

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

WRIT PETITION NO.306 OF 2020

Mataprasad Durgaprasad Rai & Ors.	..Petitioners
vs.	
Girish Mulji Vora & Anr.	..Respondents

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Mr. Amol Kumeria i/b. Abhishek Prabhu, Advocate for Petitioners.
Mr. Rajan V. Thakkar, Advocate for Respondent No.1.
Mr. P. P. Pujari, AGP for Respondent No.2 / State.

**CORAM : C.V. BHADANG, J.
DATE : 14th JANUARY, 2020**

P.C.

. The challenge in this petition is to the order dated 22/11/2018 (below Exhibit 19) passed by the Joint Charity Commissioner, Mumbai in Application No.479/2017.

2. By the said order, the Joint Charity Commissioner has refused to uphold, a preliminary objection raised by the petitioners (the original respondents), to the maintainability of the application under Section 41-D of the Maharashtra Public Trusts Act, 1950 ('Act' for short) filed by the first respondent.

3. The only contention raised on behalf of the petitioner is that the said application is filed by the first respondent in his capacity as a tenant of the said trust. Reliance is placed on the decision of this Court in the case of **S. H. Jawandhiya & Ors. vs. Onkareshwar Birbal Prasad Mishra 1996(2) Mh.L.J. 897** in order to submit that this

Court has held that a tenant is not a person interested within the meaning of Section 2(10) of the said Act. It is thus submitted that the application under Section 41-D of the said Act is not maintainable.

4. Learned counsel for the petitioners strenuously urged that it is for the first time in the reply filed by the first respondent to the preliminary objection that the first respondent has claimed that he is a devotee of the temple and a regular visitor as well as donor. It is contended that no such case is made out in the original application filed under Section 41-D of the Act. He therefore submits that the said case made out in the reply to the preliminary objection is by way of an after thought and thus cannot be accepted.

5. Secondly, it is contended that there were certain proceedings between the parties before the City Civil Court in which the petitioner is contesting the status of the first respondent as a tenant and on account of certain adverse orders passed in that litigation, the present application under Section 41-D is filed by way of counter blast. Except these, there are no other contentions raised.

6. Learned counsel for the first respondent has submitted that although the first respondent has stated that he is a tenant of the trust, there is a specific averment made in the reply to the preliminary objection that the first respondent is also a devotee, visitor and a donor of the temple. For this, learned counsel for the petitioner has pointed out the location of the shop of which the first respondent is a tenant in order to submit that the shop is located just adjacent to the temple and therefore the first respondent was

taking active part in the religious celebrations as also in the religious activities in the temple. Learned counsel submitted that in any event the issue whether, the first respondent is a person interested within the meaning of Section 2(10) of the Act is a matter of evidence and cannot be decided by way of preliminary objection.

7. I have considered the circumstances and the submissions made.

8. Learned Joint Charity Commissioner has accepted on the basis of the decision of this Court in the case of **S. H. Jawandhiya** (supra) that a tenant is not a person interested within the meaning of Section 2(10) of the Act. The question is whether in the capacity as a devotee or a regular visitor of the temple, the first respondent can claim to be a person interested. It hardly needs to be stressed that even a tenant, if he is otherwise a person interested as defined under Section 2(10) of the Act, he would be able to make an application under Section 41-D of the Act. It is only when the person viz a tenant and who otherwise do not fall under any of the categories as mentioned in Section 2(10) of the Act, would be disentitled to file such application. However, a person who otherwise falls within the definition of the person interested, under Section 2(10) of the Act would not be precluded from filing such application only because otherwise he is a tenant also of the trust.

9. Here, albeit in the reply to the preliminary objection, the first respondent has made out a case that he is a devotee and donor and regular visitor of the temple.

10. Section 2(10)(a) of the Act, which is relevant for the purpose, reads thus.

Section 2(10) -“person having interest” includes -

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the distribution of gifts thereof.

11. Learned counsel for the first respondent in my considered view is right in stating that the question whether the first respondent can be said to be an interested person within the meaning of Section 2(10) of the Act, is a matter of evidence and cannot be decided by way of preliminary issue. That apart, Section 41-D would indicate that in a given case, the Charity Commissioner can even initiate proceedings under section 41-D of the Act *suo-motu* if a case is made out to that effect. Thus, considering over all circumstances, no case for interference is made out. The petition is dismissed with no order as to costs. The rival contentions of the parties are left open.

C.V. BHADANG, J.