IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4122 OF 2017

Shri Kishor Hanmant Dhumal ... Petitioner

Vs.

Shree Bharavnath, Mahadev
Ganpati and Nrusinh Devsthan
Trust, Godoli, Tal&Dist.Satara
through its Trustee
Vyankatrao Sarjerao More … Respondent

WITH
WRIT PETITION NO.2921 OF 2017

WITH
WRIT PETITION NO.4123 OF 2017

WITH
WRIT PETITION NO.4124 OF 2017

WITH
WRIT PETITION NO.4125 OF 2017

WITH
WRIT PETITION NO.4126 OF 2017

WITH
WRIT PETITION NO.4127 OF 2017

WITH
WRIT PETITION NO.4128 OF 2017

WITH
WRIT PETITION NO.4129 OF 2017

WITH
WRIT PETITION NO.4130 OF 2017

WITH
WRIT PETITION NO.4131 OF 2017

WITH
WRIT PETITION NO.4132 OF 2017

WITH
WRIT PETITION NO.4133 OF 2017

WITH
WRIT PETITION NO.4134 OF 2017

Mr.M.N. Dhamal for Petitioner in all petitions
Mr.M.S. Athalye for Respondent

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 10, 2017

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. In all these petitions, the order dated 14.10.2016 passed by the Joint Charity Commissioner, Pune Region, Satara is in challenge. The petitioner is the original applicant and the respondent is one of the Trustees of the respondent/Trust. The respondent had moved an application under section 36(1)(a) of the Bombay Public Trusts Act seeking permission of the Charity Commissioner to sell the properties owned by the Trust for fund

raising for the trust. The object of the Trust is to look after the temples and deities of different gods in village Godoli, Taluka and District Satara. By way of 14 applications, the respondent/Trust wants to sell 14 properties owned by the Trust in order to raise the funds. The repairs and reconstruction of the temples, day to day management of the temples is shown as the object of raising funds. During the pendency of these applications, the petitioners filed application under section 73A of the Bombay Public Trusts Act claiming that he being a devotee of the gods, having interest in the trust, wants to be impleaded as a party in the enquiry proceedings under section 36(1)(a) of the Bombay Public Trusts Act. He contended fraud and misrepresentation of the funds so also mismanagement at the hands of the trustees of the respondent-trust. He further contended that earlier there were four instances of selling of property of the Trust to the purchasers who are near relatives of the trustees by ignoring the object of the trust. The Joint Charity Commissioner considered the objection raised by the petitioner in his application so also the say filed by him and dismissed all the applications by a reasoned order. Hence, these petitions.

3. The learned Counsel for the petitioner filed compilation of documents and submitted that earlier four immovable properties were sold by the trustees to their owner and their relatives and thus, they are beneficiaries of the sale proceeds of the trust properties. He further submitted that the observation of the Joint Charity Commissioner that the petitioner has not taken steps earlier against the trustees is incorrect as the petitioner had earlier moved one application dated 2.9.2016 before the Deputy Commissioner of Police of Satara. He submitted that some of the trustees were party to execution of the power of attorney and the sale of the proceeds belonged to the trust. He also relied on 7/12 extract where name of the trust as Bahirdev is appearing. He submitted that the order passed by the learned Joint Charity Commissioner is to be set aside.

4. The learned Counsel for the respondent trust has relied on the main application filed by it under section 36(9)(a) of the Bombay Public Trusts Act. He relied on the relevant averments made in the application wherein the respondent-Trust has disclosed the object of raising the funds. He further submitted that

alongwith these applications, the respondent-Trust has also filed accounts showing the balance amount with the Trust and audit report of the Trust. He supported the order passed by the learned Joint Charity Commissioner and while supporting the order, submitted that the documents required by the learned Joint Charity Commissioner will be produced by the Trust and only thereafter the Joint Charity Commissioner is going to take decision.

5. Perused the application filed by the petitioner, i.e., exhibit 37 so also reply given by him at exhibit 39. In the application filed under section 73A, he has pleaded that he is a devotee and he has participated in the activities of the rituals of the temples regularly and has shown his interest in the public trust.

6. However, he has pleaded fraud and misrepresentation by the trustees. It is also pleaded that earlier, in four transactions, the trustees have sold the land by flouting the requisite procedure under section 36(1)(a) and, therefore, he is objecting to this application. It is also contended further in his reply to exhibit 39 that the Trust is having sufficient funds to make repairs, reconstruction so also day to day management of the temples and therefore, the selling of the lands is not required. It is also pointed

out that not all the trustees have made the application for sale of the property but only two of them have filed this application and they are father and son.

7. These applications are filed by the trust under section 36(1)(a) of the Bombay Public Trusts Act i.e., seeking permission of the Charity Commissioner for disposal of the properties owned by the trust. The fact that 14 properties belonged to the trust is not disputed. The permission of the Charity Commissioner to dispose of or alienate the property is mandatory. Thus, the respondent/trust has in fact filed application for the requisite permission. It shows that they have followed the procedure in respect of all 14 properties.

8. While considering these applications, it is obligatory on the part of the Charity Commissioner to consider the aspect of necessity to raise the funds and whether it is consistent with the object of the trust or not. The Charity Commissioner yet, has to consider the applications and verify number of factors before allowing the applications. Therefore, it is not necessary for the Charity Commissioner to hear the present applicant who has objected to the proceedings under section 73 of the Bombay

Public Trusts Act. I am of the view that the order passed by the Charity Commissioner cannot be faulted with as it is a well reasoned order. However, while taking into account the objection of the petitioner, some precautionary measures are to be spelt out in order to secure more transparency in the administration of the trust. Therefore, the Writ Petitions are disposed of with the following order:

i) The Charity Commissioner while deciding the applications to take into account the locus of the two trustees of the respondent-trust; as also the minutes of the board meeting giving any authority to the applicant–trustees as all the trustees have not joined the application under section 36(1)(a) of the Bombay Public Trusts Act.

(ii) The Charity Commissioner shall also consider the genuineness and necessity of raising funds for the trust;

(iii) The Charity Commissioner will also carefully go through the accounts of the trust and shall also consider whether for purpose of sale of the trust properties, the trust is going to follow the proper procedure or not so that the trustees themselves should not be the beneficiaries of the sale proceeds of the trust properties.

9. All concerned to act on an authenticated copy of this order.

(MRIDULA BHATKAR, J.)