

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10545 OF 2018

Sadhubella Education Society

...Petitioner

Versus

The State Of Maharashtra

And others

...Respondents

....

Mr. Nandkumar Khandare, i/b. Sonal Doshi & Co. Advocate for the Petitioner.

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

Mr. Omkar Khanwilkar i/b. Soicis Lex, for Respondent No.2.

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CORAM : R. G. KETKAR, J.

DATE : 28th NOVEMBER, 2018

P.C.

1. Heard Mr.Nandkumar Khandare, learned counsel for the petitioner, Mr. S.D. Rayrikar, learned A.G.P. for respondent No.1-State and Mr.Omkar Khanwilkar, learned counsel for respondent No.2, at length.

2. This Petition takes exception to the judgment and order dated 8.6.2018 passed by the Joint Charity Commissioner-II, Maharashtra State, Mumbai (for short, 'J.C.C.') below Exhibit-43 in Revision Application No.608/2016. By that order, the J.C.C. allowed the application Exhibit-43 filed by the petitioner herein and held that respondent No.2 Swami Gaurishankardasji (revision petitioner) is a

person having interest in Sadhubella Education Society (for short, 'Trust') as contemplated under Section 2(10) of the Maharashtra Public Trusts Act (for short, 'Act') and he has *locus standi* to file Revision petition.

3. In support of this Petition, Mr. Khandare has invited my attention to the application dated 28.3.2018 filed by the petitioner at Exhibit-43 *inter alia* praying for framing of preliminary issue, namely, whether the revision petitioner i.e. alleged Mahant Gaurishankardasji is a person having interest in the Trust and whether the Revision Petition filed by him is tenable and maintainable. He submitted that instead of framing the issue in terms of prayer (a) of that application, the J.C.C. proceeded to decide the application on merits. He submitted that basically Exhibit-43 was not fixed for arguments on merits for deciding the status of the revision petitioner (respondent No.2 herein) and also whether he has locus to maintain the Revision Petition. The matter was fixed merely for framing issue as prayed in the application Exhibit-43. He submitted that without giving any opportunity to the petitioner to submit the documents and also advance the arguments on merits of Exhibit-43, the J.C.C. has finally disposed of the application Exhibit-43 on merits. While disposing of the application Exhibit-43 on merits the J.C.C. has concluded the issue by holding that respondent No.2 herein is

a person having interest in the Trust and has also *locus standi* to maintain the petition. After having concluded this issue, the revision application is presented with fate accompli. In other words, while deciding the Revision Petition filed by the second respondent finally, the J.C.C. will not go into the question whether respondent No.2 is a person having interest in the Trust as contemplated by Section 2(10) of the Act as also he has locus to maintain the revision petition. He, therefore, submitted that the impugned order deserves to be set aside and application Exhibit-43 deserves to be restored for deciding it afresh.

4. On the other hand, Mr. Khanwilkar supported the impugned order. He submitted that the impugned order records that the Advocates for the parties were heard at length and after considering the material on record the J.C.C. has held that respondent No.2 has *locus standi* to file Revision Petition and that he is a person having interest in the Trust. He submitted that in paragraph-31, the J.C.C. has clarified that the decision rendered below Exhibit-43 is tentative and is not final and conclusive. Both the parties are at liberty to establish the respective contentions in the final argument. In other words, the issue whether the second respondent is a person having interest in the Trust as also whether he has locus standi to maintain the Revision Petition is not concluded and can be agitated even while deciding the Revision Petition

finally. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order and in particular paragraph-18 shows that the J.C.C. has framed point for consideration. A perusal of that point shows that it is as per the prayer made by the petitioner in Exhibit-43. Paragraph-19 records that the J.C.C. has heard S/Shri P.C. Sharma and Suil V. Varad, learned counsel for the opponents and M.A. Kadam, learned counsel for the Revision Petitioner.

6. In paragraph-22, the J.C.C. observed that it is an admitted position that Mahant of Sadhubella Udasin Ashram is always a President and Ex-Officio of the Trust herein. A perusal of clause 6(b) of the Deed of Declaration of Trust dated 19.11.1977 shows that the Mahant of Shree Sadhubella Udasin Ashram shall always be a Trustee of the Trust and shall always be the President of the Board of Trustees and the Managing Trustees of the Trust. The J.C.C. also considered the contention that initially Acharya Swami Ganeshdasji was a President who was Mahant of Sadhubella Udasin Ashram. He died on 31.1.2011 and his successor the Mahant of Shree Sadhubella Udasin Ashram,

namely, Acharya Swami Harbhajandasji also expired on 24.5.2013. It was alleged that thereafter Acharya Swami Vishwadarshandasji Mahant was appointed, but, he and Shri Kamlesh, Manager committed misappropriation and fled away. It was observed that no prima facie evidence was produced on record to show that last Mahant Vishwadarshandasji fled away by leaving the Trust.

7. In paragraph-23, the contention of the second respondent that Acharya Swami Vishvadarshandasji resigned and he was appointed and that Change Report No.4896/2016 at Exhibit-31 showed that Acharya Swami Vishwadarshandasji resigned on 29.11.2014 and respondent No.2 came to be appointed, were recorded.

8. Mr. Khandare strenuously contended that respondent No.2 was never appointed as Mahant. The J.C.C. further observed that the Change Report No.4896/2016 is still pending before the concerned Assistant Charity Commissioner (for short, 'A.C.C.'). I do not express any opinion on the merits as the matter is subjudice before the J.C.C. and Change Reports are also pending.

9. In paragraph-25, the J.C.C. considered the fact that Sadhubella Udasin Ashram has joint account and respondent No.2 along with others is operating said account.

10. In paragraph-26, the J.C.C. noted that there are multiple litigations pending before the authorities under the Act.

11. In paragraph-27, the argument of Shri Suil V. Varad appearing for the opponent was also noted. It was sought to be contended that the order dated 8.12.2017 passed by the A.C.C. in Application No.51/2017 held that respondent No.2 has no locus or is not interested person. After considering that submission and the material on record, in paragraph-28 the J.C.C. observed that there was no issue before the A.C.C. about the locus of the second respondent and, therefore, the order does not assist the opponent before him.

12. In paragraph-31, the J.C.C. reiterated that the status of trustees or Managing Committee members are still subjudice before the A.C.C. and before him. Merely because the Authority rendered a decision that respondent No.2 herein has locus to file Revision is not final and conclusive. Both the parties are at liberty to establish their respective contentions in the final arguments. Thus the issues whether respondent No.2 is a person having interest in the Trust in terms of Section 2(10) of the Act and whether he has locus to maintain the Revision Petition are not finally decided by the J.C.C. Both the parties are at liberty to establish their respective contentions.

13. Mr. Khandare submitted that the matter was not fixed for arguments on merits of Exhibit-43 and was merely fixed for framing issue in terms of prayer clause (a) of Exhibit-43. I do not find any merit in this submission for the reasons recorded earlier. The parties proceeded to argue Exhibit-43 application and thereafter the impugned order was passed. Hence no case is made out for invocation of writ jurisdiction. Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)