IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10481 OF 2016

Shri. Girish M. Rege ..Petitioner
Versus
Dr. Rajeev Zankar and others ..Respondents

ALONGWITH
CIVIL APPLICATION NO.2595 OF 2016
IN
WRIT PETITION NO.10481 OF 2016

Dr. Rajeev Vasant Zankar ..Applicant

<u>IN THE MATTER BETWEEN</u>

Shri. Girish M. Rege ..Petitioner
Versus
Dr. Rajeev Zankar and others ..Respondents

Mr. A. G. Damle, Senior Advocate a/w Mr. Akshay P. Shinde for the Petitioner.
Mr. Niteen Pradhan a/w Ms. Shubhada Khot, Ms. Gauri Godse i/by Mr. Harshal Ghagare for the Respondent No.1.
Ms. Deepa Chawan i/by M/s. Madekar & Co., for the Respondent No.2.
Mr. Prashant Chawan i/by M/s. Divekar & Co., for the Respondent No.3.
Mr. S. V. Sadavarte a/w Ms. Tanaya Patankar i/by Mr. Prabhakar Jadhav for the Respondent No.4.
Mr. Prasad Dani, Senior Advocate i/by M/s. Navdeep Vora & Associates for the Respondent No.5.
Mr. Kiran Bapat i/by Mr. Prashant Raul for the Respondent No.6.
Mr. Anil Sakhare, Senior Advocate a/w Mr. Sanjeev Kadam, Mr. R. P. Hake Patil i/by Mr. Ravindra Chile for the Respondent No.7.

CORAM : R. M. SAVANT, J.
DATE : 30th NOVEMBER, 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 12.07.2016 passed by the Learned Joint Charity Commissioner, Mumbai, by which order, the application Exh.34 filed by the Petitioner for framing an issue referable to Order 23 Rule 3 of the Civil Procedure Code (For short "CPC") came to be rejected. The Petitioner herein is one of the trustees of the Trust known as Balmohan Vidyamandir Trust which runs the Balmohan School which is in Shivaji Park, Mumbai. The said trust is also running a school at Talegaon, District Pune. The Respondent No.1 herein is the parent of a student who is prosecuting studies in the school at Shivaji Park. He filed an application invoking Section 41D of the Maharashtra Public Trusts Act, 1950 against the Petitioner herein. In the said application, the Respondent No.1 inter-alia made allegations as regards the mis-use of the trust property as also alleging various acts of omission and commission on the part of the Petitioner. It is not necessary for this Court to delve into the said aspects for consideration of the above Petition.

2 The said application under Section 41D of the Maharashtra Public Trusts Act, 1950, is being tried by the Learned Joint Charity Commissioner, Mumbai. It seems that the Petitioner and some of the

other trustees were exploring the possibilities of resolving the disputes between the parties as a consequence of which it seems that a compromise was arrived at which was signed by the Petitioner and some of the trustees. The said compromise contemplated the Petitioner vacating the premises which were occupied by him for residential purposes as also his wife vacating the premises wherein she was carrying out the business of small savings. The said compromise also contemplated some other things revolving around the said premises.

3 At this stage, it is required to be noted that the Income Tax Authorities have refused to extend the exemption to the said trust on account of the fact that the premises in the building wherein the school is being run, is being used by the Petitioner and his wife for residential purpose as also the Petitioner's wife is carrying out business in another premises which according to the Income Tax Authorities was resulting in the property not being used for the purpose of the trust. Hence a liability of around Rs.50,00,000/- was foisted on the said trust in view of the occupation of the premises by the Petitioner and his wife.

4 In so far as the compromise between the parties is concerned, it is the case of the Petitioner that pursuant to the said compromise which according to him was entered into before the Learned

Joint Charity Commissioner i.e. the incumbent who was in the office at the said relevant time he and his wife have vacated the premises in their occupation and have therefore abided by the said compromise. It is his case that since there is a change of the incumbent in the post of the Learned Joint Charity Commissioner that the trustees who had earlier entered into compromise which is reflected by the compromise which has been drawn up have resiled from the said compromise and are now seeking to proceed with the application filed by the Respondent No.1 under Section 41D of the Maharashtra Public Trusts Act, 1950. The Petitioner therefore filed the instant application Exh.34 for framing of an issue referable to Order 23 Rule 3 of the CPC. The said application has been rejected by the Learned Joint Charity Commissioner by the impugned order dated 12.07.2016.

5 The Learned Joint Charity Commissioner whilst rejecting the application has in the impugned order referred to the clauses of the said compromise. The Learned Joint Charity Commissioner has observed that the Petitioner has vacated the premises on his own and therefore it will not be possible for the Court to compel the parties to proceed with the mediation or conciliation. The Learned Joint Charity Commissioner was therefore of the view that no issue can be framed as is sought by the Petitioner. In so far as the said compromise is concerned, it is required to

be noted that the original proponent of the application under Section 41D of the Maharashtra Public Trusts Act, 1950 i.e. Respondent No.1 herein has not signed the compromise. Even some of the trustees amongst whom is the Respondent No.5 herein i.e. Ms. Supriya Nair has not signed the compromise. It is further required to be noted that the income tax liability on account of the user of the premises of the trust by the Petitioner and his wife is only one of the facets of the application filed under Section 41D of the Maharashtra Public Trusts Act, 1950. As indicated above, the application under Section 41D of the Maharashtra Public Trusts Act, 1950, is also founded on other grounds which are revolving around various acts of omission and commission which have been alleged against the Petitioner herein.

6 Having regard to the aforesaid facts, though there is a mandate casts upon a Court by the proviso to Rule 3 of Order 23 of the CPC, in the facts and circumstances of the said case, the course of action as contemplated by the rule was not required to be followed. The Learned Joint Charity Commissioner was therefore right in rejecting the application for framing of the issue referable to Order 23 Rule 3 of the CPC. However since the Petitioner has vacated the premises in question, it would be open for him to urge the same before the Learned Joint Charity Commissioner when the application under Section 41D of the

Maharashtra Public Trusts Act, 1950 is being heard. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

7 In view of the dismissal of the Writ Petition, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]