

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10060 OF 2017**

Mr. Mohideen S.A. & Ors.

..Petitioner.

V/s.

Mr. R. Chandrashekar & Ors.

..Respondents.

Mr. S.M. Gorwadkar, Sr. Counsel I/b. Mr. Suresh M. Kamble, advocate for petitioner.

Mr. S. Xavier Fernandeo, advocate for respondent Nos. 1 and 2.

Ms. Vaishali Nimbalkar, AGP for respondent No. 10.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 12, 2018.

P. C. :

1 Heard the learned Counsel for the petitioners, respondents and learned AGP for State.

2 The application was made by the petitioner to frame preliminary issue of jurisdiction and decide the same as the preliminary issue in Mis. Application No. 164 of 2016 pending before the Joint Charity Commissioner, Bombay. The learned Joint Charity Commissioner vide order dated 16th May, 2017 had considered that a composite application under section 41(D), 47 and 41E of the M.P.T. Act is maintainable. Cross change reports are pending. The tribunal was of the opinion that the main proceedings cannot be dismissed on technical ground and had rejected the prayer to frame the issue of jurisdiction. Being aggrieved by the said order dated 16/5/2017 the petitioners have filed the present petition.

Talwalkar

3 The State of Maharashtra vide Ordinance dated 27/6/2018 has repealed section 9A of the Code of Civil Procedure, 1908. In view of this, there can be no direction to the Joint Charity Commissioner to frame an issue of jurisdiction.

4 In the course of submission, it is submitted by the learned Senior Counsel that although section 9A has been repealed, the Tribunal could frame an issue under Order XIV of the Act and decide the same as a preliminary issue. There is no application made by the petitioner to that effect before the Joint Charity Commissioner. In view of this, the petitioners seek liberty to file appropriate application in accordance with law before the Joint Charity Commissioner. In the eventuality that such an application is filed within 3 weeks from today. The Joint Charity Commissioner shall decide the same on or before 30/11/2018 without granting any unwarranted adjournments. The petition stands disposed of in the above terms.

5 Needless to state that the interim relief granted vide order dated 5/12/2017 stands vacated. The Joint Charity Commissioner is further directed to consider the said application only in the eventuality that it is filed within 3 weeks.

6 The parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]