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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.163 OF 2019
WITH
CIVIL APPLICATION NO.564 OF 2019

AND
INTERIM APPLICATION NO. 1 OF 2019
IN
CIVIL APPLICATION NO.564 OF 2019

Tukaram S. Sakpal & Ors.	...Appellants
V/s.	
Kondiba K. Utekar & Ors.	...Respondents

Mr.R.A. Thorat, Senior Counsel with Mrs.Gaurai Jadhav i/b
Mr.Gorakhanath C. Sawant for the Appellants / Applicants.

Mr.P.D. Dalvi with Mr.Tushar L.Pimpale for the Respondent Nos.9-A,
13-A and 14-C.

CORAM : R.D. DHANUKA, J.
DATE : 7TH JANUARY, 2020.

P.C. :-

1. By this first appeal, the appellants (original respondents to the application filed under section 41-E of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as "MPT, Act"), the appellants have impugned the order dated 11th January, 2019 passed by the learned Joint Charity Commissioner, Pune in Application No.55 of 2017 filed by the respondent nos.1 and 2 under section 41-E of the MPT Act.

2. The respondent nos.1 and 2 filed the said application bearing No.55 of 2017 against the appellants *inter-alia* praying for

injunction against the appellants on the ground that the respondents were creating obstructions in the affairs of the Trust which was registered prior to the date of registration of the appellant Trust.

3. Mr.Thorat, learned senior counsel appearing for the appellants invited my attention to the Application No.55 of 2017 filed by the respondent nos.1 and 2 under section 41-E of the MPT Act and also strongly placed reliance on section 41-A of the MPT Act and would submit that the said application was not at all within the parameter of section 41-E of the MPT Act. The allegations though being vague against the appellants, learned Joint Charity Commissioner passed an order of injunction in the said application filed by the respondent nos.1 and 2 without application of mind and beyond the powers of the Joint Charity Commissioner under section 41-E of the MPT Act.

4. Learned senior counsel for the appellants submits that for last several years, the appellants have been performing pooja and have been carrying on prayers inside the temple of Utteshwar Dev, situated at Walane is concerned. The respondent nos.1 and 2 thus could not have prayed for any injunction against the appellants from performing pooja or carrying on prayers in the said temple situated at Walane.

5. Learned senior counsel for the appellants invited my

attention to the scheme propounded by the appellants, sanctioned by the Assistant Charity Commissioner in Scheme Application No.11 of 2016 and also an order passed by the learned Assistant Charity Commissioner, Satara Region on 19th May, 2018 below Exhibit 1 in Change Report No.1717 of 2017 and would submit that the fact that the change report submitted by the appellants in respect of M.P.T.R. No.A/1406/Satara having been approved by the Assistant Charity Commissioner, Satara clearly indicates that the appellant Trust is duly registered and was thus eligible to perform pooja and carry on prayers in the said temple.

6. Mr.Dalvi, learned counsel appearing for the respondent nos.1 and 2 on the other hand submits that the said scheme sanctioned by the Assistant Charity Commissioner in Scheme Application No.11 of 2016 propounded by the appellants was in respect of M.P.T.R. No.A-1406/Satara, whereas the Trust formed by the respondent nos.1 and 2 was bearing No.A-1403 and was admittedly registered prior to the registration obtained by the appellants. He submits that the said order would indicate that the applicants who had applied for sanction of the scheme are all resident of village Gavdoshi, Taluka Mahabaleshwar, District Satara, whereas Devasthan premises in which pooja has been performed by the respondent nos.1 and 2 for last several decades are resident of village Walane. He invited my attention to paragraph 11 of the said order passed by the Assistant Charity Commissioner and would submit that even the said order would clearly indicate that every

villager who is devotee and is resident of village Walane is entitled to become trustee or to participate in the process of electing board of trustees. He submits that none of the appellants are resident of village Walane, Grampanchayat Walane and even otherwise cannot create any obstruction in the respondent nos.1 and 2 performing pooja and carrying on prayers which is being carrying on for last several decades.

7. The appellants are admittedly the resident of village Walane. Grampanchayat Walane had issued Namuna 8 in respect of Grampanchayat property no.54 which indicates that the same was recorded in the name of Utteshwar Devalay admeasuring 25 x 20 ft. having 14 gunthas open space. Learned Joint Charity Commissioner placed reliance on the certificate issued by the Secretary, Grampanchayat, Walane which also indicated that Grampanchayat property no.54 was in survey no.53. 7/12 extract indicates that survey no.53 was in the name of Utteshwar Devalay in which Vitthal Laxman Sapkal is shown as Vahivatdar, who was one of the trustee of Trust no.A-1403.

8. Mr.Thorat, learned senior counsel for the appellants could not point out any material to counter the findings rendered by the learned Joint Charity Commissioner and more particularly paragraph 20 of the impugned order dated 11th January, 2019. Mr. Dalvi, learned counsel for the respondent nos.1 and 2 on instructions states that his clients have no objection if the appellants also come to the

temple and pray from inside the temple without causing any obstruction to other devotees. Statement is accepted.

9. Insofar as the submission of the learned senior counsel that the impugned order is not within the parameter of section 41-E of the MPT Act is concerned, perusal of the application filed by the respondent nos.1 and 2 under section 41-E of the MPT Act clearly indicates that the apprehension of the respondent nos.1 and 2 that their registered Trust having been performing pooja and carrying out procession for last several decades, the applicants may create obstruction is justified. The learned Joint Charity Commissioner rightly exercised powers under section 41-E of the MPT Act. I do not find any infirmity in the order passed by the learned Joint Commissioner. The appeal is devoid of merit and is accordingly dismissed.

10. In view of dismissal of the first appeal, Civil Application No.564 of 2019 and Interim Application No.1 of 2019 do not survive and are accordingly disposed of.

(R.D. DHANUKA, J.)