

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 29505 OF 2014

Bhartiya Kala Prasarni Sabha	..	Petitioner
VS.		
Rajendra M. Balkawade & Ors.	..	Respondents

Mr. Niranjan Mogre with Mr. Ravi Shinde for Petitioner.
Mr. Nitin P. Dalvi for Respondent Nos. 1 to 5.
Ms M. S. Bane - 'B' Panel Counsel for Respondent No. 6.

CORAM : M. S. SONAK, J.
DATE: 17 NOVEMBER 2015

P.C. :-

1] A preliminary objection has been raised by Mr. Dalvi, the learned counsel appearing for the Respondent Nos. 1 to 5, that the petition by Bhartiya Kala Prasarni Sabha, the trust, is not at all maintainable, as the trust has no *locus standi* in the matter. Mr. Dalvi has submitted that proceedings under Section 41D of the Maharashtra Public Trusts Act, 1950 (said Act) filed by the Respondent Nos. 1 to 5 before the Charity Commissioner, seek for removal of the trustees of the trust. The objection to *locus standi* of the Respondent Nos. 1 to 5 was raised by Bhalchandra Pathak, who is impleaded as Opponent no. 3 in Application No. 8 of 2004 made under Section 41D of the said Act. By the impugned order, the objection of Mr. Pathak came to be rejected. Accordingly, Mr. Dalvi submits that the trust, which was only impleaded as a formal

party before the Charity Commissioner lacks *locus standi* to prefer this petition.

2] Mr. Mogre, the learned counsel for the Petitioner however states that this petition should be deemed to have been filed by Shri Bhalchandra Pathak, who is admittedly Secretary and one of the trustees of Bhartiya Kala Prasarni Sabha. Mr. Mogre also seeks leave to effect necessary amendment to the cause title, so that this position is made clear.

3] In view of the aforesaid submissions of Mr. Mogre, rather than dismiss the petition on the ground of lack of *locus standi*, it would be appropriate if leave is granted to effect necessary amendment to the cause title so as to make it clear that this petition is instituted by Shri Bhalchandra Pathak, trustee of Bhartiya Kala Prasarni Sabha. With this clarification and amendment, the objection as regards *locus standi*, fails. The amendment to be carried out forthwith.

4] Heard the learned counsel for the parties.

5] In view of the leave to amend and the consequent amendment, it is clear that this petition is filed by Shri Bhalchandra Pathak, Secretary as well as trustee of Bhartiya Kala Prasarni

Sabha questioning the order dated 26 August 2014 made by the Joint Charity Commissioner, Pune, rejecting Mr. Pathak's application at Exhibit '44' questioning the *locus standi* of the Respondent Nos. 1 to 5 in instituting proceedings seeking action under Section 41D of the said Act. Incidentally, the application at Exhibit '44' questioning the *locus standi* of the Respondent Nos. 1 to 5 was also made by Shri Bhalchandra Pathak, who has been arraigned as Opponent No. 3 in Application No. 8 of 2004 pending before the Joint Charity Commissioner, Pune. In response to the preliminary objection raised by Mr. Dalvi appearing for the Respondent Nos. 1 to 5, Mr. Mogre the learned counsel for the Petitioner has categorically asserted that this petition is to be regarded as has been filed by Mr. Pathak in his personal capacity, since, any action under Section 41D of the said Act, might result in suspension, removal or dismissal of Mr. Pathak, who is admittedly a trustee of Bhartiya Kala Prasarni Sabha.

6] Mr. Mogre, the learned counsel for the Petitioner has submitted that the Respondent Nos. 1 to 5 are not '*persons interested in the trust*' within the meaning assigned to this expression under section 2 (10) of the said Act. Accordingly, the Respondent Nos. 1 to 5 lack *locus standi* to initiate any proceedings under Section 41D of the said Act. Mr. Mogre pointed

out that by order dated 27 October 2010, membership has been declined to Respondent Nos. 1 and 2. Respondent Nos. 3, 4 and 5 are admittedly not the members of the trust who claim to be only its well wishers. Relying upon the decision of this Court in the case of *Chembur Trombay Education Society & Ors. vs. D. K. Marathe & Ors.*¹, Mr. Mogre submitted that the effect of order dated 27 October 2010 is that the Respondent Nos. 1, 2 and 3 were never members of the trust. Mr. Mogre further submitted that the provisions of Section 41D are penal in nature and therefore, should receive strict construction. For all these reasons, Mr. Mogre submitted that the impugned order is vitiated by jurisdictional error and the Joint Charity Commissioner should have dismissed Application No. 8 of 2004 on the sole ground that Respondent Nos. 1 to 5 lacked *locus standi* to initiate proceedings under Section 41D of the said Act. In the alternate, Mr. Mogre submitted that since there is an appeal pending against the order dated 27 October 2010, proceedings under Section 41D are required to be kept pending until the decision in said appeal. Only if, the appeal instituted by the Respondent Nos. 1 and 2 is allowed, can the said Respondents be held to have *locus standi* to initiate proceedings under Section 41D of the said Act.

7] Mr. Dalvi, the learned counsel appearing for the Respondent

1 2002 (3) Bom. C.R. 161

Nos. 1 to 5 submitted that the expression '*persons interested in the trust*' as defined under Section 2 (10) of the said Act is inclusive and of wide import. Mr. Dalvi relied upon the decision of this Court in *Writ Petition No. 8664 of 2014*², where the very Respondent Nos. 1 to 5 were held to be persons having interest in the trust in the context of proceedings under Section 36 of the said Act. That apart, Mr. Dalvi submitted under Section 41D, the Charity Commissioner is empowered to even *suo moto* exercise powers and suspend, remove or dismiss any trustee, if a case warranting such action is made out. Mr. Dalvi submitted that the proceedings are pending since 2004 and the charges levelled against the trustees are of a serious nature. The trustees are bent upon delaying the proceedings and even though, even eleven years have passed since the proceedings were instituted, the matter is at the stage of deciding the issue of *locus standi*. Mr. Dalvi submitted that there is absolutely no jurisdictional error in making of the impugned order. For all these reasons, Mr. Dalvi submitted that this petition be dismissed with compensatory costs.

8] Having heard the learned counsel for the parties, in my judgment, there is no case made out to interfere with the impugned order. There is no jurisdictional error in the making of the impugned order. At the outset, Section 41D of the said Act empowers the

² Bhartiya Kala Prasarini Sabha vs. Rajendra M. Balkawade & Ors. decided on 02.02.2015

Charity Commissioner either on application of a trustee, or any person interested in the trust, or on receipt of a report under Section 41B or *suo moto* to suspend, remove or dismiss any trustee of a public trust, if, the grounds for such action are made out. Considering the circumstance that *suo moto* powers have been conferred upon the Charity Commissioner, it is too far fetched to insist that the application made by the Respondent Nos. 1 to 5 urging action under Section 41D is required to be rejected on the ground that the said Respondents lacked *locus standi*. The Respondents are in the position of messengers. The allegations made by the Respondents, are no doubt serious. Based upon such allegations, it was always open for the Charity Commissioner to have *suo moto* examined the matter and if it is found that the grounds contemplated by Section 41D are made out, then to take action against the trustees. Rather, the period of eleven years have gone by and the matter is pending at the stage of deciding whether the Respondent Nos. 1 to 5 have *locus standi* to initiate proceedings under Section 41D.

9] If the application under Section 41D of the said Act is perused, then the charges levelled against the trustees concerns mismanagement on account of internal disputes, disputes with the staff, misappropriation of the trust funds, payments made to

professionals from out of the coffers of the trust for the purposes of pursuing the personal disputes of the trustees, cash withdrawals from banks, and finally attempt to sale TDR in respect of properties belonging to the trust. It is alleged that the Respondent Nos. 1 to 5 objected to the sale of said TDR on the ground that no valid permission from the Charity Commissioner was obtained. The trust, eventually did apply for permission from the Charity Commissioner. The Respondent Nos. 1 to 5 intervened in the proceedings before the Charity Commissioner and ultimately, permission under Section 36 of the said Act was declined. At this stage, it is too premature to comment upon the veracity or otherwise of the allegations. However, considering the nature of the allegations, the Charity Commissioner had sufficient jurisdiction as well as powers to even *suo moto* initiate action under Section 41D of the said Act, without spending almost eleven years for deciding as to whether the Respondent Nos. 1 to 5 have *locus standi* in the matter.

10] That apart, the expression '*persons having interest*' as defined under Section 2 (10) of the said Act is only an inclusive definition. The definition does not suggest that only the person who is a member of a society or a trustee of the trust can alone answer the definition of the expression '*person having interest*'. In this case, there is a dispute as to whether the Respondent Nos. 1 and 2

are indeed members of the trust / society. The appeal against the order dated 27 October 2010 is admittedly pending. The Respondent Nos. 1 to 5 were permitted to intervene in proceedings under Section 36 of the said Act. The trust had proposed to sale the TDR belonging to the trust and had applied for permission to do so. Ultimately, upon consideration of the objections of the Respondent Nos. 1 to 5, the Charity Commissioner declined permission under Section 36 for sale of TDR. All this is more than sufficient to hold that the Respondent Nos. 1 to 5 have *locus standi* to point out to the Charity Commissioner that grounds exist for taking action under Section 41D of the said Act. The decision of this Court, in the case of *Chembur Trombay Education Society* (supra) is not at all applicable. The decision is by no means an authority for the proposition that only a member of the society or the trust can apply for action under Section 41D of the said Act. In fact, that was not even the issue involved in the said decision.

11] There is substance in the contention of Mr. Dalvi, that the Petitioner is bent upon delaying the proceedings, so that there is no enquiry with regard to the allegations levelled by the Respondent Nos. 1 to 5 against the trustees. In this case also the petition was initially filed in the name of the trust / society through its Secretary Shri Bhalchandra Pathak. Upon objection being raised, it was made

clear that this petition has been filed by Mr. Bhalchandra Pathak in his personal capacity since Shri Pathak is a trustee as well as Secretary of the society / trust. This is relevant because one of the allegations is that the trustees have been expending amounts from the coffers of the trust / society for pursuing litigations which concern them personally. In fact, the trust had instituted writ petition no. 8664 of 2014 in the context of intervention applied for by the Respondent Nos. 1 to 5 in proceedings under Section 36 of the said Act. The same was dismissed by order dated 2 February 2015. Thereafter, the trust applied for a review and the same was dismissed on 14 October 2015. In the order dated 14 October 2015, it was observed that although the same was a fit case to impose costs, since costs may have been paid through the coffers of the society, no order was made with regard to costs. Now that this petition has been filed by Shri Bhalchandra Pathak in his personal capacity, there is no reason to tax the coffers of the society for payment of costs in this petition.

12] Accordingly, this petition is dismissed with costs assessed at Rs.25,000/- (Rupees Twenty Five Thousand). It is made clear that this costs will have to be borne by Mr. Bhalchandra Pathak from his personal accounts and not from the accounts of the trust or the society. The Joint Charity Commissioner to ensure that such costs

are in fact paid by Mr. Pathak to the Respondent Nos. 1 to 5 within a period of two weeks from today.

13] Further, considering the allegations levelled and the fact that the proceedings are pending since the year 2004, the Joint Charity Commissioner is directed to dispose of the proceedings under Section 41D as expeditiously as possible and in any case within a period of six months from today.

14] All concerned to act on basis of authenticated copy of this order.

15] At this stage, Mr. Mogre applies for continuation of ad interim relief i.e. stay on the proceedings before the Joint Charity Commissioner for a period of four weeks from today. Since, the proceedings before the Joint Charity Commissioner are not likely to conclude within a period of four weeks, there is no reason to continue the interim relief. Accordingly, the request for continuation of interim relief is declined.

(M. S. SONAK, J.)