

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.10066 OF 2016

Shree Sant Seva Mandal, Waksai and others

.. Petitioners

Versus

Jagatguru Shree Sant Tukaram

Maharaj Zad Paduka Sthan Seva

Trust, Wakasi and another

.. Respondents

Mr. R. S. Kadam, for the Petitioners.

Mr. S. R. Ronghe i/by Mr. D. R. Kawale, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 22nd APRIL 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 20.02.2016 passed by the Assistant Charity Commissioner, Pune Division, Pune, by which order, the application for impleadment filed by the Petitioners came to be rejected. The proceeding in question is Change Report No.1263 of 2013. The said proceeding has been filed by the Respondent No.1 herein for entering the property in its name in the schedule this is on the basis that it is gifted to it vide Gift Deed dated 06.07.2013 the said property is 2 Ares of land out of Gat No.227 which totally admeasures 17.4 Ares. In the said proceeding, the Petitioners herein filed an application for impleadment. The impleadment sought is

on the ground that the said property stands in the name of the Petitioner No.1 Trust and therefore the Petitioners are vitally interested in the said Change Report proceedings.

2. It appears that in the earlier round, the application filed by the Petitioners was allowed resulting in Writ Petition (Stamp) No.20319 of 2014 filed by the Respondents herein. The said Writ Petition came to be allowed. Resultantly, the order passed by the Assistant Charity Commissioner dated 16.04.2014 allowing the application filed by the Petitioners came to be set aside and the matter came to be remanded back to the Assistant Charity Commissioner to be decided on its own merits and in accordance with law and as expeditiously as possible. This is how, the application has now been decided by the impugned order 20.02.2016. In so far as impleadment of any party in the proceedings which are pending before the Charity Commissioner are concerned, the same is circumscribed by the fact as to whether the said party is an interested person as defined by Section 2(10) of the Maharashtra Public Trust Act, 1950 (for short "the said Act"). Hence, it is in the said context that an application under Section 73A is required to be adjudicated. In the instant case, by applying the said parameters the application filed by the Petitioners came to be adjudicated. The Assistant Charity Commissioner has recorded a finding that the Petitioners are neither trustees nor they can be said to be

interested persons in the affairs of the Respondent No.1 Trust. It is in the said context that the application Exh.28 filed by the Petitioners came to be rejected.

3. The Learned Counsel for the Petitioners sought to contend and to buttress his submission that the Respondents are interested persons and come within the definition of an interested person within the meaning of Section 2(10) of the said Act, would rely upon notices which were issued by the office of the Assistant Charity Commissioner calling upon the parties to give their say in the matter. In my view, the reliance on the issuance of the said notices is misconceived. The said issuance of notice to the Petitioners can be attributed to the fact that the Petitioners had written a letter to the Charity Commissioner stating that the Petitioners lay a claim to the property. The issuance of the said notice would not be a substitute for the Petitioners being not obligated to prove that they are interested persons within the meaning of Section 2(10) of the said Act. The Learned Counsel for the Petitioners sought to place reliance on the judgment of a Learned Single Judge of this Court in Suresh Hiralal Shah Vs. Shree Mahavir Swami Digambar Jain Mandir Trust¹. In the said case, the Learned Single Judge has reached a conclusion that the Petitioner therein was having an interest in the public trust in question and therefore found

¹ 2001(3) Mh.L.J. 147

fault with the order passed by the Deputy Charity Commissioner rejecting the application for impleadment. In the instant case, the application for impleadment is founded on the competing claim of the Petitioners in respect of the property in question, for asserting such a claim, the Petitioners cannot seek their impleadment in Change Report proceedings but would have to file appropriate civil proceedings if not already filed. The order passed by the Assistant Charity Commissioner rejecting the application for impleadment cannot be faulted with. 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]