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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.5243 OF 2018
WITH
CIVIL APPLICATION NO.1590 OF 2018
IN
WRIT PETITION NO.5243 OF 2018**

Anant Vaman Tare and Others

**..Petitioners/
Applicants.**

Versus

**Assistant Charity Commissioner-1,
Pune Region, Pune**

..Respondents

**Mr. Ajit Tamhane alongwith Mr. Amit Potnis and Mr. Rohan Tamhane
i/b Tamhane and Company for the Petitioners/Applicants.**

Mr. S.B. Kalel, AGP for Respondent Nos. 1 and 12.

**Mr. G.S. Godbole, i/b Mr. Vilas Tapkir, Advocate for Respondent Nos.
2 to 4, 6 and 7.**

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 4th September, 2018

P.C.:-

**1] Petitioners have approached this Court being aggrieved by the
Order dated 22/02/2018 on an application under Section 41-A of the
Bombay Public Trusts Act, whereby the application was partly**

allowed. By the said Order, the learned Assistant Charity Commissioner has appointed Petitioner No.2 and Respondent No.3 herein to operate the Bank Account of Shri Ekveera Devastan Trust, P.T.R. No.A-580/Pune (hereinafter referred to as “the said Trust”). This has been directed to be done till the remaining tenure mentioned in Change Report No.1634/2014.

2] There is a well-known temple of Ekveera Devi situated at Karla in Maval Tahsil of District Pune. The devotees from entire State of Maharashtra come to the said temple for offering their prayers. It appears that, with respect to the management of the said Trust, there are disputes between two warring groups. One group is led by the Petitioners, whereas the other group is led by Respondent Nos. 2 to 7. On account of dispute with regard to management of the said Trust, various conflicting change reports have been filed. On earlier occasion, Writ Petition No.11505/2014 had come before the learned Single Judge of this Court. It appears that the learned Single Judge of this Court, vide Order dated 21/09/2016, had issued the following directions:-

“4. Considering the request, I issue the following directions :-

(i) The Deputy Charity Commissioner, Pune shall appoint Officer for the purpose of opening donation box, who shall open the box in the presence of two trustees after giving a notice to them and after counting the accumulated amount drawn from cash box, shall deposit the said amount in the fixed deposit in the Nationalized Bank i.e. Bank of Maharashtra, Karla Branch, Pune, initially for a period of one year in the name of the trust. After emptying the box, the same shall be relocked and seal shall be affixed thereon immediately;

(ii) This exercise of opening of the donation box and depositing the amounts in the Fixed Deposit of Nationalized Bank by observing the directions issued in above referred clause – (i), shall be undertaken after every six months until the disposal of change reports;

(iii) It is made clear that fees and expenses of the Officer appointed from the Office of Deputy Charity Commissioner, Pune shall be borne by the Petitioner;

(iv) It would be open for the officer from the office of the Deputy Charity Commissioner, Pune to collect the keys of the donation box which are in the custody of the learned Registrar (Judicial-I) of this Court. After completing the exercise of opening of the donation box and depositing the amounts in the Nationalized Bank, the donation box shall be relocked and seal shall be put thereon and thereafter the Officer from the Office of Deputy Charity Commissioner, Pune shall deposit keys with Deputy Charity Commissioner. The officer appointed to open donation box, while doing the exercise of opening the box and computing the cash, shall cause videography of said exercise and keep the original CD in custody of Deputy Charity Commissioner;

(v) It would be appropriate for the Deputy Charity Commissioner to issue appropriate directions in respect of the amount deposited in the Fixed Deposit in pursuance of the instant order, while disposing of the Change Reports.”

3] It appears that, vide order passed by another learned Single

Judge dated 04/04/2013 in Writ Petition No.3161 of 2013, the learned Charity Commissioner was directed to decide the Change Reports within a period of four weeks from the said date. Though a period of more than five years has elapsed there from, no progress has been done in the matter of decision on the Change Reports.

4] It further appears that the Petitioners herein had approached the learned Assistant Charity Commissioner under the provisions of Section 41-A of the Bombay Public Trusts Act. It also appears that contesting Respondents had also filed another application under the provisions of Section 41-A of the Bombay Public Trusts Act. The learned Assistant Charity Commissioner, vide common order dated 22/02/2018 has partly allowed those applications and passed an order, as aforesaid.

5] It is the allegation of the Petitioners that Respondents illegally and in utter contravention of the orders passed by this Court, are mismanaging the affairs of the Trust. It is submitted that various illegal donation boxes have been installed and funds received in the

said donation boxes are misappropriated by the said Respondents. It is also submitted that the Secretary of the Trust is illegally withdrawing an amount of Rs 25,000/- towards his salary, though he is not entitled to the same.

6] Petition is vehemently opposed by Mr. Godbole, the learned Counsel appearing on behalf of the Petitioners. He submitted that the oral arguments advanced by the Counsel for the Petitioners do not find place in the pleadings. He further submitted that the allegations with regard to misappropriation of the funds are also without substance. He submits that the learned Assistant Charity Commissioner has rightly nominated one person from each group to operate the accounts of the Trust. It is submitted that the order is equitable inasmuch as it takes care of the interest of both the groups. He further submitted that Respondent No. 2 is willing to jointly work with Petitioner No.2 and operate the Bank Account of the Trust.

7] Perusal of the order passed by the learned Assistant Charity Commissioner would reveal that he has found that there is a dispute

between the two groups; one represented by the Petitioners and other by Respondent Nos. 2 to 7. He has further found that in view of the dispute between the two groups, it is appropriate that one person from each group should be permitted to operate the Bank Account. However, the factual position is that persons from both the group are not in a position to work together.

8] This is not the first Trust wherein on account of dispute between the warring groups over the management of the Trust, the functioning of the Trust has come in jeopardy. It is unfortunate that devotees of Deity fight amongst each other to get control over properties of the Trust. A judicial notice can be taken of the fact that wherever the Trusts are managed under the Board presided over by Judicial Officers, functioning of the Trusts is smooth. An example can be given of Trimbakeshwar Trust, Saptashrungi Trust and Kalaram Temple in Nashik District, so also Mohata-Devi Temple in Ahmednagar as well as Ramtek Trust in Nagpur District.

9] It will not be out of place to mention here that, when one of us

(Gavai, J.) was sitting at Aurangabad Bench in 2010, finding that Shirdi Temple Trust was tried to be taken over by politicians who had lost in the elections, the Court had appointed Board of Administrators consisting of Principal District Judge, District Collector and Executive Officer of the Trust. It will also not be out of place to mention here that till the said Board was managing the affairs of the Trust, the Trust was functioning efficiently and many developmental schemes were undertaken by the said Board of Administrators. The said Board of Administrators was also successful in eradicating various malpractices that were in existence.

10] Taking into consideration larger interest of the devotees and development of the said Trust, we are of the view that rather than leaving the fate of the Trust to two warring groups, when it is difficult for them to see eye to eye, it is just and appropriate that the Board of Administrators is appointed till the Change Reports are finally decided by the learned Assistant Charity Commissioner.

11] We therefore direct that the affairs of Shri Ekveera Devastan

Trust, P.T.R. No. A-580/Pune shall, until the Change Reports are finalized by the Assistant Charity Commissioner, be managed by the Board of Administrators consisting of the following :

- [i] Civil Judge, Junior Division, Maval - Chairman
- [ii] Assistant Charity Commissioner ,
Pune Region, Pune. - Member
- [iii] Tahsildar, Maval - Ex-officio Secretary

12] The Board of Administrators shall conduct their first meeting within a period of 15 days from today. The said Board of Administrators shall decide as to who shall be authorised to operate the Bank Account of the said Trust.

13] Needless to state that the said Board of Administrators shall have all the powers to take decision for day-to-day administration of the said Trust. However, it is clarified that no major financial or policy decision shall be taken by the said Board of Administrators without taking prior leave of this Court.

14] Petition is disposed of with the aforesaid directions.

15] Since the Petition is disposed of, Civil Application taken out therein does not survive and the same is also disposed of.

(M.S. KARNIK, J.)

(B. R. GAVAI, J.)