

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6435 OF 2000

Kishor Kamalakar Mantri & Ors. .. Petitioners

V/s.

State of Maharashtra & Ors. .. Respondents

Mr. Omkar Kulkarni i/by Mr. Y.N. Chaudhari for petitioner
nos.1 to 7

Mr. S.K. Shinde i/by Mr. Sagar Kasar for petitioner no.8

Ms. Purnima G. Bhaia for respondent no. 4,5,7,9 & 10

Mr. V.S. Gokhale AGP for respondent no. 1 & 2.

**CORAM : ABHAY S. OKA &
A.P. BHANGALE, J.J.**

DATE : 16TH APRIL, 2015

ORAL JUDGMENT (PER A.S. OKA, J)

1. Heard learned counsel appearing for the petitioner nos. 1 to 7 and the learned counsel appearing for the petitioner no.8, the learned counsel representing 4th , 7th to 10th respondent.

2. The first substantive challenge in this petition under article 226 under Constitution of India is to the order dated 28th June 2000 passed by the learned Charity Commissioner. The 4th respondent is a Public Trust duly registered under the Bombay Public Trusts Act 1950 (for short 'The said Act'). A scheme for management and administration of the said Trust

(for short “the said scheme”) was framed by this Court in Suit No. 1867/1927. An Application was made by some of the petitioners by invoking clause 8 of the said scheme for appointment of trustees of the said Trust. The said application was made before the Charity Commissioner. By the impugned order, the learned Charity Commissioner rejected the said application. In paragraph 9 of the impugned order, the learned Charity Commissioner observed that the Official Trustee has exercised the power of appointment of Trustees and unless the appointments made by the Official Trustee are set aside, the application made under clause 8 of the said scheme cannot be entertained.

3. The submission of the learned counsel appearing for the petitioners, is that in fact the Official Trustee had not passed any orders of appointment of Trustees. Our attention is invited to the letter dated 20th October, 1989 addressed by Official Trustee to the Chairman of the said Trust by which he gave his consent to the appointment of the 7th and 8th respondents as members of the Board of management of the said Trust. Our attention is also invited to the letters dated 21st October, 2000 and 11th October, 2007 by which the Official Trustee informed the Chairman of the said Trust that he has given his consent for the appointment of 9th and 10th respondents respectively as the members of the Board of Management of the said Trust. Learned counsel appearing for the petitioners submitted that the observation made by the

learned Charity Commissioner in paragraph 9 of the impugned order that the appointments of the Trustees made by the Official Trustee is erroneous and therefore, the application made by the petitioners ought to have been decided on merits.

4. Learned counsel appearing for the 4th , 5th , 7th , 9th and 10th respondents on instructions stated that except for the aforesaid letters dated 20th October, 1989, 21st October, 2000 and 11th October, 2007, there is nothing on record to show that the Official Trustee appointed 7th to 10th respondents as the Trustees. Inviting our attention to the order of exemption dated 9th October, 1980 passed by the State Government under sub- Section 4 of Section (1) of the said Act, she submitted that the Official Trustee being the sole Trustee at the relevant time was entitled to exercise of the powers of the Charity Commissioner under the said scheme for appointing the Trustees inasmuch as in view of the applicability of the exemption, learned Charity Commissioner had no jurisdiction to entertain an application under clause 8 of the said scheme. She submitted that the Charity Commissioner had no jurisdiction to appoint Trustees as the order of exemption dated 9th October, 1980 will apply.

5. We have perused the impugned order dated 28th June 2000. The order of exemption dated 9th October, 1980 is applicable when any public trust is for the time being administered by the Official Trustee of the Maharashtra State as

the sole Trustee. In short, if at any relevant time, the Official Trustee was the sole trustee of the said Trust, the provisions of the said Act could not have been applied to the said Trust.

6. Perusal of the impugned order and in particular paragraph 8 shows that Charity Commissioner has recorded that as per the Scheme framed by this Court, only the property of the said Trust vests in the Official Trustee but he is not the sole Trustee and is not having any authority as in charge of the administration of the said Trust. The submission of the learned counsel appearing for the 4th and 7th to 10th respondents is that the said observation is factually in-correct. However, the said respondents have not challenged any part of the impugned order. Thus, in the impugned order, the learned Charity Commissioner has held that at the relevant time, the Official Trustee was neither the sole trustee nor had any authority as in charge of the said Trust. The application invoking clause 8 of the scheme has been rejected only on the ground that he had no jurisdiction to interfere with the Orders of appointment of Trustees made by the Official Trustee.

7. We have already made a reference to letters dated 20th October 1999, 21st October 2000 and 11th October 2007 issued by the Official Trustee to the Chairman of the said Trust. In the said letters, the Official Trustee has merely recorded his consent to the appointment of the 7th to 10th respondents as members of the Board of management of said Trust. There is

no order passed by the Official Trustee appointing the 7th to 10th respondents as the Trustees by exercising his power as the sole Trustee of the said Trust. As stated earlier, the only reason recorded by the learned Charity Commissioner for rejecting the application under clause 8 is that he has no jurisdiction to set aside the appointment of 7th to 10th respondents as a Trustees of the said Trust as they were appointed by the Official Trustee. The said reason is factually incorrect as in fact the Official Trustee did not appoint the 7th to 10th respondents as Trustees. Therefore, the impugned order is liable to be set aside and the application under clause 8 will have to be remanded back to the learned Charity Commissioner. However, an opportunity will have to be granted to 4th, 7th to 10th respondents to agitate the issue of the jurisdiction of the learned Charity Commissioner. Hence, we pass following order.

ORDER

- i. The impugned order dated 28th June 2000 is quashed and set aside;
- ii. The proceeding no. LA/43/99/MISC is hereby restored and remanded to the learned Charity Commissioner, Maharashtra State, Mumbai.
- iii. We direct the petitioners as well as the 4th and 7th to 10th respondents to appear before the learned Charity Commissioner,

Maharashtra State, at Mumbai on 15th June 2015 at 11.00 a.m.;

iv. It will be open for the aforesaid respondents to raise an issue of the jurisdiction of the learned Charity Commissioner to entertain the application in the light of order of exemption dated 9th October 1980. It is obvious that the issue of the jurisdiction will have to be decided by the learned Charity Commissioner;

v. The learned Charity Commissioner shall decide the restored Application as early as possible and preferably by the end of the January 2016;

vi. The Application shall be decided on its own merits in the light of this judgment and order;

vii. Writ Petition is partly allowed in the above terms.

viii. Rule is made partly absolute. No costs.

x. It will be open for the learned Charity Commissioner to make appropriate interim arrangement after hearing all the concerned parties till the disposal of the Application. Till 15th July 2015, 7th to 10th respondents shall continue to act as de-facto Trustees. We make it clear that till that date, the Board of Trustees shall not take any major policy decision without leave of this Court. However, they will be entitled to look after the day to day management of the said Trust.

xi. All concerned to act upon an authenticated copy of the said order.

[A.P. BHANGALE, J.]

[ABHAY S. OKA, J.]