

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

10 FIRST APPEAL NO.2411 OF 2019

Sakharam s/o Digambar Mahajan,

VERSUS

The Joint Charity Commissioner,
Aurangabad Region, Aurangabad And
Another

.....

Advocate for applicant : Mr. C. R. Deshpande.

.....

WITH

CA /8757/2019 IN FA/2411/2019

WITH

CA /8806/2019 IN FA/2411/2019

...

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 29-07-2019.

PER COURT :

1. Heard learned advocate for appellant/ applicant.
2. Issue notice to respondent No.2, returnable on 05-08-2019.
3. Call for record and proceeding.
4. Though the respondent No.2 Prakash Doiphode appears to be the original intervener, today one more civil application bearing No.8806 of 2019 has been filed by learned advocate Mr. V. G. Salgare on behalf of proposed respondent and he submitted that, though by the impugned order the proposed respondent has been appointed as new trustee so also along with the two other persons, they have not been made as

party to this proceeding.

5. The present appellant has challenged the order in *suo motu* application No.166 of 2018, passed by learned Joint Charity Commissioner, Aurangabad, Region Aurangabad, dated 01-07-2019, under Section 47 of the Maharashtra Public Trust Act, 1950.

6. Taking into consideration the said impugned order wherein the present applicant who intends to get himself added as party (intervener) was appointed along with other two persons then definitely they are required to be added as respondents. Under such circumstance, the appellant is directed to add them as respondents No.3 to 5.

7. Amendment to be carried out forthwith. Civil Application No.8806 of 2019 is disposed of accordingly.

8. By Civil Application No.8757 of 2019 the present appellant seeks to the prayer for stay of the impugned order passed by learned Joint Charity Commissioner dated 01-07-2019, and permitting him to continue to look after the affairs of the Trust as per the order dated 04-06-2018 passed by learned Joint Charity Commissioner, Aurangabad, Region Aurangabad in Appeal No.31 of

2014 and Appeal No.39 of 2018. The learned advocate appearing for the appellant has pointed out those orders which were passed by learned Assistant Charity Commissioner, then the orders passed by learned Joint Charity Commissioner, and it was submitted that, when the learned Joint Charity Commissioner was hearing the appeals wherein it was in dispute, as to whether the present appellant is a member or not, then the learned Joint Charity Commissioner has held that, the present appellant is the member of the Trust so also the present respondent No.2 is member. The appeals challenging the orders passed by learned Assistant Charity Commissioner was dismissed by learned by learned Joint Charity Commissioner on 04-06-2018. However, it is then stated that, another order came to be passed in appeal No.31 of 2014 and 39 of 2018 wherein the present appellant was permitted to look after the administration of the trust. Other instructions-cum-directions were given, however thereafter there was a trust administration order No. No.33 of 0218 wherein the Superintendent, Administration was directed to register *suo motu* proceeding under Section 47 of the Trust Act. Thereafter by another order passed on 25-06-2018 notice calling the applications from willing persons for appointment as a Member of the Committee of the Trust was issued, and thereafter in

the said process 57 persons filed application requesting them to be appointed as Trustee. Thereafter date of interview was fixed and the notice was issued to all the 57 persons. Out of that, it appears that, 32 persons remained present for the interview. However, in terms of the fact that one writ petition was pending in this Court at that time, the end result of the interview was kept sealed in packet. Thereafter it appears that, on 01-03-2019 a decision was taken in the said *suo motu* inquiry in which statements were made that, present appellant is not an undisputed person, and therefore, it will not be proper to ask him to continue to entrust the administration of the Trust. Name of three persons were finalized, however till the decision of this Court, the names were kept in sealed packets. Ultimately the impugned decision was rendered on 01-07-2019 appointing those three persons as temporary Trustees.

9. After pointing out all these events, it has been submitted by the learned advocate appearing for the appellant that there was absolutely no reason given by the learned Joint Charity Commissioner as to why the present appellant was not continued. Vague statements were made that he is not a undisputed person but what was the material before the learned Joint Charity

Commissioner which made him disputed person, has not been clarified in the order. It is stated that, the three persons have been appointed are not at all concerned with the Trust, and therefore, he prayed for interim order.

10. On inquiry it has been stated that, immediately after the impugned order was passed on 01-07-2019, the present appellant had not prayed for stay before the learned Joint Charity Commissioner itself under Order 41 Rule 5 of Code of Civil Procedure till he approaches this Court. Under such circumstance, it is required to be seen as to whether stay can be granted on the background that according to him charge has not been taken from him. Per contra, the learned advocate appearing for the intervener submits that, the said committee has started functioning.

11. It appears that, though the present appellant was appointed to look after the administration of the Trust by order dated 04-06-2018, by Trust Administrative order No.03 of 2018 passed on 08-06-2018, the learned Joint Charity Commissioner was of the view that since there are no Trustees, it was felt necessary to appoint Trustees who can play an important role in framing the scheme. Therefore, *suo motu* proceeding under Section 47 of the Trust Act was started.

By order dated 25-06-2018, the notices calling the application from willing persons for appointment as Member of the Committee of the Trust were issued and the further process was taken up. Upon inquiry, statement has been made by the learned advocate for the appellant that, appellant himself had made application and he was amongst those 57 persons who had filed the application. Under such circumstance, when he himself had taken part in the process of the inquiry and the further selection by the learned Joint Charity Commissioner, he cannot seek the order for allowing him to carry out the administration of the Trust as of right. He may pursue his grievance in respect of the order that has been passed in *suo motu* Application No.166 of 2018. However, as regards the stay is concerned, since he had not obtained it from the learned Joint Charity Commissioner after the impugned order was passed on 01-07-2019, and according to the present intervener, the committee has already started its work as per the said order. No case is made out for grant any interim, much less ad-interim, since other respondents are yet to be served, order cannot be passed. In view of above, stand over to 05-08-2019.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.