

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9811 OF 2017

SHIVANAND VISHWANATH GANJRE
VERSUS
TUKARAM SHANKARRAO WARKAD AND OTHERS

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Advocate for Petitioner : Shri Gadhe Ganesh A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 24, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 3.5.2017, by which, Application No.33 of 2007 under Section 41-D Bombay Public Trust Act has been dismissed.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and have gone through the ten grounds formulated by him in this petition.

3. The petitioner desires that the learned Joint Charity Commissioner should take action against those trustees who are guilty of malfeasance under Section 41-D of the said Act. It requires no debate that such an application can be filed only by a valid member of the trust. A stranger to the trust cannot raise

grounds under Section 41-D since he would be unconnected with the said trust.

4. The learned Joint Charity Commissioner, Aurangabad in Appeal Nos.39 and 40 of 2009 has concluded that the five persons, namely, Ashok Kore, Joyti Karhale, Kailas Yamale, Dilip Bolawar and Shivani Ganjare need to prove their membership, either in the Change Report No.23 of 2009 or in the Change Report No.818 of 2015. Consequentially, by the said order dated 2.5.2017, these five persons have been directed to produce the necessary documents to prove their membership. The petitioner herein is one amongst those five. Learned Advocate for the petitioner submits that the petitioner had already started participating in the exercise of proving his membership in the said trust.

5. The petitioner also contends that if his membership is eventually provided, he would get the right to prove malfeasance against the trustees and seek orders for punishing them. I find that Clause 1 and 2 below paragraph No.33, which is the operative part of the impugned order, would take care of the interest of the petitioner since the authority has noted that action will be taken against the liable persons on the same set of facts

after due enquiry under Sections 39 and 41-D. The Deputy / Assistant Charity Commissioner has been directed to initiate the enquiry under Sections 39 and 41-D and submit a report within six months.

6. Considering the above factors, it is obvious that the impugned order rejecting the application filed by the petitioner has been passed since he has failed to establish that he is a valid member of the trust. Nevertheless, the learned Joint Charity Commissioner has directed initiation of enquiry under Sections 39 and 41-D so as to find out whether any trustee is guilty of malfeasance. The said order, therefore, does not appear to be perverse or erroneous and cannot be interfered with merely because a different view could be taken in the matter.

7. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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