IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.33969 OF 2016

Bhanudas Raghunath Jadhav and anr. : Petitioners.
versus
Gopal D Waghmare and ors. : Respondents.

Mr. S S Patwardhan with Mr. A M Gosavi i/by GMS Legal for the Petitioners.
Mr. Vijay D Patil with Mr. A S Deshmukh for the Respondent No.1
Mr. S D Rayrikar AGP for the Respondents/State.

CORAM : R. M. SAVANT, J.
DATE : 10th January 2017

P.C.

1 The order dated 29/11/2016 passed by the learned Joint Charity Commissioner, Maharashtra State, Mumbai allowing the application in Misc. Application No.70 of 2016 filed by the Respondent No.1 herein is taken exception to by way of the above Petition.

2 The Petitioners herein were appointed as fit persons to manage the affairs of the Trust known as Seva Ashram Shikshan Sanstha registered under PTR No.F-97M. The cause for appointing the Petitioners was that the affairs of the Trust were not carried out in accordance with the provisions of the Bombay Public Trust Act and in a manner desirable in so far as the Trust is concerned. It seems that the Trustees had not submitted audited accounts for number of years which was one of the grounds on which the Trustees were removed by

having recourse to Section 41D and the Petitioners were appointed as fit persons under Section 41D(iv). Along with the Petitioners, the Education Officer, Zilla Parishad, Palghar comprised in the team of the fit persons. The Respondent No.1 herein claims to be a fit member of the said Trust and filed the instant application which was founded inter alia on the allegations made against the Petitioners as fit persons. The allegations were revolving around the accounts not being submitted, bank account not being opened, certain misdemeanor of the Petitioners on the golden jubilee celebration and the allegations in respect of reinstatement and transfer of two employees of the two different schools run by the said Trust.

3 After following the gamut of procedure for adjudicating the said application filed by the Respondent No.1, the learned Joint Charity Commissioner framed issues which involved four allegations made in the application filed by the Respondent No.1. the learned Joint Charity Commissioner recorded findings against the Petitioners in so far as the accounts not being audited and bank account not being opened by the Petitioners. In so far as other two allegations are concerned i.e. misdemeanor during the golden jubilee celebration and the reinstatement and transfer of two employees, the learned Joint Charity Commissioner has written his finding that the said allegations were not proved. The learned Joint Charity Commissioner has accordingly by the impugned order dated 29/11/2016 has set aside the

appointment of the Petitioners as fit persons (clause 5 of the impugned order) and directed the Applicant – Respondent No.1 to give names of 3 persons who can be appointed as fit persons.

4 It seems that the Applicant – Respondent No.1 by the impugned order dated 29/11/2016 was appointed as a fit person and the Respondent No.1 was directed to suggest the names of some other persons to be appointed as fit persons. The learned Joint Charity Commissioner has approved the name of one Samadhan Babasaheb Suryavanshi amongst the names suggested by the Applicant – Respondent No.1.

5 In my view, the exercise carried out by the learned Joint Charity Commissioner is not in terms of the requirements in so far as appointment of a fit person is concerned, the Charity Commissioner as the authority incharge of the charities in the State of Maharashtra is required to consider the credentials of the individual for appointment in the light of the objects and function of the Trust. The said exercise is therefore not carried out in a satisfactory manner. Hence in so far as the said appointments are concerned, this Court has its own reservations as to whether they meet the requirements of the Trust.

6 Upon this the learned counsel appearing on behalf of the Petitioners Shri S S Patwardhan would submit that the Petitioners are ready to

tender their resignations in the event the impugned order dated 29/11/2016 as well as the subsequent order dated 30/11/2016 are set aside. He further makes a statement, on the instructions of the Petitioner No.1 who is personally present in court, that the Petitioners are not interested in offering themselves for appointment as fit persons in the event the exercise of appointing fit persons is carried out by the learned Joint Charity Commissioner after the orders dated 29/11/2016 and 30/11/2016 are set aside. Statement accepted.

7 The learned counsel appearing on behalf of the Respondent No.1 Shri Vijay Patil makes a statement likewise on the instructions of the Respondent No.1 who is personally present in Court. He further states that the Respondent No.1 though appointed as a fit person would withdraw himself and would not offer himself for being appointed as a fit person in the exercise that would be carried out by the learned Joint Charity Commissioner. Statement accepted.

8 In view of the aforesaid statements, the impugned order dated 29/11/2016 as well as the subsequent order dated 30/11/2016 are not necessary to be considered on merits and the same to accordingly stand set aside.

9 In view of the statement made by the learned counsel for the

Petitioners Shri S S Patwardhan, both the Petitioners would not continue as fit persons as having resigned.

10 In so far as the Respondent No.1 is concerned, he would also stand removed as a fit person appointed by the impugned order and would also not offer himself for being appointed as a fit person in the exercise that would be carried out by the learned Joint Charity Commissioner pursuant to the instant order.

11 Hence the following directions :-

A] In view of the setting aside of the subsequent order dated 30/11/2016, the appointment of Respondent Samadhan Babasaheb Suryavanshi would stand set aside, however, he would be entitled to be considered for appointment as a fit person in the exercise that would be carried out by the learned Joint Charity Commissioner.

B] The learned Joint Charity Commissioner would call for applications for appointment of fit persons by issuing a notice which would be put up on the notice board of all the schools run by the said Trust as also in the office of the Trust at Morbe, Tal.

Palghar, Dist. Palghar. The said notice would mention the time within which the application is to reach the learned Joint Charity Commissioner.

C] After receipt of the applications, the learned Joint Charity Commissioner may prepare a list of the applicants along with their educational qualifications and their avocation. The learned Joint Charity Commissioner may thereafter consider the applicants suitability for appointment as fit persons.

D] In the interregnum the learned Joint Charity Commissioner is directed to manage the affairs of the said Trust by making alternate arrangement as he deems fit by appointing an officer working in his office.

E] It is clarified that the appointment of the Education Officer, Zilla Parishad as a fit person is not interfered with and as and when the fit persons are appointed in terms of the exercise carried out in terms of the instant order, the Education Officer, Zilla Parishad would be in the team of the fit persons appointed by the Joint Charity Commissioner.

F] The said exercise may be carried out the learned Joint Charity Commissioner latest by 28/02/2017. In case of any difficulty, the learned Charity Commissioner, Maharashtra State may appoint a Joint Charity Commissioner other than the one who has passed the impugned orders to carry out the aforesaid exercise.

G] With the aforesaid directions the above Writ Petition to stand disposed of.

H] The parties to act upon an ordinary order of the instant order duly authenticated by the Court Associates/Sheristedar.

[R.M.SAVANT, J]