

MHNG020034622023ORDER BELOW EXH.5

The plaintiff filed present application for temporary injunction against defendants restraining them from debarring the plaintiff as member of defendant No.1 Trust and drawing chits in favour of members towards Khadim duty and Jamat duty till the final decision of the suit.

Brief facts of the case of the applicant/plaintiff -

2. The defendant No.1 trust is registered under Maharashtra Public Trust Act. Defendant No.2 claims himself as president of the Trust and change reports are subject matter of litigation in competent authority under the said Maharashtra Public Trust Act. The plaintiff claimed that he is a member of defendant No.1 trust and he is having right to offer prayers at the Dargah as Khadim of the defendant No.1 trust. The said right includes right to offerings to Khadim made by the Devotees of Saint Hazarat Baba Tajuddin. The plaintiff and Khadims are governed by bye-laws of the defendant No.1 trust.

3. Father of the plaintiff and defendant No.3 namely Sayad Manzoor Akbar Ali was Khadim and member of defendant No.1 trust. The defendant No.3 is elder brother of the plaintiff. The plaintiff claimed that though the bye-laws of trust states that eldest son in the family would lay claim to the Khadimship, the said arrangement can be changed in the family. The father of plaintiff and defendant No.3 is not eldest son of Akbar Ali and Mansoor Ali was eldest son in the family. In spite of it Mansoor Ali was made Khadim and there was no dispute about the same. Therefore, it is not mandatory that eldest son should be appointed as

Khadim. During the life time of the father he change heirship in the family and filed affidavit to that effect with the trust. Mother of the plaintiff also written letter to defendant No.1 trust regarding the nomination of the plaintiff. Accordingly, as and from 3rd November, 2019 the plaintiff is accepted as member by defendant No.1 trust and continued till today.

4. He further claimed that defendant No.3 follows Wahabi Tradition and does not considered messenger of God or Nabi as important. He further claimed that defendant No.3 cannot be member of defendant No.1 trust. He has not visited Dargah for many years. Therefore, the defendant No.3 cannot become Khadim.

5. The defendant No.3 filed application under section 41A of Maharashtra Public Trust Act to consider his name as member of the trust. It is claimed by the plaintiff that the issue of membership cannot be decided by The Charity Commissioner and his order cannot divest the membership of the plaintiff and his civil rights cannot be taken away. The defendant No.2 is acting as a dictator and defendant No.2 taking decisions on his own without holding meetings and without majority decision of the committee governed the trust. Hence, the action of the defendant No.2 are illegal. The defendant by colluding amongst themselves, trying to oust the plaintiff. The duties of Khadimship are allotted by drawing chits. The defendants are intending to take away membership of the plaintiff by drawing chits for distribution of duties without including the plaintiff. Hence, the plaintiff filed present suit for declaration and injunction and present application for interim relief.

6. The defendant No.1 failed to appear in the matter and filed any say. The defendant No.2 filed his written statement and say at Exh.23 while defendant No.3 filed his at Exh.34.

7. The defendant No.2 claimed that this court is having no jurisdiction to decide membership of the trust. The Assistant Charity Commissioner by passing order in application No.72/2019, directed defendant No.1 trust to consider the application of defendant No.3 and accordingly they appointed defendant No.3 as Khadim. The plaintiff was earlier appointed as a secretary of the trust but he was removed in view of order of Assistant Charity Commissioner in application No.72/2019. The plaintiff has not challenged the said order. The act of the defendant No.1 trust is in compliance with the order of Assistant Charity Commissioner and not malafide or illegal. Hence, he prayed for rejection of the application.

8. The defendant No.3 claimed that the plaintiff is seeking declaration to bypass the order of Assistant Charity Commissioner dated 18-04-2023 in application No.72/2019 without challenging the same before competent appellate authority. Hence, suit is not maintainable. He denied entire contentions raised by the plaintiff regarding his alleged nomination by father and his right to be member of the trust. He claimed that the plaintiff was never the member of the defendant No.1 trust nor who become member of the defendant No.1 trust. There are 59 members of the defendant No.1 trust who are Khadims of the Dargah. They are servant at the Dargah and their duty includes cleaning and maintenance of the Dargah premises, Assisting visitors to the Dargah, performing various duties assigned to them during their tenure as Khadim and particularly during the annual Urs period. The duties are allotted by drawing chits. The plaintiff by seeking injunction regarding drawing of chits practically stopped the work of the trust. The annual Urs starts from 10th August,2023. Therefore, as it is annual event and large numbers of visitors visit the said Dargah the injunction order will virtually stop the functioning of the Khadims. In view of specific condition in clause 24 of the bye-laws of the trust the plaintiff cannot be appointed as member of

the trust. The defendant No.3 is alone entitled for appointment as Khadim. It is denied that their father was not an elder son. He further denied that father during his life time changed the heirship. The alleged affidavit of the father was false and fabricated document. It is in the nature of Will. No clause in the bye-laws allows Khadims to make Will in respect of membership. The clause 24(d) is only in case of necessity i.e. in the event of incapacity of Khadim continue as member during his life time he can make alternate arrangement for the performance of his duty. In any eventuality Khadim cannot make any Will or declaration in respect of the membership. The defendant No.3 never consented to make plaintiff Khadim. Mother is having no right in deciding the membership. There is no settlement in the family as alleged by the plaintiff. Therefore, he prayed for dismissal of the application.

9. I heard learned counsels for the plaintiff and defendants and perused the documents on record. In view of rival contentions following points arise for my consideration and I have given my findings thereon as follows -

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the plaintiff is having prima facie case?	<u>No.</u>
2	Whether the plaintiff proves that balance of convenience lies in his favour?	<u>No.</u>
3	Whether the plaintiff proves that he will suffer irreparable loss if application is rejected ?	<u>No.</u>
4	What order ?	<u>As per final order.</u>

REASONS

As to Points No.1 to 4 :-

10. The learned advocate for the plaintiff submitted that the

purpose of temporary injunction application is to maintain status-quo so that the question before the court can be decided after taking evidence. He submitted that after death of father of the plaintiff, the plaintiff was working as Khadim and member of the defendant No.1 trust. This position if continued it will not affect the right of the defendants. Hence, there is no prejudice to the defendant No.3 if application is allowed. He also urged that clause 24 (c) and (d) should be read together simultaneously, and not in isolation. The plaintiff's father was also not eldest son. All family members nominated the plaintiff and therefore defendant No.3 is having no right. Regarding suppression of affidavit before the Charity Commissioner is concerned he submitted that plaintiff and present defendant No.2 engaged same advocate and due to the fraud played by defendant No.2 the said document was not produced. He submitted that it is incorporeal right of the plaintiff and it can be inherited or transferred just like intellectual property right. He submitted that three sisters of the plaintiff also nominated him. The plaintiff was member of the trust for last 4 years. He cannot be removed by the defendant No.1 trust without following due process. Notice given to the plaintiff dated 04-07-2023 was posted on 27-07-2023 which shows that it is ante dated and in violation of order of the court. The plaintiff only seek that he should not be terminated from the membership of the trust and the plaintiff is ready to expedite the matter. If he was removed, it will be stigma on him. On the contrary, as defendant No.3 is not work as Khadim till today no harm will be caused to him, if application is allowed. Hence, he prayed for rejection of the application.

11. On the contrary, learned advocate for defendant No.2 argued that he only followed direction of the Assistant Charity Commissioner. The plaintiff is stranger to the trust and not entitled to become member. He was removed from the membership. As plaintiff has not challenged the order of Assistant Charity Commissioner, this suit is not maintainable.

The trust as to face penalty or punishment if order under section 41A of Maharashtra Public Trust Act is not followed. Therefore, the action of the trust is not illegal and therefore prayed for rejection of the application.

12. The learned advocate for defendant No.3 argued that being elder son he is alone entitled to succeed his father as Khadim and member of the trust. As trust has not taken any action he filed application before Assistant Charity Commissioner and the order has been passed to consider his case. The bye-laws does not have any mention of nomination by Will or by majority of the family members. The clause 24(d) cannot be interpreted as provision to appoint member by Will or by any declaration. Hence, he prayed for rejection of the application.

13. The plaintiff in this application prayed that the plaintiff should not be debarred as member of the trust and defendants be restrained from drawing chits in favour of members towards Khadim duty and Jamat duty.

14. It is admitted fact that the father of the plaintiff Sayad Manzoor Akbar Ali was Khadim of defendant No.1 trust. It is also admitted fact that father of the plaintiff died in the year 2018. The bye-laws of the trust are produced with list at Exh.4/1. It is admitted document. The clause 24 states as follows -

२४. दरगाहचे खादीमच्या सेवेची रितीरिवाज -	
अ.	दररोज एका खादीमची ड्युटी नियमित राहणार. त्यासोबत मदतीला एक गुप राहतो येणारा प्रसाद चिरागी (देणगी) जे कटो-यात येतो त्यावर पुर्ण हक्क खादीमचा असतो. खादीमला खुद्दाम टस्ट द्वारा पगार दिल्या जात नाही.
ब.	खुद्दाम कमेटीद्वारे चिट्टी तकल्या जाते ज्याच्या नावाची चिट्टी निघेल त्याला खिदमतीची ड्युटी दिल्या जाते व सोबत टस्ट सेविकाची ड्युटी राहते.
क.	जोपर्यंत खादीम जिवंत राहील तोपर्यंत त्याला खिदमतची ड्युटी कायम राहील. खादीमच्या मृत्युनंतर मोठ्या मुलाला त्याची ड्युटी दिल्या जाते. मुलीला, जावईला याचा हक्क दिल्या जात नाही. फक्त मोठा मुलगाच याचा हक्कदार राहील.
ख.	जर खादीमला मुलगा नसेल आणि त्याला फक्त मुलीच असतील तर ड्युटीचा हक्क खादीमच्या पत्नीलाच राहील, पण त्याची ड्युटीला मदद खादीम गृप करेल

व ग्रुप एक भाग हिस्सा काढून बाकी तीन भाग हिस्सा बेवा खादीमला देतील. हि ड्युटी बेवा खादीमच्या जिवंतपणापर्यंत कायम राहील व तिच्या मृत्युनंतर ड्युटी समाप्त होईल आणि तिची ड्युटी खुद्दाम टस्टमध्ये जमा होईल. या ड्युटीची बाकी रक्कम खादीम मददगार गुपचा हिस्सा देवून बाकी रक्कम टस्ट खुद्दाम कमेटी इ/१६८९(एन) चा खात्यात जमा केली जाईल.

ड. आवश्यकता पडल्यास ही खिदमत सेवा (ड्युटी) खादीम आपल्या कुटूंबात बदलू शकते आणि खादीम आपला हिस्सा आपल्या कुटूंबात वाटेल.

15. In clause 23 of the said bye-laws, it is specifically stated that there are 59 Khadims. They are called Khuddam Durgah Khuddam Committee. They only entitled to do Mujawari. No third person is having any right to do said Mujawari. They are Khadims by inheritance.

16. In the clause 24 of the said bye laws, Khadim is entitled for offerings made in plate (Katora). He is not entitled for any salary. The duty of Khadim is distributed by drawing chits. Khadimship is for life time. After his death, elder son is entitled for said duty. Daughter or son-in-law is not entitled for Khadimship. Only elder son is entitled for Khadimship. If Khadim is having no son but only daughters, the right of duty devolved on his widow and 2/3rd of offering would be given to her and the helping group of Khadim will retain 1/3rd share. On her death Khadimship will resumed by the trust. If required Khadim can change his duty in his family and distribute his share in his family.

17. From the said bye-laws, it is clear that only 59 persons are the members of the trust and they elect the trustees and administration of trust is conducted by trustees. These 59 persons become Khadims by way of the inheritance after the death of earlier Khadim. The membership of Khadims in the trust cannot be increased. Therefore, the devolvement of right of Khadimship is Civil or personal right of the persons claiming the Khadimship. No new member can be added as Khadim or member of the trust except by inheritance. In fact, clause 23 and 24 of the bye-laws incorporated the customs and traditions which were followed in respect of appointment of Khadim since the inception of the said Dargah.

18. In this matter there is a question of interpretation of the said clause at this prima facie stage. Therefore, it is required to give literal meaning to the said clause of the bye-laws. Only after taking evidence other dimensions of the said bye-laws and the practices followed by the Khadims can be considered. The literal meaning of the said clause states that only elder son can become Khadim after death of his father who was Khadim. Therefore, clause 24 (c) is clear to show that the defendant No.3 being elder son entitled to inherit post of a Khadim i.e. membership of the trust in precedence to the plaintiff.

19. However, the plaintiff came with two cases. He claimed that in view of clause 24(d) the Khadim is having right to change the duty in his family and his father exercised the said right and by way of affidavit he nominated the plaintiff as Khadim after his death. The mother and sisters of the plaintiff and defendant No.3 nominated the plaintiff as Khadim. In fact the plaintiff was working as a Khadim i.e. member of the trust after the death of his father. Last four years he was working as a member of the trust. The defendant No.1 trust and defendant No.2 accepted him as a Khadim for all these years. They have not challenged the interpretation made by the plaintiff. In fact, defendant No.2 in his written statement specifically stated that the plaintiff was working as a Secretary of the trust and only due to the order of Assistant Charity Commissioner in application No.72/2019 he was removed from the said post. The defence of the defendant No.2 is only to the effect that they are following the order of Assistant Charity Commission and nothing more.

20. The copy of order of application No.72/2019 is produced on record. The defendant No.3 filed the said petition or application before Assistant Charity Commissioner for giving directions to the defendant No.1 trust to consider his name as Khadim and member of the trust and to appoint him as member. From the said order it can be seen that trust has

considered the application of plaintiff and appointed him as Khadim and therefore he moved said petition in the year 2019. It was decided on 18-04-2023. It shows that the defendant No.3 objected to the appointment of plaintiff as a Khadim or member of the trust since 2019. He finally get relief in the month of April 2023.

21. The plaintiff claimed equity on the ground that he was working as Khadim and member of the trust since 2019 he be allowed to continue as member till decision of the suit. Now, it is to be seen whether he is allowed to work as a member of the trust without any objection on the part of any person. The defendant No.3 objected to the appointment of the plaintiff as member of the trust. The defendant No.2 appeared in the said matter not as a president of the trust but as one of the trustee. The defendant No.2 and the plaintiff engaged the same advocate and both objected to the petition filed by the defendant No.3. In fact, the written statement of the defendant No.2 is quit interesting. In his written statement in paragraph No.4 he stated that plaintiff was appointed as a treasurer of the trust and he was only removed due to the order of the Assistant Charity Commissioner. In respect of the same defendant No.2, the plaintiff is making allegation of malafideness. Both plaintiff and defendant No.2 foughted together in the proceeding before Assistant Charity Commissioner and plaintiff during said period become treasurer of the trust. If, the defendant No.2 is acting as a dictator, question is why he made the plaintiff a treasurer when the said action of the defendant No.1 trust was questioned and subjudiced before the Assistant Charity Commissioner. It shows that the defendant No.2 was hands in gloves with the plaintiff. This is reason why the appointment and continuous of the plaintiff as a member of defendant No.1 trust should not been considered in his favour while deciding this temporary injunction application.

22. Hence, the membership of the plaintiff since 2019 of the defendant No.1 trust is not material fact to consider this application and the only criteria should be whether he can be nominated by his family or not.

23. Once again, reading the clause 24, it is crystal clear that women have no right to succeed as a member of the trust. Even, son in law of the deceased Khadim is kept away from succeeding him. In case of Khadim who has no son, after his death his group will continue his duty till the death of his widow. The widow is a having limited right of receiving the amount which being offered to group of her husband. The clause specifically state that only elder son is entitled to inherit the membership of the trust and become Khadim. The clause 24(d) again literally read states that Khadim can change his duty in his family. It shows that it has to be done during his life and not afterward. The Khadim can give his duty to his son during his life time however it will extend till his death. On his death elder son is entitled to inherit the said membership. The said elder son may give his duty to his brother as the case may be. Therefore, the right to work as a Khadim can be given by Khadim only during his life time and upto his Khadimship period. Therefore, the father of the plaintiff prima facie may give his duty to his son i.e. plaintiff though he is younger but only till his death. He has no right to scuttle the right of the defendant No.3 by making nomination after his death. There is no material how father of the plaintiff bacame Khadim though he was younger son. There is no evidence that his father nominated him or his elder brother gave up position. Hence, that fact cannot be considered at this stage. Hence, the plaintiff is having no right to succeed after his father as Khadim unless he is given Khadimship by his brother. This is a prima facie opinion based on literal interpretation of the bye-laws. Therefore, plaintiff failed to prima facie prove his case regarding entitlement of his right to Khadimship.

Therefore, the plaintiff is having no prima facie case for the purpose of injunction.

24. As the plaintiff failed to prove prima facie that he has got right to succeed his father as a Khadim in terms of bye-laws, no balance of convenience lies in his favour. Hence, there is no question of irreparable loss to the plaintiff. If application is allowed, the plaintiff will be allowed to work as Khadim and defendant No.1 trust will be restrained from drawing chits. It will be against not only bye-laws but also deprives the defendant No.3 of his right to the Khadimship.

25. As a result of it, I answer to point No.1 to 3 in negative against the plaintiff and in favour of defendant No.3. Hence, the application is plaintiff deserves to be rejected with cost. Hence, I proceed to pass the following order -

ORDER

Temporary Injunction application at Exh.5 is rejected with cost.

Date : 04-08-2023.
Nagpur.

(Shri. D.B.Mhalatkar)
2nd Jt. Civil Judge Sr.Dn.,
Nagpur.