IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.312 OF 2018

Janak Dilip Dwarkadas }
aged 61 years, having his office
at Mulla House, 3rd floor, 51, M.G.Road
Opp Central Bank of India, Fort }
Mumbai-400 001. .. Petitioner

vs

1. The Joint Charity Commissioner }
Greater Mumbai Region, Mumbai
3rd floor, 83, Dr.A.B.Road,Worli
Mumbai-400 018

2. Ravindra D.Hingwala }
74, Gayatri Dham,
Hansraj Morarji Building no.77
Derasar Lane, M.G.Road, }
Ghatkopar (E) Mumbai-400 077

3. Bai Kabibai and Hansraji Morarji Charity }
Trust, 26, Bora Bazar Street,Fort
Mumbai-400 001

4. Dilip D.Udeshi }
Shanti Apts, 5th floor, 98,
Walkeshwar Road, Mumbai-400 006.

5. Vijaysingh V.Ved }
Veerchand Umarshi Building, 3rd floor
3rd Panjara Pole Lane, C.P.Tank,
Mumbai-400 003.

6. Jaysingh L.Thakkar }
C/o Vinas Technology,Everest Building

4th floor, Tardeo Mumbai-400 034.

7. Sudhir Ajitkumar Merchant }
405-408, Nav Bharat Estate, B Wing
172, Jakaria Bandar Road,Shivri (W)
Mumbai-400 015 } .. Respondents

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Mr.Darius Khambata Sr.Advocate a/w Mr.Sharan Jagtiani, Ms.Sneha Jaisingh for Petitioner
Ms.Jyoti Chavan Asst.Govt.Pleader for Respondent no.1
Mr.R.P.Walwaikar for Respondent no.2
Ms.Rashida F.Savliwala I.b M/s Dhruve Liladhar & Co for Respondent nos.3,4,6 and 7.

Coram : S.C.GUPTE, J
Date : 20th APRIL, 2018

P.C

Heard learned counsel for the parties.

1. Rule.

2. By consent of counsel, the petition is taken up for hearing forthwith. The controversy in the present petition concerns impleadment of the petitioner as a party-respondent to the revision application filed by respondent no.2 before the Joint Charity Commissioner.The petitioner applied for deletion of his name from the cause title on the ground that he is neither a necessary nor a proper party to the revision. The application was rejected by the Joint Charity Commissioner. That order is challenged in the present petition.

3. A few facts of the case may be noted as follows:

Respondent no.3 is a public charitable trust registered under the provisions of the Maharashtra Public Trust Act,1951 ("the Act"). Respondent nos.4 to 7 are the trustees for the time being of respondent no.3-trust. The petitioner is an ex-trustee of respondent no.3-trust. The trust property originally comprised of an immovable property being land admeasuring 5,625 square meters at 77, M.G.Road, Deraser lane, Ghatkopar (E), Mumbai-400 077 ("the subject land"). On 28.9.1985, the then trustees of respondent no.3 entered into an agreement for sale of the subject land with one Jasmine Builders Pvt.Ltd (subsequently amalgamated with Satellite Developers Pvt.Ltd). Clause 10 of this agreement required that the purchaser was obliged to lease certain structures which existed on the subject land (being a sanitorium and toilet blocks) to respondent no.3 for a period of 99 years (These structures along with the land were accordingly to be the subject matter of conveyance to be executed by respondent no.3-trust and were in turn to be leased to the trust.) On 25.1.1989, the Charity Commissioner granted sanction under section 36 of the Act for sale of the subject land at or for a valuable consideration of Rs.53,75,000/. Much after this order, i.e.nearly over 9 years thereafter, the petitioner was inducted on the board of trustees of respondent no.3-trust. His name was duly entered in schedule III to reflect his appointment as an additional trustee. On 22.4.2003, the then trustees of respondent no.3-trust (which included the petitioner) executed a registered conveyance of the subject land in favour of Satellite Developers Pvt.Ltd. On 28.5.2003, pursuant to clause 10 of the agreement for sale, Satellite Developers Pvt.Ltd executed a lease deed in favour of respondent no.3-trust in respect of the two structures, namely, the sanitorium and the toilet blocks for a period of 99 years. Soon thereafter, by an agreement executed by the then trustees of the trust (including the petitioner), the structures were surrendered by the trustees to Satellite Developers Pvt.Ltd for a consideration of Rs.12,25,000/-. On 7.8.2003, the then trustees of respondent no.3-trust (including the petitioner) filed a change report with respondent no.1 consequent to the conveyance of the subject land along with all its structures (including the sanitorium and toilet blocks) to Satellite Developers Pvt.Ltd. On 2.9.2003, the Joint Charity Commissioner issued an order accepting this change report and deleting the subject land including the sanitorium and toilet blocks from the schedule of properties of respondent no.3-trust. Sometime between 2003 and 2007, the sanitorium and toilet blocks were demolished by Satellite Developers Pvt.Ltd and in their place a new building was constructed. The flats in this building have been sold by the developers to various third parties. On or about 28.3.2007, the petitioner tendered his resignation as an additional trustee of respondent no.3-trust. The resignation was accepted. The petitioner, accordingly, ceased to be a trustee.The change report communicating cessation of his trusteeship was accepted by the Charity

Commissioner. Much later, i.e. on or about 19.8.2014, that is to say, about 11 years after the passing of the order by the Joint Charity Commissioner accepting the change report concerning the subject land and deleting the same including the structures standing thereon from the schedule of properties of the trust, respondent no.2 herein filed a revision application under section 70A of the Act before the Charity Commissioner, challenging the impugned order of acceptance of change report of 2.9.2003. To this application, he joined the petitioner as a party-respondent purportedly in his capacity as a trustee of respondent no.3-trust. On 12.10.2015, the petitioner filed an application seeking discharge from the revision application on the ground that he had long ceased to be a trustee of the trust and was neither a necessary nor a proper party to the revision application. On 22.3.2016, the Joint Charity Commissioner rejected the petitioner's discharge application. This order was challenged by the petitioner in a Writ Petition, being Writ Petition (Lodging) No.1581 of 2016. By an order passed by this Court on 29.6.2016, that writ petition was disposed of with a direction to remand the matter to the Joint Charity Commissioner for a fresh decision “in the light of the observations made in this order”. After the matter was heard afresh in pursuance of the remand order, by his impugned order dated 31.10.2017, the Joint Charity Commissioner rejected the discharge application once again. That order is challenged in the present petition.

4. Section 70A of the Act provides for powers of the Charity Commissioner to call for and examine the record and proceedings before the Deputy or Assistant Charity Commissioner. This power is to be exercised either suo-motu or on an application by any party. The Charity Commissioner, while exercising his powers under section 70A of the Act, examines the record and proceedings of any case before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner, as the case may be. It is this power of the Charity Commissioner which is presently invoked by respondent no.2 in the present revision application. The order sought to be revised in this application is an order passed by the Deputy Charity Commissioner on the change report inquiry under section 22 of the Act. The change report accepted in this inquiry by the Deputy Charity Commissioner was concerning the property of the trust, namely, the subject land together with sanitorium and toilet blocks, which originally formed part of the property of the trust, and which had, by virtue of the registered conveyance of 22.4.2003, ceased to be the property of the trust. The existence as well as legality of this change was the subject-matter of the change report inquiry and it is the correctness of the order passed in the change report accepting the existence and validity of the change, which is the subject matter of the revision

application under section 70A of the Act. If the change effected by the trustees, namely, divesting of the trust property by execution of the conveyance on 22.4.2003, is not valid or legal, the Joint Charity Commissioner is bound to set aside the order accepting the change. Any cause to this order has to be shown necessarily by the existing trustees of the trust. It is purportedly on that basis that all the respondents have been joined to the revision application. Even so far as the petitioner is concerned, his presence is said to be on account of his being a trustee of respondent no.3-trust and not otherwise, for any other reason. If the existence or validity of the change reported to the Charity Commissioner, is the only subject matter of inquiry before the Joint Charity Commissioner, the petitioner is evidently neither a proper nor a necessary party. He might still have been joined as a party-respondent, if there was some particular relief to be claimed against him in person or he might have been noticed and allowed to show-cause if there was any adverse order to be passed against him. That is what the Joint Charity Commissioner was expected to consider in the discharge application and that was the express basis on which the matter was remanded to the Joint Charity Commissioner for a fresh inquiry in accordance with law. The observations made by this Court in its order dated 29.6.2016 are clear and explicit. This Court has observed that if any one had to show cause merely to the cancellation sought of the sanction of the Charity Commissioner to the sale or the acceptance of the change report in respect of deletion of the trust property from the register, it is the current trustees of respondent no.3 trust and none else. This Court made it clear further that presence of an ex-trustee may be necessary or proper only if there is any case for seeking reliefs personally against such ex-trustee. The Court observed that it was incumbent, in the premises, for the Joint Charity Commissioner to consider the position of the petitioner herein as a necessary or proper party and the matter was remanded to the Joint Charity Commissioner for a fresh decision " in the light of the observations made in this order." It is deplorable that once again the Joint Charity commissioner appears to have missed the main point. He has sadly not considered whether and if so, in what manner, the petitioner was either a necessary or a proper party to the proceedings in the light of what was observed by this Court in the remand order.

5. It is an elementary principle of law that a legal proceeding is initiated for redressal of a grievance; it seeks an appropriate relief in response to such grievance. All those parties in whose absence such grievance cannot be considered or such relief cannot be granted are termed as "necessary parties", whilst all those other parties whose presence may be considered proper for an effective adjudication of the grievance are "proper parties" to such proceeding. Unless a party qualifies either as a necessary or a proper party, it cannot be joined.

6. In the order of this Court dated 29.6.2016 this was even made explicit by outlining the scope of the inquiry before the Joint Charity Commissioner in this behalf. It was expressly observed that the Joint Charity Commissioner had to decide whether presence of the petitioner herein was (i) necessary so that in his absence, no effective order could be passed on the revision application or (ii) proper for a complete and final adjudication of the questions involved. Not only was this direction by itself clear but even important authorities barring on the issue were cited before the Joint Charity Commissioner. Yet he failed to consider the circumstances of the case for which the petitioner could be termed either as a 'proper' or a 'necessary party' or indeed discuss any of the authorities cited before him. The Joint Charity Commissioner simply says that in the year 2003, when the conveyance was executed in favour of Satellite Developers Pvt.Ltd, the petitioner was one of the trustees of respondent no.3-trust and therefore, he was a necessary party to the present proceeding. So much for the facts. On law, after noticing the authorities cited before him, the Joint Charity Commissioner simply says that the circumstances and reasons placed in the citations were different from the case in hand and hence the citations were not applicable. So much for the law.

7. The learned Assistant Government Pleader for the State refers to the provisions of section 70A of the Act and submits that

since as part of the powers of the Charity Commissioner to examine any proceeding before any Deputy or Assistant Charity Commissioner, the Charity Commissioner is not only empowered to annul, reverse, modify or confirm any finding or order passed by the Deputy or Assistant Charity Commissioner, but may even direct the Deputy or Assistant Charity Commissioner to make further inquiry or take additional evidence as may be necessary. The learned Assistant Government Pleader submits that it is possible that as part of an inquiry of this nature, the Charity Commissioner may call upon the Deputy or Assistant Charity Commissioner to investigate the matter further with a view to fix the responsibility of any particular trustee in the matter of loss caused to the trust and even direct receipt of additional evidence in that behalf. In the first place, it is important to bear in mind that any further inquiry or additional evidence referred to in section 70A can only be with a view to consider whether the order of the Deputy or Assistant Charity Commissioner needs to be annuled, reversed, modified or confirmed and not beyond that. In the present case, this power is restricted to consider whether or not to accept the change reported to the Charity Commissioner under section 22 of the Act. There is no question of fixing any responsibility or issuing any order against any individual trustee in a revision application under section 70A of the Act challenging the order accepting a change report under section 22 of the Act. Accordingly, for reasons suggested by the learned Assistant Government Pleader, it is not necessary to either arraign or even notice the petitioner.

8. The learned Assistant Government Pleader then refers to section 40 of the Act. She submits that under this provision, the Charity Commissioner can determine the loss caused to a public trust and whether any trustee is responsible for such a loss. She submits that at this stage, there may not be a finding of loss caused to the trust or responsibility on any particular trustee including the petitioner herein, for such a loss but it is possible that the Charity Commissioner may come to such finding. She submits that, at any rate, today the inquiry is at a very nascent stage. The submission is only required to be stated to be rejected. The power of the Charity Commissioner under section 40 of the Act is to be exercised as a part of the over-all control which the Charity Commissioner exercises over charity organisations. The scheme of sections 37 to 40 of the Act, coming within Chapter VI of the Act, empowers the Charity Commissioner, or the Deputy or Assistant Charity Commissioner or any Officer authorised by the State Government by a general or a special order, to enter upon and inspect properties of a public trust and also to call for any return, statement, etc.and seek any explanation from the trustees. On such entry, inspection or requisition, the Deputy or Assistant Charity Commissioner has to submit a report to the Charity Commissioner. On receipt of such report, an explanation/consideration of such explanation by the

trustees and receipt of a final report to the Charity Commissioner there is a power under section 40 to hold an inquiry with a view to consider the amount of loss caused to a public trust and whether any particular trustee is to be held responsible for such loss. This is an altogether different power and not within the scope of section 70A of the Act. It may of course be possible for the Charity Commissioner after deciding the revision under section 70A to exercise powers under section 37 and initiate the process of entering into the property or calling for inspection or returns, etc. and then make final report. As and when such course is adopted by the Deputy or Assistant Charity Commissioner, as the case may be, he will be duty bound to give notice to all those trustees against whom any action is proposed. But, as I have noted above, neither is that the scope of the case here nor has any such occasion for action under section 40 arisen today.

9. In the premises, the order impugned in the present petition cannot be sustained. The order is quashed and set aside and the name of the petitioner is ordered to be deleted from the record of the revision application. The proceedings may now go on before the Joint Charity Commissioner as against the other respondents.

10. Rule is made absolute and writ petition is disposed of accordingly.

(S.C.GUPTE, J)