

pvr

909wp7206-21.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7206 OF 2021

Smt.Manda Vasant Bhangire & Anr. ... Petitioners

V/s.

Mr.Kalidash Tukaram Ghule & Ors. ... Respondents

Mr.Surel Shah i/b. Mr.Abhishek Deshmukh, for the Petitioners.

Mr.Siddhartha R.Ronghe, for Respondent Nos.1 to 6 & 8.

Mr.S.H.Kankal, AGP for the State.

CORAM : G. S. KULKARNI, J.

DATE : 28 October, 2021

PC :

1. Heard Mr.Shah learned Counsel for the petitioners and Mr.Ronghe, learned Counsel for respondent nos.1 to 6 & 8.

2. Challenge in this petition is to an order passed below Exhibit 3 in Application no.34 of 2021 filed by respondent nos.1 to 6 and 8 under Section 41E of the Maharashtra Public Trust Act,1950. By the impugned order, the petitioners are restrained by a temporary injunction from entering into the trust property and carrying out encroachment whatsoever nature over the trust property Survey No.24 till further order. It is also directed that the petitioners or anybody on behalf of them are restrained from running any business in the name and style PUB-24 over the trust property. There is also a temporary injunction restraining the petitioners from creating third party interest in the trust property Survey No.24. In passing

such order, the learned Joint Charity Commissioner has referred to paragraphs (3) and (9) of the earlier order which was passed against the petitioners of an injunction of a similar nature. It is on such basis, the impugned order has been passed.

3. Mr.Shah has several contentions in assailing the impugned order passed by the Joint Charity Commissioner. He submits that the petitioners are carrying on business on the property which is not a trust property and which has been declared as Imam land and which is subject matter of independent litigation. He submits that considering the nature of the order, such an order ought to have been passed only after hearing the petitioners and there was no need for the Joint Charity Commissioner to pass an ex-parte order.

4. Mr.Ronghe, learned Counsel, who has instructions to appear for respondent nos.1 to 6 and 8. He submits that the order is a reasoned order, in the fact situation the petitioner could have approached the authority-the Joint Charity Commissioner making an application for vacating of said order or file an appeal as provided under sub-section 5 of Section 41E.

5. Having heard the learned Counsel for the parties and having perused the impugned order, in my opinion, there are two remedies available for the petitioners, either to make an application to the Joint Charity Commissioner for vacating the impugned order, or to file an appeal pointing out the rights of the petitioners to undertake the business in the premises of which there is now a temporary injunction restricting them by the impugned order and/or espousing the remedy of an appeal under sub-section (5) of Section 41E of the Act, which clearly provides that a trustee

or a person against whom “order of injunction” or “any other order” under Section 41E is passed, has a remedy to file appeal before the Court, within ninety days of the date of communication of such order. In view of the above clear provision in law, in my opinion, it is not appropriate for this Court to exercise jurisdiction under Article 226 or 227 of the Constitution.

6. The petition is accordingly disposed of, however, with liberty to the petitioners to take recourse to the remedies as available in law. All contentions in that regard are expressly kept open.

7. In case the petitioners file an appropriate proceedings, the petitioners would certainly be at liberty to request such forum to take up the proceedings as expeditiously as possible.

8. It is clarified that I have not examined the merits of the rival contentions of the parties.

9. Mr.Ronghe, learned Counsel states that he would file vakalatnama for respondent nos.1 to 6 within one week from today.

(G. S. KULKARNI, J.)