IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL APPELLATE JURISDICTION

MISCELLANEOUS PETITION (L) NO. 63 OF 2019

Hajee Cassum Agboatwala Charities & Ors. ... Petitioners
Versus
State of Maharashtra through the Learned Advocate General of Maharashtra & Ors. ... Respondents

Mr. Kevic Setalvad, Sr. Advocate a/w Mr. Anupam Surve, Mr. Nimish Kothare, Mr. Nikhil Mutha i/b Nanu Hormasjee & Co. for the Petitioners.
Mr. H.B Takke, A.G.P. for the Respondent – State.

CORAM : R.I. CHAGLA, J.

DATED : 6th JUNE, 2019.

P.C. :

1 Heard learned Senior Counsel for the Petitioners and learned Counsel for Respondent Nos.1 and 2. The Learned Senior Counsel has pointed out that this Petition is for amendment of the existing Scheme sanctioned by this Court vide order dated 17.10.1950 in Suit No.1389 of 1950 of Petitioner No.1. He has pointed out the schedule of amendments which are annexed at Exh.J to the Petition. The amendments are more in line with the "Maharashtra Public Trust Act 1950". The amendments sought in certain clauses provided for replacement of the words "Advocate General of Bombay" with "the Charity Commissioner" and "Hon'ble the Sitting Judge in Chambers" with "the Charity Commissioner" as well as introduction of the words "the Maharashtra Public Trust Act 1950". Further, deletion of words

"the Imperial Bank of India and National Bank of India Ltd." which are no longer in existence has been sought and substitution of certain amounts at that time considered reasonable with amounts as of today which are reasonable.

2 The learned Counsel appearing for Respondent Nos.1 and 2 does not have any objection to the amendments of the Scheme and the only objection to the amendment which he has pointed out is to Clause 24 of the Scheme where it is originally stated "The trustees shall be at liberty to use the moneys and securities standing to the credit of the Repair Reserve Fund for defraying the expenses of heavy repairs and for improving and altering the immovable properties forming part of the trust properties and for rebuilding the same as and when occasion arises, provided that the trustees shall not spend more than Rs.25,000/- (Rupees Twenty Five Thousand) in any financial year without obtaining the sanction of the Sitting Judge in Chambers". He states that the amendment now proposed i.e. by removing the words "provided that the trustees shall not spend more than Rs.25,000/- (Rupees Twenty Five Thousand) in any financial year without obtaining the sanction of the Sitting Judge in Chambers" would result in the permission of the Charity Commissioner being dispensed with so far as payment of amounts for improving and altering the immovable properties forming part of the trust properties and for rebuilding the same are concerned. In

response, the learned senior Counsel has pointed out that at that time an amount of Rs. 25,000/- (Rupees Twenty Five Thousand) was considered sufficient but now given the substantial increase in expenses for improving and alternating immovable properties and for rebuilding the same, the amount cannot be quantified.

3 Considering the nature of the amendments sought by the Petitioners which are more or less in line with Maharashtra Public Trust Act 1950 viz. the Charity Commissioner replacing the Hon'ble Sitting Judge in Chambers as well as the increase in amounts which at that time were considered sufficient i.e. in 1950 and given the escalation as on today, these amendments are required to be granted by this Court. Further, the only objection raised by the learned Counsel for the Respondent Nos.1 and 2 that the deletion of the words "provided that the trustees shall not spend more than Rs.25,000/- (Rupees Twenty Five Thousand) in any financial year without obtaining the sanction of the Sitting Judge in Chambers" would dispense with the sanction of the Charity Commissioner and permit the Petitioners to spend any amount for improvement/alteration of the immovable properties and for rebuilding the same.

4 I have considered this objection and find the same to be without merit as at that time an amount of Rs.25,000/- (Rupees Twenty Five

Thousand) was considered sufficient expenses for improving and altering immovable properties and rebuilding the same as expenses for heavy repairs, particularly since that was in the year 1950. Considering a substantial lapse of time and the fact that this amount cannot be quantified as of today, as well as the trustees being at liberty to use these moneys and securities standing to the credit of the repair reserved fund for defraying these expenses, it would not be appropriate to restrict this amount and hence, this amendment is also required to be granted in favour of the Petitioners.

5 I accordingly allow the Petition in terms of prayer clause (a). Further, prayer clause (b) which seeks an order and direction against Respondent No.3 to forthwith return the file and papers in respect of Petitioner No.1 to the Respondent No.2, being the Charity Commissioner for enabling the Charity Commissioner to exercise the powers vested in him in law is also required to be granted given the fact that the Petitioners are registered under the Public Charitable Trust Act since 10.12.1952. Therefore, Petition is also made absolute in terms of prayer (b). The Respondents are directed to permit the Petitioners to carry out the amendments in their official record and hence prayer (c) is also granted.

6 Petition is accordingly disposed of in the above terms.

(R.I. CHAGLA, J.)