

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8664 OF 2014

Bhartiya Kala Prasarini Sabha .. Petitioners
vs.
Rajendra Marutrao Balkawade and ors. .. Respondents

Mr. S.M. Gorwadkar for the Petitioners.
Mr. M.A. Chaudhari for Respondent Nos.1,3 to 5.

CORAM : M. S. SONAK, J.
DATE : 2 FEBRUARY, 2015.

P.C. :-

1] This petition is directed against the order dated 8 April 2013 made by the Assistant Charity Commissioner, Pune permitting the impleadment of respondent Nos.1 to 5 in the Change Report proceedings, instituted by the petitioner.

2] Mr. Gorwadkar, learned counsel for the petitioner submitted that such impleadment cannot be permitted on the touch stone of the provisions contained in Code of Civil Procedure, 1908 (CPC). This is because Section 76 of the Bombay Public Trust Act, 1950 (said Act), which makes applicable the provisions of the CPC, apply only to the proceedings before the Court. The Assistant Charity Commissioner before whom the proceedings for Change Report are pending, cannot be regarded as a Court. Mr. Gorwadkar further submitted that the only provisions under which a person can be

joined as a party to the proceedings could be Section 73A of the said Act. The said provisions, however, permits only “*any person having interest in the public trust*” to be joined as a party. This phrase has been defined under Section 2(10) of the said Act and in case of a society registered under the Societies Registration Act, 1860, it would include only a member of such society. Mr. Gorwadkar pointed out that by order dated 27 October 2010, the Assistant Charity Commissioner has already declined to certify the membership of respondent Nos.1 to 5 and in such circumstances, they cannot be regarded as members of the Trust. The impugned order, which does not take into consideration of all these aspects, is without jurisdiction and therefore liable to be interfered with.

3] Having heard learned counsel for the parties and perused the record, in my judgment, there is no necessity to interfere with the impugned order. This does not appear to be a case where the leave to implead has been granted by applying the touch stone of the provisions contained in Order 1 Rule 10 of CPC alone. In this case, the Assistant Charity Commissioner has ruled that respondent Nos.1 to 5 are the persons having interest in the public trust and therefore, the exercise of jurisdiction in this case can relate to the provisions contained in Section 73A of the said Act.

4] The phrase "*person having interest*" has been defined under sub-section 10 of Section 2 of the said Act as including, in case of a society registered under the Societies Registration Act, 1860, any member of such society. It is important to note that the definition is only inclusive in nature. On basis of such inclusive nature, it cannot be said that only a person who is a member of such society can alone answer the definition of the term "*person having interest*".

5] That apart, as yet there is no finality to the issue as to whether or not respondent Nos.1 to 5 are the members of trust. The issue is admittedly pending in appeal as against the order dated 27 October 2010 made by the Assistant Charity Commissioner.

6] In the meanwhile, respondent Nos.1 to 5 have been regarded as "*person having interest*" in the context of proceedings under Section 36 of the said Act, in the matter of alienation of the trust property, without permission from the competent authority. There is also on record, the reference to numerous proceedings instituted by or against respondent Nos.1 to 5, in the matter of affairs of the trust.

7] In the aforesaid circumstances, it cannot be said that the impugned order is vitiated by any jurisdictional error or for that matter any error apparent on face of record.

8] Accordingly, there is no reason to interfere with the impugned order.

9] It is clarified that the observations made in the impugned order or for that matter the present order are tentative and only for the purposes of deciding whether intervention ought to have been permitted. The observations shall be construed, accordingly.

10] The petition is dismissed. Therefore shall be no order as to costs.

(M. S. SONAK, J.)

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