

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO.12414 OF 2016

SHRI BHASKAR GULAB MALI (MAHAJAN)
VERSUS
SHRI ARVIND SHAMRAO PAWAR & OTHERS

...
Advocate for Petitioner : Mr. Kulkarni Mukul S.
Advocate for Respondent No.2 :Mr. S.G. Rudrawar
AGP for Respondent No.3 :Mr. S.W. Munde
Advocate for Respondent No.4 :Mr. S.N. Lale Yelwatkar
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CORAM: ROHIT BABAN DEO, J.

Date: FEBRUARY 3RD, 2020
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PER COURT :-

1 The petitioners, who are the trustees of the respondent No.4 society/trust, are aggrieved by order dated 27.7.2016 passed by the Assistant Charity Commissioner, Dhule, whereby respondent Nos.1 and 2 herein were permitted to join as party applicants in the enquiry under section 50-A of the Maharashtra Public Trusts Act.

2 The order impugned reads thus:-

" Order

Read application and say.

Heard. It is not disputed that the present applicant is a person having interest in the trust. As the present inquiry is under section 56A(i) and minimum two applicants are required, therefore, in the interest of trust present applicant is impleaded as party applicant to this proceeding. "

3 The basic contention of the petitioners is that the order

impugned suffers from non-application of mind and is contrary to the record. Since respondent No.4 is a trust, in view of the provisions of section 2(10) of the Act, the person interested would have to be a member of the trust. The submission is that the membership of respondent Nos.1 and 2 was not admitted. Au contraire, the membership of respondent Nos.1 and 2 was specifically disputed.

4 The learned counsel for the petitioners would further point out that while, pursuant to this Courts order an affidavit is filed on record by respondent Nos.1 and 2, asserting that they are members of the trust, the details of the membership are not disclosed. It is further submitted that no documentary proof of membership in the nature of an application or receipt evidencing deposit of membership fees is placed on record.

5 The affidavit filed on behalf of respondent Nos.1 and 2 states that since the record is lost, respondents Nos.1 and 2 are handicapped in providing the necessary information.

6 While issuing notices, this Court stayed further proceeding, with the result that while the enquiry under section 50-A was at the final stage, the enquiry is stalled since last more 3 1/2 years and more. It is certainly not in the interest of the trust to keep suspended the enquiry proceedings. Ultimately, the power to determine whether a scheme needs to be framed can also be

exercised *suo-motu* and in that event, the applicants would be considered only as relators.

7 In this view of the matter, I am not inclined to interfere in the writ jurisdiction, although the contention that the observation in the order impugned that the membership of respondent Nos.1 and 2 is admitted, is contrary to record, is well merited. It is made clear that the membership of respondent Nos.1 and 2 is not admitted. Rather, it is vehemently disputed. While respondent Nos.1 and 2 may assist the authorities in coming to appropriate decision, the fact that they are permitted to do so shall not be taken as a reflection on their status.

8 Respondent Nos.1 and 2 shall have to independently prove that they are the members of respondent No.4 trust if the need arises at an appropriate stage or in any other proceedings.

9 The petition is disposed of.

10 The Assistant Charity Commissioner, Dhule shall finally decide the enquiry under section 50-A within sixty days.

(ROHIT BABAN DEO, J)