

ORDER BELOW EXH.42

From the contention of application and say filed by the D.H. following points arises for my determination and I have recorded my findings thereon for the reasons stated as under.

Sr. No.	Points	Findings
1	Whether the application filed by the objector/J.D. is liable to be allowed as prayed ?	No
2	What order?	As per final order

REASONS**As to point nos. 1 and 2 :-**

2. Read application supported by affidavit. Perused say filed by the D.H. Perused record. Heard.

3. The advocate for the objector/J.D. has submitted that, the land bearing Gat No.3 situated at Murtizapur Tq. Mangrulpir Dist. Washim was allotted to the trust by then Government of Hyderabad in accordance with provisions of Berar Inam Rules, 1859 on 02/04/1866. As per Rule VI (1) of the Berar Inam Rules, 1859, Government of Hyderabad was empowered to grant Inam for religious or charitable objects for support of temples, colleges etc. subject to condition mentioned in Rule V(3) future alienation of the Inam is prohibited.

4. The advocate for the objector/J.D. has further submitted that, if these rules are read with annexure certificate it is apparent that Vahivatdar is not entitled to alienate land at all. After establishment of State of Madhya Pradesh,

M.P. Public Trust Act, 1951 was enacted and since land in question was given to Balaji Temple, said temple registered as Public Trust under M.P. Public Trust Act, 1951.

5. The advocate for the objector/J.D. has submitted that, thereafter portion of Vidarbha region of State of M.P. came to be reorganized and was included in State of Bombay as per State Reorganisation Act, 1956. Thereafter, by further Reorganisation Act, 1958 then State of Bombay was bifurcated in State of Maharashtra as well as State of Gujrat and as such State of Maharashtra came to be established with effect from 01/05/1960.

6. The advocate for the objector/J.D. has further submitted that, thereafter provisions of Bombay Public Trust Act, 1950 was applied to the portion of Vidarbha region included in State of Maharashtra and thereafter Trust was registered in accordance with section 28 of the said Act as Public Trust Act.

7. The advocate for the objector/J.D. has also submitted that, from the above said contents it is clear that, land in question was land allotted to the trust in Inam on the condition of non-alienation. M.P. Abolition of Proprietary Rights Act was enacted in 1951, as per section 3 and 4 thereof, properties owned by Inamdar to the extent they are actually in possession of Inamdar were treated as properties of Inamdar in possession of other were vested and therefore were allotted with occupancy rights as the case may be, to the person in possession of the properties, suffice it to say provisions of said Act are not at all applicable to Inam which were given to the Devasthan were not governed by the provisions of said land given to Devasthan through its Vahivatdar for services to be rendered by the Berar Inam Rules,

1859 to the temple though continued to be subject of restriction as imposed in accordance with provisions of the Berar Inam Rules, 1859.

8. The advocate for the objector/J.D. has submitted that, on account of misapplication of law and under misconception of law several lands allotted as Inam for giving service to the temple was treated as owned by Vahivatdar after abolition of M.P. Abolition of Proprietary Rights Act. However, said question was examined by State of Maharashtra by Government circular dated 30/07/2010, same was thereafter modified by Corrigendum dated 29/06/2011 wherein it is directed to all Revenue Officers that if lands allotted to the Devshtan are alienated it should be first taken up from possession by ignoring such alienation and be taken up in possession of State Government. Later on as per circular dated 29/06/2012 it is clarified that said lands should be given back to Devsthan.

9. The advocate for the objector/J.D. has further submitted that, Government circular was subjected to Writ Petition No.2759/2011 and it was sought that it should be implemented. In said Writ petition along with connected writ petition Hon'ble High Court of Judicature at Bombay passed order dated 14/08/2018.

10. The advocate for the objector/J.D. has submitted that, on same day, further order was passed which is reproduced in Government letter addressed to all District Collectors dated 27/04/2018. On 11/02/1960 Trust obtained exemption certificate and however same was lost, therefore application was made and therefore exemption certificate was issued by S.D.O., Mangrulpir in favour of Trust by order dated 27/07/1998.

11. The advocate for the objector/J.D. has further submitted that, the Trust in order to develop temple and maintain temple was required some money and therefore decided to sell property and accordingly advertisement given in daily newspaper 'Matrubhumi' and 'Janmadhyam' on 29/08/2022 calling tenders from general public. The tenders offered different prices for property of the Trust and offer of one Kishor Ghanshyama Paralikar i.e. deceased plaintiff was accepted by the then Trustee namely Prabhakar Dattatraya Dayal on 10/05/2003 and applied for grant of permission before the Joint Charity Commissioner, Amravati Region, Amravati, permission was accordingly granted by Joint Charity Commissioner, Amravati Region, Amravati by its order dated 06/01/2004 subject to condition that – a. Land can be sold @ Rs.35,000/- per acre within six months from today, b. The expenses of the sale deed shall not be borne by Trust, c. The permission is subject to all laws of Registration and transfer of agricultural land, d. The sale proceeds be deposited in nine FDRs of one lac each of six months and as per need the amounts be invested in renovation work as proposed, e. A change report be submitted after sale of the property in Public Trust Office, Akola, f. The Trustee is directed to submit a scheme within three months for the better administration of Trust.

12. The advocate for the objector/J.D. has submitted that, from the above said condition it is apparent that said permission was to be alive only for period of six months from the date of order and after expiry of said six months, permission was lapsed. As per clause 4 was made subject to all laws of Registration and transfer of agricultural lands. Thus, it is clear that, said permission could not have utilized for sale of suit land is Inam land within non-alienation. As per the provisions of the Berar Inam Rules, 1859 and as per the Government circular dated 30/07/2010 further explained by

Government Corrigendum dated 29/06/2011 the said permission could not have been utilized.

13. The advocate for the objector/J.D. has submitted that, the permission of Joint Charity Commissioner, Amravati Region, Amravati granted on 6th January 2004 is not applicable for alienation of the land in question.

14. The advocate for the objector/J.D. has also submitted that, one Kishor Ghanshyamsa Paralikal filed suit bearing Special Civil Suit No.13/2007 on 12/03/2007 after permission of Joint Charity Commissioner, Amravati Region, Amravati lapsed after expiry of six months from date of order i.e. 06/07/2004 however no order of extension of time was obtained from Joint Charity Commissioner, Amravati Region, Amravati.

15. The advocate for the objector/J.D. has further submitted that, the deceased trustee had no authority to hand over possession of property in terms of permission given to him after expiry of period of six months as well as without executing sale deed in favour of plaintiff. Thus the possession of defendant is totally illegal.

16. The advocate for the objector/J.D. has further submitted that, the suit proceeding exparte against Joint Charity Commissioner, Amravati Region, Amravati and on 06/12/2010 order was passed stating therein that plaintiff and defendant filed compromise pursis matter is settled out of the Court. Hence, the plaintiff do not want to proceed with suit. The contents of pursis are verified plaintiff and defendant. Pursis is read and recorded and necessary order passed below Exh.1.

17. The advocate for the objector/J.D. has also submitted that, the above

said order passed by the learned Trial Court can not constitute the decree because matter is settled out of Court, however as per contents of said document the land is agreed to be sold for Rs.8,78,500/- and deducting amount paid Rs.7,31,000/- balance of amount of Rs.1,47,500/- are to be paid within a period of one month by demand draft or be deposited in Court thereafter within 8 days defendant will execute sale deed of 25 acres 10 gunthas of land in favour of plaintiff. As per condition in case if defendant failed to deposit money he will lose right to get sale deed executed. The said 'आपसातील तडजोडीचा लेख' is dated 29/11/2010 and therefore it was obligatory on the part of plaintiff to deposit Rs.1,47,500/- within a period of one month i.e. on or before 28/12/2010. However, on 11/01/2011 i.e. almost after period of 15 days after expiry of period the D.H. filed an application for grant permission before the Court thereon the Hon'ble Court has passed order other side is absent when called and therefore Hon'ble Court allowed the application. In fact on 11/01/2011 original civil suit was not listed before the Court the D.H. filed an application for grant of extension time at Exh.23. Thereafter, during the pendency of application at Exh.23 original Trustee Prabhakar Dattatraya Dayal died on 01/04/2013. On account of death of sole Trustee Change Report Case No.409/2014 was filed before the Assistant Charity Commissioner, Washim and same was allowed by order dated 02/06/2014. Thus the objector is Trustee of Trust and is bound to project interest of trust. Thereafter, by order dated 02/12/2015 below Exh.23 then Civil Judge, Senior Division (Link Court), Magrulpur has allowed the application.

18. The advocate for the objector/J.D. has further submitted that, being aggrieved by the order dated 02/12/2015 passed below Exh.23 the objector filed Writ Petition before the Hon'ble High Court bearing Writ Petition No.

1637/2017 which was allowed by the Hon'ble High Court order dated 30/01/2018. Being aggrieved by the order passed by the Hon'ble High Court the D.H. has filed Civil Appeal No.3794/2022 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India allowed the said Civil Appeal No.3794/2022 and order of extension of time is restored by order dated 09/05/2022. The objector had no knowledge about order passed by the Hon'ble Supreme Court of India and she got knowledge of same when the D.H. filed copy of said order before this Court in Execution Petition on 17/09/2022. Thereafter, the objector/ J.D. contacted with her lawyer of Hon'ble Supreme Court of India and confirmed the fact.

19. The advocate for the objector/J.D. has further submitted that, the order passed below Exh.23 dated 02/12/2015 by the Hon'ble Civil Judge Senior Division Mangrulpir in Special Civil Suit No.13/2007, the order passed by the Hon'ble High Court dated 30/01/2018 in Writ Petition No.1637/2016 and order passed by the Hon'ble Supreme Court of India in Civil Appeal No.3794/2022 dated 09/05/2022 the point involved therein was only in respect of power of Court to grant extension of time. In fact in said matter nowhere question of validity of decree is considered or was subject matter of case.

20. The advocate for the objector/J.D. has also submitted that, it is settled law that if decree is null and void, then its invalidity can be sought even at the stage of execution. The order execution of sale deed passed on the basis of compromise between D.H. and deceased Trustee namely Prabhakar Dattatraya Dayal was not in accordance with power vested in deceased Prabhakar Dattatraya Dayal as he was not competent to sale property in view of provisions of the Berar Inam Rules, 1859 read with decision of State of

Maharashtra reflected in Government circular dated 30/07/2010 and Corrigendum dated 29/06/2011 as he had no powers to alienate the property at all.

21. The advocate for the objector/J.D. has further submitted that, the permission dated 06/01/2004 of Joint Charity Commissioner, Amravati Region, Amravati stood lapsed on expiry of period of six months on 06/07/2004 and thereafter there was no permission with respondent.

22. The advocate for the objector/J.D. has further submitted that, the time granted by Joint Charity Commissioner, Amravati Region, Amravati could not be extended by deceased Trustee and D.H. by their unilateral agreement which is stated to be done by plaintiff and D.H., itself stood lapsed and no actual order of extension of time is sought from Joint Charity Commissioner, Amravati Region, Amravati by deceased Trustee as well as D.H. and thus act of unilateral grant of time contrary to order of Joint Charity Commissioner, Amravati Region, Amravati is an act without jurisdiction by deceased Prabhakar Dattatraya Dayal and thus order of execution of sale deed passed on the basis of compromise is an act which is without jurisdiction and decree for specific performance is null and void.

23. The advocate for the objector/J.D. has also submitted that, the order of Joint Charity Commissioner, Amravati Region, Amravati is specifically stipulates that entire amount of consideration should be first obtained by investing in 9 FDRs of Rs.1,00,000/- each and only proportionate amount required for development of temple utilized for renovation etc. But bald statement is made that amount was paid prior to execution of sale deed, neither the D.H. nor deceased Trustee/J.D. had any authority to receive

amount before execution of sale deed. Thus, act of acceptance of payment of D.H. is contrary to interest of Trust.

24. The advocate for the objector/J.D. has also submitted that, present reckoner value of property is Rs.5,50,000/- per acre, bare perusal of Special Civil Suit No.13/2007 it is apparent that suit filed without obtaining any order of execution of time from Joint Charity Commissioner, Amravati Region, Amravati and thus on the date of filing of the suit he had not valid permission in the eyes of plaintiff.

25. The advocate for the objector/J.D. has further submitted that, it is well established that Joint Charity Commissioner, Amravati Region, Amravati had not authority to grant ex-post-facto permission as well has no authority to grant ex-post-facto extension of time i.e. almost after period of 3 years from the date of lapsing of original order dated 06/07/2004, thus the nullity in the eyes of law as it is based in respect of sale of Trust land without permission of the Joint Charity Commissioner, Amravati Region, Amravati under section 36 of Bombay Public Trusts Act, 1950 and such permission now cannot be granted even by Joint Charity Commissioner, Amravati Region, Amravati as he had no authority to grant ex-post-facto permission. Hence, prayed that this application may be allowed as prayed.

26. On the other hand, the advocate for the D.H. has raised strong objection to this application submitting that, the execution Court cannot go behind back the decree. In such circumstance for the Execution Court the decree has to execute as it is. He further submitted that, the objector/J.D. can not raise any objection as per the provisions of Section 47 of the Civil Procedure Code. The advocate for the D.H. has further submitted that, D.H.

filed this Execution Petition to execute the compromise decree obtained in a Lok Adalat against the compromise decree obtained in Lok Adalat appeal cannot be filed. Thus the decree obtained in Lok Adalat is not null and void.

27. The advocate for the D.H. has further submitted that, when the defendant/J.D. namely 'Balaji Sansthan' become the absolute owner of the suit land they have sought permission as per the provisions of Section 36 of Maharashtra Public Trust for to sale out the suit land with Joint Charity Commissioner, Amravati Region, Amravati. Accordingly, the Joint Charity Commissioner, Amravati Region, Amravati has granted permission to the Trust vide order dated 09/01/2014. However, as per the said permission the J.D. has not sold out the suit land to the D.H., therefore the D.H. had filed suit against the J.D. before the Hon'ble Civil Judge Senior Division, Washim bearing Special Civil Suit No.13/2007 for specific performance of the contract.

28. The advocate for the D.H. has further submitted that out of consideration amount of the suit land the D.H. has paid Rs.7,31,000/- to the J.D. and frequently requested him to get measured the suit land accordingly, one Engineer Rupesh Mahakal has measured the suit land and as per the said measurement J.D. has handed over the possession of the suit land to the D.H. At the time handing over possession question arise about the area of the suit land then the J.D. has got corrected the order of Joint Charity Commissioner, Amravati Region, Amravati as per the provisions of law.

29. The advocate for the D.H. has further submitted that, matter has been settled between the D.H. and J.D. before the Lok Adalat. Accordingly, compromise decree has been passed on 06/12/2010. As per the said

compromise decree the D.H. required to paid Rs.1,47,500/- to J.D. or to deposit in the Court within one month and then the J.D. has to execute sale deed. Accordingly, the J.D. has avoided to receive the said amount. So, the D.H. was required to deposit the said amount in the Court. But during that period the brother of D.H. suddenly died, due to which there was 5 to 6 days delay in depositing the said amount in the Court. So, the D.H. has sought permission from the Court by filing application dated 11/01/2011. The Hon'ble Court has allowed the said application. Accordingly, on 11/01/2011 the D.H. has deposited the said amount in the Court.

30. The advocate for the D.H. has further submitted that, along with above said application the D.H. has to filed application for condonation of delay to avoid the technical problem the D.H. has filed application on 15/01/2011 as per the provisions of section 151 and section 148 of the Civil Procedure Code for condonation of delay. The said application also allowed by the Hon'ble Court by order dated 02/12/2015.

31. The advocate for the D.H. has further submitted that, against the order dated 02/12/2015 J.D. has preferred Writ petition before the Hon'ble High Court Bombay, Bench at Nagpur bearing Writ Petition No.1637/2016. The Hon'ble High Court Bombay Bench at Nagpur has allowed the said Writ Petition by dated 30/01/2018 and set aside order passed by the learned trial Court. Against the said order of Hon'ble High Court in Writ Petition No.1637/2016 the D.H. has preferred appeal before the Hon'ble High Court bearing Appeal No.3794/2022. The Hon'ble Supreme Court has allowed the said appeal by order dated 09/05/2022 and set aside order passed by the Hon'ble High Court Bombay Bench at Nagpur and confirmed the order passed by the learned Trial Court.

32. The advocate for the D.H. has further submitted that, during the pendency of Execution Petition the J.D. has obtained time to file the Review Petition against the order of the Hon'ble Supreme Court and without filing review petition against the order of Hon'ble Supreme Court the J.D. has filed present application under the provisions of section 47 of the Civil Procedure Code which is barred by the provisions of law. In fact, the J.D. has not raised present objection either before the Hon'ble High Court or before the Hon'ble Supreme Court, when the Hon'ble Supreme Court confirmed the order of learned trial Court the J.D. again raised objection as per the provisions of 47 of the Civil Procedure Code. The J.D. has filed this present application only to obstruct the execution of decree and to harass the D.H. mentally and financially and deprive him from enjoying fruits of decree. Hence, prayed that this application may be rejected with costs.

33. After considering the submissions made on behalf of both the sides, I have gone through the relevant provisions of section 47 of the Civil Procedure Code which I have reproduced here for the sake of convenience as under- 'Section 47. Questions to be determined by the Court executing decree – 1. All the questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court. [Explanation I- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit. Explanation II- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be

a party to the suit in which the decree is passed; and (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be question relating to the execution, discharge or satisfaction of the decree within the meaning of this section.’

34. After going through the relevant provisions of section 47 of Civil Procedure Code, I have gone through documents produced by the objector/J.D. along with list at Exh.42A/1 to 27 at Exh.42A/1 there is xerox copy of certificate granted to the under mentioned individual in the year 1888, at Exh.42-A/2 there is xerox copy of Berar Inam Rules, 1959, at Exh.42-A/3 there is xerox copy of order of Registrar of Public Trust Shri. Balaji Mandir Mangrulpir by the Trustee Prabhakar Dattatraya Dayal, at Exh.42-A/4 there is xerox copy of Registration Certificate of Trust Shri Balaji Mandir Sansthan Trust Mangrulpir are issued to Prabhakar Dattatraya Dayal on 27/11/1961, at Exh.42-A/5 there is xerox copy of Government Circular dated 30/07/2010, at Exh.42-A/6 there is xerox copy of Corrigendum issued by State of Maharashtra dated 29/06/2012, at Exh.42-A/7 there is xerox copy of order passed by the Hon’ble High Court Bombay in Writ Petition No.13488/2017 etc. at Exh.42-A/8 there is xerox copy of Government letter dated 27/04/2018 addressed to Additional Commissioner and District Collectors, at Exh.42-A/9 there is xerox copy of application preferred by the Balaji Mandir Trust through Manager Prabhakar Dattatraya Dayal to the S.D.O., Mangrulpir, at Exh.42-A/10 there is xerox copy of order passed by S.D.O., Mangrulpir dated 27 July 1988 in रा.मा.क्र.टी.एन.सी. १२९/मुर्तीजापुर/१/९७—९८, at Exh.42-A/11 there is xerox copy of order passed by the Hon’ble High Court Bombay in Writ petition No.2759/2011 dated 22 January 2020, at Exh.42-A/12 there is xerox copy of Joint Charity Commissioner Amravati Region, Amravati dated 6 January 2004 in

Application No.22/2003, at Exh.42-A/13 there is xerox copy of Exh.1 in Special Civil Suit No.13/2007, at Exh.42-A/14 there is xerox copy of 7/12 extract of land bearing survey /Gat No.03, at Exh.42-A/15 there is xerox copy of order passed below Exh.20 (Compromise Pursis) in R.C.S. No.13/2007 by my learned predecessor dated 06/12/2010, at Exh.42-A/16 there is xerox copy of application dated 11/01/2011, at Exh.42-A/17 there is xerox copy of Roznama in Special Civil Suit No.13/2007, at Exh.42-A/18 there is xerox copy of application dated 22/06/2022, at Exh.42-A/19 there is xerox copy of application Exh.23 in Special Civil Suit No. 13/2007, at Exh.42-A/20 there is xerox copy of death certificate of Prabhakar issued by concerned authority, at Exh.42-A/21 there is xerox copy of Change Report dated 03/05/2014, at Exh.42-A/22 there is xerox copy of order passed by below Exh.1 in INQ. 409/2014 by the Assistant Charity Commissioner Washim dated 02/06/2014, at Exh.42-A/23 there is xerox copy of order passed below Exh.23 in Special Civil Suit No. 13/2007 dated 02/12/2015, at Exh.42-A/24 there is xerox copy of order passed by Hon'ble High Court Bombay Bench at Nagpur dated 30 June 2018 in Writ Petition No.1637/2016, at Exh.42-A/25 there is xerox copy of order passed by the Hon'ble Supreme Court in Civil Appeal No.3794/2022, at Exh.42-A/26 there is xerox copy of petition in Special Leave to appeal no.16942/2018, at Exh.42-A/27 there is xerox copy of valuation letter.

35. After going through the documents produced by the objector/J.D. in support of her contention I have gone through the citation filed by the learned advocate for the Objector/J.D. and learned advocate for the D.H. in support of their submissions.

36. In support of his submission the learned advocate for the objector/J.D.

relied upon the ratio laid down by the Hon'ble Supreme Court in **Kiran Singh and others Vs. Chaman Paswan and others AIR 1954 Supreme Court 340 Supreme Court** in which the Hon'ble Supreme Court has held that, “ *a defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject matter of the action, strikes at the very authority of the Court to pose any decree, and such a defect cannot be cured even by consent of parties*”.

37. After going through the ratio laid down by the Hon'ble Supreme Court, in the above cited case it seems that the facts and circumstances of case in hand and facts and circumstances of case before the Hon'ble Supreme Court are not identical with each other. Because the facts of the case before Hon'ble Supreme Court is that the appellants have filed suit for recovery of possession of 12 acres 51 cents of land situated in mauza Bardth of which defendants no.12 and 13 forming the second party are the proprietors. The allegations in the plaint were that on 12/04/1943 the plaintiffs were admitted by the second party as occupancy tenants on payment of Rs.1950 as salami and put into possession of the lands, and thereafter the first party consisting of defendant No.1 to 11 trespassed and carried away the crops. The suit was accordingly laid for ejecting defendant 1 to 11 and mesne profits. Defendant No.1 to 11 contested the suit contending that they had been in possession of the lands as tenants on 'batal' system. The learned trial Court had dismissed the suit. The plaintiff preferred the appeal before the Hon'ble District Judge, Monghyr, the Hon'ble District Judge has dismissed the said appeal. The plaintiffs took up the matter in second appeal before the Hon'ble High Court, Patna and first time objection was taken by the Stamp Reporter to the valuation in the plaint. However, the facts of case in hand is that the plaintiffs has filed execution petition for execution of compromise decree passed before the Lok Adalat dated

06/12/2010 in Special Civil Suit No. 13/2007 and by filing application Exh.42 the objector/J.D. has raised objection to the compromise decree passed in Special Civil Suit No.13/2007 dated 06/12/2010 contending that it is null and void without jurisdiction further contending several grounds. Hence, with due respect I am of the view that the above said ratio is not applicable to the submissions made on behalf of the objector/J.D.

38. Then he relied upon the ratio laid down by the Hon'ble Supreme Court in **Sundar Dass Vs. Ram Parkas AIR 1977 Supreme Court 1201** in which the Hon'ble Supreme Court has held that, *"an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the Court passing it, its invalidity can be set up in an execution proceeding"*

39. After going through the ratio laid down by the Hon'ble Supreme Court, in the above cited case it seems that the facts and circumstances of case in hand and the facts and circumstances of case before the Hon'ble Supreme Court are not identical with each other. Because the facts of the case before the Hon'ble Supreme Court is that, the dispute in this appeal relates to a shop situated on the ground floor of a building bearing Municipal No.624-36(Old) 530-35 (New) situated in Sadar Bazar, Delhi. The building was an evacuee property and it was acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and formed part of the compensation pool. It was sold by public auction and the appellant being the highest bidder was accepted as the auction purchaser by the managing officer on 5th September 1955. The sale certificate was not issued in favour of the appellant for a

considerable time and it was told that even until now it has not been issued out possession of the building was handed over to the appellant on 30 August 1956 and letter dated 3rd September 1956 was addressed by the managing officer to the respondent intimating to him that since possession of the building had been handed over rent to the appellant and otherwise deal directly with him effect from 30th August 1956. The respondent resisted the suit on the ground that the certificate of sale not having in favour of the appellant he was not the owner of the premises and hence he was not legally competent to let out the premises to the respondent nor was he entitled to recover possession of the premises from the respondent. The respondent also disputed the jurisdiction of the Court on the ground that the Delhi Rent Control Act, 1958 which had come into force on 9th February 1959 was applicable to the tenancy of the premises and by reason of section 50 if that Act the Civil Court had no jurisdiction to entertain the suit.

40. However, the facts of case in hand is that the plaintiffs has filed execution petition for execution of compromise decree passed before the Lok Adalat dated 06/12/2010 in Special Civil Suit No. 13/2007 and by filing application Exh.42 the objector/J.D. has raised objection to the said compromise decree passed in Special Civil Suit No.13/2007 dated 06/12/2010 is null and void without jurisdiction further contending other several grounds. Hence, with due respect I am of the view that the above said ratio is not applicable to the submissions made on behalf of the objector/J.D.

41. Then he relied upon the ratio laid down by the Hon'ble High Court in **Lalitkumar Ramlal Sharma and others Vs. Jadhavbai Murlidhar Sharma and others 2002(4) Bom. C.R.548** in which the Hon'ble High Court has held that, *"on the basis of this factual aspect, it is apparent that*

the respondents are not in any way said to be related either to the original defendant or his legal representatives and, therefore, they cannot step into the shoes of either Ramprasad or Brijmohan and Hiralal in case of death of these persons. Hence, it is evident that the respondents do not fall within the category of representatives of defendant as contemplated under sub-section(1) of section 47 of Code of Civil Procedure. Consequently, the provisions of sub-section (3) of section 47 of the Code of Civil Procedure are not attracted”.

42. After going through the ratio laid down by the Hon’ble High Court, in the above cited case it seems that the facts and circumstances of case in hand and the facts and circumstances of case before the Hon’ble High Court are not identical with each other. Because the facts of the case before the Hon’ble High Court is that, “during the pendency of Special Civil Suit No.12/1971 the respondents purchased the suit property from Brijmohan and Hiralal, who were brought on record as legal representatives of original defendant No.1 Ramprasad. Respondent No.1 and 2 filed R.C.S. No.42/1989 for declaration that the judgment and decree passed in R.C.S. No.12/1971 is null and void and not binding upon them. Defendants have filed an application in the said suit under Order VII Rule 11 of the Code of Civil Procedure and prayed for rejection of plaint since separate suit is not maintainable. The said application is rejected by the trial Court by order dated 09/12/1994.

43. However, the facts of case in hand is that the plaintiffs has filed execution petition for execution of compromise decree passed before the Lok Adalat dated 06/12/2010 in Special Civil Suit No. 13/2007 and by filing application Exh.42 the objector/J.D. has raised objection to the said

compromise decree passed in Special Civil Suit No.13/2007 dated 06/12/2010 is null and void and is without jurisdiction further contending several grounds. Hence, with due respect I am of the view that the above said ratio is not applicable to the submissions made on behalf of the objector/J.D.

44. In support of his submission the learned advocate for D.H. has also relied upon the ratio laid down by the Hon'ble Supreme Court in **Pradeep Mehra Vs. Harijivan J. Jethwa (Since deceased through L.R.S) and Others Civil Appeal No.6375/2023 (Arising out of SLP (C) 8943 of 2021)** in which the Hon'ble Supreme Court has held that, *“the executing Court can never go behind the decree. Under section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction”*.

45. Then he relied upon the ratio laid down by the Hon'ble Supreme Court in **Narinder Singh And others Vs. Kishan Singh (Dead) by Lrs and others 2002 AIR (SC) 2603** in which the Hon'ble Supreme Court has held that, *“ as noted earlier the plea that Karam Singh had no liability to pay any part of the mortgage debt and his property having been released from the mortgage in 1656 could not be a part of the suit property in the present case, was neither taken at trial of the suit nor before the Court in the final decree proceeding”*.

46. Then he relied upon the ratio laid down by the Hon'ble High Court in **Tushar Suresh Bhumkar Vs. M/S Suresh and Company and others 2002 (4) Mh.L.J. 845** in which the Hon'ble High Court has held that, *“ the words “execution or discharge or satisfaction” in section 47 of Civil Procedure Code disclose limits of the scope of inquiry under section 47 is said section.*

They reveal that the adjudication in the inquiry under section 47 is limited to the questions of implementation, and fulfillment of obligations under the decree. The issue in such inquiry must relate to the enforcement of the obligations created by the decree and must refer to the matters arising subsequent to the passing of the decree and not to the antecedent to it”.

47. After considering the submissions made on behalf of both the sides, going through the record and going through the ratio laid down by Hon’ble High Court and Hon’ble Supreme Court in above cited cases, it seems that the D.H. has filed this execution petition for the execution of compromise decree passed in Lok Adalat on the basis of settlement deed between the plaintiff and defendant No.1 vide Exh.20 as per the order passed by then learned Civil Judge Senior Division, Washim dated 06/12/2010 R.C.S. No.13/2007, after filing of the execution application, the objector/J.D. had filed an application Exh.15 on 13/03/2015 as per the provisions of section 28 of Specific Relief Act. My learned predecessor Dr. Shri. S.R. Jaiswal has rejected the said application by order dated 13/01/2016. It also seems from the record that the D.H. has filed application at Exh.21 to appoint Nazar to execute the sale deed, by passing order dated 11/03/2016 my learned predecessor has allowed the said application. Accordingly, vide memo Exh.22 the D.H. has deposited Rs.2000/- in the court vide C.C.D. No.190/2016 on 11/03/2016. It further seems from the record that by filing application Exh.24 J.D. has requested to the Court as not to act or pass any order or direction against J.D. in respect of field Survey No.3 till to file the order of Hon’ble Apex Court, accordingly, my learned predecessor has passed order dated 18/03/2016 and directed to call back the order till next date. It further seems from the record that, against the order of my learned predecessor dated 11/01/2011 the J.D. had preferred Writ Petition No.1637/2016 before the Hon’ble High Court Bombay Bench at Nagpur.

Accordingly, Hon'ble High Court has allowed the said writ petition by order dated 30th January 2018 and set aside the order passed by my learned predecessor dated 11 January 2011, order passed on Exh.23 dated 2 December 2015, order passed dated 13 January 2016 below Exh.15, the Hon'ble High Court has also canceled the sale deed executed in favour of the respondent/decree holder dated 12 January 2011 and remanded back the matter before this Court for considering the application Exh.21 B, 23 and 15 afresh. It further seems from the record that the D.H. has preferred civil appeal No.3794/2022 before the Hon'ble Supreme Court. The Hon'ble Supreme Court has allowed the said appeal by order dated 9 May 2022 and set aside the judgment and order passed by the Hon'ble High Court dated 30/01/2018 in Writ Petition No.1637/2016 and the order passed my learned predecessor dated 11/01/2011 permitting the D.H. (Appellant) to deposit the balance amount has been restored. It seems from the record that the said order passed by the Hon'ble Supreme Court is still in existence. However, by filing this application though the objector/J.D. has contended that, land in question was land allotted to the Trust as Inam on the condition on non-alienation lands given to Devsthan through its Vahivatdar for services to be rendered by the Berar Inam Rules, 1859 to the temple though continued to be subject of restriction as imposed in accordance with said provisions of the Berar Inam Rules, 1959, further though it is the contention of Objector/J.D. that vide circular dated 30/07/2010 and Corrigendum dated 29/06/2011 the Government of Maharashtra has directed to the Revenue Officer that if lands allotted to Devsthan are alienated, it should be first taken up from possession by ignoring such alienation and be taken up in possession of State Government, and also though further it is the contention of the objector/J.D. that Joint Charity Commissioner Amravati Region Amravati has permitted by its order dated 6th January 2004 subject to condition mentioned therein that

the land should be sold out within six months from the date of order and after expiry said six months period permission was lapsed. However, after perusing the contents of order passed by the Hon'ble Joint Charity Commissioner Amravati Region Amravati it seems that in the application No.22/2003 the Hon'ble Joint Charity Commissioner Amravati Region Amravati has passed the order that the permission is accorded applicants to sell lands admeasuring 25 acres 28 gunthas of survey No.3 Murtizapur Tq. Mangrulpir Dist. Washim to Shri. K. G. Parlikar @ of Rs.35,000/- per acre within six months from today i.e. from 06/01/2014, if the order passed by the Hon'ble Joint Charity Commissioner Amravati Region Amravati minutely perused that no where it is mentioned that after the expiry of six months period said permission will be lapsed. So, at this stage I do not find substance the submission made on behalf of the objector/J.D. that the permission granted by the Hon'ble Joint Charity Commissioner Amravati Region Amravati was to be only for a period of six months from the date of order. And after of said six months period it was lapsed.

48. Further though it is the contention of objector/J.D. that as per clause 4 of the permission it was subject to the all laws of Registration and transfer of agricultural land, so permission could not have been utilized for sale of the suit land as it is Inam land within non-alienation. However, after perusing the contents of order passed by the Joint Charity Commissioner Amravati Region Amravati dated 06/01/2004 it seems that in clause 4 of the operative part of the order the Hon'ble Joint Charity Commissioner Amravati Region Amravati has contended that, the permission is subject to all lands of Registration and transfer of agricultural land which according to my humble opinion that the permission of Hon'ble Joint Charity Commissioner Amravati Region Amravati is subject to all lands of the Registration and transfer of agricultural lands it does not mean that the permission is subject to the

provisions of Berar Inam Rules, 1959. So at this stage I do not find substance in the submissions made on behalf of the learned advocate for the objector/J.D.

49. Further though it is the contention of the objector/J.D. that no order of extension of time obtained from Hon'ble Joint Charity Commissioner Amravati Region Amravati and after expiry of 6 months period from the date of order dated 06/07/2004 said order lapsed. However from the record it seems that my learned predecessor Dr. Shri. S.R. Jaiswal has condoned the delay and permitted to D.H. to deposit the amount. Against the said order the J.D. has preferred Writ petition No.1637/2016 and by order dated 30th January 2018 the Hon'ble High Court has set aside the order dated 11th January 2011, set aside the order passed by my learned predecessor dated 02/12/2015 below Exh.23, set aside order dated 30th January 2016 below Exh.15, the sale deed executed in favour of D.H. dated 12/01/2010 has been canceled and the matter is remanded to the learned trial Court for considering the application Exh.21-B, 23 and 15 afresh. Then the D.H. has challenged the said order of the Hon'ble High Court before the Hon'ble Supreme Court by filing appeal bearing Civil Appeal No.3794/2022 by order dated 9th May 2022 and the Hon'ble Supreme Court has set aside the order passed by the Hon'ble High Court in Writ Petition No.1637/2016 dated 30/01/2018 and restored the order passed by my learned predecessor dated 11/01/2011. In such circumstances, at this stage, I do not find substance in the submission made on behalf of learned advocate for the objector/J.D. that suit is filed without obtaining order of extension of time from Joint Charity Commissioner Amravati Region Amravati. However, if the nature of the suit filed by the plaintiff considered the plaintiff has filed suit for Specific Performance of Contract contending that the cause of action for filing the suit arose on 29/09/2003 when defendant No.1 accepted the tender and

thereafter on 06/01/2004 when defendant No.2 granted permission to sale the suit property and on 06/07/2004 when defendant No.1 executed agreement of extension of time. In the said suit before the Hon'ble ADR the plaintiff and defendant No.1 have filed compromise deed at Exh.20. Accordingly, the Hon'ble ADR has directed to pass decree in terms of compromise deed Exh.20 on 03/12/2010 on the basis of which the D.H. has filed this execution petition. So at this stage, I do not find substance made on behalf of Objector/J.D.

50. Considering all the above discussion, I am of the view that the application filed by the objector/J.D does not attract the provisions of section 47 of the Civil Procedure Code. So the application filed by the objector/ J.D. at Exh.42 deserve to be rejected. Hence, I answer point No. 1 in the negative and in the result in answer to point No.2 I pass the following order.

ORDER

1. The application filed by the objector/J.D. at Exh.42 is hereby rejected.
 2. Cost in cause.
- (Dictated and pronounced in open Court.)

Sd/-

(S. J. Gaikwad)
C. J. S. D. Mangrulpir.

Date : 21/11/2023

Order dictated on : 21/11/2023
Order transcribed on : 27/11/2023
Order checked on : 27/11/2023
Order retyped and signed on : 28/11/2023

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per original order.

- 1) Name of Stenographer :- R. A. Charthal,
Stenographer (Grade II)
- 2) Name of Court :- Civil Judge (S.D.), Mangrulpir.
- 3) Date :- 21/11/2023
- 4) Order signed by the :- 28/11/2023
presiding officer on
- 5) Order uploaded on :- 28/11/2023