

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1149 OF 2018

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| Birudeo Devalaya | .. Petitioner |
| Vs | |
| State of Maharashtra & Anr. | .. Respondents |

WITH

WRIT PETITION NO. 12972 OF 2017

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| Dnyaneshwar Bhaurao Gurav | .. Petitioner |
| Vs | |
| State of Maharashtra | .. Respondent |

WITH

WRIT PETITION NO. 1160 OF 2018

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| Vitthal Birdev Mandir | .. Petitioner |
| Vs | |
| State of Maharashtra & Anr. | .. Respondents |

WITH

WRIT PETITION NO. 1546 OF 2017

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| Biroba Mandir | .. Petitioner |
| Vs | |
| State of Maharashtra & Anr. | .. Respondents |

WITH

WRIT PETITION NO. 1677 OF 2018

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| Biroba Deosthan Trust | .. Petitioner |
| Vs | |
| State of Maharashtra & Anr. | .. Respondents |

WITH

WRIT PETITION NO. 7458 OF 2018

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| Revansindh Dev Renavi Trust & Ors. | .. Petitioners |
| Vs | |
| The Charity Commissioner & Ors. | .. Respondents |

- Mr. N.P. Dalvi i/by Mr. Vikas Kolekar for the Petitioners in WP Nos. 1149/18, 1160/18, 1546/18 and 1677/18
- Mr. Mr. V.S. Talkute a/w Mr. G. Francis i/by Mr. Aditya Gurav for the Petitioner in WP 12972/17
- Mr. Tanaji Mhatugade for the Petitioners in WP 7458/18
- Mr. Shrishail Sakhare i/by S.A. Rajeshirke for Respondent Nos. 3 to 18 in WP 7458/18

- Mr. P.G. Sawant, AGP for Respondents - State in WP Nos. 1149/18, 1160/18 and 1546/18
- Ms. P.N. Diwan, AGP for the Respondents - State in WP Nos. 1677/18, 7458/18 and 12972/17

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**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE : AUGUST 14, 2019.

P.C.:

1. This group of petitions has arisen out of common document. The petitioners have challenged a portion of the Circular No. 518 dated 13.11.2017 issued by the Charity Commissioner, State of Maharashtra. The offending portion of the Circular reads as under:-

‘देवस्थानांचे लाभार्थी हे देवस्थानांचे विश्वस्थ होऊ शकत नाहीत या संदर्भात देवस्थानांच्या योजनेमध्ये योग्य ते बदल करून योग्य व्यक्तींच्या देवस्थानांचे विश्वस्थ म्हणून नेमणुका कराव्यात व देवस्थानांचे उत्पन्न कसे वाढेल व भाविकांना सोयीसुविधा कशा मिळतील याबाबत निर्णय घ्यावेत’

2. The translation of the said portion in English reads as under:-

"At many places, whether Pujari's and other persons are taking income? The beneficiary of Devasthan cannot become trustees. Hence, make the necessary changes in the Scheme of the trust and appoint other trustees"

3. The petitioners are Pujaris of different religious places situated in State of Maharashtra who are governed by the respective trusts. Their short grievance is that by virtue of the said portion of the impugned circular, the Charity Commissioner has barred all beneficiaries from being appointed as trustees of the respective trusts. Learned counsel for the petitioners submitted that there is no embargo under the Maharashtra Public Trusts Act of the nature which is envisaged in the impugned circular. He submitted that by virtue of the said directives, all beneficiaries such as Pujaris of the trusts are prevented from being appointed or continued as trustees of the trust. Our attention was drawn to the judgment of the Supreme Court in case of **Trambakeshwar Devasthan Trust & Anr. Vs. President, Purohit Sangh & Ors.**¹ to contend that said directives are not in accordance with law.

4. On the other hand, learned AGP opposed the petition contending that the circular has been issued for better management of the trusts and in public interest. The Commissioner, has, therefore, while issuing other directives,

¹ (2011) 15 SCC 323

has also included the said clause.

5. The decision of the Supreme Court in case of Trambakeshwar Devasthan Trust (supra) would be useful to refer to in the context of present controversy. Similar issue of appointment of the beneficiaries of the trust as trustees came up for consideration before the Supreme Court against the judgment of this Court. The Supreme Court upheld the decision making following observations:-

"12. We find that the High Court has considered the provisions of Sections 2(10) and 47(3) of the Act in the impugned judgment and has held that the Tungars, Purohits and Pujaris need to be represented in the Board of Trustees. Paragraphs 15 and 16 of the impugned judgment of the High Court are quoted hereinbelow:

'15. In a case of a religious public trust, undoubtedly, the Authority or the Court will have to keep in mind the requirements of Section 47(3) of the Act and the interest of or the proper management and administration of such trust. The persons to be appointed, by law, are required to be persons who have interest in the affairs of the trust which is real, substantive and an existing one, though not direct one. It is well settled that merely being resident of the area is not enough for being labeled as a suitable and fit person. At the same time the legislative scheme would suggest that the management and administration of a public religious trust such as the Trimbakeshwar Devasthan should be entrusted to

such person so as to preserve the interest of the public or the section of the public who have interest in the trust. Obviously, regard being had to the fact that the appointment will promote and not impede the execution of the trust or its policies. By the very nature of the activities in a place used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any Section thereof, it is antithesis to a private and closed door management of its affairs. On the other hand there has to be complete openness and transparency in its administration and above all by observing democratic values or principles. To put it differently, it is public trust "for the community, by the community and of the community" or any section thereof. If such is the purport of the Trust then diversified representation and involvement of all concerned or the section of the public who have interest in the Trust and in particular associated with the day to day activities of the temple of the devasthan is inevitable - and the most appropriate step to further and promote the objectives of such a Trust.

16. Once we reach at this position, the next question that needs to be examined is; whether persons belonging to a particular Section can be generally disqualified on the ground of "conflict of interest" with the affairs of the trust of fact attached to an individual? I have no hesitation to hold that disqualification is essentially of an individual and cannot be because of the fact that the person belongs to the family of "Tungar", "Pujari" or "Purohit" as such, as the case may be. A person can be said to be disqualified or would render himself unfit for being appointed as the trustees only when he has direct interest in the trust or the devasthan and is hostile to the affairs of the Trust and his object is to see that the Trust is

destroyed. To put it differently, there is a perceptible difference between "person having interest in the trust" and "person having conflict of interest". The former is the quintessence for being eligible to be considered or for being appointed as the trustee. This mandate flows from the provisions of Section 47 read with Section 2(1) of the Act. Therefore, merely because the "Tungars" have the right to take away the entire cash offerings in the form of notes or coins near the idol or the threshold of the Garbhagriha in a plate or that the "Purohits" entertain the Yajmans or offer their services for consideration or the "Pujaris" are engaged in the performance of the official puja in the temple, cannot be said to be hostile to the affairs of the Trust or having direct interest so as to conflict with the administration and management of the Trust. As observed earlier Section 2(10) of the Act would envelope even the beneficiary of the Trust. Understood thus, it is incomprehensible that the "Tungars", "Purohits" or the "Pujaris" in the devasthan can be singled out as a class from the administration and management of the Trust. This view would answer point number (iii) and (iv) above.'

13. A reading of paragraphs 15 and 16 of the impugned judgment of the High Court quoted above shows that the High Court has not only kept in mind the interest of the public but also interest of the temple and has taken a view that the appointment of representatives of the Tungars, Purohits or Pujaris in the trust would not be in conflict with the interest of the trust only because they have interest in the cash offerings, the consideration for the pujas or performance of the official puja in the temple. The High Court has rightly held that Tungars, Purohits and Pujaris have interest in the trust and not necessarily an interest which is in conflict with the interest of the trust. We are also of the view that in most of the decisions of the

Board of Trustees, there would not be a conflict of interest between that of the trust and that of the Tungars, Purohits and Pujaris. Rather, representation of Tungars, Purohits and Pujaris in the Board of Trustees may be necessary to ensure the smooth functioning of the temple. We are, therefore, not inclined to set aside the impugned order of the High Court in so far as it has held that Tungars, Purohits and Pujaris need to be represented in the Board of Trustees by one member from each of these classes."

6. The quoted portion of the said circular is, therefore, set aside. If any action is initiated pursuant to such directives, the same also stands set aside. The rest of the circular remains unchanged. Nothing stated in the order would prevent the Charity Commissioner from issuing further directives or a fresh circular in the interest of better administration of the trust, as may be permissible in accordance with law. Petitions are accordingly disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]