

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1581 OF 2016

Janak Dilip Dwarkadas

... Petitioner

Vs.

The Joint Charity Commissioner & Ors.

... Respondents

....

Mr. Darius Khambatta, Sernior Advocate a/w Mr. Pranav Dhanuka, Ms. Kanika Sharma, for the Petitioner.

Mr. Ravindra P. Walaikar, for the Respondent No. 2.

...

CORAM : S.C. GUPTE, J.

DATE : 29 JUNE, 2016

P.C.:

. Heard learned counsel for the parties. Rule. By consent of counsel, the rule is taken up forthwith for hearing. The subject matter of controversy in the present petition is the impleadment of the petitioner herein as a party respondent to a Revision Application filed by Respondent No. 2 before the Joint Charity Commissioner. The Revision Application challenges an order passed by the Joint Charity Commissioner under Section 36 of the Bombay Public Trust Act, 1950 on 25th January, 1989 as also an order passed on a change report by Deputy Charity Commissioner

on 2nd September, 2003. A discharge application was filed by the petitioner herein, in the Revision Application. The question before the Joint Charity Commissioner on the discharge application was, whether or not the petitioner is a necessary or proper party having regard to the subject matter of the Revision Application.

2. After setting out the rival contentions of the parties, the Joint Charity Commissioner in the impugned order appears to have simply noted that *Prima facie* it is not desirable or proper to discharge the petitioner herein from the proceeding at this stage. The Joint Charity Commissioner had to decide, whether for considering the merits of the order of sanction passed by the Charity Commissioner under Section 36 or the order on the change report passed under Section 22 of the Bombay Public Trust Act, 1950, the presence of the petitioner herein was (i) necessary so that in his absence no effective order could be passed on the Revision Application or (ii) proper for a complete and final adjudication of the questions involved. In the first place, the Revision Application was filed more than 25 years after the impugned order of sanction by the Charity Commissioner under

Section 36 and more than 12 years after the impugned order of the Deputy Charity Commissioner under Section 22. The Petitioner herein was an additional trustee of the 3rd Respondent trust between 1998 and 28th March, 2007. His name has been struck off from Schedule-I of the Register as a trustee in pursuance of his resignation. If anyone has to show cause to the cancellation sought of the sanction of the Charity Commissioner to the sale or the acceptance of the change report in respect of deletion of the property mentioned in the change report, it is the current trustees of the 3rd Respondent trust. The presence of an ex-trustee may be necessary or proper only if there is any case for seeking reliefs personally against such ex-trustee.

3. In the face of these facts, it was incumbent for the Joint Charity Commissioner to consider the position of the petitioner herein as a necessary or proper party. Sadly, this does not appear to have been done by the Joint Charity Commissioner in the impugned order. The impugned order, accordingly, is set aside and the matter is remanded to the Joint Charity Commissioner with directions to decide the application for discharge afresh and in the light of the observations made in this order.

4. In the meantime, till the discharge application is so considered the Revision Application shall not be proceeded against the petitioner herein.

5. Rule is made absolute and the writ petition is disposed of accordingly.

(S.C. GUPTE, J.)