

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 867 OF 2015

Jaimalhar Yatra Mandal, Nimgaon
Tal.Khed, Dist. Pune & ors.

.. Petitioners.

VS.

The Ld. Joint Charity
Commissioners, Pune Region,
Pune and ors.

.. Respondents

Mr. Rahul Kadam for the Petitioners.
Ms Aparna Vhatkar, AGP for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 27 JANUARY, 2015

P.C. :-

1] Not on board. Upon mentioning, taken on board.

2] The petitioners challenge the order dated 8 December 2014, by which the petitioners' application questioning the maintainability of application under Section 41(E) of the Bombay Public Trusts Act, 1950 (said Act) has been rejected. Mr. Kadam, learned counsel for the petitioners made two submissions in support of this petition.

(a) That the application under Section 41E of the said Act by respondent No.2 was not supported or made by any other persons. Even the affidavit was filed only by respondent No.2. This is breach of Section 41E of the said Act, which requires that the application for invoking the

powers under Section 41E of the said Act have to be made by atleast two persons having interest supported by the affidavit;

(b) That the applicants, who made the application under Section 41E of the said Act cannot be regarded as a person interested and therefore application at their behest was not maintainable.

3] The Joint Charity Commissioner, in making the impugned order, has noted that the application was filed by two persons. Merely, because the application is not signed by two persons, as long as the same bears the names of two persons and further second name is in the handwriting of respondent No.3, it cannot be said that the application under Section 41E of the said Act is not at all maintainable. On the aspect of person interested, it is recorded that respondent No.2 is an Advisor of the Trust and in that capacity, he is the person interested.

4] It is not possible for this Court to go into disputed facts as to whether or not the application was indeed made by two persons. There is a finding of fact recorded that the application was filed by

two persons. This is a finding on the basis of docket sheet prepared at the time of registration of the application. The circumstance that there are no two affidavits, cannot be said to be conclusive. It is sufficient, if the application is made by two persons and supported by an affidavit. Further the Joint Charity Commissioner accepts that respondent No.2 was the Advisor of Trust. As such, it cannot be said that the application was made by some total strangers or busy bodies. Respondent No.2, who is 90 years old and has been pursuing the matter. In the aforesaid circumstances, no case is made out to interfere with the impugned order. Considering the age of respondent No.2, it is appropriate that the Joint Charity Commissioner proceeds with the matter expeditiously and decide the same in accordance with law, within a period of four months from today.

5] The petitioners to bring to the notice of the Joint Charity Commissioner the present order, since this has been made without any notice to respondent Nos.2 and 3.

6] With the aforesaid, petition is disposed of. No order as to costs.

(M. S. SONAK, J.)