IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION (WP) NO.7686 OF 2019

PETITIONERS : 1. Methodist Episcopal Church,
Civil Lines, Near V.C.A. Nagpur through its trustee

Original N.A.

2. John Mathew David S/o Moses David,
aged about 68 years, President, Occupation Retired, R/o-86, Mecosabagh, Christian Colony, P.O. Bezanbagh, Nagpur-440004.

3. Gireesh S. Biwalkar S/o Sumant Biwalkar,
aged about 68 years, Vice-President, Occupation Retired, R/o Aasma Inclave-III, 27/28, Flat No.101, Ratan Nagar, Koradi Road, Nagpur-440030.

4. Anil Vimal Das S/o Vimal Kumar Das,
aged about 48 years, Secretary, Occupation Service, R/o 47, Rathore Layout, Near Anant Nagar, Nagpur-440013.

5. Ajay Manoharrao Waghchoure,
aged about 40 years, Treasurer, Occupation Service, R/o St. Ursula Compound, Civil Lines, Nagpur-440001.

6. Mrs. Asha Avinash Landge,
aged about 45 years, Occupation House wife, Member, R/o-c-203, Ekdant Apartment, Genesh Nagri, Near H.P. Petrol Pump, Koradi Road, Nagpur-441111.

7. David A. John S/o Andrew John,
aged about 57 yrs, Occupation Business, Member, R/o-7-Jai Bajrang Society, Seminary Hills, Nagpur-440006.

8. Vinod S/o Durlabhnand Pramanik,
aged about 50 yrs, Occupation Business, Member, R/o Prem Nagar Road, Itwari, Bastarwari, Nagpur-440002.

9. Mrs. Lilly Christina Das W/o Vimal K. Das,
aged about 64 yrs, Occupation Retired, Member, R/o 47-F, Rathore Layout, Nagpur-440013.

10. Mukund S/o Hansraj Kakade,
aged about 45 years, Joint Secretary, Occupation Service, R/o Giripeth, Nagpur Near R.T.O. Office, Nagpur.

11. Chandrahas S/o Marcus Chawan,
Aged about 67 years, Occupation Retired, Member, R/o Akar Nagar, Katol Road, Nagpur.

--***VERSUS***--

RESPONDENTS : 1. The Secretary to the Government of Maharashtra, Law & Judiciary Department, Mantralaya, Mumbai-32, through Joint Charity Commissioner, Nagpur, Near Hydrabad House, Civil Lines, Nagpur-440001.

Original Appl.

2. The Methodist Church in India, Through its General Secretary, Methodist Centre, 21, YMCA Road,

Mumbai Central, Mumbai-8.

3. The District Superintendent, Methodist Church in India, Mecosabagh, Tahsil & District Nagpur duly authorized representative of the applicant No.1.

4. Ind Synergy Limited,
Formerly Known as Ind Agro Synergy Limited, Through its Director, Satish Murarilal Goel, Lotus Court, Near V.C.A. Civil Lines, Nagpur

5. Shri Satish Murarilal Goel,
aged about 65 years, Occupation Business, Resident of Lotus Court, Near V.C.A., Civil Lines Nagpur

6. Shri Aditya Satish Goel,
aged about 40 years, Occupation Advocate, R/o Lotus Court, Near V.C.A., Civil Lines, Nagpur.

7. Mrs. Uma w/o Satish Goel,
aged about 55 years, Occupation Business, R/o Lotus Court, Near V.C.A., Civil Lines, Nagpur.

8. M/s. Jagdamba Roller Flour Mills Pvt. Ltd. Through its Authorized Signatory Shri Pradeep Kumar, s/o Prabhudayal Agrawal, R/o Lotus Court, Near V.C.A., Civil Lines, Nagpur.

9. M/s Uma Plantations Pvt. Ltd., Through its Authorized Signatory Shri Pradeep Kumar Agrawal, R/o Lotus Court, Near V.C.A., Civil Lines, Nagpur.

10. The Executive Board of Methodist Church in India through its Secretary,

Methodist Centre, 21-YMCA Road, Mumbai Central, Mumbai-8.

Shri. K. K. Pillai, Advocate for the Petitioners
Ms. M. A. Barabde, AGP for Respondent No.1
Shri. S. P. Dharmadhikari, Senior Advocate a/b Shri. A. Goel, Advocate for the Respondent Nos.2 to 9.

CORAM : **N. B. SURYAWANSHI, J.**
RESERVED ON : **05.10.2021**
PRONOUNCED ON : **29.10.2021**

JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioners challenge the order dated 04.10.2019 (Annexure-M) passed in Revision Application No.6 of 2019 by the Joint Charity Commissioner, Nagpur, thereby dismissing Inquiry Application at Exh-1 for registration of Petitioner No.1/Church as a Public Trust and setting aside the order passed by the Deputy Charity Commissioner, Nagpur in Inquiry Application No.901 of 2007 dated 08.07.2008.

3. The facts, leading to this Petition in short, are that :

The Petitioner No.1/Church is established in the year 1870 at Nagpur by American Evangelists Like William Taylor. In the year 1880, the “Religious Societies Act 1880” (for short, “the Act of 1880”) came into existence. The Petitioner No.1/Church was managed, controlled and administered by the Trustees appointed/elected under the provisions of the Act of 1880. The Trustees of Petitioner No.1/Church purchased a property at Civil Lines, Nagpur from Dr. Rev. Alexander Garden Frazor vide sale deed bearing Registration No.20 dated 23.03.1886. The Church also took on lease 45 Acres Nazul Land at Wadpakad, Indorea and Jaripatka in the year 1924. After the independence, the four Trustees, who purchased the land either expired or left India and their address is not known.

The Executive Board of Methodist Church/Respondent No.2/Church in Southern Asia came

to be registered vide Registration No.1155 of 1942-43 under the provisions of Societies Registration Act, 1860 as well as under the Bombay Public Trust Act, 1950 vide Registration No.F-405 (Bom.) in the year 1954. Change Report No.2974 of 1965 came to be filed by Respondent No.2/Church to add the properties belonging to Petitioner No.1/Church in its Schedule-I, which according to the Petitioners, was done behind the back of Petitioner No.1/ Church. The Assistant Charity Commissioner, Bombay vide order dated 15.03.1967 added the properties of Petitioner No.1/Church in Schedule-I of Respondent No.2/ Church, which according to the Petitioners was done without conducting an inquiry as contemplated under the provisions of the Maharashtra Public Trust Act, 1950 (for short, “the M.P.T. Act, 1950”) and Rules. By Change Report No.1108 of 1882, Respondent No.10/Church came to be renamed as “Executive Board of Methodist Church in India.” The Respondent No.2/Church decided to sell 9702 sq.mtrs of land out of 15276.80 sq.mtrs of land bearing Survey No.1677, Khasara No.177, situated near V.C.A., Civil Lines, Nagpur in the year 2000. Permission

for sale was sought from the Joint Charity Commissioner, Bombay. vide order dated 04.12.2002, permission was granted to sell 9702 sq.mtrs of land to Respondent No.4/Ind Synergy Limited under certain terms and conditions. The order contains a condition that the entire sale transaction should be completed within a period of six months from the date of order, the same was not complied with and the sale deeds were executed in the months of January and May, 2004. According to the Petitioners, the sale deeds so executed beyond the stipulated time were *Void Ab Initio*. The Joint Charity Commissioner, Bombay granted permission to sell 9702 sq.mtrs. of land belonging to Petitioner No.1/Church, without verifying title deed of the said land. As per the title deed produced before the Joint Charity Commissioner, Bombay alongwith Application for permission, the said properties stood in the name of Petitioner No.1/Church, no opportunity of hearing was given to Petitioner No.1/Church. The Assistant Charity Commissioner, Bombay, therefore deleted 9701 sq.mtrs. of land from Schedule-I of Respondent No.2/Church in the

year 2004. According to the Petitioners, Respondent No.2/Church sold 8367 sq.mtrs. of land by virtue of eight sale deeds executed in the months of January and May, 2004. When the Respondent Nos.4 to 9, who purchased the property started demolishing the bungalows and servant's quarters in 9702 sq.mtrs. of land during the month of November/December, 2005, the Petitioners came to know on inquiry that Respondent No.2 has sold a portion of the Church land to Respondent Nos.4 to 9 illegally, without any right or authority of law.

According to the Petitioners, by a notice dated 20.04.2007, a meeting of congregation was called in the premises of the Petitioner No.1/Church, it was resolved to register the Trust under the provisions of the Bombay Public Trust Act, 1950 (for short, "the B.P.T. Act,1950"). A Managing Committee of 11 trustees was also elected.

The Petitioners thereafter filed an Application in the prescribed profarma on 02.08.2007 to register the Trust under the provisions of the B.P.T. Act, 1950.

A Regular Civil Suit No.1010 of 2007 is also filed by the Petitioners for restoration of the possession of 9702 sq.mtrs. of land, cancellation of sale deeds and for other ancillary reliefs.

After receiving the Application for registration of Trust by the Petitioners, a public notice was published in local News Paper calling objections, if any. The Respondent Nos.2 and 3 filed their objections to include the property in Schedule-I of Petitioner No.1/Church. The Objectors (Respondent Nos.4 to 9) also filed their objections. The Objectors contended that Petitioner No.1/Church merged with Respondent No.2/Church and in view of process of unification, the properties owned and possessed by the Methodist Episcopal Church stood vested without any conveyance in Methodist Church in Southern Asia as its new Trustees. It was alleged that unification took place in the year 1939, when the Methodist Episcopal Church merged with Methodist Church. It is also alleged that the ownership over the properties of Petitioner No.1/Church was claimed by

relying on the order dated 15.03.1967. Therefore, the Objectors/Respondents prayed for dismissal of Inquiry No.901 of 2007 by filing an Application (Exh-30).

The Objectors/Respondents allegedly gave consent to register Methodist Episcopal Church under the provisions of the B.P.T. Act, 1950 on the condition not to include the disputed immovable properties of Petitioners Trust in Schedule-I of Petitioner No.1/Church. No objection was given to register the Trust leaving the disputed immovable property admeasuring 9702 sq.mtrs., since the Civil Suit was pending. The registration Application was partly allowed and Petitioner No.1/Church was registered bearing Registration No.E-2154(N) as a Trust under the provisions of B.P.T. Act, 1950, on 08.07.2008.

The Respondent Nos.2 and 3 challenged the order dated 08.07.2008 by filing Revision Application No.6 of 2009 under Section 70-A of the M.P.T. Act, 1950, contending that they did not give consent to register the

Petitioner No.1/Church, while arguing Exh-30 and the same is wrongly mentioned in the impugned order. The said revision was opposed by the Petitioners raising objection to the maintainability and on other grounds, the Petitioners also filed two counter appeals with a prayer to add remaining 5574 sq.mtrs. of land in possession of the Petitioners in Schedule-I of the Petitioner No.1/Church. The Petitioners filed various documents to establish its possession of 5574 sq.mtrs. of land. A copy of sale deed (Exh-256) in Regular Civil Suit No.1010 of 2007, Schedule-I of F-405 and the Application filed by Respondent No.2/Church was filed on record. The Joint Charity Commissioner, Nagpur, however, by the impugned order set aside the judgment and order dated 08.07.2008 passed by the Deputy Charity Commissioner, Nagpur and dismissed the Application filed by the Petitioners for registration of Petitioner No.1/Church. This order is impugned in the present petition.

4. Heard Shri. K. K. Pillai, learned Advocate for the Petitioners, Shri. S. P. Dharmadhikari, learned Senior

Advocate for the Respondent Nos.2 to 9 and Ms. M. A. Barabde, learned Assistant Government Pleader for Respondent No.1

5. Shri. K. K. Pillai, learned Advocate for the Petitioners strenuously submitted that the Joint Charity Commissioner, Nagpur has recorded perverse findings in the impugned order. He has failed to take into consideration the documents placed on record by the Petitioners and by misinterpreting the same, the impugned order is passed. He submitted that taking into consideration the prayers made in Regular Civil Suit No.1010 of 2007 by the Petitioners/Plaintiffs, declaration of title is not claimed by the Petitioners. The suit is only in respect of property admeasuring 9702.61 sq.mtrs. of land. The remaining land i.e. 5574.80 sq.mtrs. is in possession of the Petitioners. He submits that Section 2(13) of the B.P.T. Act, 1950 provides definition of Public Trust and Church is included in the definition of Public Trust. Therefore, the Trust exists and it is a Public Trust. He further submitted that the Joint Charity Commissioner

has recorded a perverse finding that corpus is required in the form of movable or immovable property and since the title of Methodist Episcopal Church relating to immovable property is not decided, the Petitioners Trust does not have any immovable property. The Civil Suit in that behalf is pending. He further submitted that the Joint Charity Commissioner further recorded erroneous finding that cash of Rs.11,000/- was not received from original Applicant. Further he submitted that Rs.1,000/- each was paid by 11 Trustees of Petitioner No.1/Church towards membership fees, it is the corpus of the Church/ Trust, which is deposited in Alahabad Bank. This aspect is ignored by the Joint Charity Commissioner. The finding of the Joint Charity Commissioner that there is no corpus of Petitioner No.1/Church is perverse since the same is contrary to the documents placed on record. The Joint Charity Commissioner has failed to consider the fact that the land admeasuring 5574 sq.mtrs. is in possession of the Petitioners. Thus, there is also movable property with Petitioner No.1/Church. This aspect is also ignored by the Joint Charity Commissioner. Hence, the impugned

order is unsustainable on that count also. In support of these submissions, he placed reliance in Appendix-II and Appendix-III annexed by the Petitioner No.1/Church to the Application filed seeking registration of Petitioner No.1/Church under the provisions of the B.P.T. Act, 1950. In light of these documents, the learned Advocate for the Petitioners submits that a finding recorded by the Joint Charity Commissioner that no Trust exists is perverse. He also relied on tax receipts etc. submitted on record in Revision Application.

By placing reliance in Section 18 of the M.P.T. Act, 1950, he submits that no Trust deed is contemplated by the said provision. The Petitioners have already applied in the prescribed profarma (Annexure-D) alongwith necessary documents including the Rules and Regulations of the Trust, Resolutions passed in the General meeting and the list of movable articles (Appendix-II) and description of immovable property (Appendix-III). He further submitted that all the requirements mentioned in Section 18 are complied with

by the Petitioners. The findings recorded by the Joint Charity Commissioner in the impugned order are perverse. By relying on Section 18(6)(a), he submitted that the matter could have been remanded back by the Joint Charity Commissioner. He therefore submits that the impugned order is liable to be quashed and set aside by allowing the Writ Petition.

6. Shri. S. P. Dharmadhikari, learned Senior Advocate for the Respondent Nos.2 to 9 submitted that the Respondent No.2/The Methodist Church in India, is a registered Public Trust. The disputed property/suit property is 15276 sq.mtrs. land. As 9702 sq.mtrs portion from the said property was to be alienated, a permission was sought from the Deputy Charity Commissioner. In fact, this property is reflected in Schedule-I of Respondent No.2/Church since the year 1966. On 04.12.2002, Respondent No.2/Church was permitted to alienate 9702 sq.mtrs. of land from the suit property. By taking me through the pleadings of Civil Suit, he submits that title to the suit property is challenged in the said

suit. According to him, the definition of the Public Trust in Section 2(13) creates a express Trust. Section 2(7A) contemplates instrument of Trust. According to him, merely because a resolution is passed by the Petitioners, it does not create a Trust and the Joint Charity Commissioner was justified in stating that the instrument of the Trust is must for creation of Trust. By relying on the order passed in Appeal Against Order No.23 of 2008, he submits that the Joint Charity Commissioner was justified in holding that “the real dispute raised in the plaint by the plaintiffs is about ownership of the suit property. However, it is pertinent to note that no relief of declaration of title over the suit property has been claimed by the plaintiffs.” He further submits that no documents were placed on record to show that Rs.11,000/- was a corpus of the Petitioner No.1/Church. According to him, since the property stands in the name of Respondent No.2/Church in India, there is no immovable property in possession of the Petitioners, and therefore, the Joint Charity Commissioner has rightly held that there is no corpus of Petitioner No.1/Church.

According to him, the revisional powers under Section 70A of the M.P.T. Act, 1950 were rightly exercised by the Joint Charity Commissioner. He further submits that the Petitioners have failed to point out that there is any perversity or illegality in the order impugned in this petition and the same is liable to be dismissed. He submits that there is no merit in the Writ Petition and the same may be dismissed.

7. The learned Assistant Government Pleader supported the order passed by the Joint Charity Commissioner.

8. The learned Senior Advocate for Respondent Nos.2 to 9 submitted that this Court quashed the entry of deleting the property from Schedule-I of Respondent No.2. Therefore, the suit property/disputed property is restored in Schedule-I of Respondent No.2. He therefore submitted that there is no merit in the petition and the same is liable to be dismissed.

9. In reply, the learned Advocate for the Petitioners submitted that by way of a resolution, Trust deed is executed by the Petitioners and execution of Trust deed is not a requirement of law. According to him, passing a resolution and framing Rules and Regulations to create a Trust fulfills the requirement.

10. Admittedly, as per the order dated 15.03.1967, passed in Change Report No.2974 of 1965, the properties belonging to Petitioner No.1/Church were added in Schedule-I of Respondent No.2/Church. This order has become final and at no point of time, the same is challenged. By order dated 04.12.2002, permission was granted to Respondent No.2/Church to sell 9702 sq.mtrs. of land out of total 15276.80 sq. mtrs. Accordingly, property admeasuring 9701 sq.mtrs. was sold and the same was deleted by the Assistant Charity Commissioner from Schedule-I of Respondent No.2/Church in the year 2004. Even this order granting permission to sell the property and deletion of the property which is sold from Schedule-I are not questioned before any Competent

forum till date. In this view of the matter, it is clear that there is no property belonging to the Petitioner No.1/Church. The immovable and movable properties, which the Petitioners claimed to be in possession are recorded in Schedule-I of Respondent No.2/Trust, and therefore, it is not possible to accept the contentions of the Petitioners that they are in possession of the said property. The evidence led by the Petitioner No.1/Church does not indicate that an amount of Rs.11,000/- was raised to form corpus of the proposed Trust. Though, the Petitioners claimed that unification/merger of the properties of the Petitioner No.1/Church with Respondent No.2/Church is in contravention of the Indian Registration Act, 1908, the Maharashtra Stamp Act, 1958 and the Transfer of Property Act, 1882, in absence of challenge raised in that behalf by anybody or by the Petitioners. The said argument is unacceptable.

11. It is a matter of record that Regular Civil Suit No.1010 of 2007 is filed by the Petitioners claiming title of the property in question (15276.80 sq.mtrs.) bearing

City Survey No.1677, Mouza Sitabuldi, Nagpur and Main Bungalow admeasuring 5955.1679 sq.ft.

12. The Deputy Charity Commissioner at the time of considering the Application filed by the Petitioners under Section 18 was expected to ascertain as to whether a Trust as is claimed by the Petitioners exists and whether such a Trust is a Public Trust, whether any property is the property of Petitioner No.1/Trust and the origin nature and object of the Trust. This exercise is not properly conducted by the Deputy Charity Commissioner, therefore, the order passed by him is unsustainable.

13. As per Sub-section 13 of Section 2 of the said Act, to constitute a Public Trust, it is important that there must be a Trust for charitable purpose and there must be a property held by the Society. In the present case, *prima facie*, it is evident from the record that the immovable property which is claimed to be owned and possessed by the Petitioners is recorded in Schedule-I of the Respondent No.2/Trust. The Deputy Charity

Commissioner by relying on Section 2(13) held that 'Church' is included in the definition of Public Trust, and therefore, he has drawn a conclusion that the Trust exists and the same is a Public Trust. He has ignored the admitted position on the record that the entire property claimed by the Petitioner No.1 is in Schedule-I of Respondent No.2/Church. Therefore, the order passed by the Deputy Charity Commissioner is not sustainable and is rightly set aside by the Joint Charity Commissioner.

14. On the basis of material placed on record, the Joint Charity Commissioner was right in coming to the conclusion that there is no corpus in the form of movable or immovable property with the Petitioner No.1/Church. The finding recorded by the Joint Charity Commissioner that the title of the Petitioner No.1/Church in respect of immovable property is yet to be decided and the suit is pending before the Civil Court and the immovable property is undisputedly recorded in Schedule-I of Respondent No.2/Church are in consonance with the record. The Joint Charity Commissioner was also justified

in holding that no document is filed on record to show that payment of Rs.11,000/- is made to the proposed Church.

15. For the aforestated reasons, this Court is of the opinion that there is no error committed by the Joint Charity Commissioner, while passing the impugned order. The impugned order is based on relevant material placed on record by the parties. No illegality or perversity is found in the order passed by the Joint Charity Commissioner. No merit is found in the petition and the same is hereby **dismissed**.

Rule discharged with no order as to costs.

JUDGE

TAMBE