

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12866 OF 2019

Shree Siddheshwar Devasthan Trust, Solapur and others ... Petitioners
Vs.
Sanjay B. Thobde and others ... Respondents

Mr. S. B. Talekar a/w. Ms Madhavi Ayyappan i/b. Talekar & Associates for
Petitioners.
Mr. Akshay C. Tapkir for Respondent No.1.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 06, 2020
Pronounced on : JUNE 09, 2020

P.C.:

Heard Mr. Talekar, learned counsel for the petitioners and Mr. Tapkir, learned counsel for respondent No.1.

2. By filing this petition under Article 227 of the Constitution of India, petitioners seek quashing of order dated 19.11.2019 passed by the Joint Charity Commissioner, Pune Region, Pune rejecting the application filed by the petitioners in the proceeding instituted by respondent No.1 under Section 41D of the Maharashtra Public Trust Act, 1950, being Application No.22 of 2018.

3. Be it stated that petitioners, who are the opponents in the said proceeding, had filed an application for issuing summons to five persons to depose and produce documents in the said proceeding as witnesses. By the impugned order, the said application was rejected.

4. The *lis* lies within a narrow compass. Question for consideration is whether the Joint Charity Commissioner, Pune Region, Pune was justified in rejecting the application filed by the opponents i.e., petitioners herein for summoning five

persons as witnesses?

5. Ancillary to the above question is whether such an order rejecting application for summoning witnesses i.e., an order passed at an interlocutory stage, should be subjected to adjudication in a proceeding under Article 227 of the Constitution of India?

6. Petitioner No.1 is the Shree Siddheshwar Devasthan Trust, Solapur (briefly 'the Trust' hereinafter). It is a public trust registered under the Maharashtra Public Trust Act, 1950 (referred to hereinafter as 'the Act'). Petitioner Nos.2 to 30 are trustees of the Trust.

7. Respondent No.1 was also a trustee of the Trust. Because of his conduct and acting in a manner prejudicial to the interest of the Trust, a notice dated 09.06.2018 was issued to him to show cause as to why he should not be removed as a trustee of the Trust. Ample opportunity was given to respondent No.1 to state his case. In this connection a meeting of the Board of Trustees was held on 18.06.2018. Misconduct of respondent No.1 having been proved, a unanimous resolution was adopted to remove respondent No.1 from the office of trustee. Accordingly, a change report was filed before the Assistant Charity Commissioner, Solapur on 20.06.2018 regarding removal of respondent No.1 and deletion of his name from the Board of Trustees.

8. It is stated that because of the above developments, respondent No.1 bore a grudge against the trustees more particularly against petitioner No.2 whom he thought was responsible for his removal.

9. Because of such grudge, respondent No.1 filed an application under Section 41D of the Act before the Joint Charity Commissioner, Pune Region, Pune (referred to hereinafter as the 'Joint Charity Commissioner') seeking an enquiry

into the losses sustained by the Trust. In the said application, petitioners and respondent Nos.2 to 5 were arrayed as opponents. Prayer made was to fix responsibility for such loss sustained by the Trust and to take suitable action on the opponents including fastening of liability and suspension. The said application was registered as Application No.22 of 2018. Respondent No.1 also filed an application for interim suspension of the opponents.

10. It is stated that the opponents i.e., the petitioners filed their say to the application under Section 41D as well as to the application for suspension. Petitioners denied all the allegations made against them by respondent No.1 i.e., the applicant. Petitioners asserted that the decisions taken by the trustees were very much lawful and in the best interest of the Trust.

11. Joint Charity Commissioner framed three charges on 27.11.2018. Thereafter, respondent No.1 filed an application dated 30.11.2018 before the Joint Charity Commissioner praying that additional charges should be framed against the opponents. This application of respondent No.1 was opposed by the petitioners who filed their say on 07.12.2018. However, on 07.12.2018 itself, Joint Charity Commissioner framed four additional charges against the opponents. Petitioners have alleged that actually the additional charges were framed on 27.12.2018 but for reasons not known the said date was scored off and made 07.12.2018.

12. It is stated that though initially respondent No.1 had filed a *pursis* on 02.08.2018 that he would not adduce any evidence, surprisingly he filed his evidence on affidavit on 22.01.2019. Though advocate for the petitioners took objection to filing of such evidence on affidavit having waived his right to adduce evidence, Joint Charity Commissioner allowed the said evidence on affidavit and exhibited the same as Exhibit No.28.

13. Thereafter, examination-in-chief of the applicant i.e., respondent No.1 was

concluded whereafter he was cross-examined by the opponents i.e., petitioners on 07.05.2019, 09.05.2019, 20.05.2019 and 20.06.2019. After cross-examination was complete, there was no re-examination of respondent No.1.

14. After evidence on behalf of the applicant was closed, petitioners started adducing their evidence. Petitioner No.4 filed his evidence-in-chief by way of affidavit on 24.09.2019 whereafter his examination-in-chief was completed. He was thereafter subjected to cross-examination on 01.10.2019 and 09.10.2019.

15. An application was filed by the opponents i.e., petitioners on 14.11.2019 to issue witness summons to five persons to produce the documents mentioned against their names and on that basis to adduce evidence. Respondent No.1 opposed the said application by filing his say on 15.11.2019. The said application of the petitioners for summoning witnesses was marked as Exhibit 105.

16. After hearing the matter, Joint Charity Commissioner passed the order dated 19.11.2019 rejecting the application of the petitioners for summoning witnesses. Joint Charity Commissioner mentioned that the documents which were sought to be produced through those persons were actually in the custody of the Trust. Therefore, it was not necessary to issue summons to the five named persons. That apart, burden is on the original applicant i.e., respondent No.1 to prove the charges.

17. Aggrieved by the aforesaid order dated 19.11.2019, petitioners have preferred the present writ petition under Article 227 of the Constitution of India seeking the reliefs as indicated above.

18. Respondent No.1 has not filed any affidavit.

19. Learned counsel for the petitioners submits that Joint Charity

Commissioner was not justified in rejecting the application of the petitioners for summoning the five persons mentioned in the application as witnesses and for production of relevant documents in their custody. This would adversely affect the defence of the opponents (petitioners) in the proceeding under Section 41D of the Act. In fact, such rejection amounts to denial of fair hearing to the opponents, thus violating the principles of natural justice. He therefore submits that the impugned order may be set aside and direction be issued to the Joint Charity Commissioner to allow the prayer of the opponents for summoning witnesses along with documents.

20. On the other hand, learned counsel for respondent No.1 submits that there is no error or infirmity in the order dated 19.11.2019. Joint Charity Commissioner has given good reasons while rejecting the application. No final order has been passed in the Section 41D proceeding. Matter is at an interlocutory stage. At this stage no interference is called for. Writ petition being misconceived, is liable to be dismissed.

21. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

22. Section 41D of the Act deals with suspension, removal and dismissal of trustees. Sub-section (1) says that the Charity Commissioner may either on an application of a trustee or any person interested in the trust or on receipt of a report under Section 41B or *suo motu* may suspend, remove or dismiss any trustee of a public trust if the six conditions mentioned therein are attracted. Before proceeding to the six conditions it may be noted that Charity Commissioner is defined in Section 2(3) of the Act to mean the Charity Commissioner appointed under Section 3. While Section 3 deals with appointment of Charity Commissioner, Section 3A of the Act provides for appointment of Joint Charity Commissioner who shall exercise all or any of the powers and perform all or any

of the duties and functions of the Charity Commissioner. Further, Section 41B deals with power of Charity Commissioner or Deputy Charity Commissioner or Assistant Charity Commissioner to institute enquiry with regard to charities or a particular charity or class of charities either generally or for particular purposes. Such enquiry may be instituted either on a written complaint from any person having interest in respect of any public trust or *suo motu*.

22.1. Coming back to Section 41D of the Act, action against a trustee of a public trust for suspension, removal or dismissal by the Charity Commissioner may be initiated in the following manner:-

1. either on an application of a trustee or of any person interested in the trust; or
2. on receipt of a report under Section 41B of the Act; or
3. *suo motu*.

22.2. Such action may be initiated if a trustee of a public trust commits the following:-

- a. makes persistent default in the submission of accounts report or return;
- b. wilfully disobeys any lawful orders issued by the Charity Commissioner under the Act or Rules made thereunder;
- c. continuously neglects his duty or commits any *mal-feasance* or *mis-feasance* or breach of trust in respect of the trust;
- d. misappropriates or deals improperly with the properties of the trust of which he is a trustee; or
- e. accepts any position in relation to the trust which is inconsistent with his position as a trustee;
- f. if convicted of an offence involving moral turpitude.

22.3. However, Charity Commissioner may proceed against such person only when he finds that there is *prima-facie* material.

22.4. Sub-section (2) lays down the procedure which the Charity Commissioner

has to follow if he proposes to take action under sub-section (1). It includes issuance of notice to the trustee or the person against whom such action is proposed to be taken and submission of reply by such trustee or person. If there is no reply or if the reply is not satisfactory, the Charity Commissioner shall frame charges against such person(s). The person proceeded against shall have opportunity of meeting such charges and adducing evidence. The Charity Commissioner after considering the evidence adduced for and against the person(s) concerned, may pass order regarding suspension or removal or dismissal within three months from the date of framing of charge, which period is however extendable on recording reasons. Such an order shall be a reasoned order with finding on each charge. The Charity Commissioner has also the power to place the trustee proceeded against under suspension during the *interregnum*. In case of an order of suspension, removal or dismissal of a trustee, the Charity Commissioner has the power to appoint a fit person to discharge the duties and perform the functions of the trust; such person shall hold office till such time a trustee is duly appointed. An appeal lies to the Court against the order made under sub-section (1). The order of the Charity Commissioner shall, subject to any order of the court or in appeal, shall be final. 'Court' has been defined in Section 2(4) of the Act to mean the High Court of Judicature at Bombay.

23. This then is the scheme of Section 41D of the Act which has been invoked by respondent No.1 against the petitioners. The procedure is summary with emphasis on expeditious conclusion though principles of natural justice has to be complied with. Be that as it may, it is not necessary to delve into the allegations made by respondent No.1 against the petitioners in the application under Section 41D which has been registered as Application No.22 of 2018. Suffice it to say that on 27.11.2018 the Joint Charity Commissioner framed three charges; charge No.1 dealing with alleged illegal demolition and construction in the temple of Lord Siddheshwar; the second charge relates to not giving the shops constructed by the Trust on rental basis thereby causing loss to the Trust; and the third charge relates

to destruction of one eco pond while carrying out the construction.

24. Thereafter, four additional charges were framed by the Joint Charity Commissioner on 07.12.2018. Petitioners have stated that the initial date of framing additional charges was 27.12.2018 but the same was changed to 07.12.2018 by overwriting; '2' of '27' was overwritten as '0' to make it '07'. Though this may not have a bearing on the adjudication, however Court would like to emphasise that in case of any necessity to change date, there should be proper scoring off with initials. This will remove any misgiving that a litigant may have on such a count. Be that as it may, the four additional charges relate to non-submission of application for framing of scheme; non-conducting meetings and elections of the Trust; illegal cutting down of trees around the *Sabhamandap*; and starting construction of engineering college against directions of government.

25. It is seen that the applicant i.e., respondent No.1 has adduced evidence though initially he had stated that he would not tender evidence. This has been objected to by the opponents i.e., petitioners. Petitioners i.e., the opponents have started their evidence; petitioner No.4 Shri. R. S. Patil having already tendered his evidence as witness No.1 on behalf of the opponents and has also been cross-examined. It is however not very clear as to whether any of the other trustees would also depose before the Joint Charity Commissioner. Since evidence on behalf of the opponents has not been closed, it is open to the opponents to tender such evidence as is necessary for their defence.

26. It is in this context that the opponents i.e., petitioners filed the application to issue witness summons which was marked as Exhibit 105. It was stated therein that the said application was filed to issue witness summons to five persons for production of documents stated to be in their custody and to tender evidence in order to elucidate certain important technical aspects which have emerged in the course of the proceedings. The proposed witnesses were:-

1. Shri Shashikant Gandhi, Architect;
2. Shri Prakash Ashokrao Sanghve, Structural Designer;
3. Shri Avinash Sidhramappa Bidve, Architect, Civil Engineer and Contractor;
4. Shri Umesh Mallickarjun Jinkeri, Clerk, Siddheshwar Talaw Sudhar Samiti; and
5. Shri Channabasav Bapurao Nadgauda, Engineer and Chief Executive Officer, Siddheshwar Deosthan Education Committee.

26.1. The documents which were stated to be in the custody of those persons and which were considered relevant for production were mentioned below each of the persons. As already noted, this was opposed by the applicant by filing his say.

27. This application i.e., Exhibit 105 was rejected by the Joint Charity Commissioner vide the order dated 19.11.2019. Relevant portion of the order dated 19.11.2019 is extracted hereunder:

“9. So far as witness No.1 Architect Shashikant Gandhi and documents called from him are concerned, the witness R. S. Patil examined by the opponent has admitted on page-7 of Exh.101 that old Sabhamandap was in dilapidated condition. He can file documents showing condition of old Sabhamandap. Gandhi advised the trust to demolish the Sabhamandap. The trust can file advise letter given by Gandhi regarding demolition of Sabhamandap.

10. On page-3 of Exh.101 R. S. Patil has admitted that prior to construction of building for Women's College of Engineering, the trust had called quotations. He can file original documents regarding construction of said building. On page-5 the witness has admitted that prior to testing pit opinion of Civil Engineering, Bidve was taken. He can produce opinion of Civil Engineer regarding test pit. Engineer Bidve was appointed as construction supervisor. Architect Gandhi and Structural Designer Sanghve were also appointed by the trust. The trust paid digging charges of said test pit. He can file documents regarding said expenditure.

11. The admissions given by the witness examined by the opponents clearly indicates that the documents called from witness No.1 Shashikant Gandhi and witness No.2 Prakash Sanghve are in the custody of the trust and the witness has admitted to produce those documents. Therefore, it is

not necessary to issue summons to witness Nos.1 and 2 to produce documents.

12. So far as witness No.3 is concerned, he was appointed by the trust to supervise work of building site of Siddheshwar Women's College of Engineering, Solapur. As mentioned above the documents relating to said work are in the custody of the trust and the witness has admitted to file those documents. So it is not necessary to issue summons to witness No.3.

13. So far as witness No.4 is concerned, the documents called from him are not relevant for decision of the present case. Moreover, on page-8 the witness examined by the opponent has admitted that the trust has reduced height of eco-pond. The trust can file those documents. The trust is owner of eco-pond. The trust has passed resolution regarding consent for eco-pond. He can file those documents. Considering the admissions given by the witness it is not necessary to issue summons to witness No.4.

14. So far as witness No.5 is concerned, the documents called from him are regarding Siddheshwar Women's College of Engineering. The witness examined by the opponents has admitted that those documents are in possession of the trust and he can file those documents. Considering these facts I came to conclusion that it is not necessary to issue summons to witness No.5.

15. At this stage it would not be out of place to mention that since appearance of the opponents they have tried to prolong the matter. Filing present application is also one of the effort to prolong the matter. Charge was framed on 27-11-2018. Additional charge was framed on 07-12-2018. Burden is on the original applicant to prove the charges. The case is mostly based on documentary evidence. The parties have already examined one witness each. Hence, following order is passed.

ORDER

The application is rejected.”

27.1. In so far proposed witness No.1 and his documents are concerned, Joint Charity Commissioner took the view that witness Shri R. S. Patil of the opponent can file documents showing condition of the old *Sabha-mandap* and the advise letter given by Shri Shashikant Gandhi for demolition of *Sabha-mandap*. It has further been held that he can file original documents regarding construction of the building for Women's College of Engineering as well as the opinion of Civil Engineer regarding test pit. Further, he can also file documents regarding the

expenditure incurred in the said test pit. Documents sought from proposed witness Nos.1 and 2 are in the custody of the Trust which the witness had admitted he would produce. Therefore, a view was taken that it was not necessary to issue summons to proposed witness Nos.1 and 2 to produce the mentioned documents. Similarly, proposed witness No.3 was appointed by the Trust to supervise the building work of Siddheshwar Women's College of Engineering, Solapur. Documents relating to the said work are in the custody of the Trust. Witness R. S. Patil of the opponents had stated that he would file those documents. Therefore, it was considered not necessary to issue summons to him. Joint Charity Commissioner also took the view that documents sought to be called for from respondent No.4 are not relevant for the purpose of the present case. Trust is the owner of the eco pond. Trust can file the related documents through witness R. S. Patil. Therefore issuing summons to proposed witness No.4 was not necessary. Regarding proposed witness No.5, the documents sought to be called for from him are in the custody of the Trust; witness R. S. Patil can file those documents. In such circumstances, it was considered not necessary to issue summons to him.

27.2. Before concluding Joint Charity Commissioner referred to framing of charges and additional charges and the fact that the burden is on the original applicant to prove the charges, the case being based mostly on documentary evidence. In the circumstances, Joint Charity Commissioner rejected the application. However, while doing so he made an observation that since their appearance, opponents have tried to prolong the matter. This was really not necessary and could have been avoided. A person proceeded against under Section 41D of the Act has the right to adduce evidence. Opponents had only invoked such a right. Therefore, such an observation would not have any bearing on the adjudication of Application No.22 of 2018.

28. Thus, on a careful consideration of the impugned order dated 19.11.2019 Court finds no error or infirmity to warrant interference. View taken by the Joint

Charity Commissioner is a plausible and a reasonable one. Though a second view may be possible it does not render the decision taken bad in law. Admittedly adjudication of Application No.22 of 2018 is not complete; matter is at an interlocutory stage. Therefore, interference at this stage is not called for, having regard to the scheme of Section 41D of the Act. That apart, jurisdiction under Article 227 is not to be invoked in a routine manner, that too, at an interlocutory stage.

29. Since matter is still at the stage of adducing evidence, as indicated in the impugned order, it is open to the opponents to bring on record all the relevant documents and prove the same including the contents thereof in accordance with law. All contentions are kept open.

30. Therefore, on overall consideration Court finds no good ground to interfere with the impugned order dated 19.11.2019.

31. Consequently, the writ petition is dismissed. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

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