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IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 22ND DAY OF JUNE 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.2424 OF 2006 (BPT)

BETWEEN:

MALLARI S/O. RAMCHANDRA NIMBALKAR
AGED ABOUT 63 YEARS, OCC: AGRICULTURE,
R/O. JALALPUR, TQ: RAIBAG, DIST: BELGAUM.

...APPELLANT

(BY SRI.RAMACHANDRA A.MALI, ADVOCATE)

AND:

1. LAXMAN RAJU POOJARI
   AGED MAJOR.

2. MARUTHI PARSHURAM POOJARI
   AGED MAJOR.

3. RAJU SADASHIV POOJARI
   AGED MAJOR.

4. APPASAHEB B.CHOUGULE
   AGED MAJOR.

5. MARUTHI DHONDIBA GOOSARWADE
   AGED MAJOR.

6. RAMAKANTH RAMCHANDRA POOJARI
   AGED MAJOR.

7. UDAY RAMACHANDRA POOJARI
   AGED MAJOR.

8. SUMITRABAI PARASHRAM POOJARI
AGED MAJOR.

9. PRAKASH PARASHARAM POOJARI
AGED MAJOR,
ALL ARE R/O. JALALPUR, TQ: RAIBAG,
DIST: BELGAUM.

10. STATE OF KARNATAKA
REP. BY ITS SECRETARY,
DEPT. OF MUZARAI AND
HINDU RELIGIONS INSTITUTION
AND CHARITABLE ENDOWMENTS, A.V.ROAD,
CHAMARAJPET, BANGALORE-18.

…RESPONDENTS

(BY SRI.SHIVAKUMAR S.BADAWADAGI, ADVOCATE FOR R1;
SRI.RAVIKUMAR D.GOKAKAKAR, ADVOCATE FOR R7;
SRI.ABHISHEK MALIPATIL, HCGP FOR R10;
NOTICE TO R2, R4 TO R6, R8, R9 ARE SERVED;
APPEAL AGAINST R3 STAND DISMISSED V.O.DATED 21.02.2011)

THIS MFA IS FILED UNDER SECTION 72(4) OF THE BOMBAY PUBLIC TRUSTS ACT AGAINST THE ORDER DATED 8.11.2005 PASSED IN MISC. APPLICATON NO.96/2001 ON THE FILE OF THE II ADDL. DISTRICT JUDGE BELGAUM, DISMISSING THE MISC. APPLICATION FILED UNDER SECTION 72(1) OF BOMBAY PUBLIC TRUST ACT TO SET ASIDE THE ORDER PASSED BY THE CHARITY COMMISSIONER, BELGAUM, IN APPEAL NO.15/97 DATED 19.5.2001.

THIS APPEAL COMING ON FOR DICTATING JUDGMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

The appellant/petitioner has filed the present appeal under Section 72(4) of Bombay Public Trust Act, 1950 (for short 'BPT Act') challenging the order dated 08.11.2005 passed in Misc.App.96/2001 on the file of II Additional District Judge, Belgaum, by confirming the order dated 19.05.2001 passed in Appeal No.15/97 on the file of Charity Commissioner, Belgaum who has reversed the order dated 21.06.1997 on Inquiry petition No.277/94 on the file of Assistant Charity Commissioner, Belgaum.

Parties would be referred with their names and ranks as they were before the Assistant Charity Commissioner in Inquiry petition No.277/94 for convenience and clarity.

The Inquiry petition under Section 18 of BPT Act was filed before the Assistant Charity Commissioner, Belgaum which is registered at Inquiry Petition No.277/94, praying for registering Sri Yallamma Devi Trust as Public Trust. Initially, 33 trustees' names are mentioned in this petition.

Later four more names are added by amending the petition.

2. Opponent No.1-Raju Sadashiv Poojari has filed inquiry petition, which is registered in inquiry petition No.419/1994, praying for registering his name as 'trustee' on the ground that his family was Archak of the temple; Opponent Nos.4 and 5-Maruthi Dondiba Goosarwade and Ramachandra Kashappa Poojari have filed the petition which is registered in inquiry petition No.38/1995, praying for registering the temple as private trust and to register their names as 'trustees'.

3. Respondent No.6 contested the petition.

4. The case of petitioners in Inquiry petition is that Sri Yallamma Devi Temple at Jalalpur, Raibag taluk, Belgaum District is an ancient temple. Devotees of said temple thought of getting it registered as 'public trust' and to have an elected Managing Committee to look after its religious and other developmental activities. A meeting

was held on 01.03.1994 of devotees of the temple and by-laws were adopted on that meeting and a committee of 33 persons named in the application was elected for a period of 5 years. Afterwards, applicants amended the petition and included four more names i.e., the hereditary poojaris of the temple also as trustees at serial Nos.34 to 37. Their contention is that they are the hereditary 'Poojaris' and thus their name should be entered as trustees on registration of the temple as 'Public trust'.

5. Maruthi Poojari and others (Opponent Nos.1 to 4) have filed objections to this petition wherein they have taken contention that the petition is not maintainable. There is no committee of 33 persons as alleged in the application. There is no scope and provision to register any committee relating to said temple. The alleged committee never formed and there was no meeting on any alleged date 01.03.1994 and no notice to him or to others. Furthermore, formation of committee is not required. The applicant has not endowed with any property. These 33

persons have not endowed with any property and have not created any trust. Thus, the application is not maintainable.

6. They further took contention that opponent Nos.1 and 2 are Poojari trustees of the temple. Their ancestors had been the trustees from generation to generation. They are hereditary trustees and render daily pooja, archana and hold annual fair in honour of the deity. They have filed an application for registration of said temple showing them as trustees in inquiry No.419/1994. The village Jalalpur was inam. Its Inamdar Shrimant Konerao alias Annasaheb Deshpande used to manage the affairs of the village temples and to appoint Poojaris or Archakas. He appointed the grandfather of these opponents-Gundu, whose mother is Lagamavva Jogi. A Kabulayat executed in favour of Gundu on two-anna General Stamp of Kolhapur on 05.06.1939. Thus, Gundu continued regular daily pooja services, festival fair and maintenance of the temple/devastan. His samadhi is in

temple premises. After lifetime of Gundu, his sons Sadashiva and Parashuram, the respective fathers of opponent Nos.1 and 2 succeeded and managed the temple affairs, rendered daily pooja services and annual festival fair. Their houses are at VPC Nos.199/1 and 199/2 situated on the eastern side of the temple within the vicinity of temple. Princely State of Kolhapur merged in Indian Union and Inams abolished. The articles of deity i.e. gold, silver, brass were in their possession, but it was not safe to keep with them; hence those articles were used to be keeping before the elders of the village for safe custody. Sadashiva died about 12 years back and then opponent No.1 succeeded and rendering poojas and also performing management of the temple. The village elders nine in number including serial No.6-Raosaheb Satagouda Patil and serial No.22-Appasaheb Dattu Hawaldar have passed receipt under their signatures on 28.08.1988 in favour of Parashurama Gundu Poojari, the father of opponent No.2 for having received those articles. Thus, every year articles are given for performing annual fair and afterwards they were kept in safe custody with elders of the village. During 1990-Ramachandra Kashappa Poojari (opponent No.5) and Laxman Ramu Poojari (opponent No.6) started disturbing the pooja services and in receiving offerings by opponent No.1 and father of opponent No.2. Hence, O.S. No.201/1990 is filed by father of opponent No.2-Parashuram Gundu Poojari before the Court of Munsiff, Raibag. The temporary injunction is granted on 20.06.1990. Thereafter, the Court passed order on 20.01.1991 directing parties to maintain *status quo*. The said suit is still pending. Parashuram died and his son i.e., opponent No.2 is brought on record. Even the tomb of said Parashuram is in the temple premises. Hence, prayed for dismissal of the petition No.277/1994 with costs and to allow the Petition No.419/1994.

7. Opponent No.5. Ramachandra Kashappa Poojari filed his objection statement wherein he contended that he has filed the suit for permanent injunction against Sri

Laxman Ramu Poojari (Opponent No. 6) and others and the said matter went up to Hon'ble Apex Court and his suit was dismissed with some observation. Based on it, Sri Laxman Ramu Poojari has filed suit for partition against him in OS No.94/1991 and it is pending. After the death of Parashurama Poojari, his sons Maruthi Parashurama Poojari (opponent No.4), Nagu Parashurama Poojari and Prakash Poojari are interested in creating trust in respect of Sri Yallamma Devi, deity of Jalalpur. They have no right over the temple or performing pooja. He opposes the application given by Maruthi Parashuram Poojari and others.

8. Opponent No.6-Laxman Ramu Poojari has filed his objections, wherein he contended that he is the Poojari of Sri Yallamma Devi deity. Formerly his ancestors were Poojaris of said temple. After death of his father-Ramu, he and his brothers are performing pooja by accepting the offerings without any obstacle by anyone. There is dispute between themselves and his uncle Ramachandra

(Opponent No.5) and the matter went up to this Court. In view of the order passed by this Court in RSA No.729/1986 dated 20.09.1990, he along with his brothers has filed O.S. No.94/1991 against his uncle-Ramachandra for partition in respect of performance of pooja of said Sri Yallamma Devi temple. The applicants are strangers to said temple and are in no way concerned to his family. Thus, they have no right or interest over the temple. They have filed fake applications just to harass him and his family members. Hence, prayed for dismissal of the petition.

9. After filing the objection statements, inquiry was conducted before the Assistant Charity Commissioner as required under Section 19 of the BPT Act. After conducting such inquiry, the Assistant Charity Commissioner came to the conclusion that Sri Yallamma Devi temple is an ancient temple and even though endowment to the temple is not forthcoming, it is a public trust and allowed the petition No.277/1994 and permitted

33 trustees to become trustees, but dismissed the contention of other four trustees on the ground that the persons rendering their services and receiving benefit cannot be named as trustees as per definition of Section 2(18) of the BPT Act. Further, there is long standing dispute amongst deceased opponent No.5, opponent Nos.1 and 2 and others in respect of performing exclusive rights of Pooja. He has also narrated the suit and appeal filed between opponents and OS No.201/1990 and OS 94/1991, which were pending at the time of passing said order. Considering these disputes and further holding that beneficiaries cannot be named as 'trustees', rejected their contention to implead them as 'trustees.'

10. Aggrieved by the same, opponent No.6-Laxman Ramu Poojari has filed the appeal before The Charity Commissioner, Belgaum against the order passed in inquiry No.277/1994 and also against the order passed in inquiry No.419/1994 and Inquiry No.38/1995. In that appeal, he has taken contention that the Assistant Charity

Commissioner ignored to note that Sri Yallamma Devi Temple is the personal property of appellant/opponent No.6 and his uncle deceased Ramachandra Poojari. He further contended that in RSA No.729/1986, it is held that it is the personal property of these two persons.

11. Appellants in Appeal No.15/1997 i.e., Raju Sadashiv Poojari and Maruthi Parashuram Poojari have partially challenged the impugned order on the ground that their names are also to be included as 'trustees'. But, the Assistant Charity Commissioner has rejected the same. Hence, for that limited purpose they have also filed the appeal.

12. The Charity Commissioner has made an observation that Assistant Charity Commissioner has not considered the fact that no material is produced to show that on which date the temple became 'Public trust'; he made an observation that merely because there is large numbers of devotees to the temple, it cannot be called as 'public temple' and a 'Public trust'. Said finding is further

based on the observation made by this Court in RSA No.729/1986 holding that there is no material to prove that the property in question is the trust property neither public nor private; he would further make an observation that none of the parties referred to any endowment. Further, the applicant and 33 named trustees in the application are only devotees of the temple and not archaks of the temple. There is no evidence to show that the property was debottar in the sense that there is any dedication to the deity by any person. Further, by quoting the observation of this Court in RSA NO.729/1986 that plaintiff and defendants and their ancestors were performing pooja in the temple and had acquired such right to perform pooja and appropriate the offerings. Under these circumstances, Sri Yallamma Devi temple could not be called as 'Public Trust'. With these observations, the Charity Commissioner has allowed the appeal and dismissed the Inquiry petition No.277/1994.

13. Aggrieved by the order of the Charity Commissioner, the appellant/petitioner has filed Miscellaneous Application No.96/2001 before the II Additional District Judge, Belgaum and opponent Nos.1 and 2 have filed Miscellaneous Application No.95/2001. Both the applications were clubbed together. In the said case, the District Judge based on the observation made by this Court in RSA No.729/1986, has also dismissed both the applications and confirmed the order passed by the Charity Commissioner.

14. Aggrieved by the same, the petitioner in inquiry petition No.277/1994 has filed the present appeal.

15. This matter was heard in detail by this Court and then based on the observations made in RSA No.729/1986; this appeal was dismissed upholding the order passed by the Charity Commissioner and District Judge.

16. The same was challenged before Hon'ble Apex Court in Civil Appeal No.11073/2025 at SLP (C. No.26685/2017). The Hon'ble Apex Court has allowed the appeal and remanded the matter to this Court by making an observation that:

> *"We have perused the orders passed at different levels by different authorities, and the impugned order passed by the High Court. We are inclined to hold that the decision rendered by the High Court in the earlier proceedings would have no bearing in the present matter. The issue for consideration therein was of poojari rights. Even assuming there is a finding qua the nature of the property, the same being incidental, will have no bearing on the present matter.*
>
> *In view of the aforesaid settled position of law, we are inclined to set aside the impugned order and remit the matter to the High Court for fresh consideration. While doing so, the High Court shall take into consideration the effect of the report submitted by the Tahsildar and the stand taken by the state that the property belongs to the Gram Panchayat.*

Accordingly, the impugned order stands set aside and the matter stands remitted to the High Court for fresh consideration."

17. After such remand, the trial Court records was called from respective Courts. Only the TCR from II Additional District Court, Belgaum is received. The TCRs of Charity Commissioner and Assistant Charity Commissioner were not received. After passing judgment in this case, they were returned to learned AGA; but it appears that they were misplaced; even after several reminders, learned AGA could not produce the same. However, Xerox copies of the petition, objections of both parties and evidence of both parties before Assistant Charity Commissioner are available in the file and both parties have no objection to consider the same and to pass the judgment. Hence, the file is reconstructed based on the available Xerox documents and then heard arguments of both sides.

18. Heard learned counsel for appellants Sri Ramachandra Mali and learned counsel for respondent No.1 Sri Shivakumar S. Badawadagi.

19. Learned counsel for appellant Sri Ramachandra Mali would submit that the Inquiry petition No.277/1994 is the only petition now pending for consideration. The other two petitions No.38/1995 and No.419/1994 were dismissed and no appeal is preferred before this Court.

20. Learned counsel for appellant would further submit that 'Public Trust' and 'Temple' are defined under Section 2(13) and 2(17) of the BPT Act.

21. Learned counsel for appellant would further submit that the plain reading of these two definitions would make it clear that Sri Yallamma Devi Temple, Jalalpur, Raibag taluk, Belgaum district is an ancient temple; all Hindus can perform pooja in said temple as of right. Hence, Sri Yallamma Devi temple comes within the definition of Section 2(17) of BPT Act. Thus, it included in

Section 2(13) of the BPT Act and thus it is a 'Public trust'. Sri Yallamma Devi temple is a place of public religious worship and dedicated for the benefit of or used as of right by Hindu community as a place of public religious worship. In this regard, he places reliance on the evidence of PW1. Further, learned counsel for appellant places reliance on the judgment of Hon'ble Apex Court in the case of ***Bala Shankar Mama Shankar Bhattiji and Ors. Vs. Charity Commissioner Gujarat State*** decided on ***17.08.1994*** and further would submit that the judgment passed in RSA No.729/1986 is only about the rights of archaks to perform pooja in the temple; incidentally, it is observed in that case that it is neither the case of parties that the temple is public or private trust. Present appellant and respondent Nos.1 to 4 were not parties in that case. It was only *interse* between respondent No.5 & 6. Further, while remanding the matter, the Hon'ble Supreme Court clarified this point. Hence, prayed for allowing the appeal.

22. Learned counsel for respondent No.1 Sri Shivakumar S. Badawadagi would submit that the place in which temple is situated is the property of ancestors of respondent Nos.5 and 6. Respondent No.6 has taken this plea at the time of filing the appeal before Charity Commissioner. Materials are produced to show that this property was standing in the name of grandfather of respondent No.6. Under these circumstances, merely because publics are making their offerings to the deity, it cannot be called as 'Public trust'. In this regard, learned counsel for respondent places reliance on the judgments of Hon'ble Apex Court in ***Radha, Kantha, Deb and Another versus the Commissioner of Hindu Religious Endowments, Orissa and another, Satyanarayanji Maharaj Virajman, Mandir Sathnarayan Dharma Shala and others versus Rajendra Prasad Agarwal and others*** and also the Judgment of Division bench of this Court in ***Shankar Bhat dead by LRs versus Ganesh Krishna Dikshit dead by LRs and others.*** Hence,

submitted that the petition is not maintainable in law and pray for dismissal of the appeal by confirming the order passed by the Charity Commissioner upheld by the District Court.

23. Heard Learned HCGP Shri Abhishek Malipatil for respondent No.10.

24. Having heard arguments of both sides, verifying the appeal papers and available constructed records of the trial Courts, the point that arise for consideration is:

"Whether finding of the Assistant Charity Commissioner that the Sri Yallamma Devi Temple, Jalalpur, Raibag taluk, Belagaum District is the 'Public trust' is proper and it is not appreciated in the appeal and in the miscellaneous petition?"

25. The finding on this point is in **AFFIRMATIVE** for the following :

REASONS

This is the petition filed under Section 18 of the Bombay Public Trust Act, 1950 praying for creation of public trust in respect of Sri Yallamma Devi Temple.

26. Before discussing the facts of the case, the judgments relied by both sides requires to be looked into. Learned counsel for opponent No.6 places reliance on the judgment of Co-ordinate Bench of this Court in ***Rudrappa Channamallappa Patil Vs. Kadeppa Dareppa Patil***[1] decided on 13.02.1967 wherein at paragraph Nos.8 to 11 held as follows:

> *"8. The question is whether we could say that the provision for the employment of the Income from a part of the property belonging to the family for a religious purpose brings into being an express or constructive trust for either a public, religious or charitable purpose or any other religious or charitable endowment such as the one of which the definition speaks. This is the restricted investigation which we should make, since in the case before us we find no temple, math, wakf, a dharmada or*

[1] AIR 1967 KANT 239

society for a religious or charitable purpose or for both and registered under the Societies Registration Ad 1860.

9. The definition speaks of three categories of public trusts One is an express or constructive trust for religious or charitable purposes or both The second consists of temples, maths, wakf dharmadas or any other religious or charitable endowments In the third are included societies formed for a religious or charitable purpose or both and registered under the Societies Registration Act 1860.

10. Although there was no discussion by either the District Judge, or by the Assistant Charity Commissioner or Charity Commissioner of any other question than whether there was a public trust for a religious or charitable purpose, it becomes necessary for us by reason of the comprehensive definition contained in the Act, to ask ourselves whether there is a trust in the case before us falling within the first or the second category since it is obvious that there is none inside the third.

11. It can be within the first category if there is an express or constructive trust for a public, religious or charitable purpose or for *both. It would be in the second if we could say that there is any other religious or charitable endowment. There would be a public trust within his first category only if a religious or charitable purpose is a public purpose. That is what the definition expressly says. The second part of the definition says that a public trust includes 'a temple, a math, wakf, a dharmada or any other religious or charitable endowment.' But in has to he remembered that a math, temple and wakf are defined by Section 2 of the Act and those definitions make it clear that the beneficiaries of those institutions are either the general public or a section thereof. Although in the context of the words 'any other religious or charitable endowment' occurring in the definition, we do not find the word 'public', it is obvious that 'any other religious or charitable endowment' becomes a public trust only if it is ejusdem generis and the religious or charitable endowment is for a public purpose. It is clear that a private endowment even if it be for a religious or charitable purpose is not within the definition, since it is clear from the earlier part of the definition that the emphasis is not upon the religious or charitable nature of the trust,* *but is upon the benefit it confers upon the general public or a section thereof."*

27. Learned counsel for respondent No.1 would rely upon the judgment of Division Bench of this Court in the case of ***Shankarbhat Vs. Ganesh Krishna Dixit and another*** in MFA No.102281/2016 decided on 04.04.2017. The facts and circumstances of the said case are entirely different from the facts and circumstances of the present case.

28. Learned counsel for respondent No.1 would further places reliance on the judgment of the Hon'ble Apex Court in ***Radhakanta, Deb and another Vs. The Commissioner of Hindu Religious Endowments, Orissa***[2] wherein at paragraph No.14 held as follows:

> *"14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:*

[2] AIR 1981 SC 798

(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance when the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the Private nature of the endowment."

29. In the aforesaid judgment, the Hon'ble Apex Court clearly held that where the origin of the endowment cannot be ascertained, the question whether the user of

the temple by members of the public is as of right is relevant to decide whether it is a 'temple' as defined under Section 2(17) of BPT Act. This is the judgment based on Orissa Hindu Religious Endowments Act, 1951. The definition of 'public trust' and 'temple' in the BPT Act and in Orissa Hindu Religious Endowments Act, 1951 is similar in nature.

30. Thus, the above ruling is aptly applicable to the present case. In the aforesaid case, the Hon'ble Apex court based on earlier judgments, narrated the circumstances under which, the court can hold the place as 'temple'. The first and foremost circumstance narrated in said case is *where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right is the point to be determined to decide said place as 'temple'.*

31. In this regard, learned counsel for appellant relies upon the judgment of the Hon'ble Apex Court between ***Bala Shankar Mama Shankar Bhattjjee and***

others Vs. Charity Commissioner, Gujarat State[3], wherein the question arose is whether Kalika Mataji Temple is a public trust. In said case, it is held as follows:

> *"The question emerges whether the Kalika Mataji temple is a public Trust. The High Court after exhaustively subjecting the entire material evidence to close scrutiny concluded thus:*
>
> *(1) It (Kalika Mataji temple) is very ancient temple more than thousand years old.*
>
> *(2) It origin is lost in antiquity. It is not possible to rely upon the evidence of witness Chandramukharam and witness witness- Pavinbhi that about a thousand years ago their ancestor Devshanker had the vision of Mataji at that place and that he had constructed that temple for his own worship. They cannot have knowledge of events which took place a thousand years ago. We are, there fore, of the opinion that so far as the origin of the temple is concerned it is lost in antiquity. The temple is situated on a hill were there is no permanent human habitation.*
>
> *(3) It is situated about a mile away from Champaner which is the nearest village.*

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[3] AIR 1995 SC 167

(4) Pilgrims in thousands visit every year this temple for Darshan, for performing their individual rituals and for discharging themselves from the vows (Badhas) which they take for due fulfillment of their desires, They do so on account of their faith in Mataji.

(5) The visitors visit the temple without let or hindrance. Therefore, no evidence of any one having been obstructed in his visit to temple for Darshan. There is evidence on record regarding offerings from the visitors to Mataji not only in small coins but also in big things, as we shall shortly show.

(6) The temple has been shown in Govt. records as belonging to Mataji and the respondents have been described as it Vahivatdars and poojaris.

(7) There is cash allowance paid from the State Treasury to maintain it. It has been paid to the deity. The respondents are only its recipients in their capacities as the Poojaries or Acharyas of the temple.

(8) The evidence of witness Chandrakukharam shows that separate of the income of the temple have been maintained.

(9) Sanad No. 19 to which we have referred in the foregoing paragraphs of This judgment, shows that Seindias in their capacity as sovereign Rules had interest in that temple and that they had passed on

their obligation in respect of the temple to the British Govt. by the Treaty concluded between Them and the British Govt. in 1860.

(10) The properties attached to the temple of Kalika Mataji have been shown in all Govt. records in the name of Mataji and not in the names of the respondents. Obviously this factor leads to the inference that the immovable properties standing in the name of Mataji were gifted or donated to the deity.

(11) The evidence further discloses that the deity has three sources of income (a) Cash allowance from the State Treasury, (b) Offerings by the devotees and visitors and (c) Income from immovable properties given over to and in the name of Mataji.

In view of all these factors we have no doubt in our mind that temple of Kalika Mataji is 'temple' within the meaning of 5s2(17) of the Bombay Public Trusts Act, 1950 and is therefore, a public trust as defined in Section 2(13) of the said Act. We record this conclusion on the strength of the fact that taking into account the nature of public user of the temple and other attendant factors the members of the Hindu Community have been using it as of right. In a given case public user as of right may not amount to implied dedication. It depends upon the facts of each case. But so far as the facts of the *present case are concerned, no doubt it is left in our mind that on an analysis of the evidence discussed by as above not only the user by the evidence discussed by us above not only the user by members of the Hindu Community of the said temple has been as of right but that it amounts to implied dedication for the benefit of the Hindu Community.*

…………..

A bare conjoint reading of the two definitions would show that the definition of public trust is an inclusive one bringing within its ambit, an express or constructive trust for which a public religious or charitable purpose or for both which includes a temple, a math, a wakf, a charmada or any other religious or charitable endowment and a society formed either for religious or charitable purpose or for both and a registered society under society <u>*Registration*</u> Act*. A public place by whatever designation is temple when it is used as a place of public religious worship. It must be dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof, as a place of public religious worship.*

…………………..

Deoki Nandan v. Murlidhar, [1956] SCR 756, is a leading judgment of this court by a Bench of four Judges. In that case the facts found were that one *sheo Ghulam, a pious childless Hindu, constructed Thakurdwara of Sri Radhakrishnaji ii Balasia village of District Sitapur, He was in management of the temple till his death. He executed a 'Will' bequeathing all his properties to the temple and made provisions for its proper manage-ment. The question arose whether the temple was dedicated to the public and whether the temple was a public or private temple. This court laid down that the issue whether the religious endowment is a public or a private is a mixed question of law and facts, the decision of which must be taken on the application of the legal concepts of public and private endowment to the facts found and it is open to consideration of this court. The distinction between a private or a public endowment is that whereas in the former the beneficiaries are specific individuals, in the letter they are the general public or a class thereof. An idol is a juristic person capable of holding properties. The properties endowed for the temple yest in it, but the idol has no beneficial interest in the endowment. The true beneficiaries are its worshipers. On facts it was found that the temple was a public temple……*

…………….

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 ate 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.*

………………….

Thus, we are of the considered view that Kalika Mataji temple is a public trust within the meaning of s.2(13); and public temple under s.2(17) of the Act and the High Court rightly relegated the enquiry in respect of other temple and-we feel it not expedient to record any finding in that behalf. The appeal is accordingly dismissed with costs quantified at Rs.20,000."

32. Section 2(13) of the BPT Act defines "public trust". It reads as follows:

> *"2(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 wakf, [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;"*

33. Thus, it is an inclusive definition and it includes the temples. According to this definition, all temples are public trusts. Further, "Temple" is defined under Section 2(17) of the BPT Act. It reads as follows:

2(17) "temple" means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship;

34. The plain reading of this section and based on the principles noted in the above said judgments cited supra, to constitute a “temple” one has to establish that

i) it shall be a place of public religious worship; OR

ii) it shall be a place dedicated to Hindu community or any section thereof; OR

iii) it shall be for the benefit of Hindu community or any section thereof; OR

iv) the Hindu community or any section thereof may use it as of right.

35. With this background, the evidence of both parties is to be examined to come to the conclusion that

whether Yallamma Devi Temple is a “Temple” as per this definition.

36. PW1 in his evidence has deposed that Sri Yallamma Devi Temple is situated at property No.201/1. He has stated that there are 4 families performing archane, poojas in this temple on hereditary basis.

37. It is not in dispute that Sri Yallamma Devi Temple is a public religious worship place. In the objection statements of all the opponents, this fact is not disputed. In the petition filed before the Assistant Charity Commissioner, it is specifically stated that in property No.201/1 the temple is in existence. The temple is being run with the donations given by the public as offerings. In the objection statement of respondent No.6, it is specifically stated that he and his brothers have been performing pooja by accepting the offerings without any obstruction by anybody. In the objection statement of opponent No.5, it is stated that his ancestors were performing pooja of the temple. He being one of the

archaks of the temple, he shall be made as one of the trustees of the temple. Opponent Nos.1 to 4 in their objections have taken contention that opponent Nos.1 an. 2 are the successors of one Gundu who was appointed by the then Inamdar of the temple, as Archak. According to him earlier this Jalalpur Village was governed by Raibag Mahal in the then princely state of Kolhapur. The entire village is an Inam land. It is Inam that Shrimant Konerao alias Annasaheb Deshpande was managing the affairs of the Village Devastanam and appointed archaks. Inamdar appointed the grandfather of opponent Nos.1 and 2-Gundu as archak of the temple. Kabulayath is also executed in that regard in 2 annas stamp paper in the year 1939. Gundu was performing pooja and after his death his children were performing pooja and now these opponent Nos.1 and 2 are performing pooja of the temple.

38. The Assistant Charity Commissioner, the Charity Commissioner and the District Judge in their order have clearly come to the conclusion that Sri Yallamma

Devi temple is an ancient temple. There is no dispute by any one on this point.

39. It is opponent No.6 has taken contention in his appeal for the first time that property No.201/1 is the property of his ancestors. However, there is no such plea taken at the initial stage.

40. It is to be noted here that in RSA No.729/1986, incidentally it is held that none of the parties contend that it is a public or private trust. Based on said findings of this Court in the said RSA which is filed only in respect of who has to perform pooja of the temple, the Charity Commissioner and II Additional District Judge have come to the conclusion that there is no public trust in the present case and thus, the finding of Assistant Charity Commissioner was reversed.

41. The Charity Commissioner in his order made an observation that under Section 114 of the Evidence Act,

the ancient temple cannot be presumed as public Trust and held that Sri Yallamma Devi Temple is not public trust.

42. It is to be noted here that all the courts below have not made any efforts to examine the definition of 'temple' as per the BPT Act and whether 'temple' comes under the ambit of public trust.

43. It is to be noted here that RSA No.729/1986 is filed challenging the judgment and decree in R.A.No.14/1986 on the file of Civil Judge, Gokak. R.A. No. 14/1986 was filed challenging the judgment and decree in O.S.No.43/1982 on the file of Munsiff, Raibag. The said suit was between the present opponent Nos.5 and 6 only in respect of the question that who has to perform pooja in the temple. Both of them contended in that case that they exclusively have a right to perform pooja. Ultimately it is held that opponent Nos.5 and 6 were having common ancestor. Said common ancestor was performing pooja and thus, both of them are having right to perform pooja. Even in the present case as per the objections of the

opponent No.6, he is claiming only pooja rights or right of archaks in the temple and he has not claimed any right of ownership over the property in question.

44. Except opponent Nos.5 & 6 of present petition, other parties to present proceedings are not parties in that appeal. Even on that ground also said finding of this court is only incidental and not on core issues of said case. Hence, said finding is not a binding precedent to decide the present appeal.

45. Only in the first appeal before Charity Commissioner, he had taken the plea that this is his exclusive property and in that regard he has produced one property extract of 1990-91, wherein name of opponent No.6 is shown in the owner cum possessor column. But, initially, no such plea was taken. Further, no suit is filed to declare him as absolute owner of the property in question. Further, no evidence is adduced to substantiate his said contention in the first appeal or before the District

Judge. Furthermore, in this case already the government became one of the respondents.

46. In this case and also before Hon'ble Supreme Court, the Tahsildar of the Government has sworn to an affidavit stating that this is the property standing in the name of temple. Except this one property document of 1990-91, in all other documents produced in this case, it is name of Sri Yallama Devi Temple is shown as owner cum possessor in the property extract.

47. Hence, merely based on one property extract of one year, opponent No.6 cannot claim that he is the absolute owner of this property. That is not the contention raised by him in Inquiry proceedings and also in earlier proceedings between him and respondent No.5 i.e. in O.S.No.43/1982 and subsequently in the suits of 1990 and 1991 between him and opponent No.5 for the relief of partition. The relief of partition was claimed only in respect of performing pooja and not on the property in question.

Hence, the above said contention of opponent No.6 is not acceptable one.

48. With this background the evidence produced by both parties is to be looked into. None of the respondents dispute the nature of temple, but they dispute only about performing poojas in the temple that who has to perform it. There is some material produced before the Assistant Charity Commissioner that opponent Nos.1 and 2 are the successors of Gundu. Gundu was performing pooja and was appointed as archak of the temple for some period. Opponent Nos.5 and 6 have also produced some material to show that their common ancestor was also performing pooja of the temple. It is not in dispute that they were performing pooja as hereditary archaks. Under these circumstances, all opponent Nos.1, 2 and 5 and 6 are the performing poojas of the temple.

49. At the time of arguments, learned counsels for appellant and opponent No.1 fairly conceded that original opponent Nos.1, 2, 5 and 6 were the archaks of the

temple and they were performing poojas on rotation basis. Hence, it is not in dispute that these four persons were performing poojas by accepting the offerings given by the public towards deity and thus, the public at large of Hindu community were worshipping the temple.

50. The Assistant Charity Commissioner in his order has discussed that opponents while performing poojas were keeping gold and silver valuable articles with some of the trustees named in the petition and those valuable articles will be given to archaks at the time of jatra or special poojas or some festivals and after performing such jatra, special pooja or festivals, they would be once again given back to the same custody with some of the trustees named in the inquiry petition. These facts clearly established that even though there is no named public trust, the activities of the temple are being carried out with the assistance of elders of the village. Hence, by any stretch of imagination it cannot be said that this is not the temple.

51. Thus, it is the place of public religious worship; further, it is the place dedicated to Hindu community for their benefit and all Hindus are using this place as of right to offer pooja. All Hindus have right to enter the temple and to offer their pooja to the deity in the temple.

52. In the citation of Hon'ble apex court ***Rudrappa Channamallappa Patil's*** Case cited supra, the definition of public trust speaks three categories;

i) express or constructive trust for religious or charitable purposes or both;

ii) temples, maths, wakf, dharmadhas or any other religious or charitable endowments ;

iii) society formed for religious or charitable purpose or for both.

53. As discussed above, the District judge, the Charity Commissioner and Assistant Charity Commissioner, have not discussed this fact. However it is necessary for this court to verify whether Sri Yallamma

Devi Temple would fall under any one of these categories. Unequivocally, Sri Yallamma Devi Temple would not fall in first and third category.

54. Admittedly, there is no endowment produced by either party to say that the temple is endowed. However, it is an admitted fact that it is an ancient temple; under these circumstances, use of the temple by members of the public Hindus is as of right or not is to be decided to determine said place as temple or not.

55. Admittedly, the publics are having every right to enter the temple and offer their poojas.

56. As discussed above, the property attached to the temple bearing No.201/1 was shown in the name of deity in government records. In ***Bala Shankar Mama Shankar Bhattiji's*** case cited supra, the properties attached to the temple were shown in the name of deity in government records. The same is in the present case. In that case also BPT Act is applicable and Section 2(13) and

(17) were discussed in length and finally held that it is the temple and included under the definition of public trust. In the above case, the Hon'ble Supreme Court affirmed the finding of the High Court of Gujarat.

57. In nutshell, it is established that Sri Yallamma Devi Temple is an ancient temple; place of public religious worship; dedicated to Hindu community for their benefit and Hindu community people are having right to use it as of right for their offerings to the deity and worship the deity. Thus, the ingredients of Section 2(17) of the BPT Act are fulfilled. Thus, Sri Yallamma Devi Temple comes under the definition of 'Temple' as per Section 2(17) of BPT Act.

58. Section 2(13) of the BPT Act is an inclusive definition. It includes temples. If 'Temple' as per Section 2(17) of the BPT Act is in existence, then it will be a public trust as per Section 2(13) of the BPT Act.

59. Accordingly, the Assistant Charity Commissioner has passed a reasoned order accepting that there exists public trust.

60. As discussed above, the Charity Commissioner and District Judge have dismissed the appeals only on the ground that there is finding in RSA No.729/1986 that there is no existence of public or private trust. However, that finding is given only as an ancillary in the proceedings between defendant Nos.5 and 6, which is not the subject matter of the present case. The present petition is filed to form public trust in the name of Sri Yallamma Devi Trust and it is stated that there are 33 trustees to the temple. All of them have accepted the by-laws and after accepting by-laws, these petitioners appointed their president who has filed the present petition under Section 18 of BPT Act. After receipt of said petition, the Assistant Charity Commissioner has conducted inquiry as contemplated under Section 19 of the BPT Act and finally held that even though there is no document to show that this is an

endowment, but admittedly it is an ancient temple and does held that it is public trust. There is no dispute that temple in question is an ancient temple.

61. The Assistant Charity Commission has not permitted the archaks of the temple i.e., opponent Nos.1, 2, 5 and 6 to become trustees of the temple by interpreting Section 2(18) of BPT Act that they are beneficiaries and thus they cannot be called as trustees.

62. In this regard reading of this definition of trustee as held under Section 2(18) of BPT Act is very much relevant. It reads as follows:

> *"2(18) "trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager."*

63. This definition does not say that the beneficiary is to be excluded from becoming trustee. The persons who manage the affairs of the religious trust are entitled to become trustees. The trustee is a person who holds legal

ownership or possession over the subject of the trust and who will be bound to allow the beneficial enjoyment or use of the property.

64. It is to be noted here that archaks are always performing poojas on behalf of devotees. They will be called as middlemen between the devotee and the deity. If they perform the pooja with great devotion and then that would be helpful to the public at large. If they are also made as trustees, definitely it would help the overall development of the temple because they are the pillars of the temple. Admittedly since from the time of ancestors of opponent Nos.1, 2, 5 and 6 they are performing poojas in the temple on rotation basis. If there is a small dispute between them in respect of who has to perform pooja that itself cannot be a ground to deny them to become trustees. There is no rule that archak of the temple cannot be trustee of the temple.

65. But the Assistant Charity Commissioner failed to accept poojaris and trustees of the temple. Archaks who

are performing poojas in temple are permitted to become trustees. As opponent Nos.1 and 2 are from one common descendant. Opponent Nos.5 and 6 are from another common descendant.

66. The devotees themselves cannot directly offer prayers before the idols which are consecrated and placed in the sanctum. So, they approach the temple for worship. Only when the poojaris /Archaks performs the pooja with true inner devotion can the devotees successfully offer those prayers to the deity of ignite the same spiritual energy in the devotees. Thus making the poojaris/Archaks a trustee of the temple**.**

67. Hence, from one common descendant's family there will be one Archak as trustee i.e, in between opponent Nos.1 and 2, there will be one trustee. Likewise, in between opponent Nos.5 and 6 there will be another trustee.

68. Thus, the order passed by the Assistant Charity Commissioner is a reasoned order to consider Sri Yallamma Devi temple as 'public trust'; but his finding that archaks cannot be trustees is not proper. However, the order of the Charity Commissioner and the District Judge are erroneous and requires to be set aside.

69. Accordingly the point under consideration is answered in **affirmative** and this Court proceeds to pass the following:-

ORDER

i) The appeal is allowed by setting aside the order dated 8.11.2005 passed in Misc. App. No.96/2001 on the file of the II Addl. District Judge Belgaum, and order dated 19.5.2001 passed in Appeal No. 15/97 on the file of Charity Commissioner, Belgaum and confirming the order dated 21.06.1997 in Inquiry Petition No. 277/94 on the file of Assistant Charity Commissioner, Belgaum.

ii) The trustees named in inquiry petition along with one person from the family of opponent Nos.1 and 2 and one person from the family of opponent Nos.5 and 6 are the trustees of the temple.

iii) The trust by name Sri Yallamma Devi Temple is ordered to be registered as a Public trust.

iv) As per by-laws of the trust, the trustees can be appointed for the period mentioned in the by- laws.

Sd/-
(GEETHA K.B.)
JUDGE

HMB- Up to para 27
SSP-Para 28 to 48
HMB- Para 49 to end

CT:VH
List No.: 1 Sl No.: 25