

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3724 OF 2014

Shri Sampat Kachru Shelke & Ors. .. Petitioners
vs.
Pandit Shankar Kedar & Ors. .. Respondents

Mr. P. B. Shah i/b. Mr. K. P. Shah for Petitioners.

Mr. S. D. Patil i/b. D. S. Matwankar for Respondent Nos. 1 to 3, 17, 21, 22 and 26.

Mr. Mahesh V. R. for Respondent Nos. 5 to 16, 18 to 20 and 23 to 27.

Ms K. Kulkarni – AGP for State.

CORAM : M. S. SONAK, J.

DATE: 18 OCTOBER 2016

P.C :

1] The challenge in this petition is to the order dated 11 March 2014 made by the Joint Charity Commissioner, impleading the petitioners in proceedings bearing P.T.R. No.F-495(Nashik) instituted under Section 41D of the Bombay Public Trust Act, 1950 (said Act).

2] Mr. Shah, learned counsel for the petitioners submits that the original application under Section 41D of the said Act was made some time in the year 2010. In the year 2010, the petitioners were neither trustees nor managing trustees. The petitioners became trustees only in the year 2012 and their term is up to the year 2016. Despite this being the position, by an order made by the Joint

Charity Commissioner, all the trustees were suspended and committee of three members was appointed for governing the trust. This order was stayed by this court on 7 August 2013 in writ petition no. 5299 of 2013 instituted by the petitioners and others. Soon thereafter, application came to be made before the Joint Charity Commissioner to implead the petitioners as parties to the proceedings under Section 41D. The impugned order permits such impleadment.

3] Mr. Shah submits that since the original petition seeking action under Section 41D relates to the period prior to 2012, there is no question of impleading the petitioners as parties in such proceedings. At the highest, independent proceedings can be initiated against the petitioners if at all, there is any cause of action for the same. Mr. Shah also submits that there is absolutely no cause of action to proceed against the petitioners. The allegations, if any, are totally vague and on basis of the same, there is no question of impleading the petitioners as parties.

4] Having heard learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned order. The stay order dated 7 August 2013 granted by this Court in writ petition no. 5299 of 2013 itself states that since the

petitioners were not parties to the proceedings filed by the respondents under Section 41D of the said Act, the order, suspending them or appointing any committee to govern the trust, is being stayed. From the perusal of the order dated 7 August 2013, it is quite clear that the stay order was on account of the petitioners not being impleaded as parties in the proceedings under Section 41D.

5] In the application, seeking impleadment, the respondents have alleged that the petitioners, who are now admittedly the trustees of the trust, are indulging in the very same acts, which the remaining trustees who are parties to the proceedings under Section 41D are indulging. The issue as to whether such allegations are true or false, whether the allegations are vague, whether there is indeed any cause of action are all matters which can be decided once the petitioners are impleaded as parties to the proceedings. Under Section 41D, the Charity Commissioner is vested with the power to suspend, remove or dismiss any trustees of the public trust, if the predicates of sub section (1) are fulfilled. In order to avoid a situation where any order is made behind the back of the petitioners, when in fact, the respondents allege that the predicates of Section 41D are satisfied even in the case of the petitioners, leave to implead them as parties came to be applied for.

The Joint Charity Commissioner, has considered the matter in this perspective itself. The impugned order nowhere states that the allegations against the petitioners are accepted or stand proved. The impugned order only states that presence of the petitioners is necessary, so that even they have opportunity to meet the charges levelled against them. There is no jurisdictional error in the view taken.

6] According, there is no merit in this petition. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka