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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3522 OF 2018

Radheshyam G. Sodhani & Anr.	...Petitioners
V/s.	
The Joint Charity Commissioner & Ors.	...Respondents

Mr.Pradeep Thorat for the Petitioners.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent No.1.

Mr.Sanjay Jain I/b Mr.Tushar Jadhav for the Respondent Nos.2 and 3.

CORAM : R.D. DHANUKA, J.
DATE : 6TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 18th January, 2018 passed in the Miscellaneous Application filed below Exhibit – 26 to the extent of part dismissal of Miscellaneous Application filed below Exhibit – 26 and pray that the Miscellaneous Application filed below Exhibit – 26 be allowed in its entirety.
2. Heard learned counsel for both the parties at length.
3. A perusal of the impugned order passed by the learned Joint Charity Commissioner indicates that the learned Joint Charity Commissioner has allowed the application for seeking amendment to the application under section 41-E of the Maharashtra Public Trusts

Act, 1950 (for short the “said Act”) filed by the petitioners partly. Insofar as the proposed amendment in paragraph 38-A to 38-G are concerned, the amendment is rejected on the ground that the petitioners are the objector to the application filed under section 36(1) (a) of the said Act and thus can raise those objections set out in paragraphs 38-A to 38-G in those proceedings under section 86(5) filed by the Trust *inter-alia* praying for seeking permission to sell certain properties.

4. It is the case of the petitioners that that insofar as the application made by the petitioners in the said application filed by the Trust under section 36(1)(a) of the Act is concerned, the said application is dismissed by an order dated 3rd October, 2016.

5. Mr.Jain, learned counsel appearing for the Trust on the other hand submits that since the petitioners did not apply for intervention under section 73(1A) of the Act in such application filed by the Trust under section 36(1)(a), the learned Joint Charity Commissioner rightly dismissed the said application by an order dated 3rd October, 2016. In support of this submission, he invited my attention to various averments made in this writ petition and also the application filed by the petitioners on 11th March, 2016 which came to be rejected by the learned Joint Charity Commissioner by an order dated 3rd October, 2016.

6. Mr.Thorat, learned counsel for the petitioners in rejoinder invited my attention to the averments made in the application for amendment and would submit that the application for amendment in those paragraphs are erroneously rejected though those averments would directly relate to the enquiry under section 41-E of the Act. He also invited my attention to the order dated 12th October, 2017 passed by the Division Bench of this Court in Writ Petition No.9287 of 2017 filed by the petitioners against the learned Joint Charity Commissioner and others and more particularly paragraph 3 thereof in support of his submission that by the said order, the Division Bench of this Court has already directed that the application filed by the petitioners under section 41-E of the Act and the application filed by the Trust under section 36(1)(a) of the Act shall be heard together as expeditiously as possible. He submits that the petitioners are thus not required to file an application for intervention under section 73(A) of the Act.

7. A perusal of the amendments proposed to be made by the petitioners by paragraphs 38-A to 38-G clearly indicates that various allegations are made by the petitioners relating to the trust property which according to the petitioners are for sale illegally by the Trust. The petitioners thus wanted to raise these additional grounds in the said application under section 41-E of the Act.

8. The correctness of such grounds can be gone into by the learned Joint Charity Commissioner in the application filed by the petitioners under section 41-E of the Act.

9. Be that as it may, in view of the order passed by the Division Bench of this Court on 12th October, 2017 in the writ petition filed by the petitioners, the application filed by the petitioners under section 41-E of the Act and the application filed by the Trust under section 36(1)(a) of the Act are directed to be heard together collectively. In my view, the interest of justice would be met with if the amendment proposed by the petitioners in paragraphs 38-A to 38-G are allowed and those allegations are also heard by the learned Joint Charity Commissioner under section 41-E of the Act along with the application filed by the Trust under section 36(1)(a) of the Act.

10. The impugned order dated 18th January, 2018 passed by the learned Joint Charity Commissioner insofar as it rejects the amendment application of the petitioners partly and more particularly in support of the averments made in paragraphs 38-A to 38-G is concerned is quashed and set aside. The amendment application filed by the petitioners is allowed in toto. The Trust would be at liberty to file an affidavit in reply to the amended paragraphs within two weeks from the date of this order.

11. Learned Joint Charity Commissioner is directed to comply

with the directions issued by the Division Bench of this Court in an order dated 4th October, 2017 and shall hear both the applications expeditiously. The time to dispose of the proceedings under sections 41-E and 36(1)(a) of the Act is extended by three months from today.

12. It is made clear that this Court has not expressed any views as to whether the allegations made by the petitioners in those amended paragraphs are correct or not. The same is kept open.

13. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

14. All the parties as well as the Authorities to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)