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

**WRIT PETITION NO. 9443 OF 2017
WITH
CIVIL APPLICATION NO. 2991 OF 2017
IN
WRIT PETITION NO. 9443 OF 2017
WITH
CIVIL APPLICATION NO. 2992 OF 2017
IN
WRIT PETITION NO. 9443 OF 2017**

Shri. Ravindra Vitthalrao
Daravade and others

.....Petitioners

V/s.

Shri. Saddguru Santvarya Maharaj
Samadhi Trust and others

.....Respondents

**WITH
CIVIL APPLICATION NO. 920 OF 2018
IN
WRIT PETITION NO. 9443 OF 2017**

Sadanand Shivajirao Khamkar and another

.....Applicants

V/s.

Shri. Ravindra Vitthalrao
Daravade and others

.....Respondents

Mr. P. B. Shah i/b Kayval Shah for the Petitioner
Smt. Smita Mane for respondent nos. 1, 9, 10, 11 & 13

Mr. Avinash Avhad for respondent nos. 4 & 5
Mr. Makrand Kale i/b Sachin Hande for respondent no. 2
Mr. S. H . Kankal AGP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 18, 2019.

P.C.

The present petition is arising out of the Trust proceedings wherein the Assistant Charity Commissioner by its impugned order dated 08/08/2017 in the light of the clause 10A of the Scheme of respondent-Trust considered recommendations of the existing Trustees and ordered nomination excluding the petitioners.

2 The brief facts for deciding the petition are as under:

(i) Respondent no. 1-Trust is governed by provisions of Maharashtra Public Trust Act, 1950 and the Scheme framed for management framed thereunder.

(ii) Mode of appointment of Trustees is provided under Clause 10A of the Scheme which reads as under:

“10A Future Trustess will be appointed for every 3 years by the Asstt. Charity Commissioner, Poona out of a panel of at least 10 suitable names to be submitted to him by the existing trustees 3 months before the expiry of their term alongwith the consent and particulars of the persons proposed in the panel. Such persons should file a declaration on solemn affirmation that he is a devotee of Late Shankar Maharaj. The existing or continuing trustees shall be eligible for their re-appointment. In case no such panel is submitted by the existing trustees or if the names given in the panel are not found suitable, the Asstt. Charity Commissioner, Poona shall appoint new trustees as he may deem fit and proper. The term of the new trustees will be from 3 years, i.e. from 1st January to 31st December”.

(iii) According to petitioners in the wake of above, in September 2011, the then trustees forwarded the proposal to the Assistant Charity Commissioner, Pune for appointment of trustees which was numbered as MA No. 256 of 2011. The said application remained pending for more than 3 years i.e. the tenure of trustees pursuant to the directions given by Joint Charity Commissioner, the said MA No. 256 of 2011 came to be decided on 09/10/2015 whereby petitioners were accepted as trustees by virtue of order of Assistant Charity

Commissioner. In view of the fact that tenure of their appointment was already over, they were termed to be defacto trustees for a period from 01/01/2012 to 31/12/2014.

3 The respondent trust through its trustees on 29/09/2014 in view of the term of the trustees was coming to an end on 31/12/2014, submitted a proposal for appointment of trustees in the light of provisions of Clause 10A of the Scheme which was consisting of panel of 10 persons. The appointments were to be made for a period from 01/01/2015 to 31/12/2017.

4 The Misc. Application no. 491 of 2014 containing the aforesaid proposal was decided on 08/10/2017 thereby appointing respondent nos. 2 to 4 as trustees alongwith other trustees. The petitioners whose name were excluded and who are claimed to have absolute right to appointment pursuant to recommendations made by the existing trustees are questioning the order on the following grounds:

(a) According to learned counsel for the petitioner, clause 10A of

the Scheme speaks of 10 suitable names to be recommended by existing trustees and the name of the petitioners were included in the said panel of 10 suitable names. According to him, once the panel consisting 10 names recommended by the trustees is received, the Assistant Charity Commissioner is duty bound to select the trustees from the said panel and not from outside. According to him, the decision to nominate the respondent thereby excluding the claim of the petitioners is contrary to the aforesaid clause 10A of the Scheme.

(b) Learned counsel would urge that the Division Bench of this Court had an occasion to consider the mode of nomination of trustees in the matter of **Shri. V. V. Peshwa & Others Vs. State of Maharashtra & Others** [1996 (1) All.M.R. 102]. According to him, in view of observations made in para 3 of the said Judgment, the petitioners are entitled to be appointed as trustees thereby setting aside the appointment of respondents as the respondents are not nominated in the panel recommended by the existing trustees.

5 The next limb of submission of the learned counsel for the petitioner is, the reason cited for exclusion of the names of the petitioners in the array of trustees is not germane to the cause. According to him, the finding of not reposing the faith in the petitioners are without any basis and contrary to the record. He would invite attention of this Court to the order dated 19/10/2016 passed in Application No. 76/2016 thereby rejecting Application under Section 41A by the Joint Charity Commissioner and the other similar orders. He would then urge that this Court had an occasion to consider a similar issue in Writ Petition No. 2211 of 2000 which was decided on 10/01/2000. He would urge that the reasons for rejection of the candidature are contrary to record and that being so, the order impugned is liable to be set aside.

6 The contention raised by the learned counsel for the petitioner are supported by the learned counsel for the respondent-Trust. According to the learned counsel for the Trust, the nomination of the trustees has to be from the panel of the members forwarded by the trustees. Attention of this Court is also invited to application

preferred thereby seeking nomination post tenure of nominated trustees. The order of appointment, out of the names recommended, passed by the Assistant Charity Commissioner is under challenge. As such, a prayer is made for quashing the order impugned.

7 *Per contra* the respondent supported the order and submits that the Assistant Charity Commissioner has every right under clause 10A of the Scheme to decide the suitability of the names given in the panel submitted by the trustees and it shall be open for the Assistant Charity Commissioner, in case a disagreement to nominate the trustees who are found suitable. In support, reliance is placed on clause 10A of the Scheme is so as to substantiate the aforesaid contention. According to respondents and the learned AGP who appears for the Assistant Charity Commissioner, the order is well reasoned and the consideration and rejection of each of the members of the panel is very much decreed with by a speaking order. According to respondents, the petitioners are trying to establish their monopoly to continue as trustees for years together without giving any chance to other devotees who are serving the

Math in question for much longer time and much better manner. As such, dismissal of the petition is sought.

8 Considered rival submissions.

9 It is not in dispute that existing trustees of respondent no. 1-Trust submitted a panel of 10 persons out of whom 7 are to be nominated by the Assistant Charity Commissioner. The said nomination by the Assistant Charity Commissioner in view of clause 10A of the Scheme is not in a stereotype manner but the Assistant Charity Commissioner is armed with assessing the suitability of such candidates who are nominated in the panel. In case if the candidates who are nominated in the panel submitted by the existing trustees are not found to be suitable, the Assistant Charity Commissioner is armed with powers to appoint such suitable persons as trustee as it may deem fit and proper. The said clause also provides for the term of the trustees is for 3 years.

10 In the case in hand after names from panel were received from

existing trustees, an inquiry to that effect was registered and certain parties intervened in the said proceedings. The Trust document provides for minimum 5 and maximum 7 trustees out of which one member from the family of late Shri. Pannalal Balkrishna Malpani as a permanent trustee. The tenure of such nominated trustees is of 3 years.

11 In the aforesaid background, the Assistant Charity Commissioner framed the issues as regards the suitability of the names forwarded in the panel and proceeded to record reasons for accepting the names from the panel and rejecting the candidature of the petitioner. The order of Assistant Charity Commissioner is based on material availability before it, analysis thereof, affection/devotion of the person who claims to be nominated as a trustee, his qualification. The Assistant Charity Commissioner proceeded to record the reasons in support of acceptance of nomination of each of the trustees which prima facie appears to be germane to the cause.

12 So far as the case of the petitioner is concerned, though the

proceedings under Section 41A are dismissed, however, without attributing any stigma or hurting their sentiments, the Assistant Charity Commissioner has proceeded to refuse their nomination in view of certain shortfalls noticed in their discharge of duties as trustees.

13 Apart from above, what is required to be noted is, once the Assistant Charity Commissioner records its satisfaction *qua* qualification of the trustees who are nominated by the order impugned, this Court is not supposed to substitute the said findings with that of to be recorded by this Court in absence of any material illegality or irregularity. The Scheme under clause 10A if appreciated, same vest power with the Assistant Charity Commissioner to analyse the candidature of each of the person who is nominated in the panel by which trustees to be nominated as a new trustee and in case if such candidate is found to be not suitable, the powers vest with the Assistant Charity Commissioner to appoint a new trustee in his judicious discretion. Perusal of the order impugned does not smack of any non judicious approach of the Assistant Charity

Commissioner. The very intention of the Assistant Charity Commissioner appears to be to give chance to devotees who are serving for decades together and not to continue the same trustees for decades. To strike out the balance, the Assistant Charity Commissioner continued some old trustees and has given chance to few new people to serve the Trust.

14 In the aforesaid background, this Court hardly notice any illegality or irregularity which warrants interference in the supervisory jurisdiction.

15 That being so, the petition fails, stands dismissed.

16 At this stage, the learned counsel for the petitioner seeks extension of interim relief as according to him, same is operating since 2017.

17 This Court hardly see any convincing reason which warrants

continuation of the interim relief.

18 Furthermore, the fact remains that under Ex-parte order, the petitioners are continuing the administration of a Trust for years together without giving way to the devotees who are newly nominated in addition to three old existing Trustees.

19 In view of dismissal of Writ Petition, all Civil Applications stand disposed of accordingly.

[NITIN W. SAMBRE, J.]