

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7296 OF 2015

Geeta Rajesh Khare & Anr.	..	Petitioners
VS.		
Samarth Samaj & Ors.	..	Respondents

Mr. Mr. P. S. Dani – Senior Advocate i/b. Mr. V. V. Salunke for
Petitioners.

Mr. A. Y. Sakhare – Senior Advocate with Ms Jyoti Chavan for
Respondent Nos. 1, 3 to 9.

Mr. S. D. Rayrikar – AGP for Respondent No. 10.

CORAM : M. S. SONAK, J.
DATE : 03 FEBRUARY 2016

P.C :

1] Mr. Dani, the learned Senior Advocate appearing for the
petitioners seeks leave to delete name of the respondent no. 2 as
the presence of the respondent no. 2 is not necessary for the
purposes of deciding the issues raised in the present petition. Leave
granted. Necessary amendment to be carried out forthwith.

2] Rule. With the consent of and at the request of the learned
counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 6 July
2015 made by the Joint Charity Commissioner, dismissing
application at Exhibit '74' taken out by the petitioner no. 2, seeking

inter alia deletion of the averments / allegations in the application made by some of the respondents seeking action under Section 41D of the Maharashtra Public Trusts Act 1950 (said Act), in so far as said averments / allegations concern, the petitioner no. 1, who had originally been impleaded as opponent no. 5 in the application under section 41D of the said Act.

4] Some of the respondents, who are now represented by Mr. Sakhare, the learned Senior Advocate, have made application no. 18 of 2012 to the Joint Charity Commissioner, urging action under Section 41D of the said Act against the trustees of Samarth Samaj Trust, which is impleaded as respondent no.1 in the present petition. To the said application, apart from the trust, four other opponents were impleaded. The petitioner no. 2 was impleaded as opponent no. 2 and the petitioner no. 1 was impleaded as opponent no. 5. In the said application, it was clearly stated that the petitioner no. 1 i.e. opponent no. 5 is the ex trustee of the trust, since, she has resigned as the trustee in the year 2006.

5] The applicants, in application no. 18 of 2012, by application dated 7 January 2014 applied for deletion of Vishwanath Shantaram Vaidya (original opponent no. 3) and Geeta Rajesh Khare (original opponent no. 5) from the array of parties in

application no. 18 of 2012, on the ground that they do not continue to be the trustees of Samarth Samaj Trust. This application was not opposed by any of the opponents, including, the petitioners in this petition and therefore, the same was granted. As a result, the said Vishwanath Vaidya and Geeta Khare (petitioner no. 1) came to be deleted.

6] Consequent upon deletion as aforesaid, the petitioner no. 2 (original opponent no. 2) has taken out application at Exhibit '74' urging to strike of the averments / allegations against Geeta Khare, the petitioner no. 1 herein, who was earlier impleaded as opponent no. 5 to application no. 18 of 2012. The reasoning of the petitioner no. 2 was that such averments / allegations do not survive and in any case, cannot be gone into, in view of the deletion of the name of Geeta Khare from the main proceedings i.e. application no. 18 of 2012.

7] By the impugned order dated 6 July 2015, the Joint Charity Commissioner has dismissed the application at Exhibit '74' *inter alia* by observing that the petitioner no. 2 lacks *locus standi* to make an application of this nature and since, Geeta Khare has made no application to delete the averments / allegations against her, there is no reason to entertain the application at Exhibit '74' made by the

petitioner no. 2.

8] Mr. Dani, the learned Senior Advocate for the petitioners has contended that since the averments / allegations in the application affect Geeta Khare, she is entitled to maintain the present petition. Mr. Dani submitted that if allegations of malafides and character assassination against the persons, cannot be gone into, in the absence of such a person being impleaded as a party to the proceedings. He submitted that since, the respondent themselves applied for deletion of Geeta Khare as opponent, such respondents, cannot be permitted to continue with the averments / allegations against Geeta Khare. If such a course is permitted, the same would constitute gross violation of principles of natural justice and fair play.

9] On the other hand, Mr. Sakhare, the learned Senior Advocate for the respondents 1 and 3 to 9 submitted that the petitioners did not object to the deletion of Geeta Khare but rather, urged that such deletion was proper and must be granted. Mr. Sakhare pointed out that at that stage no objection was raised to the retention of averments / allegations either by Geeta Khare or by any of the opponents. Mr. Sakhare pointed out that in case the petitioner no. 1 was indeed serious that the averments / allegations be not gone into behind her back, it was necessary that the petitioner no. 1

objects to her deletion from the proceedings. This having not been done, the petitioner no. 1 can neither file the present petition nor object to the continuance of the averments / allegations in the application. Mr. Sakhare also submitted that the petitioner no. 2, who is admittedly, a trustee, can have no *locus standi* to object to the averments / allegations against Geeta Khare. Mr. Sakhare pointed out that the averments / allegations against the petitioner no. 2 are inextricably interlinked with the averments / allegations against the petitioner no. 1 and therefore adjudication into such averments / allegations cannot be stalled in this manner.

10] On basis of instructions from his instructing attorney, and without prejudice, Mr. Sakhare submitted that the respondents would have no objection in case, Geeta Khare applies for deletion of averments / allegations against her *inter alia* on the ground that the same cannot be gone into in her absence. Mr. Sakhare submitted that in case the petitioner no. 1 were to make such an application, his clients would perhaps record their no objection to the re-impleadment of the petitioner no. 1 as a party to the proceedings so that the allegations / averments against the petitioner no. 1 can also be gone into in the interests of determining whether any action under Section 41D of the said Act is warranted in the facts and circumstances of the present case.

11] The rival contentions now fall for determination.

12] At the outset, it is to be noted that the provisions under Section 41D of the said Act empower the 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 even suo motu may suspend, remove or dismiss any trustee of a public trust, if, such trustee make persistent default in the submission of accounts report or return; wilfully disobeys any lawful orders issued by the Charity Commissioner; continuously neglects his duties or commits any mal-feasance or misfeasance or breach of trust;; misappropriation or deals improperly with the properties of the trust; accepts any position in relation to the trust which is inconsistent with his position as a trustee, or is convicted of an offence involving moral turpitude.

13] Sub-section (2) of Section 41D provides that when the Charity Commissioner proposes to take action under sub- section (1) for suspension, removal; or dismissal of any trustee of a public trust, he shall frame charges against the trustee or the person against whom action is proposed to be taken and give him an opportunity of meeting such charges of testing the evidence against

him, and of adducing evidence in his favour. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefor. From the provisions of sub section (2) of Section 41D, it is quite clear that the requirement of framing the charges is not merely restricted against the trustee who may be proposed to be suspended, removed or dismissed but also against the person against whom action is proposed to be taken.

14] In the present case, since, the petitioner no. 1 has resigned as a trustee way back in the year 2006, there is no question of seeking suspension, removal or dismissal of the petitioner no. 1. However, if the removal of the exiting trustees is sought for, *inter alia* on the grounds which also inextricably concern the conduct of the petitioner no. 1, then, it is only proper that any enquiry into such allegations takes place in the presence of such a party, so that, such a party is also not condemned unheard or in collateral manner. It is settled position in law, that where, an act is challenged on the grounds of malafides, it is necessary that the person against whom malafides are imputed is impleaded as a party in person before any enquiry is made into the allegations of malafides. This principle, springs from the salutary rule of natural justice which says that no person should be visited with any civil consequences, without

opportunity of being heard. The same principle applies, when the conduct of any person is being enquired into. Even if, there is any possibility of adverse comment, it is only proper that such a person is noticed and offered an opportunity of rebuttal, before any adverse comments are made.

15] Mr. Dani, the learned Senior advocate for the petitioner however contended that the order of deletion of the petitioner no. 1 has attained finality and therefore the only course of action now open is to delete the averments / allegations against her, if at all the principles of natural justice have to be complied with. In the present case, it must be noted that the petitioner no. 1 did not make any grievance before the Charity Commissioner in the matter of the averments / allegations against her. The grievance was made by the petitioner no. 2, obviously to bolster his own case, since, allegations against him appear to be linked with the allegations against the petitioner no. 1. In the sense, therefore, the Charity Commissioner was right in not entertaining the application made by the petitioner no. 2. Besides the application made by the petitioner no. 2 was also quite vague and perhaps intended to scuttle enquiry in terms of Section 41D, in the matter of suspension, removal or dismissal of trustees.

16] In case, the petitioner no. 1 is genuinely concerned about the averments / allegations which continue against her in the application no. 18 of 2012, then, she could have very well raised this issue at the stage of her deletion. She could have even objected to her deletion. Further, notwithstanding her deletion, she could have applied for deletion of the averments / allegations against her. She has however chosen to do nothing of this sort. The circumstance that the petitioner no. 1 has instituted the present petition and the same is being entertained, does indicate that the petitioner no. 1 is interested in deleting the averments / allegations against her, particularly as she apprehends that such averments / allegations might be enquired into by the Charity Commissioner, behind her back, thereby, infringed the principles of natural justice and fair play.

17] Therefore, the interests of justice would be met if liberty is granted to the petitioner no. 1 to apply to the Charity Commissioner within a period of four weeks from today for deletion of the averments / allegations against her in application no. 18 of 2012. If such application is made, the same shall be considered and disposed of by the Charity Commissioner on its own merits expeditiously and in any case within a period of six weeks from the date on which such application is made. If such application is made,

then, the Charity Commissioner shall consider whether the averments / allegations against the petitioner no. 1 are indeed inextricably linked with the allegations / averments against the petitioner no. 2. If the allegations against the petitioner no. 1 are necessary to be gone into for the purposes of determining whether any action is warranted against the trustees against under Section 41D, the Charity Commissioner may also consider directing the re-impleadment of the petitioner no. 1 to application no. 18 of 2012. Considering the scope and amplitude of the provisions contained in Section 41D of the said Act, there can be no bar to such a direction, if the interests of justice warrant the same. This is particularly so, since, powers under Section 41D, can be exercised even *suo moto* by the Charity Commissioner if the situation so warrants.

18] The impugned order is accordingly modified to the aforesaid extent. Liberty is granted to the petitioner no. 1 to the aforesaid extent. The Joint Charity Commissioner is also directed to apply his mind to the averments / allegations in application no. 18 of 2012 and to take a decision on whether the impleadment of the petitioner no. 1 is necessary. In case, such averments / allegations are required to be gone into and adjudicated upon for the purposes of deciding whether any action under Section 41D of the said Act is at all warranted in the facts and circumstances of the present case.

19] It is made clear that this Court has not adverted to the merits and therefore, all contentions of all parties on merits are left open for decision by the Joint Charity Commissioner.

20] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

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

(M. S. SONAK, J.)

Chandka