

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3436 OF 2016**

Shree Yamai Devi Trust & Anr

..Petitioners

Vs.

Shri Sudama Bajirao Mashere & Ors

..Respondents

**Mr. P. B. Shah u/b Mr. K. P. Shah for the Petitioners
Ms Aparna Vhatkar AGP for the Respondent No.21**

**CORAM : R. M. SAVANT, J.
DATE : 22nd MARCH, 2016**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 6-1-2016 passed by the Assistant Charity Commissioner (ACC)-IV, Pune Region, Pune, by which order, the application Exhibit-8 filed by the Respondent Nos.1 to 8 herein came to be allowed and resultantly the said Respondents were allowed to intervene in the Change Report proceedings.

2 The Petitioner herein is a public trust registered under the Maharashtra Public Trust Act 1950 (for short the said Act) and is managing the temple known as Yamai Temple in Khed Taluka, District Pune. An order came to be passed by a Learned Single Judge of this Court on 4-6-2015 in Writ Petition No.4949 of 2015 whereby the proposed elections for period of 2 to 3 months i.e. May 2015 to June 2015 were stayed. However, it was clarified that the order passed will not come in the way of the trust to immediately initiate

process to hold elections to elect the new trustees of the trust for a period of 5 years in accordance with the scheme of the trust. Pursuant thereto, elections were held on 23-6-2015 to the Board of Trustees of the Petitioner Trust. The said Writ Petition No.4949 of 2015 in which the order dated 4-6-2015 was passed, thereafter came up for admission before a Division Bench of this Court on 20-7-2015. The factum of the election being held was brought to the notice of the Court. By way of an affidavit before the Division Bench, the Respondent Nos.1 and 2 submitted that the said Respondents are seriously disputing the correctness of the statements made in paragraphs 2 to 4 of the said affidavit, meaning thereby that they were questioning the alleged elections held. The Division Bench in the said background observed that issue of illegality and validity of the alleged election is kept open and granted permission to the Respondent Nos.1 and 2 to file objections to the Change Report on all permissible grounds. The said Writ Petition was accordingly disposed of. It is pursuant to the said order dated 20-6-2015 that the Respondent Nos.1 and 2 to the said Petition filed their objections in the Change Report No.569 of 2015.

3 The Respondent Nos.1 to 8 filed an application for intervention being Exhibit 8 in the said Change Report proceedings. The said application was founded on the fact that the Applicants are the Managing Trustees of the trust and the persons having interest in the said trust. It was contended that the Change Report submitted by the reporting trustee itself is illegal and

unconstitutional. The elections were questioned on the ground that no elections as alleged in the said Change Report have taken place to the said trust. A reply came to be filed by the reporting trustee Mohan Dagadu Daundkar. The principal contention raised in the said reply was that since permission was granted to the Respondent Nos.1 and 2 to the said Petition i.e. Kaluram Dashrath Daundkar and Gajendra Balasaheb Daundkar, they are the only persons who are permitted to file objections to the Change Report and therefore the Intervenor cannot be allowed to intervene. It was also fleetingly mentioned that they are not the “outgoing persons”, hence the factum of the Intervenor i.e. Respondent Nos.1 to 8 being the Managing Trustees and persons interested in the trust was not specifically dealt with but it was only averred that they are not the “outgoing persons”. The ACC considered the said application Exhibit 8 and has by the impugned order dated 6-1-2016 allowed the same. The ACC has allowed the application on the ground that the Intervenor Nos.1 to 8 appear to be the outgoing trustees and hence they are directly related with the present Change Report. The ACC also held that the Intervenor i.e. the Applicants who are interested persons as per Section 2(10) of the said Act. It is the said order passed by the ACC which is taken exception to by way of the above Petition

4 The principal contention of the Learned Counsel appearing for the Petitioner is that since the application was one referable to Section 73A, it was

required on the part of the Intervenor's that they satisfy their bonafides, in so far as their interest in the trust is concerned. It was the submission of the Learned Counsel for the Petitioner that the ACC considering the said aspect has allowed the application for intervention filed by the Respondent Nos.1 to 8. In support of the said contention, the Learned Counsel for the Petitioner sought to place reliance on the judgment of a Learned Single Judge of this Court in the matter of **People's Education Society and Ors. Vs. Mansing S. Moray**¹

5 Having heard the Learned Counsel for the Petitioner, in my view, there is no merit in the above Petition. As indicated above, the application Exhibit 8 is founded on the fact that the Applicants / Intervenor's are the Managing Trustees and they have interest in the affairs of the trust. The said averment is not been specifically dealt with by the Petitioner. As indicated above it has been fleetingly mentioned that they are not the "outgoing persons". The ACC has recorded a specific finding that the Respondent Nos.1 to 6 are the outgoing trustees.

In so far as the application under Section 73A is concerned, the same is circumscribed by the definition of the "person interested" as postulated in Section 2(10) of the said Act. In so far as the Intervenor's are concerned, they satisfy the said test laid down in the definition as being the outgoing trustees, they are the persons vitally interested in the affairs of the trust.

1 2015(6) Bom C.R. 786

In so far as the Judgment of the Learned Single Judge in People's Education Society (Supra) is concerned, in my view, the test laid down in the said judgment can be said to be satisfied in the instant case in as much as the intervenors being the outgoing trustees, are not required to satisfy their bonafides, in so far as their interest in the affairs of the trust are concerned. In fact in so far as the present Change Report is concerned, which Change Report is in respect of the elections which have taken place, the intervenors who are the outgoing trustees are directly concerned with the same.

6 In my view, therefore no fault can be found with the order passed by the ACC allowing the application for intervention. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]