

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

WRIT PETITION NO. 13687 OF 2018

Karunakar Poojary & Ors.

... **Petitioners**

V/s.

Shree Dattatrey Mitra Bhajan Mandali & Ors.

... **Respondents**

Mr.Mohan Dhamal for Petitioners.

Ms.Shilpa Kapil a/w. Mr.Ravi Kotian for Respondent Nos.1 & 3, 5 to 7.

CORAM : A.S. GADKARI, J.

DATE : 26th July 2019.

P.C. :

1] By the present petition under Article 227 of the Constitution of India, the petitioners have taken exception to the Order dated 16/08/2018 passed below Exhibit-19 in Application No.363 of 2015 by the Joint Charity Commissioner-II, Maharashtra State, Mumbai, rejecting the said application.

2] Heard Mr.Dhamal, learned counsel for the petitioners and Ms.Shilpa Kapil, learned counsel for the respondent Nos.1, 3, 5 to 7 i.e. contesting respondents. Perused the record.

3] The petitioners are devotees and members of Shree Dattatrey Mitra Bhajan Mandali of Dattatrey Durgambika Devasthan Trust situated at Asalpha Villge, Ghatkopar (West), Mumbai. The contesting respondents are the governing trustees of the said trust.

4] The record indicates that, the petitioners filed an application bearing No.363 of 2015 under Section 41-D of the Maharashtra Public Trusts Act, 1950 (for short, "said Act") before the Charity Commissioner, Mumbai, alleging that, the respondents herein i.e. trustees of the said trust are involved in illegal acts detrimental to the interest of the trust and an appropriate action against them be taken under the said Act including their removal as trustees of the said trust. The record further indicates that, in the said proceedings the petitioners filed an application below Exhibit-16 for framing charge against the respondents, as per the points formulated by the petitioners in the said application. The Joint Charity Commissioner by its Order dated 09/02/2018 framed charge under three distinct heads, as per the application filed by the petitioners below Exh.-16, however, did not frame charge of misappropriation of the trust property as alleged by the petitioners in their application below Exh.-16 and had formulated it at point No.3.

5] Feeling aggrieved by the said non framing of charge pertaining to misappropriation of the trust property, the petitioners preferred Review Application below Exhibit-19 in the said Application No.363 of 2015. The Joint Charity Commissioner by the impugned Order dated 16th August 2018 has rejected the said application on the ground that there is no material available on record to justify framing of charge for alleged misappropriation of an amount of Rs.50,00,000/- to Rs.52,00,000/- by the respondents belonging to the said trust.

6] During the course of arguments, the learned counsel for the petitioners drew my attention to various documents annexed to the petition and requested me to infer that the respondents have infact committed misappropriation of the said amount belonging to the trust and therefore, a charge for misappropriation of the amount of the trust may be framed, as has been formulated by the petitioners in their application below Exhibit-16 in the said proceedings. Perusal of record would indicate that, there is no material available on record, even to remotely infer that, the respondents committed misappropriation of the said funds of the trust. Framing of charge with an allegation of misappropriation of funds of the trust property has serious repercussions

under the law. In the absence of *prima-facie* material even to infer that, the respondents had misappropriated the said amount and only because the petitioners have alleged so, in my view, the said charge cannot be framed. The pleadings of the petitioners in their application below Exh.-16 lacks corroborative material in that behalf.

7] In view of the above, I find no reason to interfere with the Order dated 9th February 2018 passed below Exhibit-16 and impugned Order dated 16th August 2018 passed below Exhibit-19 in Application No.363 of 2015 by the Joint Charity Commissioner-II, Maharashtra State, Mumbai.

8] Petition being devoid of merits is accordingly rejected.

[A.S. GADKARI, J.]