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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4440 OF 2022**

Sau. Ragini Vishwas Joshi

.....Petitioner

v/s

Shri. Wakeshar and Shri Vithal D. Pashan
& another

.....Respondents

Mr. R.S. Apte, Senior Advocate, i/b Santaram A. Tarale, for the
Petitioner.

Mr. S.S. Kanetkar, for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: JUNE 15, 2022

P.C.:-

1] The order impugned is dated 17th February 2022, passed by Joint Charity Commissioner Pune Region, Pune whereby prayer of the Petitioner for his impleadment in the proceedings initiated under Section 36 of the Maharashtra Public Trusts Act (Hereinafter referred to as 'the Act' for the sake of brevity) in the matter of alienation of immovable property of the Respondent - Public Trust came to be rejected.

2] Contentions of Mr. Apte, learned Senior Counsel for the Petitioner are, one Bhagwat was holding lease for 30 years of the land owned by Respondent-Trust. Said Bhagwat, after expiry of lease period, executed irrevocable Power of Attorney in favour of the Petitioner for certain consideration so also deed of confirmation.

According to Mr. Apte, said Bhagwat became owner of the property of the Trust to the extent mentioned in the lease deed by virtue of adverse possession and as such, possession stood vested in the Petitioner by way of lawful means by execution of aforesaid two documents.

3] According to him, since Respondent-Trust intends to alienate the property, part of which is in possession of the Petitioner, it is necessary that Petitioner should be heard by permitting his impleadment in the said proceedings under Section 36 of the Act.

4] Drawing support from the provisions of Section 73A of the Act, he would urge that it is open for the Joint Charity Commissioner to permit the Petitioner to be impleaded for the purpose of appropriate adjudication of the proceedings preferred under Section 36 of the Act as the Petitioner is in possession of part of the property of the Trust.

5] Further contentions are, in case if Section 36 proceedings are decided in the absence of the Petitioner, same is likely to give rise to further complications, as third party rights will be created in spite of the fact that Petitioner is in possession of the Property.

6] Mr. Kanetkar, Counsel for the Respondent-Trust, so also learned AGP would support the order impugned as according to them, Petitioner has an appropriate alternate remedy.

7] Considered submissions.

8] No doubt, plea of adverse possession as is sought to be raised by the Petitioner can also be raised in support of claim for declaration. It is required to be noted that earlier lease in favour of Bhagwat is informed to be in the absence of the appropriate approval of the Charity Commissioner, as is contemplated under Section 36 of the Act.

9] In the aforesaid backdrop, even if it is open for the Petitioner to seek a declaration that he having entered into the shoes of Bhagwat - an earlier lessee, has become owner by virtue of adverse possession, such relief cannot be sought in proceedings under Section 36 but has to be in independent proceedings. Keeping such option open to the Petitioner, in my opinion, Charity Commissioner was justified in rejecting the prayer of the Petitioner, as the Petitioner does not appear to be a person interested as is defined under the provisions of the Act.

10] In that view of the matter, keeping an option open to the Petitioner to raise his grievance before the appropriate forum and if so required by preferring a suit for declaration that he has become owner by adverse possession, I hardly see any reason to interfere with the impugned order in extraordinary jurisdiction of this Court.

11] Petition as such fails and same stands dismissed.

12] Needless to clarify that Petitioner, before conclusion of section 36 proceedings, may raise an objection with the Respondent-Trust qua his right in the said property.

(NITIN W. SAMBRE, J.)