

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10067 OF 2015

Prashant D. Mhasudage & Ors. .. Petitioners
vs.
Sudama Bajirao Mashere & Ors. .. Respondents

Mr. P. Shah i/b. Mr. K. P. Shah for Petitioners.
Mr. K. S. Dewal i/b. Mr. Rohan Tanna for Respondent Nos. 1, 2 and 6.
Mr. Metkari – AGP for Respondent Nos. 17 and 18.

CORAM : M. S. SONAK, J.
DATE: 12 OCTOBER 2015

P.C. :-

- 1] **Not on board. Upon production, taken on board.**
- 2] Heard Mr. Shah, the learned counsel for the Petitioners and Mr. Dewal for Respondent Nos. 1, 2 and 6.
- 3] The challenge in this petition is to the following orders:
 - (A) Order dated 9 October 2015 made by the District Judge, Pune, in Appeal No. 40 of 2015, by which the District Judge declined to grant exparte ad interim stay to the order dated 5 October 2015 made by the Joint Charity Commissioner, Pune;
 - (B) Order dated 5 October 2015 made by the Joint Charity Commissioner, Pune Division, Pune, during the pendency of

application no. 53 of 2015 under Section 41E of the Maharashtra Public Trusts Act, 1950 (said Act);

4] In so far as the first order is concerned, the petition has been rendered infructuous. This is because today i.e. on 12 October 2015 appeal no. 40 of 2015 has itself been disposed of. The order dated 9 October 2015 had declined the Petitioner ad interim exparte stay pending appeal no. 40 of 2015. Now that appeal no. 40 of 2015 has been disposed of, there is no question of examining the legality and validity of the order dated 9 October 2015.

5] In so far as the order dated 5 October 2015 is concerned, the same was appealable and in fact the Petitioners had already preferred an appeal. However, now that the appeal has been disposed of, it would not be proper to relegate the Petitioners to seek alternate remedy provided by the statute.

6] Mr. Shah has submitted that there was absolutely no justification in making the impugned order dated 5 October 2015, because in this case, it cannot be said that the trust property was being changed or being vested, damaged or improperly alienated by any trustee, more particularly the elected trustees whom he represents. Mr. Shah also submitted that the impugned order dated

5 October 2015 was made without due compliance of the principles of natural justice in as much as some reasonable time was applied for, to file reply in the matter and the same was not granted. Mr. Shah finally submitted that two of the members who have been inducted in the *ad hoc* committee to oversee the organization of Navratri festival, are themselves serious defaulters and have a vested interest in the matter. For all these reasons, Mr. Shah submitted that the impugned order dated 5 October 2015 be set aside.

7] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the impugned order dated 5 October 2015. In the first place, before the impugned order was made, due notice was served upon the Petitioners. The Petitioners despite said opportunity chose not to proceed in the matter but to seek some time. In these circumstances, it cannot be said that there has been any violation of principles of natural justice and fair play.

8] That apart, the order dated 5 October 2015 is an interim order pending decision in application no. 53 of 2015 under Section 41E of the said Act. The impugned order is to operate only during a Navratri festival i.e. between 13 October 2015 to 22 October 2015.

The impugned order, upon consideration of the material on record, merely appoints an *ad hoc* committee which is to comprise two of the applicants, two of the elected trustees and one independent villager by name Shri Kaluram Dasharath Daundkar. It is this committee, which is to oversee the organisation of the Navratri festival, maintain accounts of the donations received and submit a detailed report of the income and expenditure. The order, is quite balanced, in as much as interest of not just the two disputing parties but the interest of the trust itself have been safeguarded. Assuming that two of the applicants are allegedly villagers or have a vested interest, it is not as if the entire organisation of the Navratri festival has been left to the said persons. Besides, an independent villager has also been appointed. In a matter where there are serious allegations of misappropriation of the trust property, making of such an equitable order and that too for a very limited duration, cannot be criticized as an exercise in excess of jurisdiction. Ultimately, the order dated 5 October 2015 neither interferes with the festivities nor does the same have the effect of ousting the Petitioners from the management of the trust. Only during the limited period of the Navratri festival and subject to any orders that may be made in application no. 53 of 2015, the arrangement indicated in the impugned order has been made. Accordingly, there is no reason to interfere with the impugned order.

9] This petition is therefore dismissed. There shall be no order as to costs.

10] It is however made clear that the observations in the impugned order dated 5 October 2015 or for that matter the observations made in this order shall not influence the Joint Charity Commissioner, Pune, in deciding and disposing of application no. 53 of 2015 on its own merits and in accordance with law. It is made clear that the observations are only *prima facie* and made for the purposes of ensuring that the festivities are held in a proper manner and proper accounts as to income and expenditure are maintained.

(M. S. SONAK, J.)

Chandka