

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

WRIT PETITION NO. 14253 OF 2017

Baburao Laxman Bhalke & Ors.	...	Petitioners
V/s.		
Chichwad Devsthan Trust & Ors.	...	Respondents

- Mr.Kuldeep V. Nikam a/w. Mr.Chetan R. Nagare for the Petitioners.
- Mr.Siddharth R. Ronghe for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 6th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioners and the Respondents.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 28th September 2017 passed by the Jt. Charity Commissioner, Pune, below Exhibit-13A in Application No.45 of 2017 filed under Section 36(1)(a) of the Maharashtra Public Trust Rules, 1951.

3] The Application at Exhibit-13A was filed by the present Petitioners under Section 73A of the Maharashtra Public Trust Act,

1950 to implead them as a party opponents in the proceeding claiming that they are in actual cultivation of the trust property in their capacity as tenants and when the application is filed by the Respondents under Section 36(1)(a) of the Act for seeking permission to sell the trust property, it is necessary to join them in the said proceeding.

4] The learned Jt. Charity Commissioner, Pune, has however, vide its impugned order rejected the said application and hence, the instant Writ Petition.

5] In support of submission that the Petitioners being the tenants of the suit property are necessary parties to the proceeding under Section 36(1)(a) of the Act, learned counsel for the Petitioners has relied upon the judgment of the Division Bench of this Court (Nagpur Bench) in case of *M/s.S. Kumar Developers and Builders V/s. Bhimrao Laxman Jadhao and Ors.*, *Letters Patent Appeal No.279 of 2012 in Writ Petition No.2749 of 2006 dated 30th July 2012*. In the said appeal also the exact question raised for consideration before the Division Bench was, “*Whether the tenants are the necessary parties to the proceeding under Section 36(1)(a) of the Bombay Public Trusts Act?*” and while answering this question, it was categorically held that, the tenants are the necessary parties to the

proceeding under Section 36(1)(a) of the Act.

6] In view of this legal position laid down in the judgment, this Writ Petition raising the same issue needs to be allowed.

7] Accordingly, the Writ Petition is allowed. The impugned order passed by the trial Court stands quashed and set-aside. The Application at Exhibit-13A, which was filed by the present Petitioners is allowed and the Petitioners are permitted to be impleaded as a party opponent in the proceeding before the Jt. Charity Commissioner, Pune. The Respondents to carryout necessary amendment in the cause title for their impleadment in the proceedings.

8] On the request of learned counsel for the Respondents, it is made clear that all the contentions raised by both the parties are expressly kept open to be decided by the Jt. Charity Commissioner at the time of deciding the Application filed under Section 36(1)(a) of the Act, including the contentions, as to, applicability of Section 88 of the Bombay Tenancy and Agricultural Lands Act in view of Exemption Certificate, if any, granted to the Respondent-Trust.

9] The Jt. Charity Commissioner to decide the proceedings pending before it on its own merits.

10] Learned counsels for both the parties submit that the parties are ready to appear before the Jt. Charity Commissioner on 12th March 2018 with the authenticated copy of this order, so that the matter can be proceeded further.

11] The concerned parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]