

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 10758 OF 2018

Poona Camp Sikh Association Pune and others.	]	Petitioners
Vs.		
Ranjeet Singh Arora and others.	]	Respondents

Mr. Shirish V. Pitre, for Petitioners.
Mr. Prafulla Shah, for Respondents No.1 to 10.
Mr. S.H. Kankal, A.G.P, for Respondents No.11 to 13.

CORAM : R.G. KETKAR, J.

DATE : 3rd DECEMBER, 2018.

P.C.

Heard Mr. Pitre, learned Counsel for the petitioners, Mr. Shah, learned Counsel for respondents No.1 to 10 and Mr. Kankal, learned A.G.P, for respondents No.11 to 13.

2. This Petition takes exception to the order dated 24th April, 2018 below Exhibit 20 and 38 in Application No.1 of 2017 passed by Assistant Charity Commissioner, Pune (in short 'A.C.C'). By that order, A.C.C disposed of application Exhibit 20 dated 18th August, 2017 made by the petitioners for dismissal of application No.1 of 2017 on the ground that as Scheme in respect of Poona Camp Sikh Association, Pune (for short 'Trust') is already framed for management of the Trust, the application for framing fresh scheme cannot be entrained. The petitioners filed application Exhibit 38, inter alia contending that after making of search in their records, the Trust has obtained certified copy of the scheme framed by Deputy Charity Commissioner, Pune. The same

bears Exhibit No.3 and an independent certified copy of the Scheme is issued. Prayer was made for dismissal of application filed by respondents No.1 to 10 under section 50A (1) of the Maharashtra Public Trusts Act. The petitioners have also challenged the order dated 11th July, 2018 passed by Joint Charity Commissioner, Pune Region, Pune (for short 'J.C.C') in Appeal No.56 of 2018. By that order, J.C.C dismissed the appeal on the ground of maintainability.

3. Rule. Mr. Shah waives service on behalf of respondents No.1 to 10 and Mr. Kankal waives service on behalf of respondents No.11 to 13. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Pitre submitted that scheme in respect of the trust is already framed in the year 2008. Respondents No.1 to 10 filed application under section 50A(1) of the Act on or about 28th December, 2016, inter alia, for framing a scheme with or without changes or modification as provided in the draft schedule submitted by them for better administration of the trust. He submitted that as the scheme is already framed long back in the year 2008, application for framing fresh scheme in terms of draft scheme submitted by respondents No.1 to 10 under section 50A is not maintainable. On 18th August, 2017, the petitioners made application Exhibit 20 for dismissal of the application on the ground that since the scheme is already framed for management of trust, application for framing fresh scheme is not maintainable. He invited my attention to the order dated 20th December, 2017 passed by A.C.C directing respondents No.1 to 10 herein to produce copy of the audited report till date and directing the petitioners herein to submit certified copy of the scheme application and order thereon if previously scheme is framed.

5. Mr. Pitre submitted that in view of the order dated 20th December, 2017, the petitioners filed application Exhibit 38. In paragraph 3 of that application, it is asserted that trust had obtained certified copy of the scheme framed by the Hon'ble Deputy Charity Commissioner, Pune and the same was placed on record along with application with prayer to dismiss application No.1 of 2017 filed by respondents No.1 to 10. Respondents No.1 to 10 filed reply dated 15th September, 2017 opposing application Exhibit 20. By the impugned order, A.C.C disposed of application Exhibit 20 and 38 on the ground that the order dated 20th December, 2017 is not complied fully and that the maintainability of the application will be decided at the time of final order. He submitted that in the application Exhibit 38 itself, it was made clear that the order on the application for framing scheme is not available with the Trust. However, certified copy of the scheme framed by the Deputy Charity Commissioner, Pune was placed on record. A.C.C while disposing of the applications Exhibit 20 and 38 has not considered this aspect. He submitted that it is not permissible to defer issue of maintainability of the proceeding till final arguments of the proceedings. He, therefore, submitted that the impugned order deserves to be set aside. The Petition requires consideration.

6. On the other hand, Mr. Shah supported the impugned order. He submitted that respondents No.1 to 10 had filed application dated 2nd January, 2017 under Right to Information Act, 2005. By communication dated 13th February, 2017, Information Officer attached to the office of A.C.C informed that after perusing the original record, the scheme of the trust as also constitution is not found. Details of the trustees of management in schedule-I were furnished to respondent No.1. He submitted that in Schedule-I also, there is no reference of framing of the scheme in respect of the Trust. In other words, he submitted that no scheme is framed in respect of the Trust.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the petitioners filed application Exhibit 20 for dismissal of application No.1 of 2017 on the ground of maintainability. On 20th December, 2017, A.C.C passed order directing respondents No.1 to 10 to produce copy of the audited report till date and directed the petitioners to submit the certified copy of the scheme application and order passed thereon. In pursuance thereof, the petitioners filed application Exhibit 38. Paragraphs 2 and 3 of that application read thus;

“2. The Opponent has applied for the certified copy of the application and order. However, the Opponent has not received the same till today.

3. However, after making a search in the records of the Opponent Trust, the Opponent Trust has obtained a certified copy of the scheme framed by the Honourable Deputy Charity Commissioner Pune. The same bears Exhibit No.3, and an independent certified copy of the scheme is issued”.

8. Thus, the petitioners specifically asserted that certified copy of the application and order passed thereon is not received till date. They have, however, placed on record certified copy of the scheme framed by the Deputy Charity Commissioner, Pune. Mr. Shah, on the other hand, submitted that no scheme is placed on record. While passing the impugned order, A.C.C has not considered this aspect. In view thereof, the impugned order deserves to be set aside thereby directing A.C.C to decide issue of maintainability first. A.C.C shall not defer deciding issue of maintainability till the time of passing of the final order. All contentions of the parties on this aspect including contention of respondents No.1 to 10 that no such scheme is settled and the petitioners did

not produce certified copy of the scheme are kept open. As the order dated 24th April, 2018 passed by A.C.C below Exhibit 20 is set aside, challenge to the order dated 11th July, 2018 does not survive.

9. In view of the aforesaid discussions, rule is made absolute with no order as to costs. It is common ground between the parties that A.C.C has fixed the matter on 5th December, 2018. A.C.C will either decide issue of maintainability on that date or fix a suitable date. A.C.C will decide issue of maintainability as expeditiously as possible and in any case, within 4 weeks from the date so fixed. All the parties including A.C.C to act upon the authenticated copy of this order. Order accordingly.

[R.G. KETKAR, J.]