

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.13856 OF 2017

Suhas Laxman Wakade	]	Petitioner
Vs.		
The Joint Charity Commissioner	]	
Pune Region, Pune and others.	]	Respondents

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Mr. Ojas Deolankar, for petitioner.
Mr. C.D. Mali, A.G.P, for Respondents No.1 and 17.
Mr. Ashutosh M. Kulkarni a/w Akanksha Helaskar, for Respondent No.16.

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CORAM : R.G. KETKAR, J.

DATE : 28TH NOVEMBER,2018.

P.C.

Not on board. At the request of Mr.Deolankar, taken up for admission.

2. Heard Mr. Deolankar, learned Counsel for the petitioner, Mr. Mali, learned A.G.P, for respondents No.1 and 17 and Mr. Kulkarni, learned Counsel for respondent No.16 at length.

3. This Petition takes exception to the order dated 6th September, 2017 passed by the Joint Charity Commissioner, Pune Region, Pune (for short 'J.C.C') below Exhibit 30 in Appeal No.9 of 2013. By that order, J.C.C allowed the application Exhibit 30 made by respondent No.16 for impleading her as party respondent in the appeal.

4. In support of this Petition, Mr. Deolankar strenuously contended that J.C.C committed serious error in allowing the application. He submitted that earlier in Change Report No.1095 of 2006, respondent No.16 had filed application for impleadment in the proceedings on the ground that she is having interest in the Trust as per section 2(10) of the Maharashtra Public Trusts Act (for short 'Act'). By order dated 31st January, 2013, Assistant Charity Commissioner, Satara (for short 'A.C.C') rejected the application. Respondent No.16 filed application dated 13th February, 2013 for stay of the proceedings on the ground that she proposes to challenge the said order. On the same day, A.C.C rejected the application. He submitted that respondent No.16 thereafter did not challenge the order rejecting application for her impleadment in the Change Report.

5. Mr. Deolankar submitted that by order dated 2nd March, 2013, A.C.C rejected the Change Report. Aggrieved by that decision, Appeal No.9 of 2013 was filed before J.C.C. During pendency of this appeal, respondent No.16 filed application Exhibit 30 for her impleadment. He submitted that as the application filed by 16th respondent for impleadment before A.C.C was rejected and that she did not file appeal against that order, she is precluded from filing application for impleadment in an appeal filed before J.C.C. In short, he submitted that the application made by respondent No.16 for her impleadment in Appeal No.9 of 2013 itself is not maintainable. Appeal being continuation of the original proceedings, J.C.C committed serious error in entertaining and allowing the said application.

6. On merits, he submitted that having regard to clause 10 of the Scheme of Kedareshwar Devasthan Trust (for short 'Trust'), the trustees are to be elected and/or appointed under the Scheme have to be the members of the said trust at least for two years consecutively prior to his or her being

appointed and/or elected as trustee and resident of Dandeghar. He submitted that respondent No.16 does not satisfy these conditions in clause 10 (a) of the Scheme. Thus, even on merits, J.C.C committed error in allowing the application. He submitted that J.C.C has not recorded any finding as to how presence of respondent No.16 will enable the Authority to decide effectively and completely controversy raised between the parties. He, therefore, submitted that the Petition requires consideration.

7. On the other hand, Mr. Kulkarni supported the impugned order. He submitted that clause 11 of the Scheme lays down that the trustees from Wakade family shall be trustees for their life. Vacancy arising by whatsoever reason in case of trustees from Wakade Family, the eldest male major legal heir of such outgoing trustee shall become a trustee. In case, no male heir is available or eldest male legal heir refused to act as trustee; the vacancy shall be filled in from any other legal heir of outgoing hereditary trustee according to Hindu Law.

8. Mr. Kulkarni invited my attention to clause 9 of the Scheme dealing with first trustees who are the heirs of Dattatray Khanderao Wakade. Dattatray Wakade died on 14th April, 1963 leaving behind Ramchandra, Narayan and Govind. Ramchandra died leaving behind Arun. Narayan died leaving behind Uttam and Purushottam. Govind died leaving behind respondent No.16 and Shekhar and Mohan. All are non resident Indians. In view of clause 11 of the Scheme, respondent No.16 can act as a trustee on account of non availability of male heir of Dattatraya Wakade. That apart, respondent No.16 has independently filed change report in respect of the said Trust. He submitted that J.C.C while passing the impugned order has also considered the fact that the application made before A.C.C was rejected by A.C.C. Thus, it cannot be assumed that J.C.C did not consider this aspect. He,

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

9. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. A perusal of application Exhibit 30 and in particular paragraph 2 thereof shows genealogy of Wakade family. A perusal of genealogy shows that Dattatray Khanderao Wakade died on 14th April, 1963 leaving behind Ramchandra, Narayan and Govind. A perusal of clause 9 of the Scheme dealing with first trustees shows that Ramchandra son of Dattatray, his wife Leela and brother Govind were first trustees from Wakade family. Clause 11 of the Scheme reads thus;

“11.TENURE OF TRUSTEESHIP:

First board of trustees, subject to the provisions made hereunder to hold office for 10 years i.e upto 31st December, 2001 and thereafter to be elected after every Five Years.

The trustees from Wakade Family shall be trustees for their life. Vacancy arising by whatsoever reason in case of trustees from Wakade Family, the eldest male major legal heir of such outgoing trustee shall become a trustee. In case no male heir is available or eldest male legal heir refuses to act as trustee; the vacancy shall be filled in from any other legal heir or outgoing hereditary trustee according to Hindu Law. In the event of no any legal heir or Wakade Family is available or then existing heirs refuse to act as trustees, the vacancy shall be filled in by election from amongst members of the trust”.

It is evident from the record that Arun son of Ramchandra as also Uttam son of Narayan as also brothers of respondent No.16 Shekhar and Mohan all are Non Resident Indians. Thus, in the absence of male heirs, respondent No.16 is entitled to become a trustee of the trust as per clause 11 of the scheme. Section 2 (10) (a) and (e) of the Act reads thus,

(10) “person having interest” [includes]-

(a)in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

(e)in the case of any other public trust [any trustee or beneficiary]

A.C.C while rejecting the application filed by respondent No.16 for her impleadment in change report did not consider whether the case of respondent No.16 falls in sub-clause (a) or (e) or both the sub-clauses of clause 10 of section 2 of the Act.

10. In view thereof, I do not find that J.C.C committed any error in passing the impugned order. A perusal of the order dated 31st January, 2013 of A.C.C shows that A.C.C held that respondent No.16 is not member of the Trust as also she is not residing at Dandeghar. A.C.C, however, did not consider clause 11 of the Scheme.

11. In view thereof, I do not find that this is a fit case for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

12. At this stage, Mr. Deolankar orally applies for stay of this order for a period of 4 weeks. He assures that no further extension shall be sought. In view thereof, notwithstanding dismissal of the Writ Petition, this order shall remain stayed for a period of 4 weeks from today. Order accordingly.

[R.G. KETKAR, J.]