed that out of the earnings from the same, land bearing Survey No.15/1/a and Survey No.15/2 were purchased by him from one Bajirao and Yadu Kardile for sum of Rs.1,300/- in the year 1967. He has further deposed that his son Vijay is an advocate and another son Rajendra runs a shop of agricultural products. In the application for the registration of trust filed in the year 1952, Kisan Lahanu Bhagat had stated that his sustenance was dependent on the offerings made to the temple and, as such, the offerings formed the nucleus in the hands of Arjun Bhagat, who purchased the land bearing Survey No.15/1/a and Survey No 15/2 in the year 1967.

61. The District Judge has scrutinized the documents i.e., Civil

Suits of 1893 and 1935 and the partition deed of the year 1942 and held that the documents do not mention that there was other sources of income for the Bhagat family. The land bearing Survey No.15/1/a and survey No 15/2 has been purchased by Arjun Bhagat. But there is no evidence on record to show that the said land was purchased from private earnings. The sources of income are the oil shop, cycle repairing shop and the agricultural land bearing Survey No 139 and 140 standing in the name of Kisan and Lahanu. There is no documentary evidence produced on record to establish that the ancestral agricultural land i.e., Survey No.139 and Survey No.140 was purchased out of the personal earnings of the Bhagat family. As it is the specific contention of the Respondents that there was flow of public money to the *Palkhi* and the temple, it was required of the Petitioners to place sufficient evidence on record to demonstrate the revenue generated from the oil shop, cycle shop and the agricultural land and the purchase of the properties of the public trust from the said revenue. Apart from oral deposition there is no documentary evidence produced on record to substantiate the generation of revenue.

62. A cumulative reading of the application for registration

and the evidence produced on record indicates that there was substantial flow of public money to *Palkhi*, that there is no mention of any other source of income in the previous litigation and there is no evidence that the predecessors of the Petitioner had independent source of income, apart from the offerings made to the temple and the *Palkhi*. This is a strong indication in support of the contention that the temple was constructed out of public funds.

63. Another aspect which points to the public nature of the temple is that the expenses of maintaining the temple is met out of the public funds. In the application for registration of the year 1952, Kisan Lahanu Bhagat has stated in Column 14 of the application that the living of the applicant is eked out from the offerings of the temple and the applicant has no other source of income. This is a statement made in the year 1952 by the father of Arjun Kisan Bhagat. The Petitioners now seek to contend that the expenses are met from their earnings of oil extraction business. The impugned judgment records that according to Arjun Kisan Bhagat, the extraction work of oil had stopped from last 20-25 years; that he was doing only Puja and archana; that he had not given any independent evidence regarding his income as well as income of his son. Kisan Lahanu

Bhagat has stated that he is dependent on the offerings for his sustenance, Arjun Kisan Bhagat deposes that he is doing only Puja and Archana, and, there is no other evidence as regards his income and that of his son i.e. Vijay Arjun Bhagat.

64. The location of the temple is another factor to be taken into consideration - whether it is situated in a separate building or part of the residential premises. In the present case, the temple is located within the residential premises of the Petitioners. In the judgment of this Court which was passed in First Appeal No. 804 of 1989 and Second Appeal No. 274 of 2002, the geographical location has been discussed in paragraph No.4, which states that there is a big house (*Wada*) which was being used as a residence by Kisan Bhagat, and in 2 rooms on the front side, Shree Jagdamba Tuljabhawani Devi deity and Saptshringi Devi deity were installed. It has come on record that for the purpose of entering into the residential house, one has to go from the main door of the temple. As regards the existence of oil crusher in front of the temple door, the Joint Charity Commissioner has recorded that the photographs reveals that there is a door for ingress and egress and there is distance in between the oil crusher and the said door. Before this Court there are no photographs produced and hence on the basis of the material available on record,

the position of the temple will have to be visualized.

65. From the discussion above, it appears that the temple is situated in two rooms on front side of the Wada -residential house with a common door to enter the temple and the residential house, with open space surrounding the Wada in which the temple is situated. The impugned judgment refers to the photographs produced on record showing the entrance of big Temple, the outside photo of Temple showing two *Kalash* with Turrets or Minars, a photo of Jankoji hall, the walls around the temple, the house nearby, old plaque and inscription.

66. In the present case, there are no dimensions of the temple given *vis-a-vis* the residential house to ascertain whether the temple forms small part of the residential house in which case it was an indication that it is a private temple. The impugned judgment records that the photographs show the entrance of big Temple, the outside photo of Temple showing two *Kalas* with Turrets or Minars, a photo of Jankoji hall, the walls around the temple, the house nearby, old plaque and inscription. An important factor is the construction of "*Kalash*" which is one of the characters of public temple. This Court in

the case of ***Shankarlal Sandhuram Master*** **v.** ***Kedargir Guru Harigir [2016(5) ABR 78]*** in the context of determining whether the temple is private temple or public trust has held thus:

> *"Further, said temple is built in such a imposing manner that it appears to be a public temple. Most crucial test is the "Kalas" (i.e. ornamental piece of painted wood as fixed on the spires of temples) which unmistakably points out that the temple is a public temple. Usually, in a private temple, where the entry is restricted, the "Kalas" (i.e. ornamental piece of painted wood as fixed on the spires of temples) of the temple is not built.*

67. The learned District Judge has rightly taken into consideration the magnitude of the temple, the area thereof, *kalas* upon it, free access and exit for darshan without evidence of any obstruction to any person or public and held that the Hindus were treating it as a place of public religious worship as of right.

68. Much emphasis is being laid on the location of the temple in the residential premises to impress upon the private nature of temple. But this stand alone aspect cannot clothe a public temple as a private temple. While ascertaining the true nature of temple there are number of factors to be taken into consideration and the location of the temple is one of the factors. It will be cumulative reading of all the factors which will render a finding on true nature of the temple. Another aspect in present case, which supports the finding

that temple is a public temple is the use of the open space surrounding the temple. The order of this Court (Coram: A.B. Naik, J.) dated 22nd June, 2004 passed in Second Appeal No.16 of 2001 which reads thus:

> *"2…..It is the contention of the Plaintiff that the pilgrims used to throng the temple and stay for a while in the open space at the time of festivals. It is the contention of the Plaintiff that at the time of festival i.e. Ashwini Shudha Pratipada the devotees and pilgrims visit the temple and for the convenience of them, the plaintiff used to let out the open space to the hawker, flower vendors etc and they used to do brisk business during that period and plaintiff used to take the rent which he used for the purpose of maintaining the temple. It is contended by the plaintiff that letting out shops to the pilgrims at the time of festivals was done since so many years……."*

69. The contentions of the Bhagats as recorded above indicates that the festivals are celebrated on a large scale with participation of devotees and pilgrims in large numbers so much so, that the open space was let out to the hawker, flower vendors etc during that period, which is being done since last many years. In that respect there was litigation between the Petitioners and the Gram panchayat as regards letting out the open space on rent, which indicates that substantial income was being generated due to the participation of large number of devotees and worshipers.

70. The immovable property forming Schedule-I of the public trust is a temple built on land having dimensions of 53 X 100 ft, and the

open space around the temple, the temple premises- Sabha-mandap, etc. In Second Appeal No. 16 of 2001, this court was dealing with a suit for injunction filed by the Bhagats seeking to restrain the Sarpanch Gram Panchayat, Burhannagar from interfering with the possession of the petitioners on the open space surrounding Tuljabhawani temple. In that context, this Court vide order dated 22nd June, 2004, recorded that the suit is for injunction only. Another litigation in respect of the subject property are the proceedings which has reached this court by way of Second Appeal No. 274 of 2002, and which came to be decided along with First Appeal No. 804 of 1989 vide the judgment and order dated 19th July 2007. This court while dealing with the second appeal was concerned with the question whether the civil court has jurisdiction to decide the issue whether a particular property is that of a public trust or belongs to an individual claimant.

71. The Petitioners claim the temple as their private ancestral property. In my opinion, the issue as regards the ancestral nature of the property cannot be gone into in these proceedings. As indicated above the provisions of Section 79 and Section 80 of the Trust Act empowers the Deputy or Assistant Charity Commissioner to consider

as to whether the property is property of public trust. The property has been described in the application for registration in column 6 and 7A as under :

"६) जंगम मालमिळकत, अशा मालमिळकतीच्या प्रत्येक वस्तुच्या अंदाजे किंमतीसह (टिप इ. प्रत्येक वस्तुची नोंद करण्याऐवजी अशा मालमिळकतीच्या वस्तुचे एक नविन बुक करुन नोंदी भराव्यात जसे फर्निचर, पुस्तके वगैरे एकड़ रक्कम ट्रस्टाच्या भांडवलाच्या भाग असेल तरच सदर एकड रकमे संबंधी नोंद करावी. रोख्यांच्या बाबतीत प्रत्येक सिक्युरिटी, स्टॉक, शेअर व डिबेंचर यांचा त्यांच्या नंबरासह तपशील यावा).

भार	देवीचे अंगावरील दागिने
५०	चांदी कमर पटटा
१०	चांदी देवीचा टोप
सोने १ तोळे	गळयातील पुतळ्या
सोने १ तोळे	वर्ज टीक

देवीची छत्री चांदीची भार पंचावन्न ५५.

समया दोन २ पितळी

नगारा १

घाटया दोन पितळी,

घाटया वरील झाकण पितळी.

किंमत सोने २०० चांदी १७० पितळ ६० नगारा १०"

"७)(अ) जेथे स्थावर मालमिळकत असेल ते गांव किंवा म्यु. सिटी सर्व्हे ची मुळ म्युनिसिपल किंवा मुळ प्रत, नकाशा किंवा दाखवणारी स्थावर मालमिळकतीची, गांव क्षेत्र माहितीपत्रक या सत्ता क्रमांक ती नोंद केली असे त्या सत्ताप्रकाराचे वरील (हक्काचे पत्रक, सिटी सर्व्हे रेकॉर्ड किंवा मुळ म्युनिसिपल रेकॉर्ड यांतील मालमिळकती संबंधीच्या नोंदीचा दाखला दिलेल्या प्रती जोडाव्या).

"मौजे कापुरवाडी शिवारात तपे नगर, गांव बु-हानगर (गावठाण जागेवर खाजगी मालकीचे श्री. झगदंबे तुळजापुरचे देवीचे देऊळ तुकाई या नावाचे देवालय आहे. त्या जागेस सर्व्हे नंबर अगर अदयाप कोणतेच नंबर नाही.

देवाचे देऊळ ज्या जागेत आहे त्या जागेचे अदमासे क्षेत्र :- लांबी पूर्व प. फुट ५३ व द.उ. फुट १०० व बाकीची खुली जागा या जागेत देवीचे देवालय देऊळ इमारती, सभामंडप वगैरे आहेत. या जागेची वहीवाट वंश परंपरा व वहिवाटी प्रमाणे मालकी प्रमाने चालत आलेली आहे."

72. The learned counsel for Petitioners contend that in revision proceedings the question of registration was required to be determined and it was not necessary to go into the question of ownership of property in as much there was a decree of the Civil Court in their favour declaring the trust property as their private property. On the other hand it is the contention of the Respondents that the Civil Court has no jurisdiction to decide the issue. The proceedings of RCS No 600 of 1982 are not placed before this Court. Upon reading of the decision of the Apex Court dated 11th May, 2018 passed in Civil Appeal No 6272 of 2010, it appears that the suit was preferred by the Petitioners seeking a declaration that the suit properties are ancestral properties of the Petitioners; that the Petitioners are owners of the suit properties and the suit property described in Schedule 1(A) is not a Trust property and it be declared as Petitioners private property, which came to be dismissed on 10th December 1999 by the trial court. In Regular Civil Appeal No. 21 of 2000, the District Judge reversed the finding of the trial court and decreed the suit, as against which the Gram Panchayat came in

appeal, by way of Second Appeal No.274 of 2002. The decision of the Appellate Court is not placed on record and this Court is therefore unable to examine the issues decided by the Appellate Court.

73. In the common judgment and order dated 19th July, 2007 passed in First Appeal No.804 of 1989 and Second Appeal No. 272 of 2002, this court after considering various judicial pronouncements, and in particular the Full Bench judgment of this court in ***Keki Pestonji Jamadar v. Kohabadad Merwan Iran [AIR 1973 Bom 130]***, has held in the judgment dated 19th July, 2017 that the civil court did not have the jurisdiction to decide the issue as regards the property of the trust. Pertinently, in the second appeal, this court has observed that in the case of ***Keki Pestonji (supra)***, the question was whether the author of the trust was the lawful owner of the property which he has created and no such question is involved in the present matter. Against the order of this court passed in second appeal, the challenge was taken to the Apex Court, which came to be decided on 11th May 2018 remanding the matter to this court for deciding the appeal afresh on merits and in accordance with law. The Apex Court remanded the matter by observing that the manner in which this Court proceeded to decide the second appeal did not appear to be in

conformity with the mandatory procedure prescribed under Section 100 of Code of Civil Procedure.

74. The issue as regards the ancestral nature of the property is sub-judice before this Court in Second Appeal No.272 of 2002 and has not attained finality, and, as such will be examined in the pending proceedings. It will be worthwhile to note that it is not the submission of the learned counsel for Petitioners that the Joint Charity Commissioner does not have the power to decide the issue of the existence of the public trust or the issue as to whether the property is the property of the public trust. In the present proceedings, the Joint Charity Commissioner was called upon by the revision applicants to decide the issue of creation of public trust and as to whether the properties are properties of public trust. In my opinion, the Joint Charity Commissioner has not transgressed the powers vested under the provisions of Section 79 and 80 of the Trust Act. The Petitioner after filing of RCS No.600 of 1982 seeking a declaration as regards the ancestral nature of property had thereafter instituted the revision proceedings questioning the registration of the trust and claiming that the properties were not the properties of the public trust. I am unable to accept the submission of learned senior counsel for Petitioner that the issue as

regards the property of the public trust ought not to have been gone into by the Joint Charity Commissioner in view of the pendency of the Second Appeal before this Court. In my view, the jurisdiction of civil court and the joint charity commissioner is clearly demarcated and the provisions of Section 80 of the Trust Act operates as a bar on the Civil Court to decide or deal with any question which is required to be dealt with by the authority under the Trust Act. As indicated above, the Second Appeal is pending adjudication before this Court and the effect of the decision in the Second Appeal will be considered after the issue attains finality. The power of the Joint Charity Commissioner to decide the issues raised in the Revision Applications is not disputed and in my opinion, the issues have been rightly decided by the Joint Charity Commissioner.

MAINTAINABILITY OF REVISION APPLICATIONS:

75. Although the issue of maintainability is a jurisdictional issue, I deemed it appropriate to first consider as to whether the temple in question was a private temple or public trust and whether the trust was in fact registered under the provisions of Trust Act. Learned counsel for the Respondents have raised an objection to the revision applications on the ground of maintainability as well as limitation. It is contended that the revision application seeks de-

registration of the trust which can be permitted only in event of contingencies provided in sub-section (3A) of Section 22 of the Trust Act. The provisions of sub-section (3A) of Section 22 of the Trust Act provide that the de-registration of trust may take place when the purpose of the trust is completely fulfilled or becomes unlawful or when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise or when the trust, being revocable, is expressly revoked or when the trustees are found not doing any act for fulfilling the object of the trust.

76. In the present case, the revision application has been preferred under section 70A of the Trust Act, which deals with the power of the Charity Commissioner to call for and examine the records and proceeding before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner. It is the case of the Petitioner that order of the Deputy / Assistant Charity Commissioner registering the public trust is erroneous, inasmuch as the property in question was private temple and not capable of forming party of the public trust. In my opinion, the provisions of sub-section (3A) of

Section 22 of the Trust Act and Section 70A of the Trust Act operate in different fields. The substantive challenge is to the order of 21st January, 1954 registering the trust and as such the application was maintainable under the provisions of Section 70A of the Trust Act.

77. As regards the issue of limitation, it is contended by the learned Counsel for Respondents that the order of the year 1954 is sought to be challenged by way of a revision in the year 2008. Perusal of provisions of Section 70A of the Trust Act indicate that there is period of limitation prescribed for preferring revision application. This Court in the case of ***Vithalrao Sambhajirao Kharpade v. Motriam Narsingrao Birajdar [2010(1) Mh.L.J.* 977]** has held that there is no period of limitation provided for entertaining revision application or for exercise of *suo motu* powers by the Charity Commissioner. As such, I am not inclined to accept the objection of limitation raised by learned counsel for Respondents.

78. The impugned judgment was also assailed on the ground of *mala fide.* Learned counsel for the Petitioner has alleged *mala fide* against the learned District Judge by pointing out that the impugned order is dated 24th November, 2022 and the endorsement shows that

it was checked on 21st November, 2022 and signed on 26th November, 2022 whereas on 24th November, 2022 the decision of the Court was published in the newspaper which compelled the Petitioners to file an emergency application before the District Court to stay the effect and operation of the impugned order. I am not inclined to consider the allegations of *mala fide* inasmuch that the person against whom the *mala fide* are alleged has not been impleaded and, as such, is not before the Court to defend the allegations.

79. No submissions were advanced before this Court as regards the necessity of framing of the scheme. Considering that the Joint Charity Commissioner as well as the District Judge has come to a finding on the basis of the factual position that it was necessary to settle a scheme in respect of the said trust, there is no reason to interfere with the framing of scheme.

80. As regards the decision relied upon by learned counsel for the petitioners in ***Nathmal v. Bansilal [2011(3) Mh.L.J. 785]***, there is no quarrel with the proposition laid down therein that there are several characters which are required to be considered while declaring a private temple as a public temple. The decision in the

case of ***Gangadhar v Mahadeo [1999(3) Mh.L.J. 248]*** and ***Hari Bhanu Maharaj of Baroda v. Charity Commissioner [AIR 1986 SC 2139]***, are decisions on the point as regards the consideration of size of construction and its proportion to the entire extent of property while judging whether the temple is a public or private temple. In the present case, the petitioners have not placed on record the dimensions of house or the dimensions of temple to come to a decision as regards the proportionate area of the temple to the total extent of the house. In any event, along with the size of construction, there are other factors which are required to be taken into consideration before it can be said that the temple is a private temple or public temple.

81. As regards the decision of the Privy Council in ***Babu Bhagwan Din v. Gir Har Saroop [supra]*** in that case the dedication was in favour of the founder and not in favour of the idol. In that case, the Court had held that the family had treated the temple as a family property, dividing the various forms of profit, whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home, and erecting *Samadhis* to

the honour of its dead. In the present case, there is no evidence produced on record to substantiate the fact that there was any hindrance or obstruction to the user of the temple as a public temple.

82. Considering the discussion above, in my opinion, the deity i.e., the idol of the Goddess, was in existence since the time of Jankoji; the origin of temple cannot be said to be traceable to the year 1913; the *Palkhi* and the deity was a matter of public worship and there was considerable flow of public income to the *Palkhi* and the deity. In the year 1952, by way of an application an endowment was made in favour of the idol and the endowment was in the nature of public endowment as it did not recognize the founders or the heirs in perpetuity; the public trust was validly created and registered; the description of temple, which is situated in the front two rooms of Wada, the *kalas* and the free access and exit for Darshan without any hindrance or obstruction from any member of the Bhagat family is cogent evidence of the temple being place of public religious worship as a matter of right.

83. I am mindful of the fact that this Court has been called upon to exercise the powers of superintendence under Article 227 of

Constitution of India. However, considering the nature of controversy involved, I deemed it appropriate to examine the facts in detail to be satisfied that the temple was a public temple and the properties are the properties of public trust. The impugned judgment has dealt in detail with the issues raised in the present case and, in my view, the impugned judgment does not suffer infirmity so as to warrant interference in exercise of jurisdiction under Article 227 of Constitution of India.

84. For the reasons indicated above, Writ Petition No.305 of 2023, Writ Petition No.306 of 2023 and Writ Petition No.316 of 2023 stand dismissed. In view of the dismissal of the said Writ Petitions, nothing survives for consideration in Writ Petition No. 558 of 2023.

[Sharmila U. Deshmukh, J.]

85. At this stage, learned counsel appearing for the petitioner seeks stay to this judgment. Learned counsel for the respondents opposed the stay. As there is interim stay in favour of the petitioners operating since 26th November 2022, I am inclined to grant stay to the judgment for a period of eight weeks from today.

[Sharmila U. Deshmukh, J.]