

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

WRIT PETITION NO.5570 OF 2022

Rajendra s/o Vithalrao Prakashe and another

Vs.

Shankar Shriram Supare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Rohit Joshi, Advocate for petitioners.

Ms. Yoshita Paliwal, Advocate h/f Mr. V. K. Paliwal, Advocate for respondent nos.1 & 2.

Ms. H. N. Jaipurkar, AGP for respondent no.3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 21/09/2022

1. Heard Mr. Joshi, learned counsel for the petitioners and Ms. Paliwal, learned counsel for the respondent nos.1 and 2.

2. The petition challenges the order dated 27.5.2022 passed by the learned Deputy Charity Commissioner, Nagpur, on an application below Exh. 4, whereby the application of the respondent no.1, to intervene in the scheme application under Section 50A of the Maharashtra Public Trusts Act, 1950 (hereinafter referred as "the MPT Act"), filed by the petitioners, has been allowed.

3. Mr. Joshi, learned counsel for the petitioners taking exception to the said order contends that, as per the language of Section 50A of the MPT Act, notice is

only to be given to the trustees of the trust for affording due opportunity. Since the respondent no.1 was admittedly not the trustee of the trust, the impugned order according to him, cannot be sustained.

4. Ms. Paliwal, learned counsel for respondent nos.1 and 2 does not dispute that as on today the respondent no.1 is not a trustee. She however contends, that in the past, the respondent no.1 had been shown to be the reporting trustee in number of applications, some of which have been decided and some of which are pending, and therefore, would entitle the respondent no1, to be impleaded as an intervenor. Reliance is also placed upon *Hemkrushna Shamraoji Kapgate and Ors Vs. Assistant Charity Commissioner and Ors 2018 (3) Bom.C.R. 145*.

5. A perusal of the impugned order, indicates an admitted position as recorded in para 3 thereof that the name of the respondent no.1 was deleted from the Schedule-I of the trust, in view of the order passed by the learned Joint Charity Commissioner, Nagpur, dated 19.5.1993 in Application No.4 of 1992 under Section 47 of the MPT, 1950. The earlier position in this regard is also reflected from the judgment dated 19.5.1993 passed by the Joint Charity Commission, Nagpur in an Application No.4 of 1992 under Section 47 of the MPT Act, to which the respondent no.1 is the party, in which

four persons named in the operative para no.1 of the said judgment (pg.49) were appointed as trustees under Section 47 of the MPT Act, to administer the trust. This judgment was challenged by the present respondent no.1 in First Appeal No.256 of 1993, which came to be dismissed by the judgment dated 28.7.2014, in which in para 37, it has been observed by this Court, that by virtue of the orders dated 6.6.1988 and 30.6.1988, the respondent no.1 was already directed to be kept at arm's distance from the administration of the trust. The dismissal of the appeal would indicate that respondent no.1, was kept away from the affairs of the trust. This position has continued thereafter also and there is no order, holding the field as of today indicating the respondent no.1 to be the trustee.

6. The language of Section 50A(1) of the MPT Act, is clear and explicit in as much as, is a scheme application filed it is the discretion of the Assistant or Deputy Charity Commissioner to frame such scheme before which an opportunity of hearing is to be afforded to the trustees of such trust. Admittedly, as recorded, even in the impugned order in para 3, the respondent no.1 is not the trustee of the Aadarsha Dnyanprakash Shikshan Sanstha, Nagpur [P.T.R. No.F-455(N)], considering which, in view of the express language of Section 50A(1), it was not permissible for the learned Deputy Charity Commissioner, to have allowed the

application below Exh.4. The reliance on Section 50A(2) of the MPT Act, in the impugned order is clearly not sustainable, as both the provisions operate in a different field, as is apparent from a plain reading of the language therein. ***Hemkrushna Shamraoji Kapgate*** relied upon by Ms. Paliwal, learned counsel for the respondent nos.1 and 2 does not dilate upon the notices to be issued to third party, who are not trustees, or their entitlement to be heard in a scheme application filed under section 50A(1) of the MPT Act.

7. In view of the aforesaid discussion, it is apparent that the impugned order dated 27.5.2022, cannot be sustained. The same is hereby quashed and set aside and the application below Exh.4, is rejected.

8. The petition is allowed in the above terms.
No costs.

JUDGE

Sarkate